BRIEFING ON HONG KONG FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE – October/November 2012
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1 The human rights obligation to prohibit corporal punishment

1.1 The legality and practice of corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity and to equal protection under the law, and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment – rights guaranteed in the International Covenant on Civil and Political Rights and other international human rights instruments.

This briefing describes the legality of corporal punishment of children in Hong Kong. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, and the repeated recommendations to Hong Kong by the Committee on the Rights of the Child, we hope the Human Rights Committee will:

- raise the issue of corporal punishment of children in its List of Issues for Hong Kong, in particular asking what measures have been taken to ensure the law explicitly prohibits corporal punishment in all settings including the home, and
- recommend to Hong Kong, in its concluding observations on the third report, that legislation is enacted and enforced which explicitly prohibits corporal punishment in all settings including the home as a matter of priority, together with appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.
2 Response to Hong Kong’s third report to the Human Rights Committee

1.1 Corporal punishment is addressed in paras. 305 to 308 of the third report to the Human Rights Committee (CCPR/C/CHN-HKG/3). The report notes that some “commentators” have called for legislation against corporal punishment (para. 305), refers to existing legislation on the issue in the Child Care Services Regulations and the Education Regulations (para. 306), and notes that the criminal provisions on assault in the Offences Against the Person Ordinance may apply (para. 307). It acknowledges that not all corporal punishment in the family is unlawful but states that while laws are developing elsewhere the issue remains controversial and there is currently no intention to reform the law in Hong Kong (para. 308).

2.2 Calls for legislation to prohibit corporal punishment do not only come from “commentators”. Prohibiting corporal punishment is an established obligation under international human rights law. It has been recommended to states by the Committee on the Rights of the Child since the Committee’s earliest examinations of implementation of the Convention on the Rights of the Child. Other international and regional treaty monitoring bodies have increasingly recommended prohibition and there is now consensus that children have a right to protection from this form of violence, even when meted out in the guise of “discipline” or “correction”. Recommendations to prohibit corporal punishment in all settings also feature highly in the Universal Periodic Reviews of states’ overall human rights records.

3.1 Corporal punishment of children in Hong Kong is unlawful in schools, in the penal system and in some forms of childcare, but it is lawful in other care settings and in the home.

3.2 With regard to the home, article 8 of the Basic Law states that the common law previously in force shall be maintained, which 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 in Hong Kong “to inflict moderate punishment” (Law Reform Commission of Hong Kong (2002), Report: Guardianship of Children).

3.3 Corporal punishment is explicitly prohibited in schools in Regulation 58 of the Education Regulations (1971, as amended in 1991): “No teacher shall administer corporal punishment to a pupil.”

3.4 In the penal system, corporal punishment is unlawful as a sentence for crime: the Corporal Punishment Ordinance was repealed in 1990. It is prohibited as a disciplinary measure in penal institutions: it 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), and is explicitly prohibited in approved institutions by Rule 37 of the Probation of Offenders Rules.

3.5 In care settings, 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, providing for the powers of juvenile courts in relation to guardianship and custody and control of children in need of care and protection, 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).

4 Prevalence of corporal punishment in Hong Kong

4.1 Numerous research studies have highlighted the prevalence of corporal punishment of children in Hong Kong. For example, in a survey by Against Child Abuse Ltd in 2006-7, 83.3% of parents admitted inflicting corporal punishment on their children, though 49.7% were in favour of prohibition. ¹ Research in 2008 found that 21% of children were hit by their parents, but the lifetime prevalence was 58%.² In comparative research by Save the Children in 2005, 71% of children in Hong Kong reported being physical punished in the home, 54% at school. Children reported being hit with an implement (86.7% – 57.8% with sticks etc, 28.9% with a whip, lash or belt), and being hit on the face (13%), limbs (45%), back (27%) and genitals (1%).³ In the first household survey on domestic violence about 44% of parents admitted inflicting corporal punishment and physical violence on their children, 32% of these at least once during the past 12 months.⁴

5 Recommendations by human rights treaty monitoring bodies

4.1 The Committee on the Rights of the Child first raised concerns about corporal punishment of children in Hong Kong in 1996, when Hong Kong was a dependent territory of the UK.⁵ In 2005, after Hong Kong became a Special Administrative Region of China, the Committee again addressed the issue and recommended that corporal punishment be explicitly prohibited “in the family, schools, institutions and all other settings”.⁶

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¹ Survey announced in 2007 Spank Out Day press conference, information from Priscilla Lui in correspondence with the Global Initiative, February 2009
² 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
⁴ 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
⁵ 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
⁶ 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