

Corporal punishment of children in Thailand

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Child population 14,656,000 (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, alternative care settings and day care.

Article 1567(2) of the Civil and Commercial Code states that parents have the right to impose “reasonable” punishment for the purpose of discipline. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. This provision should be repealed, and prohibition enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have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care settings – Provisions for punishing children in articles 61 and 65 of the Child Protection Act 2003 should be repealed/amended and prohibition enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).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).

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 1567 of the Civil and Commercial Code states: “A person exercising parental power has the right ... (2) to punish the child in a reasonable manner for disciplinary purposes.” Article 26 of the Child Protection Act 2003 states that no person shall act in a way which tortures the physical or mental condition of a child but it does not clearly prohibit all corporal punishment. Provisions against violence and abuse in the Revised Penal Code 2003, the Criminal Procedure Code, the Domestic Violence Act 2007 and the Constitution 2007 are not interpreted as prohibiting all corporal punishment in childrearing.

The Government had initially made a commitment to prohibition in response to recommendations to prohibit corporal punishment made during the Universal Periodic Review of Thailand in 2011: “Corporal punishment is already prohibited in schools and other alternative care settings. We are determined to improve the laws in order to prohibit corporal punishment in communities and families.... As a State Party to the CRC, Thailand is committed to eradicating corporal punishment as well as the abuse and sexual exploitation of children....”¹ But in its report to the Universal Periodic Review in 2016, the Government asserted that corporal punishment is prohibited in article 26 of the Child Protection Act 2003 and in article 1567 of the Civil and Commercial Code, “which allows guardian to punish the child only in a reasonable manner for disciplinary purposes”.² Nevertheless, the Government went on to accept the recommendations to prohibit corporal punishment in all settings, including the home.³ The Global Initiative no longer considers Thailand committed to prohibiting all corporal punishment of children without delay, as corporal punishment continues to remain lawful in the home and in alternative care and day care settings.

As at June 2016, the Child Protection Act is under review and reportedly proposed revisions include strengthened protection for children from all forms of violence, including corporal punishment. The draft Constitution 2016 also strengthens protection from violence, stating in article 71 that the State should protect children from violence and unjust treatment (art. 71). It appears this article was kept in the final version of the Constitution which was signed by the King on 6 April 2017. Thailand is now in a grey constitutional area: with the new Constitution needing several supporting laws to be enacted before it enters into force, it appears the 2007 Constitution is still being used for the time being. The Government is aiming to enact the supporting laws by early 2018 and then to hold general elections in September 2018, after which the new Constitution would be able to enter into force.⁴

Alternative care settings

Corporal punishment appears to be lawful in alternative care settings. The Government has stated that it is prohibited in the Regulation of the Ministry of Social Development and Human Security on Child Punishment of 2005 which does not include corporal punishment among permitted disciplinary measures.⁵ However, the prohibition appears to apply only to corporal punishment of a certain severity: under article 61 of the Child Protection Act 2003 an owner, guardian of safety, and staff of a nursery, remand home, welfare centre, safety protection centre and development and rehabilitation centre must not mentally or physically assault or impose harsh punishment on any child under their

¹ 6 March 2012, A/HRC/19/8/Add.1, Report of the working group: Addendum, para. 15

² 12 February 2016, A/HRC/WG.6/25/THA/1, National report to the UPR, para. 72

³ 15 July 2016, A/HRC/33/16, Report of the working group, paras. 158(103), 158(104), 158(105), 158(106)

⁴ Information provided to the Global Initiative, May 2017

⁵ 20 January 2012, CRC/C/THA/Q/3-4/Add.1, Written replies to the Committee on the Rights of the Child, para. 44

care and guardianship, “except where such acts are reasonably applied for disciplinary purposes in accordance with the regulations specified by the Minister”. Article 65 of the Act provides for punishment of children which must be “carried out reasonably for disciplinary purposes”.

Day care

Corporal punishment is lawful in early childhood centres and in day care for older children under articles 61 and 65 of the Child Protection Act 2003 (see under “Alternative care”) and article 1567 of the Civil and Commercial Code (see under “Home”).

Schools

Corporal punishment was prohibited in schools in 2000, when the Regulation on the Punishment of Students 2000 did not include caning among permitted disciplinary measures. This was subsequently revised and the Ministry of Education Regulation on Student Punishment 2005 similarly does not include corporal punishment among permitted disciplinary measures. Article 6 of the Regulation states (unofficial translation): “It is prohibited to punish pupils and students with violent methods or with harmful, angry or revengeful intention...” The Regulation on the Promotion and Protection of the Rights of Children and Juveniles in Educational Establishments 2000 states in article 8: “Punishment of children and youth must not be carried out with torture or harsh treatment to the body or mind, by cruel, humiliating, inhumane means, or in any inappropriate manner.”

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions under the Department of Corrections Regulation 2005 on Abolition of the Department of Corrections Regulations No. 3 on Punishment by Means of Physical Chastisement (1937). Previously, corporal punishment had been lawful under the Training Arrangement for Certain Groups of Children Act 1936, which provided for whipping up to 10 strokes of children in correctional schools, vocational training schools and penitentiaries (art. 11); the Ministry of Interior Regulation on Punishment of Certain Groups of Children 1937 specified that the rod to be used must not exceed 75cm in length and 0.5cm in diameter (reg. 4).

The Establishment of Juvenile and Family Court and Procedure Act 1991 had provided for the Director of an observation and protection centre to order a child to be flogged for disciplinary breaches. This Act was repealed by the Juvenile and Family Court and Juvenile and Family Case Procedure Act 2010.

The Ministry of Justice Regulation on Children and Youth Punishment and Provisional Permission for Children and Youth 2003 pursuant to the Child Protection Act, does not include corporal punishment among permitted disciplinary measures; it does, however, authorise the imposition of hard labour (art. 4). Corporal punishment is not among permitted disciplinary actions in the Military Prisons Act 2007: previously the Military Prisons Act 1936 had authorised caning.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime under the Revised Penal Code 2003 and the Juvenile and Family Court and Juvenile and Family Case Procedure Act 2010: the latter repealed the Establishment of Juvenile and Family Court and Procedure Act 1991, which had authorised courts to order flogging of children and young people in observation and protection centres (art. 39). The Constitution 2007 states that “torture, brutal acts or punishment by cruel or inhumane means shall

not be inflicted” but also that “a punishment imposed pursuant to a Court judgment or by virtue of law shall not be deemed as punishment by cruel or inhumane means under this paragraph”.

Universal Periodic Review of Thailand’s human rights record

Thailand was examined in the first cycle of the Universal Periodic Review in 2011 (session 12). The following recommendations were made:⁶

“Adopt all necessary measures to eradicate the abuse and sexual exploitation of children, corporal punishment, the recruitment of children by armed groups and to combat the worst forms of child labour (Uruguay);

“Prohibit corporal punishment of children in all settings (Slovenia)”

In accepting the recommendations in relation to corporal punishment, the Government stated: “Corporal punishment is already prohibited in schools and other alternative care settings. We are determined to improve the laws in order to prohibit corporal punishment in communities and families.... As a State Party to the CRC, Thailand is committed to eradicating corporal punishment as well as the abuse and sexual exploitation of children....”⁷

Examination in the second cycle took place in 2016 (session 25). In its national report, the Government asserted that corporal punishment is prohibited in article 26 of the Child Protection Act 2003 and in article 1567 of the Civil and Commercial Code, “which allows guardian to punish the child only in a reasonable manner for disciplinary purposes”.⁸ The following recommendations were made and were accepted by the Government:⁹

“Carry out measures to prohibit corporal punishment of children in all settings, including the home (Bolivia);

“Prohibit corporal punishment of children in all settings (Slovenia);

“Adopt legislation prohibiting corporal punishment of children in all settings (Madagascar);

“Explicitly prohibit in law any form of corporal punishment or other cruel or degrading punishment of children in all settings (Sweden).”

Examination in the third cycle is scheduled for 2021.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(17 February 2012, CRC/C/THA/CO/3-4, Concluding observations on third/fourth report, paras. 7, 8, 47 and 48)

“The Committee, while welcoming the State party’s efforts to implement the concluding observations on the State party’s second periodic report (CRC/C/THA/CO/2), notes with regret that a number of the recommendations contained therein have not been given sufficient follow-up.

⁶ 8 December 2011, A/HRC/19/8, Report of the working group, paras. 89(36) and 89(37)

⁷ 6 March 2012, A/HRC/19/8/Add.1, Report of the working group: Addendum, para. 15

⁸ 12 February 2016, A/HRC/WG.6/25/THA/1, National report to the UPR, para. 72

⁹ 15 July 2016, A/HRC/33/16, Report of the working group, paras. 158(103), 158(104), 158(105), 158(106)

“The Committee urges the State party to take all necessary measures to address those recommendations contained in the concluding observations on the second periodic report that have not yet been, or not sufficiently, implemented, including on such issues as ... corporal punishment in the home.... The Committee also urges the State party to provide adequate follow-up to the recommendations contained in the present concluding observations.

“The Committee is concerned that corporal punishment remains lawful in the home. Moreover, article 1567 of the Civil and Commercial Code states that those with parental authority over children have a right to impose ‘reasonable’ punishment for the purpose of discipline.

“The Committee reiterates its previous concerns and concluding observations (CRC/C/THA/CO/2, paras. 40 and 41) and encourages the State party to take into account its general comments Nos. 13 (2011) on the right of the child to freedom from all forms of violence, and 8 (2006), on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment in adopting measures to combat all forms of violence against children.

“The Committee recommends that the State party:

- a) prohibit explicitly by law corporal punishment of children in the home and alternative care settings, including for disciplinary purposes;
- b) introduce sustained public education and awareness-raising and social mobilization programmes involving children, families and communities on the harmful effects of corporal punishment with a view to changing attitudes and promoting alternative, positive and non-violent forms of child-rearing and discipline;
- c) prioritize the elimination of all forms of violence against children, and ensure the effective implementation of the recommendations of the United Nations study on violence against children (A/61/299);
- d) provide information concerning the implementation by the State party of the recommendations of the above-mentioned study in its next periodic report, particularly those highlighted by the Special Representative of the Secretary-General on violence against children, in particular:
 - (i) the development in each State of a national comprehensive strategy to prevent and address all forms of violence and ill-treatment against children, paying particular attention to gender;
 - (ii) the introduction of an explicit national legal ban on all forms of violence against children in all settings;
 - (iii) the consolidation of a national system of data collection, analysis and dissemination, and a research agenda on violence and ill-treatment against children.”

Committee on the Rights of the Child

(17 March 2006, CRC/C/THA/CO/2, Concluding observations on second report, paras. 39, 40, 41, 76 and 77)

“The Committee notes the State party’s efforts to prohibit the use of corporal punishment in schools and takes note of the recent Ministerial regulation prohibiting the use of corporal punishment in penal institutions. The Committee nevertheless regrets that corporal punishment in the home and in alternative care settings is not explicitly prohibited by law. Further, it notes the State party’s acknowledgement that child victims are often afraid to complain and that assistance is rarely available to them.

“The Committee reiterates that corporal punishment is not compatible with the provisions of the Convention and is not consistent with the requirement of respect for the child’s dignity, as specifically required by article 28, paragraph 2 of the Convention. Therefore, the Committee urges the State party, taking into account the recommendations adopted by the Committee on its day of general discussion on violence against children within the family and in schools (see CRC/C/111), to prohibit by law all forms of corporal punishment in the home and in all alternative care settings.

“The Committee recommends that the State party sensitize and educate parents and other caregivers, law enforcement officials and professionals working with and for children by carrying out public awareness-raising campaigns about the harmful impact of corporal punishment. It encourages the State party to promote positive, non-violent forms of discipline as an alternative to corporal punishment. The Committee also recommends that the State party establish specific child-sensitive complaint mechanisms and services, and ensure access of all children to these mechanisms.

“The Committee welcomes the recent amendment to the Act Instituting the Juvenile and Family Courts and the Juvenile and Family Procedures of 1991 that entered into force in February 2005.... It notes the recent Ministerial regulation prohibiting corporal punishment in penal institutions....

“The Committee reiterates its previous recommendations and urges the State party to ensure that its legislation and practice concerning juvenile justice is in full compliance with the provisions of the Convention, in particular articles 37, 39 and 40, as well as other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (General Assembly resolution 40/33), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (General Assembly resolution 45/112), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113), and the Guidelines for Action on Children in the Criminal Justice System (annexed to Economic and Social Council resolution 1997/30 of 21 July 1997). In this regard, the Committee recommends that the State party: ...

b) amend its national legislation to reinforce the prohibition against the use of corporal punishment in penal institutions; ...”

Committee on the Rights of the Child

(26 October 1998, CRC/C/15/Add.97, Concluding observations on initial report, para. 21)

“The Committee notes the State party’s efforts to prohibit the use of corporal punishment in schools. It is concerned, however, that corporal punishment is still practised and that domestic legislation does not prohibit its use within the family, the juvenile justice and alternative care systems and generally within the society. In this regard, the Committee recommends that the State party take all appropriate measures, including of a legislative nature, to prohibit corporal punishment within the family, the juvenile justice and alternative care systems and generally within the society. It further suggests 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, especially article 28.2.”

Prevalence/attitudinal research in the last ten years

Research conducted in 2015-16 as part of UNICEF’s Multiple Indicator Cluster Surveys (MICS) programme, found on average 75% of children aged 1-14 years experienced some form of violent discipline (psychological aggression and/or physical punishment) in the month prior to the survey. On average 62% of children experienced psychological aggression, 56% physical punishment and 4%

severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Only 21% of children experienced only non-violent forms of discipline, which was more common for girls than boys (23% compared to 19%) and more common in the wealthiest households than the poorest (32% compared to 16%).

(National Statistical Office & UNICEF (2016), *Thailand Multiple Indicator Cluster Survey 2015- 2016, Final Report*, Bangkok: National Statistical Office & UNICEF)

As part of a cross-sectional study carried out between July 2011 and January 2012, 34 caretakers of children aged 1-9 years born to methamphetamine abusing mothers were interviewed to assess their disciplinary actions; more than 90% of the caretakers were female aged 18-35 and about 60% were biological mothers. Physical discipline was used by 80% of caretakers.

(Patcharoros, N., et al. (2014), "Assessing child maltreatment in children born to mothers who used methamphetamine during pregnancy at Siriraj Hospital, Bangkok, Thailand: A Pilot study", *International Scholarly Research Notices* 1-4)

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 Thailand 58% of girls and 72% of boys involved in the study 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), 5% of girls and 3% 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, 16% of mothers and 22% of fathers believed it was necessary; for boys, 11% of mothers and 10% of fathers.

(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 UNICEF study involving more than 2,300 children in the southern border area of Thailand found that violence, and the anxiety it causes, is an everyday occurrence in their lives, including corporal punishment in homes and schools. Of the 475 children who answered a question about corporal punishment in the home, 38% said they had direct experience of violent punishment like beating with a stick or belt, 8% said this kind of punishment happens often; 50% of the 1,010 children who answered a question on their opinion on corporal punishment at home disagreed that they deserved violent punishment when they did wrong.

(UNICEF (2008), *Everyday Fears: A study of children's perceptions of living in the southern border area of Thailand*, Bangkok: UNICEF, www.unicef.org/thailand/Everyday_fears.pdf)