

REPUBLIC OF KOREA

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 the Republic of Korea, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and 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 the Republic of Korea’s failure to fully accept and implement the recommendation on this issue made during the UPR in 2008. We hope states will raise the issue during the review in 2012 and recommend to the Republic of Korea that legislation is enacted to explicitly prohibit corporal punishment of children in all settings, including the home, as a matter of priority.

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

1.1 The Republic of Korea 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:

“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).”³

1.2 The Government's immediate response was to state that with regard to corporal punishment in the home “it is important to reflect the views of various sectors of society in order to amend legislation”, and that since 2007 there have been some pilot schools where corporal punishment is not used.⁴ The Government later stated that it would continue to “review appropriate measures” and noted that current legislation prohibited corporal punishment in schools “except in circumstances in which it is inevitable for educational purposes”.⁵ The Government did not clearly accept or reject the recommendation.

1.3 Some legislative measures have been introduced which address corporal punishment of children, but they fall short of prohibiting all corporal punishment without exception and there has been little overall change in the legality of corporal punishment since the initial review in 2008 (see below).

2 Legality of corporal punishment in the Republic of Korea

2.1 Corporal punishment is lawful in the **home**. Provisions against violence and abuse in the Juvenile Protection Act (1997), the Framework Act on Juveniles (2004), the Juvenile Welfare Support Act (2004), the Child Welfare Act (amended 2011), 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 Child Welfare Act was reportedly revised in 2008 to provide for parent education on non-violent discipline and was further revised in 2011.⁶ We have been unable to examine the full text of the Act as revised but to our knowledge the law does not explicitly prohibit all corporal punishment in childrearing.

2.2 It appears that some but possibly not all forms of corporal punishment are prohibited in **schools** (information unconfirmed). The Government reported to the Committee on the Rights of the Child that article 31(8) of the Enforcement Decree for the Elementary and Secondary Education Act (2008), which permitted corporal punishment in certain circumstances, was amended in 2011 to explicitly prohibit corporal punishment “using parts of the human body or a tool to cause physical pain to students”.⁷ We have yet to confirm that prohibition applies to all forms of corporal punishment: this confirmation is necessary in light of the controversy

¹ 9 April 2008, Compilation of UN information, para. 15

² 2 April 2008, A/HRC/WG.6/2/KOR/3, Summary of stakeholder's information, para. 16

³ 29 May 2008, A/HRC/8/40, Report of the Working Group, para. 64(29)

⁴ 29 May 2008, A/HRC/8/40, Report of the Working Group, para. 58

⁵ 25 August 2008, A/HRC/8/40/Add.1, Report of the Working Group: Addendum

⁶ 5 January 2011, CRC/C/KOR/3-4, Third/fourth report to the Committee on the Rights of the Child, para. 146; 2 February 2012, CRC/C/KOR/CO/3-4, Concluding observations on third/fourth report, para. 3

⁷ 4 August 2011, CRC/C/KOR/Q/3-4/Add.1, Written replies to the Committee on the Rights of the Child, para. 52

during 2010 and 2011 concerning the distinction between direct and “indirect” corporal punishment such as painful positions and punitive physical exercise.

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, the Criminal Procedure Code (1954) and the Juvenile Act (1988). It is considered unlawful as a disciplinary measure in penal institutions, but 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.

2.4 Corporal punishment is lawful in **alternative care settings**.

3 Recommendations by human rights treaty monitoring bodies

3.1 The **Committee on the Rights of the Child** first recommended prohibition of all corporal punishment, including in the home, in 1996.⁸ The recommendation was repeated in 2003⁹ and, most recently, in February 2012.¹⁰

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March 2012

⁸ 13 February 1996, CRC/C/15/Add.51, Concluding observations on initial report, paras. 15 and 22

⁹ 18 March 2003, CRC/C/15/Add.197, Concluding observations on second report, paras. 7, 38 and 39

¹⁰ 2 February 2012, CRC/C/KOR/CO/3-4, Concluding observations on third/fourth report, paras. 6, 7, 42 and 43