

Corporal punishment of children in Kazakhstan: Briefing for the Universal Periodic Review, 20th session, 2014

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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 Kazakhstan, corporal punishment of children is currently lawful, despite repeated recommendations by the Committee on the Rights of the Child. No specific recommendations to prohibit corporal punishment were made during Kazakhstan’s first cycle UPR in 2010. We hope recommendations will be made in the second cycle review regarding this fundamental obligation under human rights law.

We hope the Working Group will note with concern the legality of corporal punishment of children in Kazakhstan. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted in Kazakhstan to explicitly prohibit corporal punishment in the home and all alternative care and day care settings.

1 The initial review of Kazakhstan by the Human Rights Council (2010)

1.1 Kazakhstan was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 7). The issue of corporal punishment was raised in the compilation of UN information¹ and the summary of stakeholders information.² No recommendations were made specifically on corporal punishment of children, but the Government accepted a recommendations to further refine laws aimed at protecting children’s rights.³

1.2 As a state party to the Convention on the Rights of the Child, Kazakhstan is under a legal obligation to prohibit and eliminate all corporal punishment of children in all settings, including the home. There has been significant law reform in Kazakhstan which has, among other things, aimed to strengthen legal protection for children from violence and abuse. However, there is no explicit prohibition in law of all corporal punishment in childrearing. **We respectfully urge members of the Working Group to recommend to Kazakhstan that law reform be undertaken which aims to achieve legal clarity that all forms of corporal punishment, without exception, are prohibited.**

¹ 30 November 2009, A/HRC/WG.7/8/KAZ/2, Compilation of UN information, para, 17

² 24 November 2009, A/HRC/WG.6/7/KAZ/3, Summary of stakeholders' information, para. 23

³ 23 March 2010, A/HRC/14/10, Report of the working group, paras. 95(9) and 95(44)

2 Legality of corporal punishment in Kazakhstan

- 2.1 **Summary:** Corporal punishment of children in Kazakhstan is unlawful in schools, the penal system and some care settings, but it is not fully prohibited in the home and in all forms of alternative care and day care for children.
- 2.2 **Home (lawful):** The Government reported to the UN Committee on the Rights of the Child in 2003 that all violence and corporal punishment is prohibited.⁴ However, while there is no confirmation in law of a “right” of parents to punish their children, there is no explicit prohibition of all forms of corporal punishment in childrearing. Article 60 of the Marriage and Family Code 2011 states that the child “has the right to be educated by the parents, ensuring its interests, full development and respect for human dignity” (unofficial translation). Article 72 states that in the exercise of parental rights, parents “do not have the right to harm the physical and mental health or moral development of the child” and that “methods of education must exclude neglectful, cruel, brutal or degrading treatment or abuse, humiliation or exploitation”. But the Code does not explicitly prohibit all corporal punishment, however light.
- 2.3 The Law on the Rights of the Child 2002 confirms the child’s right to respect for human dignity the state’s obligation to protect the child from physical and mental abuse and cruel, inhuman or degrading treatment (art. 10) and confirms parents’ duty to educate and care for children (art. 24) but does not explicitly prohibit all corporal punishment. Similarly, there is no prohibition of all corporal punishment in childrearing in the Law on Prevention of Domestic Violence 2009: it defines domestic violence as “an intentional illegal act (action or failure to act) by one person in the sphere of the family and household relations concerning another (others) causing or containing threat of causing of physical and (or) mental suffering” (art. 1(3)) and states that this can take the form of, among other things, physical abuse, defined as “intentional harm to health by use of force and causing of physical pain”, but we have no evidence that this is interpreted as prohibiting all corporal punishment of children.
- 2.4 **Alternative care settings (partially prohibited):** The Law on Children’s Villages of Family Type and Youth Homes 2000 states in article 5 that in children’s villages, children have the right to respect for their human dignity and article 18 states that the mother tutor “may not harm the physical and mental health of children” and “methods of education must not include neglectful, cruel or degrading treatment, or insulting the honour and dignity of the child”. This appears to be interpreted as prohibiting all corporal punishment (unconfirmed). There is no explicit prohibition in other care settings, where children are protected from some but not all corporal punishment under article 10 of the Law on the Rights of the Child 2002 (see para. 2.3).
- 2.5 **Day care (partially prohibited):** Corporal punishment is considered unlawful in the provision of preschool education and training under the Law on Education 2007, which prohibits physical and mental violence (art. 28(4)) and respect for pupils’ honour and dignity (arts. 47(11) and 51(3)) (see under “Schools”), but it is not explicitly prohibited. There is no explicit prohibition of corporal punishment in other early childhood care (crèches, family centres, etc) and day care for older children (day centres, childminding,

⁴ 24 July 2003, CRC/C/SR. 886, Summary record of 886th meeting, para. 15

etc): in these settings children are protected from some but not all corporal punishment under article 10 of the Law on the Rights of the Child 2002 (see para. 2.3).

2.6 **Schools (unlawful)**: Corporal punishment is considered unlawful but there appears to be no explicit prohibition. The Law on Education 2007 prohibits physical and mental violence (art. 28(4), unofficial translation): “Training and educational process is carried out on the basis of mutual respect for the human dignity of pupils, students, teachers. The use of physical, moral and mental violence against students and pupils is not allowed.” Article 47(11) states that pupils and students have a right to respect for their human dignity, and article 51(3) states that teachers must “respect the honour and dignity of pupils, students and their parents”. Article 10 of the Law on the Rights of the Child 2002 (see para. 2.3) also applies.

2.7 **Penal institutions (unlawful)**: There is no provision for corporal punishment among the permitted disciplinary measures specified in the Criminal and Executive Code 1997 (arts. 50, 111, 115, 132 and 134) and in the Law on Prevention of Offenses Among Minors and the Prevention of Children’s Neglect and Homelessness 2004 (art. 22-8).

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

3 Recommendations by human rights treaty bodies

3.1 **CRC**: The Committee on the Rights of the Child has twice recommended to Kazakhstan that all corporal punishment of children be prohibited, including in the home – in its concluding observations on the state party’s initial report in 2003⁵ and on the second/third report in 2007.⁶

3.2 **HRC**: In 2011, the Human Rights Committee expressed concern at the legality of corporal punishment in the home and foster care and recommended the promotion of non-violent forms of discipline as well as measures to end corporal punishment in schools and institutions.⁷

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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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 in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

⁵ 10 July 2003, CRC/C/15/Add.213, Concluding observations on initial report, paras. 37 and 39

⁶ 19 June 2007, CRC/C/KAZ/CO/3, Concluding observations on second/third report paras. 36 and 37

⁷ 19 August 2011, CCPR/C/KAZ/CO/1, Concluding observations on initial report, para. 15