

# BRIEFING FROM GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN

## **BRIEFING FOR THE COMMITTEE ON THE RIGHTS OF THE CHILD PRE-SESSIONAL WORKING GROUP – January/February 2007**

*From Peter Newell, Coordinator, Global Initiative*

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### **KAZAKHSTAN (second/third report – CRC/C/KAZ/3)**

#### **Corporal punishment in the home**

Corporal punishment is lawful in the home. Children have legal protection from violence in the home under the Child's Rights Law N. 345-II (2002, amended 2004), the Marriage and Family Law N. 321-I (1998, amended 2004) and the Criminal Code (1997, amended 2004).

In a 2002 nationwide survey of over 2,000 children (living with their parents, in institutions and on the street), parents and specialists, specialists estimated that 60-80% of children are subject to violence by parents, adults and children, and the number is increasing.<sup>1</sup> Health workers reported an increase in the number of children coming to their facilities as a result of beating and torture in families. Interviews showed that most often the victims were from "troublesome" families (49.5%) and families with a low level of education (28.7%), and children of all ages were susceptible.

#### **Corporal punishment outside the home**

Corporal punishment is considered unlawful in **schools** under the Child's Rights Law and the Education Law N. 389-I (1999, amended 2004) and is reportedly not used in military schools, but we have been unable to identify an explicit prohibition in legislation.

In the **penal system**, corporal punishment is unlawful as a sentence for crime and as a disciplinary measure in penal institutions. According to the Code for the Execution of Criminal Penalties (1997) the application of penal legislation is based on respect for the guarantees of protection from torture, violence and other cruel or degrading treatment of convicted persons. Chapter 2 of the Criminal Code (1997) ("Special features of criminal responsibility and punishment of minors") prohibits the imposition of measures which might harm the child's health or the development of his/her personality. Adolescents may be subject to "coercive measures" but these do not include corporal punishment. Corporal punishment of young offenders in special educational or medical-educational institutions is prohibited under the Code for the Execution of Criminal Penalties. Cruel treatment of young offenders by teaching staff and guards is punishable under the Criminal Code.

Corporal punishment is unlawful in **alternative care contexts** under Special Law No. 113-11 About children's villages of family type and youth homes (2000, amended 2004), Decree N. 1613 Statute on the family in children's villages (2001), the Order by the Head of the Health Agency N. 228 On operational procedures in infant homes (2000), Law No. 343-II On social, medical and pedagogical correctional support of children with special needs (2002, amended 2004), the Child's Rights Law, Law N. 591-II On prevention of crimes among youth and prophylaxis of child abandonment and street children (2004), Law N. 430-II On the health system (2003, amended 2004), the Education Law, and Ministerial Order N. 08-1/31 Guidelines on registering children, citizens of Kazakhstan, adopted by foreigners (2003). But there is no explicit prohibition of corporal punishment in foster care.

We have no information relating to corporal punishment in **situations of employment**.

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<sup>1</sup> Association of Social Scientists and Politologists/UNICEF (2002), *Violence against Children in the Republic of Kazakhstan February – March 2002*, Almaty: ASSAP/UNICEF

**In its concluding observations on the State party's initial report in 2003, the Committee on the Rights of the Child expressed concern at the continued use of corporal punishment in educational institutions and the lack of action towards preventing corporal punishment within the family (CRC/C/15/Add.213, para. 37). The Committee recommended that the State party "take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment, within the family, schools and other institutions" and "promote positive non-violent forms of discipline as an alternative to corporal punishment, especially in families, the schools and other institutions" (para. 39). In light of the Committee's General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment" and taking into account the recommendation in the UNSG's Study on violence against children that all corporal punishment of children be prohibited by 2009, we hope the Committee will question the State party in detail concerning the legal status of corporal punishment in schools, foster care and the workplace, and reiterate its 2003 recommendations by urging the State party to explicitly prohibit in law corporal punishment of children in all settings, as well as recommending public and professional awareness raising and the promotion of non-violent, positive, participatory methods of childrearing and education and of knowledge among children of their right to protection from all forms of corporal punishment.**

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### **MALDIVES (second and third periodic report – CRC/C/MDV/3)**

#### **Corporal punishment in the home**

Corporal punishment is lawful in the home. Children have limited protection from violence and abuse under the Law on the Protection of the Rights of the Child (1991), and the Family Law (2000, in force 2001) protects children from some corporal punishment, stating in article 18: “No child shall, even as a measure of discipline, be subjected to punishment which may cause physical injury or which may be detrimental to the health of the child.” But there is no explicit prohibition of all forms of corporal punishment.

#### **Corporal punishment outside the home**

Corporal punishment is prohibited in **schools** under article 10 of the Law on the Protection of the Rights of the Child, which states: “Punishment in school should be appropriate to the child’s age and should not affect them physically or psychologically.” This is reiterated in the Ministry of Education *Handbook for Teachers* (updated 2002), which confirms (in section 2.7): “Maldavian Law does not allow teachers to inflict corporal punishment on students.”

In the **penal system**, corporal punishment is lawful as a sentence for crime. The Law on the Protection of the Rights of the Child prohibits imposing cruel and degrading punishment on children, and the Penal Code (amended 2002) does not include corporal punishment among permitted sentences for crimes that fall outside of Shari’a law. However, under the Penal Code, the Sentencing Guidelines 298 (“Rules on Investigation Adjudication and Sentencing in Respect of Offences Committed by Minors”) and the Rules for Sentencing No. 6 (2003), the Hadd punishments of Islamic law, including corporal punishment, are applicable to any person who has reached puberty. The combined first and second report to the Committee on the Rights of the Child, dated February 2006, contained a footnote to paragraph 175 on punishment for sex offenders which stated: “Haddu punishments are found in verses of the Qur’an. Hence, these are pre-established and cannot be changed by anyone. These punishments are applicable to any person even under the age of 18 years if they have reached puberty....” This is repeated in the combined second and third reports to be examined in the 45th session of the Committee. There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions.

There is no explicit prohibition of corporal punishment in **alternative care settings**. The Education and Training Centre for Children operates under the Ministry of Education and so corporal punishment is prohibited in that institution under article 10 of the Law on the Protection of the Rights of the Child and the *Handbook for Teachers* (see above).

We have been unable to ascertain the legality of corporal punishment in the **workplace**.

**In its concluding observations on the State party’s initial report in 1998 (CRC/C/15/Add.91), the Committee on the Rights of the Child made no specific recommendation concerning corporal punishment. We understand from the follow-up process to the South Asia Regional Consultation for the UNSG’s Study on violence against children that the Maldives is committed to law reform to prohibit corporal punishment. In light of the Committee’s General Comment No. 8 on “The**

**right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” and taking into account the recommendation in the UNSG’s Study that all corporal punishment of children be prohibited by 2009, we hope the Committee will now question the State party in detail on the issue of corporal punishment and urge the State party as a matter of priority to introduce legislation to prohibit corporal punishment in the home, alternative care contexts, workplace settings, and the juvenile justice system, including as a sentence for offences under Shari’a law. We hope the Committee will recommend this be accompanied by a study of the nature, prevalence and negative effects of corporal punishment of children as a basis for public and professional awareness raising of children’s rights to protection from all corporal punishment and the promotion of positive, non-violent and participatory approaches to childrearing and education.**

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### **SLOVAK REPUBLIC (second periodic report – CRC/C/SVK/2)**

#### **Corporal punishment in the home**

Corporal punishment is lawful in the home. In 2005, the Government stated its intention to prohibit corporal punishment in the home. A new Penal Code came into force in January 2006 which protects children from physical and psychological violence, insults, abuse, neglect and mistreatment, but we have been unable to ascertain whether it also explicitly prohibits corporal punishment and have no evidence of such an interpretation.

Research in 2000 on the prevalence of corporal punishment within the family by the Bratislava International Centre for Family Studies, involving 2,433 children aged 13-17, found that corporal punishment was common for 2.2% of the children; it was experienced occasionally by 38%, and never by 59.2%.<sup>2</sup> Preliminary analysis of attitudinal research in 2002, undertaken by the same institution and involving 856 adults, found that 98.6% believed that parents should be allowed to use a “smack on the buttock from time to time”, 75.3% believed that parents should be allowed to use “occasional slaps”, 41.7% felt that occasional beating with an implement was acceptable, and 22.9% felt that repeated beating was acceptable.<sup>3</sup>

#### **Corporal punishment outside the home**

Corporal punishment is unlawful in **schools** under the Penal Code which states that human dignity may not be humiliated by the execution of a punishment. Corporal punishment is not among the permitted disciplinary measures in Act No. 569/2003 Coll. on State Administration in the School System and School Self-government and on amending and supplementing certain other laws (2003). School legislation applies to state and non-state, private and church schools and educational establishments.

Corporal punishment is unlawful in the **penal system** as a sentence for crime and as a disciplinary measure in penal institutions. It is not a permitted punishment under the Penal Code.

Corporal punishment is unlawful in **alternative care contexts**.

We have no information relating to corporal punishment in **situations of employment**, but would presume that corporal punishment is prohibited under the Penal Code.

**In its concluding observations on the State party’s initial report in 2000, the Committee on the Rights of the Child recommended that the State party “ensure that all forms of physical and mental violence, including corporal punishment and sexual abuse of children in the family, schools and care institutions, are prohibited” (CRC/C/15/Add.140, para. 32). In 2003, the European Committee of Social Rights noted the lack of information in the country’s report as to whether corporal punishment “in the home, in schools, institutions and elsewhere was prohibited by legislation”; it concluded that there was no such prohibition in place and that the situation**

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<sup>2</sup> International Centre for Family Studies (2002), “The children’s rights applying in the praxis. Preliminary survey report”, Bratislava: International Centre for Family Studies

<sup>3</sup> International Centre for Family Studies (2003 in progress), “The prevalence of violence in Slovakia”, Bratislava: International Centre for Family Studies

**was therefore not in conformity with article 17 of the European Social Charter (Conclusions XVI-2, page 804). In light of the Committee on the Rights of the Child General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” and taking into account the recommendation in the UNSG’s Study on violence against children that all corporal punishment of children be prohibited by 2009, we hope the Committee will question the State party in detail on explicit legal provisions prohibiting corporal punishment of children, in particular regarding the prohibition of violence in the new Penal Code as it relates to corporal punishment within the family home. We hope the Committee will also recommend public and professional awareness raising and the promotion of non-violent, positive, participatory methods of childrearing and education and of knowledge among children of their right to protection from all forms of corporal punishment, wherever they are.**

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### **URUGUAY (second periodic report – CRC/C/URY/2)**

#### **Corporal punishment in the home**

Corporal punishment is lawful in the home. Article 261 of the Civil Code (1868) gives parents the right to “moderately correct” their children and, if this is insufficient, to request that a judge order their detention in a correctional facility. Guardians have the same rights. Article 16 of the Children and Adolescents Code (2004) states that it is the parents’ duty to “adequately correct” their children or wards.

Children have some protection from violence and abuse under other provisions in the Civil Code and the Children and Adolescents Code, as well as under the Criminal Code (1934), the Domestic Violence Law (2002) and the Constitution (1967). The Children and Adolescents Code recognises the right to dignity and integrity (article 9) and protection from all forms of cruel, inhumane or degrading treatment (article 15). According to the Constitution, parents have an obligation to protect, educate and care for their children (article 41) and the state has a specific obligation to protect children from violence in the family (articles 40 and 41).

#### **Corporal punishment outside the home**

Corporal punishment is lawful in **schools**. The Children and Adolescents Code authorises judges to act on filed complaints on ill-treatment and “exaggerated punishments” carried out by those responsible for children in educational institutions, indicating that it is lawful to carry out corporal punishments that are not considered to be “exaggerated”.

In the **penal system**, corporal punishment is unlawful as a sentence for crime but there is no explicit prohibition of its use as a disciplinary measure in penal institutions. The regulations of the Institute of Juvenile Rehabilitation, which have long been under revision, make no provision for corporal punishment.

There is no explicit prohibition of corporal punishment in **alternative care contexts**. Under the Civil Code, the infliction of ill-treatment and “exaggerated punishment” on children under care and protection is prohibited. Guardians have a right of “moderate correction” as for parents. The provisions against violence and abuse in the Children and Adolescents Code apply.

We have no information relating to corporal punishment in **situations of employment**.

**In its concluding observations on the State party’s initial report in 1996, the Committee on the Rights of the Child expressed concern at abuse and violence within the family (CRC/C/15/Add.62, paras. 13 and 21) but made no specific recommendations concerning corporal punishment. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” and taking into account the recommendation in the UNSG’s Study on violence against children that all corporal punishment of children be prohibited by 2009, we hope the Committee will now question the State party in detail on the issue of corporal punishment and urge the State party as a matter of priority to introduce legislation prohibiting corporal**

**punishment in the home, alternative care contexts, workplace settings, and the juvenile justice system. We hope the Committee will recommend that this be accompanied by a study of the nature, prevalence and negative effects of corporal punishment of children as a basis for public and professional awareness raising of children's rights to protection from all corporal punishment and the promotion of positive, non-violent and participatory approaches to childrearing and education.**