



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

BRIEFING ON KYRGYZSTAN FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESESSIONAL WORKING GROUP – Jul 2014

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The human rights obligation to prohibit corporal punishment – a key strategy in eliminating all forms of violence

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006), addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. Physical violence against girls and boys in their own home is typically assumed not to be domestic violence because it is inflicted under the guise of “discipline” or “correction” – a rationale totally unacceptable when the victim is an adult woman. **It is for these reasons that we respectfully urge the Committee on the Elimination of Discrimination Against Women to specifically recommend that corporal punishment be prohibited in the home and all settings.**

This briefing describes the legality of corporal punishment of children in Kyrgyzstan. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, and the repeated recommendations to Kyrgyzstan by treaty monitoring bodies and during the UPR (accepted by the Government), we hope the Committee on the Elimination of Discrimination Against Women will:

- **raise the issue of corporal punishment of girls in its List of Issues for Kyrgyzstan, asking what progress has been made towards ensuring clarity in law that corporal punishment is prohibited in all settings, including the home, and**
- **recommend to Kyrgyzstan, in the concluding observations on the fourth state party report, that legislation clearly prohibits all forms of corporal punishment in all settings, including the home.**

1 The state party's report to CEDAW

- 1.1 At the time of preparing this briefing, the fourth report of Kyrgyzstan to CEDAW is available only in Russian.

2 The legality of corporal punishment of children in Kyrgyzstan

- 2.1 **Summary:** In Kyrgyzstan, corporal punishment of children is unlawful in schools, the penal system and some alternative care settings; it appears that it is not fully prohibited in the home, alternative care settings and day care.
- 2.2 **Home (lawful):** The Code on Children 2012 includes as one of the basic principles of child protection “ensuring protection of the child from all forms of violence” (art. 4, unofficial translation); it defines violence/abuse as “any action in relation to the child which violates or endangers its physical or mental development” (art. 5). Article 7 states that the child has the rights to “care from parents and persons replacing them” and to “respect for his/her human dignity”. Article 16(1) states: “Every child has the right to honour and dignity, and security of the person. The state provides personal security of the child, and protects him/her from physical and mental, sexual violence, cruel, brutal, inhuman or degrading treatment....” Neither this Code nor the newly enacted Criminal Code 2014 explicitly prohibits all forms of corporal punishment.
- 2.3 The Family Code 2003 states in article 59(2) (unofficial translation): “... The child has the right to education by the parents, ensuring its interests, full development, and respect for human dignity....” Article 61(2) protects the child from abuse by parents; article 70 states: “In the exercise of parental rights, parents have no right to harm the physical and mental health of children, their moral development. The methods of raising children should exclude neglectful, cruel or degrading treatment, abuse or exploitation of children.” But the Code does not explicitly prohibit all corporal punishment.
- 2.4 The Law on Social Legal Protection from Violence in the Family 2003 defines domestic violence as “any intentional act by one family member against another if this action violates the legal rights and freedoms of a family member, causing him physical and mental suffering and causing moral harm or posing a threat to the physical and personal development of a minor member of the family” and the definition of physical violence includes beating and actions which violate the honour, dignity and mental, physical and personal development of the child (art. 1). But the Law does not explicitly state that violent punishment in the guise of “discipline” is prohibited.
- 2.5 **Alternative care settings (partially prohibited):** Corporal punishment is unlawful in residential institutions under clause 31 of Regulation No. 489 “On the state children’s home (residential institutions) of the system of the Ministry of Education, Science and Culture of the Kyrgyz Republic” 1998. It is not prohibited in foster care and other alternative care settings, though children are protected from some violent punishment under the protection from “cruel, brutal, inhuman or degrading treatment” in article 16 of the Code on Children 2012.
- 2.6 **Day care (lawful):** There is no explicit prohibition of corporal punishment in day care settings, though children are protected from “cruel, brutal, inhuman or degrading treatment” in article 16 of the Code on Children 2012. The Law on Preschool Education 2009 states that children in preschool education have “the right guaranteed by the state ... to be protected from all forms of exploitation and actions that are harmful to their health, as well as physical and psychological abuse, humiliation of dignity” (art. 18, unofficial translation), but it does not explicitly prohibit all corporal punishment.
- 2.7 **Schools (unlawful):** Corporal punishment is considered unlawful under the Law on Education 2003, article 29 (unofficial translation): “... Teachers shall ... not apply methods of physical and moral abuse in relation to students.” The Law on the Status of the Teacher 2001 states in article 15: “The teacher shall ... respect the honour and dignity of pupils.” Article 16 of the Code on Children 2012 protects children from “cruel, brutal, inhuman or degrading treatment”.

2.8 **Penal institutions (?unlawful):** There is no provision for corporal punishment among the permitted disciplinary measures in the Criminal and Executive Code 1999 (arts. 39-15 and 87), but the Law on Bodies and Organisation of Criminal and Executive (Penitentiary) System 2003 states in article 28 that staff may use physical force if nonviolent methods are ineffective. Article 16 of the Code on Children 2012 protects children from “cruel, brutal, inhuman or degrading treatment”.

2.9 **Sentence for crime (unlawful):** There is no provision for judicial corporal punishment in criminal law.

3 The practice of corporal punishment in Kyrgyzstan

3.1 UNICEF’s major 2010 analysis of data from 2005-2006 found that 54% of 2-14 year olds in Kyrgyzstan were violently “disciplined” (with physical punishment and/or psychological aggression) in the month prior to the survey.¹ In a large-scale national study involving over 2,000 children, 24% said they had been hit, kicked, beaten or physically hurt in another way by an adult in their family; 11% had been hit or attacked with a weapon or other object by a family member; surveys with 155 parents revealed that 68% had used some kind of corporal punishment.²

3.2 Research by NGOs in care institutions found that corporal punishment was common. Punishments included punching children, beating them with a stick, forcing them to clean for long periods, forcing them to stand on one leg with their arms raised, making them spend nights in rooms occupied by older children, depriving them of food and placing them in psychiatric hospitals.³ A 2013 shadow report to the Committee on the Rights of the Child by a group of NGOs documented that torture (including being beaten, forced to do physical exercise, suffocated and deprived of sleep) was inflicted on children in detention centres, special schools and residential institutions, including as a punishment.⁴ Another NGO documented evidence of injuries caused by strenuous physical exercise used as punishment in a special school for boys aged 11-14.⁵

4 Recommendations by human right treaty monitoring bodies and during the UPR

4.1 **CRC:** The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Kyrgyzstan and recommended that it be prohibited in the family and all other settings – in its concluding observations on the initial report in 2000⁶ and again on the second report in 2004.⁷

¹ UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

² Haarr, R. et al (2009), *Child Abuse and Neglect in Families in the Kyrgyz Republic: a National Population-Based Study*, UNICEF

³ Youth Rights Protection Group survey for 2006, 2007 and 2009, reported in Government of Kyrgyzstan (2010), *Third/fourth state party report to the Committee on the Rights of the Child*, CRC/C/KGZ/3-4

⁴ Utesheva, N. et al (2013), *Shadow report of NGOs on compliance of obligations under the UN Convention on the Rights of the Child by the Kyrgyz Republic*, Association of NGOs for the protection and promotion of child rights, Centre for Child Protection, SOS Children's Villages Kyrgyzstan, Independent Human Rights Group, Legal Clinic “Adilet”, Youth Human Rights Group, Children of Tien Shan, Blagodat, Association of Parents of Disabled Children, Haliluya, Voice of Freedom & Master radosti

⁵ O’Donnell, D. (2012), *Juvenile Justice In Central Asia Reform Achievements And Challenges In Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan And Uzbekistan*, UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States

⁶ 9 August 2000, CRC/C/15/Add.127, Concluding observations on initial report, paras. 33, 34, 39 and 40

⁷ 3 November 2004, CRC/C/15/Add.244, Concluding observations on second report, paras. 37, 38, 43, 44, 45 and 46

- 4.2 **HRC:** The Human Rights Committee recommended prohibition and elimination of all corporal punishment of children in its concluding observations on the initial state party report in 2000⁸ and on the second report in 2014.⁹
- 4.3 **CAT:** The Committee Against Torture in 2013 recommended that corporal punishment of children in Kyrgyzstan be prohibited in all settings.¹⁰
- 4.4 **UPR:** Kyrgyzstan was reviewed in the first cycle of the Universal Periodic Review in 2010. The Government accepted a recommendation to give children “full legal protection” from corporal punishment in all settings.¹¹

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⁸ 24 July 2000, CCPR/CO/69/KGZ, Concluding observations on initial report, para. 19

⁹ [April 2014], CCPR/C/KGZ/CO/2 Advance Unedited Version, Concluding observations on second report, para. 21

¹⁰ 20 December 2013, CAT/C/KGZ/CO/2, Concluding observations on second report, para. 21

¹¹ 16 June 2010, A/HRC/15/2, Report of the working group, paras. 76(56) and 76(57)