

# **Corporal punishment of children in the Russian Federation: Briefing for the Universal Periodic Review, 30<sup>th</sup> session, 2018**

*From the Global Initiative to End All Corporal Punishment of Children, September 2017*



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

**The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.**

**In the Russian Federation, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and by the European Committee of Social Rights.**

**We hope the Working Group will note with concern the legality of corporal punishment of children in Russia. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Russia draft and enact legislation as a matter of priority to clearly prohibit all corporal punishment of children, however light, in every setting of their lives including the home.**

## **1 Review of the Russian Federation in the 2<sup>nd</sup> cycle UPR (2013) and progress since**

- 1.1 The Russian Federation was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 16). The issue of corporal punishment of children was raised in the summary of stakeholders' information.<sup>1</sup> During the review, no recommendation was made specifically on corporal punishment of children but the Government accepted recommendations on the protection of children's rights.<sup>2</sup>
- 1.2 However, since the review in 2013 no progress has been made on the prohibition of corporal punishment. In fact, amendments criminalising family violence were overturned in February 2017, denying children the most basic protection from violence within the home.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Russia. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Russia draft and enact legislation as a matter of priority to clearly prohibit all corporal punishment of children, however light, in every setting of their lives including the home.**

<sup>1</sup> 28 January 2013, A/HRC/WG.6/16/RUS/3, Summary of stakeholders' views, para. 27

<sup>2</sup> 8 July 2013, A/HRC/24/14, Report of the working group, paras. 140(31), 140(43), 140(44) and 140(46)

## 2 Legality of corporal punishment in the Russian Federation

### *Summary of current law and reforms needed to achieve prohibition*

Corporal punishment of children in Russia is lawful in the home, in alternative care and in some day care settings. It is unlawful in schools, penal institutions and as a sentence for a crime. Achieving prohibition requires legislation to be enacted to explicitly prohibit corporal punishment of children in all settings, including the home.

- 2.1 **Home (lawful):** The Family Code 1995 provides for the protection of children's human dignity by their parents (art. 54) and protection from abuse by parents (arts. 56 and 69). It states that parents have a right and duty to educate their children and must care for their children's "health, physical, mental, spiritual and moral development" (art. 63) and that "methods of parenting should not include neglectful, cruel or degrading treatment, abuse or exploitation of children" (art. 65). The Criminal Code 1996 punishes intentional serious, less serious and minor harm to health (arts. 111 to 115) and "beating or other violent acts which cause physical pain but not the consequences in article 115" (art. 116 and 116-1). In 2010, the Ministry of Justice stated that these provisions in the Family and Criminal Codes amount to prohibition of corporal punishment of children.<sup>3</sup> However, in the absence of explicit prohibition it is not clear that they effectively prohibit all forms of physical punishment in childrearing.
- 2.2 There is no explicit prohibition of corporal punishment of children in the Law on Guarantees of the Rights of the Child 1998, the Law on Guardianship and Custody 2008, the Criminal Code 1996, the Code on Administrative Offences 2001 or the Constitution 1993. President's decree No. 761 dated 1 June 2012 "On the national strategy of activities in the interests of children for 2012-2017" states that one of the measures focused on the formation of a safe and comfortable family environment is the creation and adoption of a programme promoting intolerance to any forms of violence and corporal punishment of children. However, no such programme appears to exist.<sup>4</sup>
- 2.3 The Council of Europe's petition against all corporal punishment, part of its campaign to achieve prohibition in all member states, was supported by Russian officials but to our knowledge there have been no moves towards law reform on the issue. A Law on Domestic Violence is being drafted.<sup>5</sup> Draft amendments to the Code of Administrative Offences<sup>6</sup> have been submitted to the State Duma: the aim of the bill is to prohibit insulting harassment, vulgar language and other intentional behaviour disturbing the public order or peace of citizens conducted at home. In December 2014, a member of the Federation Council proposed amendments to the Criminal Code introducing higher liability for intentional minor harm to health (art. 115), beating (art. 116) and torture (art. 117) committed against relatives or former relatives.<sup>7</sup> Amendments to the Criminal Code were voted in July 2016, modifying article 116 to include having a family

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<sup>3</sup> 10 November 2010, Letter to Council of Europe Commissioner for Human Rights Mr Thomas Hammarberg

<sup>4</sup> Latham & Watkins (UK) in correspondence with the Global Initiative, 18 May 2015

<sup>5</sup> 22 August 2014, CEDAW/C/RUS/8, Eighth state party report, para. 105

<sup>6</sup> The draft law No. 545442-6 "On introducing the amendments to the article 20.1 of the Code of Administrative Offences of the Russian Federation (regarding amendments of the disposition of article 20.1 of the Code and harsher punishment for the violations established by this article)"

<sup>7</sup> The draft law No. 665512-6 "On introducing the amendments to the Criminal Code of the Russian Federation (regarding establishing the higher criminal responsibility for the crimes, envisaged by articles 115-117 of the CC RF, committed against relatives or former relatives)"

relationship with the victim an aggravating factor of battery and thus criminalising family violence. Article 116-1 was also added, making the first occurrence of battery without an aggravating factor an administrative offence.<sup>8</sup> Both articles 116 and 116-1 refer to battery that does not cause “substantial bodily harm”. These amendments did not explicitly prohibit all corporal punishment of children. In January 2017, a Bill aiming to overturn these amendments and decriminalise family violence was voted by the Duma.<sup>9</sup> The Bill removes from article 116 the mention of the family relationship as an aggravating factor, which makes the first occurrence of domestic violence an administrative offence under article 116-1. However, repeat offenses within a year can result in criminal prosecution.

**2.4 *Alternative care settings (lawful)*:** Corporal punishment is lawful in alternative care settings as in the home. There is no explicit prohibition of corporal punishment in all alternative care settings (foster care, institutions, places of safety, emergency care, etc). Children are legally protected from some but not all physical punishment under the Family Code 1995 and the Criminal Code 1996.

**2.5 *Day care (partially lawful)*:** Corporal punishment is considered unlawful in ore-school day care settings under the Law on Education 2012 (see below). There is no prohibition of all forms of corporal punishment in other early childhood care and in day care for older children. Act No. 3185-1 on Psychiatric Care and Guarantees for the Rights of Citizens Receiving Such Care 1992 states that the provision of care must be humane and must respect human and civil rights but it does not explicitly prohibit corporal punishment. Children are legally protected from some but not all physical punishment under the Family Code 1995 and the Criminal Code 1996.

**2.6 *Schools (unlawful)*:** Corporal punishment is considered unlawful in schools, though it is not explicitly prohibited. Article 34 of the Law on Education 2012 states that students have the right to “(9) respect for human dignity, protection from all forms of physical or mental violence, injury personality, the protection of life and health”; article 43(3) states that “discipline in educational activities is provided on the basis of respect for human dignity of students and teachers” and “application of physical and mental violence to students is not allowed” (unofficial translation). The Code on Administrative Offences 2001 punishes violations of the right to education (art. 5(57)).

**2.7 *Penal institutions (unlawful)*:** Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, though there appears to be no explicit prohibition. Article 12(2) of the Criminal and Executive Code 1997 states (unofficial translation): “Prisoners are entitled to courteous treatment by staff of penal institutions. They should not be subjected to cruel, inhuman or degrading treatment or recovery. Coercive measures to convicts can be applied not only as to the law.” There is no provision for corporal punishment in correctional institutions (arts. 115 and 136). Article 8(1)(4) of the Law on the Fundamentals of the System of Prevention of Neglect and Offences of Minors 1999 states that in the case of minors “the use of physical and psychological violence” and “the application of measures with an anti-pedagogical nature, degrading human dignity” are prohibited. The provisions against beating and intentional causing of harm in the Criminal Code 1996 (arts. 111 to 116) are also applicable.

**2.8 *Sentence for crime (unlawful)*:** There is no provision for judicial corporal punishment in criminal law. Article 7 of the Criminal Code 1996 states that punishment and other measures applied to a convicted person “cannot have the purpose of causing physical suffering or humiliation of

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<sup>8</sup> See <https://meduza.io/en/news/2016/06/28/russian-senator-says-special-criminal-punishment-for-domestic-violence-is-anti-family>, accessed 13 January 2017; Federal law 323-FZ of 7 March 2016, <http://kremlin.ru/acts/bank/41057/page/1>

<sup>9</sup> See <https://www.ft.com/content/e523d036-e482-11e6-9645-c9357a75844a>, accessed 31 January 2017

human dignity”. The Code sets out the sentences which may be given to minors and these do not include corporal punishment (art. 88).

### 3 Recommendations by human rights treaty bodies

- 3.1 **CRC**: The Committee on the Rights of the Child has recommended to Russia that corporal punishment of children be prohibited on three occasions – in concluding observations on the second report in 1999,<sup>10</sup> the third report in 2005<sup>11</sup> and the fourth/fifth in 2014.<sup>12</sup>
- 3.2 **ECSR**: The European Committee of Social Rights found in 2015 Russia to be in breach of the Charter as not all forms of corporal punishment are prohibited in homes and institutions.<sup>13</sup>

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*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 since 2011 the Committee on the Rights of Persons with Disabilities.*

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<sup>10</sup> 10 November 1999, CRC/C/15/Add.110, Concluding observations on second report, paras. 28, 29 and 30

<sup>11</sup> 23 November 2005, CRC/C/RUS/CO/3, Concluding observations on third report, paras. 7, 36, 37, 46 and 47

<sup>12</sup> 31 January 2014, CRC/C/RUS/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth state party report, paras. 32 and 33

<sup>13</sup> January 2016, Conclusions 2015