

JAPAN

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 14th session, 2012

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Global Initiative to
**End All Corporal Punishment
of Children**

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in Japan, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and Japan’s acceptance of the recommendation to prohibit made during the initial UPR in 2008.

We hope the Human Rights Council will note with concern the repeated and unfulfilled treaty body recommendations on corporal punishment and Japan’s lack of progress in implementing the recommendation on this issue accepted during the UPR in 2008. We hope states will raise the issue during the review in 2012 and recommend to Japan that legislation be enacted to explicitly prohibit corporal punishment of children in all settings, including the home, as a matter of priority.

1 The initial review of Japan by the Human Rights Council (2008)

1.1 Japan was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 2). The issue of corporal punishment of children was included in the compilation of UN information¹ and the summary of stakeholders' information² and the following recommendation was made:

“Prohibit expressly all forms of corporal punishment of children and promote positive and non-violent forms of discipline (Italy)”

1.2 Japan accepted this recommendation.³ However, the mid-term progress report by Japan simply describes existing law on the issue – the prohibition of corporal punishment in schools and the legal power of those with parental authority to discipline children – and gives no indication of any progress towards prohibiting all corporal punishment of children.⁴ The legality of corporal punishment has not changed since Japan's initial UPR in 2008.

2 Legality of corporal punishment in Japan

2.1 Corporal punishment is lawful in the **home**. The Civil Code states that a person with parental authority “may discipline the child to the extent necessary” (article 822). Article 14 of the Child Abuse Prevention Law states that “those who have parental authority have to take an appropriate way when disciplining a child” and that those charged with inflicting bodily injury and violence cannot evade those charges under this provision, but it does not rule out all corporal punishment in childrearing. Provisions against violence and abuse in the Criminal Code, the Revised Child Abuse Prevention Law and the Law Concerning Punishment of Physical Violence and Others are not interpreted as prohibiting all corporal punishment in childrearing.

2.2 Corporal punishment is prohibited in **schools** in article 11 of the Education Law (1947), which states that disciplinary punishment may be inflicted but “in no case is corporal punishment permitted” (article 11). However, a ruling by the Tokyo High Court on 1 April 1981 suggested this provision did not prohibit all physical punishment in all cases, and in 2007 a ministerial guideline issued to public schools relied on this in suggesting that some forms of physical punishment may be permitted in some circumstances.

2.3 In the **penal system**, corporal punishment is unlawful as a sentence for crime: there is no provision for it in the Criminal Code or the Criminal Procedure Code. However, it is lawful as a disciplinary measure in penal institutions. The Constitution (1946) prohibits cruel punishments and the Act on Penal Detention Facilities and Treatment of Inmates and Detainees (2005) provides for the maintenance of discipline in penal institutions, but there is no explicit prohibition of corporal punishment.

2.4 Corporal punishment is lawful in **alternative care settings** under the power of those with parental authority to punish and discipline children in the Civil Code and the Child Abuse Prevention Law (see above). Minimum Standards for Child Welfare Facilities (1948) address abuse of disciplinary methods but do not prohibit corporal punishment.

¹ 8 April 2008, A/HRC/WG.6/2/JPN/2, Compilation of UN information, para. 21

² 8 April 2008, A/HRC/WG.6/2/JPN/3, Summary of stakeholders' information, para. 16

³ 25 August 2008, A/HRC/8/44/Add.1, Report of the Working Group on the Universal Periodic Review : Japan, Addendum: Conclusions and/or recommendations, para. 1(a)

⁴ Government of Japan, March 2011, Mid-term progress report by Japan on its implementation of recommendations made in May 2008, pp. 9-10

3 Recommendations by human rights treaty monitoring bodies

3.1 The **Committee on the Rights of the Child** first recommended prohibition of corporal punishment of children in the family and in childcare and other institutions in 1998.⁵ The recommendation was made again in 2004⁶ and, most recently, in 2010.⁷

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March 2012

⁵ 5 June 1998, CRC/C/15/Add.90, Concluding observations on initial report, paras. 24 and 45

⁶ 26 February 2004, CRC/C/15/Add.231, Concluding observations on second report, paras. 35 and 36

⁷ 20 June 2010, CRC/C/JPN/CO/3, Concluding observations on third report, paras. 7, 8, 47, 48, 56 and 57