



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

**BRIEFING ON KYRGYZSTAN FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
PRESESSIONAL WORKING GROUP – October 2013**

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This briefing describes the legality of corporal punishment of children in Kyrgyzstan. 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”, its previous recommendations on the issue, the recommendations to prohibit made during the UPR in 2010 (accepted by the Government) 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 Kyrgyzstan, raise the issue of corporal punishment of children, in particular asking to what extent law reform to date has been aimed at prohibiting all corporal punishment of children, without exception, and what efforts are being made to achieve legal clarity on the prohibition through further law reform?**
- **in its concluding observations on Kyrgyzstan’s third/fourth report, recommend that legislation is amended as necessary to clarify that no form of corporal punishment, however light, is lawful, and that prohibition is enforced through appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

1 Kyrgyzstan’s report to the Committee on the Rights of the Child

1.1 The third/fourth state party report to the Committee on the Rights of the Child, dated August 2010, provides information on the extent of the problem of corporal punishment of children in Kyrgyzstan, including its nature and prevalence and widespread social acceptance in childrearing and education.¹ In terms of the law, the report states that Act No. 62 of 25 March 2003 on domestic violence does not address violence against children

¹ 6 June 2012, CRC/C/KGZ/3-4, Third/fourth state party report, paras. 49, 72, 73 and 74

(somewhat in conflict with our information, see below); the report does not refer to the Family Code 2003 in this respect.

- 1.2 We note that the information in the report appears to contradict the Government's assertion during the Universal Periodic Review of Kyrgyzstan, also in 2010, that corporal punishment of children is prohibited by law.² Our research suggests that recent law reform may have been intended to prohibit corporal punishment but that current law does not explicitly and unequivocally prohibit all corporal punishment, however light (see next section). **We hope the Committee will urge the Government of Kyrgyzstan to pursue further law reform to ensure that legislation prohibits all corporal punishment and not only that which is considered to constitute "abuse".**

2 The legality of corporal punishment of children in Kyrgyzstan

2.1 *Summary*: In Kyrgyzstan, corporal punishment is unlawful in schools, in the penal system and in some forms of care, but it is lawful in the home and in other care settings.

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" (article 4, unofficial translation); it defines violence/abuse as "any action in relation to the child which violates or endangers its physical or mental development" (article 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...." But the Code does not explicitly prohibit all corporal punishment in childrearing.

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 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." This does not clearly prohibit all corporal punishment in childrearing but we are seeking to establish whether it was intended to do so.

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 (article 1). But the Law does not explicitly state that violent punishment in the guise of "discipline" is prohibited.

2.5 *Schools (unlawful)*: Corporal punishment is unlawful in schools, though there appears to be no explicit prohibition. The Law on Education 2003 states in article 29 that teacher shall not use "methods of physical and moral abuse in relation to students" (unofficial translation); the Law on the Status of the Teacher 2001 states in article 15 that teachers

² 16 June 2010, A/HRC/15/2, Report of the working group, para. 53

must “respect the honour and dignity of pupils”. Children are protected from “cruel, brutal, inhuman or degrading treatment” under article 16 of the Code on Children 2012.

- 2.6 *Penal system – sentence for crime (unlawful)*: The Code on Children 2012 includes among the principles underpinning juvenile justice “prohibition and prevention of all forms of violence in case of administration of law concerning children in conflict with the law” and “prohibition of torture, cruel, inhuman or humiliating treatment or punishment of the minor” (article 90). Cases of crimes committed by children are often heard in aksakal (traditional village) courts. Corporal punishment is not included in the measures available to these courts under articles 28 and 29 of the Law on Courts of Aksalals 2002; article 28 also states that the court has no right to impose punishments degrading to human dignity.
- 2.7 *Penal system – disciplinary measure in penal institutions (unlawful)*: There is no provision for corporal punishment among the permitted disciplinary measures in the Criminal and Executive Code 1999. 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”.
- 2.8 *Alternative care settings (partial prohibition)*: Corporal punishment is unlawful in residential institutions under 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, which makes no provision for corporal punishment as a permitted measure of discipline. There is no explicit prohibition of corporal punishment in foster care and other alternative care settings.

3 Recommendations by human rights treaty bodies and during the UPR

- 3.1 *CRC*: The Committee on the Rights of the Child has twice recommended prohibition of corporal punishment in the family and other settings in Kyrgyzstan – in its concluding observations on the initial report in 2000³ and on the second report in 2004.⁴
- 3.2 *HRC*: In 2000, the Human Rights Committee recommended that corporal punishment of children be prohibited in Kyrgyzstan.⁵
- 3.3 *UPR*: Kyrgyzstan was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). During the review, the Government stated that it “rejected the view that corporal punishment was permitted in Kyrgyzstan, noting that corporal punishment and the infliction of physical or moral suffering on children was prohibited by law”.⁶ Nevertheless, recommendations were made to prohibit corporal punishment in all settings and were accepted by the Government.⁷

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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³ 9 August 2000, CRC/C/15/Add.127, Concluding observations on initial report, paras. 33, 34, 39 and 40

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

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

⁶ 16 June 2010, A/HRC/15/2, Report of the working group, para. 53

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