

**BRIEFING ON CHINA FOR THE COMMITTEE ON THE RIGHTS OF THE CHILD, PRESESSIONAL WORKING GROUP – February 2013**

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**This briefing describes the legality of corporal punishment of children in China, including Hong Kong and Macau. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, the Committee’s previous recommendations on the issue, and the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, we hope the Committee will:**

* **in its List of Issues for China, raise the issue of corporal punishment of children, in particular asking what measures have been taken to draft legislation which would explicitly prohibit corporal punishment in all settings throughout the state party, including the home, schools, penal institutions and all forms of alternative care?**
* **in its concluding observations on the third/fourth report of China and the second reports of Hong Kong and Macau, emphasise that prohibition is not a matter of choice but a fundamental obligation under the Convention and recommend that legislation is enacted to achieve prohibition in all settings, including the home, and that prohibition is enforced through appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

**1 Corporal punishment in the periodic reports of China, Hong Kong and Macau**

1.1 In the third/fourth state party report of China, the Government refers to “enhanced safeguards” in the Law on the protection of Minors to ensure children are not subjected to violence and to the prohibition of corporal punishment in schools,[[1]](#footnote-1) but it fails to acknowledge that children may lawfully be physically punished by parents and others and does not mention any steps towards reforming the law to prohibit all corporal punishment.

1.2 Referring to the Committee’s previous recommendations on the issue, the second periodic report of Hong Kong describes legislation prohibiting corporal punishment in schools, correctional institutions and childcare centres.[[2]](#footnote-2) However, the Government is resistant to prohibition in the home: “We do not consider that legislation at this stage would be the most effective means of dealing with the issue in Hong Kong. Rather, public education and intervention by professionals are considered more effective.” [[3]](#footnote-3)

1.3 The second report of Macau does not address the issue of corporal punishment.

**2 The legality of corporal punishment of children in China, Hong Kong and Macau**

2.1 *Summary:* In China, corporal punishment is prohibited in schools and the penal system but it is lawful in the home and in alternative care settings. In Hong Kong, corporal punishment is unlawful in schools, the penal system and in child care centres but it is lawful in the home and in other alternative care settings. In Macau, corporal punishment is unlawful as a sentence for crime but there appears to be no explicit prohibition in schools and penal institutions; it is lawful in the home and alternative care settings.

***China***

2.2 *Home (lawful):* There is limited protection from corporal punishment by parents in some circumstances: Rules in the Shenzhen Special Economic Zone (1993) pursuant to the Law on the Protection of the Rights and Interests of Women (1992) explicitly prohibit corporal punishment of the female child (article 23); under article 36 of the Law on the Prevention of Juvenile Delinquency (1999), families of children in work-study schools must not impose physical punishment on them – but this Law also states that parents or guardians of children who commit serious misbehaviour may be ordered to subject their children to “strict discipline” (articles 35, 38 and 49). Provisions against violence and abuse in the revised Law on the Protection of Minors (2006), the Criminal Law (1979), the Constitution (1982) and the Marriage Law (amended 2001) are not interpreted as prohibiting all corporal punishment in childrearing.

2.3 *Schools (unlawful):* Corporal punishment is explicitly prohibited in schools, kindergartens and nurseries in the Compulsory Education Law (1986, article 16), the Teachers’ Law (1994, article 37) and the Law on the Protection of Minors (2006, articles 21 and 63). It is prohibited in work-study schools in the Law on the Prevention of Juvenile Delinquency (1999, article 36).

2.4 *Penal system – sentence for crime (unlawful):* There is no provision for judicial corporal punishment in criminal law.

2.5 *Penal system – disciplinary measure in penal institutions (unlawful):* Corporal punishment is prohibited in the Criminal Code (article 248), the Law on the Prevention of Juvenile Delinquency (article 36), the Prison Law (article 14), the People’s Police Law (article 22) and in the Regulations on the Behaviour of People’s Police on Duty in Custody-houses (2001).

2.6 *Alternative care settings (lawful):* There is no explicit prohibition of corporal punishment.

***Hong Kong***

2.7 *Home (lawful):* Article 8 of the Basic Law (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 “to inflict moderate punishment”.[[4]](#footnote-4) Provisions against violence and abuse in the Protection of Children and Juveniles Ordinance (1951), the Domestic and Cohabitation Relationships Violence Ordinance (1986), 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.

2.8 *Schools (unlawful):* Corporal punishment is explicitly prohibited in Regulation 58 of the Education Regulations (1971, as amended in 1991).

2.9 *Penal system – sentence for crime (unlawful):* There is no provision for judicial corporal punishment in criminal law. The Corporal Punishment Ordinance was repealed in 1990.

2.10 *Penal system – disciplinary measure in penal institutions (unlawful):* Corporal punishment 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.

2.11 *Alternative care settings (partial prohibition):* Corporal punishment is explicitly prohibited in child care centres and in mutual help child care centres in the Child Care Services Regulations (1976) (regulations 15 and 45R respectively). In other forms of care it is lawful as for parents. The Protection of Children and Juveniles Ordinance 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” (section 34, para. 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” (Regulation 7).

***Macau***

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

2.13 *Schools (lawful):* There appears to be no explicit prohibition of corporal punishment in schools. Education laws – including Law 9/2006 on the Educational System for Non-Higher Education and Decree-Law No. 42/99/M on compulsory education – are silent on the issue.

2.14 *Penal system – sentence for crime (unlawful):* There is no provision for judicial corporal punishment in criminal law.

2.15 *Penal system – disciplinary measure in penal institutions (?unlawful):* Corporal punishment appears to be unlawful 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 in certain circumstances but not as a disciplinary measure (articles 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 (article 27). The Law allows for the use of physical force and does not explicitly prohibit its use as a disciplinary measure; corporal punishment is not included in the list of permitted disciplinary measures (articles 88, 93 and 96).

2.16 *Alternative care settings (lawful):* There is no explicit prohibition of corporal punishment.

## 3 The nature and prevalence of corporal punishment of children

3.1 *China:* Many research studies have documented the nature and prevalence of corporal punishment of children. For example, in a study of 2,363 parents published in 2010, 43.8% said they had physically punished a child; 32.8% had done so in the past year.[[5]](#footnote-5) A survey of over 2,100 primary school children, reported in 2010, found that 73% were physically punished by their parents.[[6]](#footnote-6) In a 2006 study of more than 1,600 parents, 57.5% reported using corporal punishment.[[7]](#footnote-7)

3.2 Corporal punishment continues to be used in schools, despite prohibition. In a study of 6,592 high school students, 23.2% reported experiencing corporal punishment in the past six months.[[8]](#footnote-8) A survey in 2004 of 528 students from a college and a technical secondary school in Hebie province found that 57.6% reported having been physically punished at least once; 53.4% reported receiving “non-contact” corporal punishment by teachers when aged below 16 years, including running, standing, kneeling etc; 16.1% reported being hit/kicked/pushed very hard with open hands or another part of the body, 10.2% beaten with an object, 0.2% locked in a cupboard or tied with a rope.[[9]](#footnote-9)

3.3 *Hong Kong:* A survey in 2006-7 involving more than 700 parents and secondary school children found that 83.3% of parents admitted physically punishing their children; 74.2% of the students and 49.7% of parents said they would support prohibition of corporal punishment.[[10]](#footnote-10) 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 2008 found that more than one in five children had been hit by their parents, with 21% of nearly 6,000 school students reporting this, but the lifetime prevalence was much higher, at 58%.[[11]](#footnote-11) In the first large scale household survey on domestic violence, commissioned by the Hong Kong Social Welfare Department and reported in 2006, around 44% of the parents admitted physically punishing their children, and most of these had done so at least once in the previous 12 months.[[12]](#footnote-12)

3.4 *Macau:* No research identified.

**4 Recommendations by human rights treaty bodies**

4.1 *CRC:* In its concluding observations on the second report of China in 2005, the Committee on the Rights of the Child recommended that corporal punishment be explicitly prohibited in the family, schools, institutions and all other settings throughout the state party, including Hong Kong and Macau.[[13]](#footnote-13) The Committee had previously raised the issue with Hong Kong in 1996, in the context of examining the initial report of the UK on its dependent territories.[[14]](#footnote-14)

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

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*January 2013*

1. CRC/C/CHN/3-4, paras. 113 and 116 [↑](#footnote-ref-1)
2. CRC/C/CHN-HKQ/2, paras. 148ff [↑](#footnote-ref-2)
3. Ibid., para. 150 [↑](#footnote-ref-3)
4. Law Reform Commission of Hong Kong (2002), *Report: Guardianship of Children* [↑](#footnote-ref-4)
5. Chan, K. L. (2010), “Co-occurrence of intimate partner violence and child abuse in Hong Kong Chinese families”, *Journal of Interpersonal Violence*, (e-publication 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 [↑](#footnote-ref-5)
6. 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 [↑](#footnote-ref-6)
7. Tang, C. S. K. (2006), “Corporal punishment and physical maltreatment against children: A community study on Chinese parents in Hong Kong”, *Child Abuse & Neglect*, 30, 893-907, cited in UNICEF East Asia and Pacific Regional Office (2012), *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research*, Bangkok: UNICEF [↑](#footnote-ref-7)
8. 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 [↑](#footnote-ref-8)
9. Jing-qi, C. et al. (2006), “A retrospective survey of childhood corporal punishment by school teachers in students”, *Chinese Journal of Paediatrics*, 44(1) [↑](#footnote-ref-9)
10. Survey announced in 2007 Spank Out Day press conference, information supplied to the Global Initiative, February 2009 [↑](#footnote-ref-10)
11. 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 [↑](#footnote-ref-11)
12. Chan, K. L. (2005), *Study on Child Abuse and Spouse Battering: Report on findings of Household Survey*, Hong Kong: Department of Social Work & Social Administration, the University of Hong Kong [↑](#footnote-ref-12)
13. 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 [↑](#footnote-ref-13)
14. 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 (Hong Kong ceased to be a dependent territory of the UK in 1997.) [↑](#footnote-ref-14)