

Corporal punishment of children in Kazakhstan: Briefing for the Universal Periodic Review, 34th session, November 2019



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

From the Global Initiative to End All Corporal Punishment of Children, March 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 Kazakhstan, corporal punishment of children is still lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the Human Rights Committee.

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 2019 and make a specific recommendation that Kazakhstan draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal all legal defences for its use.

1 Review of Kazakhstan in the 2nd cycle UPR (2014) and progress since

1.1 Kazakhstan was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 20). The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information.² No recommendations were made specifically on corporal punishment of children but the Government accepted a recommendation to criminalise all forms of violence against children including in the family, stating that it was already implemented.³ Since the review, there has been no change in the legality of corporal punishment.

1.2 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in Kazakhstan. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Kazakhstan draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal all legal defences for its use.**

¹ 18 August 2014, A/HRC/WG.6/20/KAZ/2, Compilation of UN information, para. 19

² 24 July 2014, A/HRC/WG.6/20/KAZ/3, Summary of stakeholders' views, para. 14

³ 10 December 2014, A/HRC/28/10, Report of the working group, para. 124(8)

2 Legality of corporal punishment in Kazakhstan

Summary of current law and reforms needed to achieve prohibition

Corporal punishment of children is prohibited in some alternative care and day care settings, in schools, in penal institutions and as a sentence for a crime; it is still lawful in the home and in some alternative care and day care settings. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including the home.

2.1 ***Home (lawful)***: Corporal punishment is lawful in the home. 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 it does not explicitly prohibit all corporal punishment, however light.

2.2 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 (amended 2014): 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” (art 4(2)). Neither the Criminal and Executive Code 2014 nor the Code on Administrative Offences 2014 prohibits all corporal punishment in childrearing.

2.3 ***Alternative care settings (partially lawful)***: Corporal punishment is prohibited in some but not all alternative care settings. 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). In reporting to the Committee on the Rights of the Child in 2014, the Government stated that pursuant to Order No. 10 of 31 March 2005 of the Procurator-General’s Office, children’s homes must be inspected at least once every six months with a view to preventing corporal punishment.⁵ There is no explicit prohibition in other

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

⁵ 15 January 2014, CRC/C/KAZ/4, Fourth state party report, para. 169

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.

2.4 ***Day care (partially lawful)***: 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 protects pupils' right to respect for their honour and dignity (arts. 47(11) and 51(3)) (see below), 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, 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.

2.5 ***Schools (unlawful)***: Corporal punishment is considered unlawful in schools, and in 2001 the Government reported to the UN Committee on the Rights of the Child that the use of threats or corporal punishment is forbidden in educational organisations⁶ and the Government similarly reported in 2014 that corporal punishment is prohibited in educational institutions⁷ 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 also applies.

2.6 ***Penal institutions (unlawful)***: Corporal punishment is unlawful as a disciplinary measure in penal institutions. There is no provision for corporal punishment among the permitted disciplinary measures in the Criminal and Executive Code 2014 and in the Law "On Prevention of Juvenile Delinquency, Child Neglect and Abandonment" (art. 22-8). The latter states in article 23: "Bodies and agencies of the system of preventing crime or neglect of minors, within their jurisdiction, must ensure that the rights and legitimate interests of minors are respected, protecting them against all forms of discrimination, physical or mental violence, injury, abuse, sexual and other exploitation." The Criminal and Executive Code 2014 states that convicted persons have the right to "recognition of their human dignity and protection from torture, violence and other cruel, inhuman and degrading punishment" (art. 10, unofficial translation). Article 154 of the Code sets out permitted disciplinary measures in detention, which include warning, reprimand, strong reprimand and placement in an isolation cell.⁸

2.7 The Law "On Procedures and Conditions of Detention of Persons in Special Institutions of Temporary Isolation from Society" states (art. 4): "Placement in specialized institutions is carried out in accordance with the rule of law, presumption of innocence, equality of citizens before the law, humanity and respect for the honour and dignity of a person, as well as international law, and should not be accompanied by actions intended to cause physical or mental suffering to persons suspected or accused of crimes who are kept in special institutions."

2.8 Disciplinary measures in Kazakhstan's eight Special Schools are also governed by the Order of the Kazakhstan Minister for Education and Science "On Approval of the Regulation on Educational Institutions with Special Detention Regime". Article 46 permits only warning, reprimand,

⁶ 24 September 2002, CRC/C/41/Add.213, Initial state party report, para. 89

⁷ 15 January 2014, CRC/C/KAZ/4, Fourth state party report, para. 174

⁸ Penal Reform International (2015), *Voice of the child: Findings from a survey of children detained in closed institutions in Kazakhstan, Kyrgyzstan and Tajikistan*, p. 15

discussion at a general meeting and extraordinary duties, stating that “application of penalties not covered by these Regulations is prohibited”.⁹

2.9 **Sentence for crime (*unlawful*)**: There is no provision for judicial corporal punishment in the Criminal and Executive Code 2014.

3 Recommendations by human rights treaty bodies

3.1 **CRC**: The Committee on the Rights of the Child has on three occasions 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 2003,¹⁰ on the second/third report in 2007,¹¹ and on the fourth report in 2015.¹²

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.¹³

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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.

⁹ Article 46 quoted in Penal Reform International (2015), *Voice of the child: Findings from a survey of children detained in closed institutions in Kazakhstan, Kyrgyzstan and Tajikistan*, p. 15

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

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

¹² 2 October 2015, CRC/C/KAZ/CO/4 Advance Unedited Version, Concluding observations on fourth report, paras. 28 and 29

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