

Corporal punishment of children in Tajikistan: Briefing for the Universal Periodic Review, 39th session, 2021

*From the Global Partnership to End Violence Against Children,
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This submission provides an update on the legality of corporal punishment of children in Tajikistan since its review in the second cycle UPR in 2016. Corporal punishment prohibition is still to be achieved in the home, alternative care settings, day care, schools and penal institutions.

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 Tajikistan, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies and during the 2nd cycle UPR of Tajikistan in 2016.

We hope the Working Group will note with concern the legality of corporal punishment of children in Tajikistan. We hope states will raise the issue during the review in 2021 and make a specific recommendation that Tajikistan enact a legislation to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any existing legal defence, as a matter of priority.

1 Review of Tajikistan in the 2nd cycle UPR (2016) and progress since

- 1.1 Tajikistan was reviewed in the second cycle of the Universal Periodic Review in 2016 (session 25). The issue of corporal punishment of children was raised in the compilation of UN information and the summary of stakeholders' information. Recommendations to prohibit corporal punishment were made and accepted by the Government:¹
- 1.2 Since the review, a National Action Plan for the implementation of CRC recommendations was developed in 2018. However, it does not provide for law reform, instead focusing on awareness-raising and preventative and reporting mechanisms. The Government declared in November 2017 that the Criminal Code criminalised corporal punishment² and in May 2018 that "corporal punishment of children was prohibited by law, including the Family Code".³

¹ 15 July 2016, A/HRC/33/16, Report of the working group, paras. 158(103), 158(104), 158(105), 158(106)

² 29 November 2017, CCPR/C/TJK/3, Third periodic report, para. 61

³ 14 May 2018, CAT/C/SR.1636, Summary records of 1636th meeting, para. 14; see also 29 November 2017, CCPR/C/TJK/3, Third periodic report, para. 59

- 1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Tajikistan. We hope states will raise the issue during the review in 2021 and make a specific recommendation that Tajikistan enact a legislation to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.

2 Legality of corporal punishment in Tajikistan

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Tajikistan is lawful in the home, alternative care settings, day care and penal institutions. There appears to be no confirmation in legislation of a right to impose “reasonable chastisement” or similar in childrearing, but provisions against violence and abuse of children are not interpreted as prohibiting all corporal punishment in childrearing. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. Prohibition should be enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

- 2.1 **Home (lawful):** There appears to be no confirmation in legislation of a right to impose “reasonable chastisement” or similar. The Law on Prevention of Violence in the Family 2013 defines violence in the family as “the intentional illegal act of physical, mental, sexual and economic nature made within the family relations by one member of the family in relation to other member of the family which becomes the cause of infringement of its rights and freedoms, causing of physical pain or harm to its health or threat of causing such harm to health” (art. 1, unofficial translation). It defines physical abuse as “intentional illegal act of one member of the family in relation to other member of the family, as a result of use of physical force which becomes the reason of drawing of physical pain or harm to its health” (art. 1). One of the purposes of the Law is “assistance to increase of responsibility of parents for training and education of children” (art. 2). The Code on Administrative Offences 2008 punishes violence in the family which does not amount to a criminal offence (art. 93).
- 2.2 The Family Code 1998 states that every child has the right to respect for human dignity (art. 55(2)) and the right to protection against abuse from parents and persons in *loco parentis* (art. 57(2)). Article 65(2) of the Code states (unofficial translation): “In exercising parental rights, parents have no right to harm the physical or mental health of children or their moral development. Methods of raising children should exclude neglectful, cruel or degrading treatment or abuse....” But the Code does not explicitly prohibit all forms of corporal punishment in childrearing.
- 2.3 End Corporal Punishment no longer considers Tajikistan committed to prohibiting all corporal punishment of children without delay. Despite accepting Universal Periodic Review recommendations to do so in 2011, no progress has been made on drafting and adopting prohibiting legislation. Tajikistan has since implied that its current legislation was sufficient and did not commit to law reform in recent relevant National Action Plans.

2.4 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in all alternative care settings. Corporal punishment appears to be lawful as for parents (see under “Home”). We have been unable to examine the revised Regulations of Family and Child Support Centres but it appears they do not mention corporal punishment.

2.5 **Day care (lawful):** Corporal punishment is prohibited in preschool education under article 25(3) of the Law on Education 2013 (see under “Schools”). There is no explicit prohibition of corporal punishment in other early childhood care and in day care for older children.

2.6 **Schools (unlawful):** Corporal punishment is prohibited in schools in the Law on Education 2013 (art. 25(3), unofficial translation): “Methods of training and education in educational institutions is performed on the basis of mutual respect between learners, teachers and other workers. Application of physical and psychological violence in relation to learners is forbidden.” Article 21 of the Regulation of Boarding Schools prohibits the use of physical and psychological violence.

2.7 **Penal institutions (lawful):** There is no prohibition of corporal punishment as a disciplinary measure in penal institutions. Article 87 of the Code on Execution of Criminal Sanctions 2004 states that physical force may be used if a person sentenced to imprisonment commits socially dangerous acts (such as hostage taking, wilful disobedience, trying to escape, etc.). It does not prohibit all forms of corporal punishment.

There are no specific laws regulating the juvenile justice system. A National Plan of Action on the Reform of the Juvenile Justice System 2017-2021, aimed at aligning domestic legislation with relevant international standards, was adopted in 2017⁴ but did not address corporal punishment. It appears amendments to the Criminal Code relating to detention procedure were enacted in 2016,⁵ but the Criminal Code and the Criminal Procedure Code are still being revised.⁶ We have not been able to obtain access to the text of the amended Criminal Code but there are no indications of provisions relating to corporal punishment.

2.8 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Code 1998 or the Code of Criminal Procedure 2009. Article 9(2) of the Criminal Code states (unofficial translation): “The penalty and other measures under criminal law applicable to a person who has committed a crime may not be intended to cause physical suffering or humiliation of human dignity.”

3 Recommendations by human rights treaty bodies

3.1 **CRC:** The Committee on the Rights of the Child has three times expressed concern at corporal punishment of children in Tajikistan and recommended it be explicitly prohibited in all settings – in its concluding observations on the state party’s initial report in 2000,⁷ on the state party’s

⁴ [May 2018], CAT/C/TJK/CO/3 Advance unedited version, Concluding observations on third report, para. 5(h)

⁵ 27 December 2016, CAT/C/TJK/3, Third report, para. 26

⁶ Information provided to the Global Initiative, August 2017

⁷ 23 October 2000, CRC/C/15/Add.136, Concluding observations on initial report, paras. 28, 29, 34 and 35

second report on 2006⁸ and on the state party's third to fifth report.⁹

3.2 **CAT:** The Committee Against Torture has three times expressed concern at corporal punishment of children in Tajikistan and recommended it be explicitly prohibited in all settings – in its concluding observations on the state party's second report in 2013,¹⁰ and on the state party's third report on 2018.¹¹

3.3 **HRC:** The Human Rights Committee has three times expressed concern at corporal punishment of children in Tajikistan and recommended it be explicitly prohibited in all settings, including in schools – in its concluding observations on the state party's initial report in 2005¹² and on the state party's second report in 2013.¹³

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⁸ 5 February 2010, CRC/C/TJK/CO/2, Concluding observations on second report, paras. 39 and 40

⁹ 29 September 2017, CRC/C/TJK/CO/3-5, Concluding observations on third/fifth report, Advance unedited version, paras. 4, 21 and 22

¹⁰ 21 January 2013, CAT/C/TJK/CO/2, Concluding observations on second report, para. 16

¹¹ [May 2018], CAT/C/TJK/CO/3 Advance unedited version, Concluding observations on third report, paras. 39, 40, 43 and 44

¹² 18 July 2005, CCPR/CO/84/TJK, Concluding observations on initial report, para. 23

¹³ 22 August 2013, CCPR/C/TJK/CO/2, Concluding observations on second report, para. 15