

**Corporal punishment of children in
Kyrgyzstan: Briefing for the Universal
Periodic Review, 35th session,
January 2020**



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

From the Global Initiative to End All Corporal Punishment of Children, July 2019

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 Kyrgyzstan, corporal punishment of children is still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture and the Human Rights Committee.

We hope the Working Group will note with concern the legality of corporal punishment of children in Kyrgyzstan. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Kyrgyzstan draft and enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including the home.

Kyrgyzstan's commitment to prohibiting corporal punishment

Kyrgyzstan expressed its commitment to prohibiting corporal punishment in all settings by accepting clearly the recommendation to do so made during the Universal Periodic Review of Kyrgyzstan in 2015.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings and day care.

There appears to be no confirmation in legislation of a “right” of parents and other to impose corporal punishment on children, such as a right to inflict “reasonable chastisement” or a “power to correct”. However, the near universal acceptance of a certain degree of violence in the name of discipline necessitate clarity in law that all forms of corporal punishment are prohibited, without exception.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings, including foster care, placed of safety, emergency care, etc.

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, preschools, crèches, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. There is no clear prohibition in law of all forms of corporal punishment in childrearing.

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....” The Code does not explicitly prohibit all corporal punishment, however light, in childrearing.

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, however light, in childrearing.

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. In reporting to the Committee on the Rights of the Child, the Government acknowledged the inadequacy of this Law in protecting children from violence.¹ However, under examination by the Human Rights Committee in 2014, the Government stated that corporal punishment is prohibited under the Criminal Code.² In fact, there is no explicit prohibition of corporal punishment in the Criminal Code 2014.

During the Universal Periodic Review in 2010, the Government accepted the recommendation to protect children by law from corporal punishment in any setting, but also stated that the law already prohibits corporal punishment.³ However, following the second cycle review of Kyrgyzstan in 2015, the Government clearly accepted the recommendation to prohibit corporal punishment in all settings including the home, indicating its commitment to law reform to achieve prohibition.⁴

Alternative care settings

Corporal punishment is unlawful in residential institutions. In 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, corporal punishment is not included as a permitted measure of discipline.

There is no explicit prohibition of corporal punishment in foster care and other alternative care settings, though children are protected from some corporal punishment under the protection from “cruel, brutal, inhuman or degrading treatment” in article 16 of the Code on Children 2012.

Day care

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.

Schools

Corporal punishment is unlawful in schools, though there appears to be no explicit prohibition. The Law on Education 2003 states in 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”.

¹ 6 June 2012, CRC/C/KGZ/3-4, Third/fourth state party report, para. 72

² 14 March 2014, CCPR/C/SR.3039, Summary record of 3039th meeting, para. 14

³ 16 June 2010, A/HRC/15/2, Report of the working group, paras. 53 and 76(56)

⁴ 9 April 2015, A/HRC/29/4, Report of the working group, para. 117(78)

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions but it is not explicitly prohibited. 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”.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not among permitted sentences for offenders under 18 in article 78 of the Criminal Code 1997. 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” (art. 90).

The 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.

Universal Periodic Review of Kyrgyzstan’s human rights record

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”.⁵ Nevertheless, the following recommendations were made and were accepted by the Government:⁶

“Ensure the full legal protection of the freedom of children from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including corporal punishment in any setting, and take further practical measures to stem the occurrence of violence against children (Sweden);

“Stop all acts of intimidation, corporal punishment or arrest linked to the activities of human rights defenders, political activists and journalists, and guarantee freedom of expression, without introducing any provisions restricting its exercise (Argentina)”

The second cycle review took place in 2015 (session 21). During the review, the following recommendation was made and was accepted by the Government:⁷

“Fully prohibit corporal punishment against children in all settings, including at home (Croatia)”

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

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

⁷ 9 April 2015, A/HRC/29/4, Report of the working group, para. 117(78)

Recommendations by human rights treaty bodies

The Committee on the Rights of the Child has on three occasions expressed concern at corporal punishment of children in Kyrgyzstan and recommended it be prohibited in the family and all other settings – in 2000,⁸ in 2004,⁹ and in 2014.¹⁰

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 2000¹¹ and on the second report in 2014.¹²

The Committee Against Torture in 2013 recommended that corporal punishment of children in Kyrgyzstan be prohibited in all settings.¹³

Prevalence/attitudinal research in the last ten years

A survey carried out in 2014 by the National Statistical Committee as part of the global MICS programme found 57% of children age 1-14 years had experienced violent “discipline” (psychological aggression or physical punishment) during the month preceding the survey; 38% had experienced physical punishment and 3% severe physical punishment. Thirty-eight per cent of children reported that they had experienced only non-violent forms of discipline.

(National Statistical Committee of the Kyrgyz Republic & UNICEF (2014), *Kyrgyzstan Multiple Indicator Cluster Survey 2014, Key Findings*, Bishkek, Kyrgyzstan: National Statistical Committee of the Kyrgyz Republic & UNICEF)

Amongst a small sample of eight children in detention centres, half had been subject to disciplinary measures which included physical punishment. Seventy-one per cent of children in state-run residential institutions had been subject to disciplinary measures or punishment; a third said they had received physical punishments such as beatings. When asked to explain further, children recalled being made to clean rooms and wash windows, being made to stand in the corner on one foot, and two children from a psychiatric institution said they were given injections when they misbehaved. All 14 members of staff that were interviewed said they did not support the use of corporal punishment.

(Penal Reform International (2015), *Voice of the Child: Findings from a survey of children detained in closed institutions in Kazakhstan, Kyrgyzstan and Tajikistan*, London: Penal Reform International)

During its 2012 visit to Kyrgyzstan, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment documented the widespread use of “punishment cells” in which children were held in solitary confinement, usually for 2-3 days but sometimes for longer, in a prison colony for juvenile offenders. The report of the visit recommends that the punishment cells be immediately closed.

(Advance copy, CAT/OP/KGZ/R.1, Report on first periodic visit)

A 2012 study of juvenile justice settings documented the use of corporal punishment in a “Centre for Adaptation and Rehabilitation of Juveniles” and a “special school”.

(Utesheva N. A. & Korzhova O. A. (2013), *Protecting children from torture and cruel treatment in the context of juvenile justice: research report 2012*, Bishkek: UNICEF)

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

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

¹⁰ 7 July 2014, CRC/C/KGZ/CO/3-4, Concluding observations on third/fourth report, paras. 32 and 33

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

¹² [April 2014], CCPR/C/KGZ/CO/2 Advance Unedited Version, Concluding observations on second report, para. 21

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

An NGO documented evidence of injuries caused by strenuous physical exercise used as punishment in a special school for boys aged 11-14.

(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)

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. Care workers, directors and other staff members punished children. Children said they were often punished for not agreeing with a care worker's opinion or actions.

(*Third/fourth report of Kyrgyzstan to the Committee on the Rights of the Child (2010)*, CRC/C/KGZ/3-4)

In a large-scale national study which involved over 2,000 children, 24% said they had been hit, kicked, beaten or physically hurt in another way by an adult in their family; 16% had experienced this in the past month.; 11% had been hit or attacked with a weapon or other object by a family member. Of the quarter of children who had been physically hurt by an adult in their family, 31% could still feel the pain next day or had a bruise, cut that bled or other injury such as a broken bone; 12% of these children had required medical attention. Forty-four per cent of children said adults in their family had called them names or said things that hurt their feelings; 33% had experienced this in the past month. Fifteen per cent of children had been threatened with violence with a weapon, 10% in the past month. Surveys with 155 parents also revealed very high rates of use of physical and verbal punishment. Positive discipline was widely used (93% of parents had used positive discipline methods such as explaining why a behaviour was wrong or taking away a child's privileges, 87% in the past month), but the majority of parents who used positive discipline also used physical, verbal and psychological violence as a punishment. Sixty-eight per cent of parents had used some kind of corporal punishment, 57% in the past month: 58% had slapped their child on the back, buttocks, leg or arm; 41% had shaken their child; 32% had hit their child with a hard object (including belts, hairbrushes and sticks); 25% had slapped their child on the face or head; 11% had hit their child over and over as hard as they could; 4.5% had thrown their child or knocked them down. Forty-seven per cent of parents had sworn at or cursed their child or called them names, 41% in the past month; 34% had threatened to hit, beat or kick their child, 27% in the past month. The study recommends prohibition of corporal punishment in all settings, including the home.

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