

# Corporal punishment of children in Kazakhstan

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Child population 5,356,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## 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 is no confirmation in law of a “right” of parents to punish their children, but there is no explicit prohibition of all forms of corporal punishment in childrearing. The near universal acceptance of corporal punishment in “disciplining” children necessitates a clear statement in law that all corporal punishment, without exception, is prohibited.

*Alternative care settings* – Corporal punishment should be prohibited in all alternative care settings, without exception.

*Day care* – Corporal punishment should be prohibited in all early childhood care (including crèches, family centres) and all day care for older children (including day centres, after-school childcare, childminding, etc), without exception.

## **Current legality of corporal punishment**

### **Home**

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.<sup>1</sup> 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.

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.

### **Alternative care settings**

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.<sup>2</sup>

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 under “Home”).

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<sup>1</sup> 24 July 2003, CRC/C/SR. 886, Summary record of 886<sup>th</sup> meeting, para. 15

<sup>2</sup> 15 January 2014, CRC/C/KAZ/4, Fourth state party report, para. 169

## Day care

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 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, 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 under "Home").

## Schools

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 organisations<sup>3</sup> and the Government similarly reported in 2014 that corporal punishment is prohibited in educational institutions<sup>4</sup> 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 under "Home") also applies.

## Penal institutions

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.<sup>5</sup>

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

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<sup>3</sup> 24 September 2002, CRC/C/41/Add.213, Initial state party report, para. 89

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

<sup>5</sup> 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

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.”

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, discussion at a general meeting and extraordinary duties, stating that “application of penalties not covered by these Regulations is prohibited”.<sup>6</sup>

### **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal and Executive Code 2014.

### **Universal Periodic Review of Kazakhstan’s human rights record**

Kazakhstan was examined in the first cycle of the Universal Periodic Review in 2010 (session 7). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:<sup>7</sup>

“To continue its work to ensure the further refinement of laws aimed at protecting children’s rights in order to step up criminal and administrative responsibilities for crimes and offences committed against children or involving children in crime (Kyrgyzstan);

“To continue to apply a zero-tolerance approach to torture and cruel, inhuman or degrading treatment or punishment (Germany)”

Examination in the second cycle took place in 2014 (session 20). No recommendations were made specifically on corporal punishment of children. The Government accepted a recommendation to criminalise all forms of violence against children including in the family, stating that it was already implemented.<sup>8</sup>

### **Recommendations by human rights treaty bodies**

#### ***Committee on the Rights of the Child***

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

“While noting some positive legislative changes, the Committee remains concerned that the State party’s legislation fails to explicitly prohibit corporal punishment, however light, in the home, care institutions and day care facilities. It is also concerned about violent disciplinary measures applied in families, schools and care institutions.

“In the light of its general comment No. 8 (2006) on corporal punishment, the Committee urges the State party to take immediate measures to explicitly prohibit corporal punishment in all its forms in the home, care institutions and day care facilities and ensure that those who violate the law are held

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<sup>6</sup> 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

<sup>7</sup> 23 March 2010, A/HRC/14/10, Report of the working group, paras. 95(9) and 95(44)

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

accountable. The Committee also recommends that the State party take measures to foster positive, non-violent and participatory forms of child-rearing and discipline among parents, teachers, staff of care institutions and day care facilities and other professionals working with and for children.”

### ***Committee on the Rights of the Child***

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

“The Committee appreciates that corporal punishment is unlawful in schools, the penal system and alternative care. However, the Committee regrets that there is no specific legal prohibition of corporal punishment in foster care, military schools, kinship care and the workplace, and that despite legal prohibitions for some areas, the de facto situation is that children are still victims of corporal punishment.

“The Committee urges the State party, while taking into account its general comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/GC/2006/8), to:

- a) explicitly prohibit in law corporal punishment of children in all settings;
- b) undertake public and professional awareness-raising;
- c) promote non-violent, positive, participatory methods of childrearing and education and knowledge among children of their right to protection from all forms of corporal punishment; and
- d) Seek assistance from, inter alia, UNICEF and WHO.”

### ***Committee on the Rights of the Child***

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

“The Committee also notes that corporal punishment is forbidden in educational institutions but remains concerned that inappropriate methods of discipline, including corporal punishment, continue to be used in such institutions. The Committee is further concerned that appropriate measures have not been taken to effectively prevent and combat any form of ill-treatment and corporal punishment of children within the family.

“The Committee recommends 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. The Committee further recommends that the State party, through, for example, public awareness campaigns, promote positive non-violent forms of discipline as an alternative to corporal punishment, especially in families, the schools and other institutions.”

### ***Human Rights Committee***

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

“While taking note of the existence of the Child Rights Law of 2002 and the prohibition of corporal punishment in schools and the penal system, the Committee expresses concern at the permissibility of corporal punishment in the home and foster care establishments where it continues to be accepted and practised as a form of discipline by parents and guardians (arts. 7 and 24).

The State party should take practical steps to put an end to corporal punishment in schools and institutions. It should also encourage non-violent forms of discipline as alternatives to corporal

punishment in family settings and conduct public information campaigns to raise awareness about its harmful effects.”

## **Prevalence/attitudinal research in the last ten years**

Research conducted in 2015 as part of UNICEF’s Multiple Indicator Cluster Surveys (MICS) programme, found on average 53% of 1-14 year-old children experienced some form of violent discipline (psychological aggression and/or physical punishment) in the month prior to the survey. On average 47% of children experienced psychological aggression, 25% physical punishment and 1% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Only 39% of children experienced only non-violent forms of discipline.

(The Statistics Committee of the Ministry of National Economy of the Republic of Kazakhstan (2016), *2015 Kazakhstan Multiple Indicator Cluster Survey, Key Findings*, Astana, Kazakhstan: The Statistics Committee of the Ministry of National Economy of the Republic of Kazakhstan)

Nearly half of children in detention who took part in the survey said they had been subject to disciplinary measures or punishment: a quarter said they had experienced physical punishment such as beatings, and 9% (5 boys in total) had experienced solitary confinement as a punishment. Three quarters of children in state-run residential institutions who took part in the survey said they had been subject to disciplinary measures or punishment, with a third saying they had experienced physical punishment such as beatings. One member of staff from state-run residential institutions said that physical punishment was used, and two (5% of all staff surveyed) said they supported 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)

An assessment of violence against children in schools, which used data from more than 4,000 9-17 year olds and 917 teachers and other staff at 40 state-run schools, found that 12.9% of students had been physically punished by a teacher in the past year and 15% of teachers reported using corporal punishment in the past year, despite it being considered unlawful in schools. Punishments included being hit with objects, slapped or spanked, forced to stay in uncomfortable positions and prevented from using the toilet. Nearly a quarter of teachers (22.9%) said they supported the use of corporal punishment, with 15.2% agreeing that “A good teacher knows how to use physical punishment to discipline children” and 10.9% thinking that their school director “prefers teachers that know how to use physical punishment to discipline children”. Only 35.6% thought there was “an official regulation/policy that regulates how and when teachers and specialized staff can discipline children”. The study recommends that the government ensure “legislation exists that prohibits all forms of violence and discrimination against children in schools, including corporal punishment and others forms of cruel and degrading punishment”.

(Office of the Commissioner for Human Rights in the Republic of Kazakhstan (2013), *Assessment of violence against children in schools in Kazakhstan*, Astana: Commissioner for human rights in the Republic of Kazakhstan & UNICEF Office in Kazakhstan)

According to statistics collected in 2010 under round 4 of the UNICEF Multiple Indicator Cluster Survey programme (MICS4), 49.4% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Nearly three children in ten (29.1%) experienced physical punishment, while a smaller percentage (6.5%) of mothers and caregivers thought physical punishment was necessary in childrearing. Two per cent of children experienced severe physical punishment (being hit or slapped on the face, head or ears or

being hit over and over with an implement), 43.3% psychological aggression (being shouted at, yelled at, screamed at or insulted).

(Agency of Statistics & UNICEF (2012) *Multiple Indicator Cluster Survey (MICS) in the Republic of Kazakhstan, 2010-2011, Final Report*, Astana: Agency of Statistics & Republican State Enterprise Information Computing Center)

In 2009, the UN Special Rapporteur on torture visited Kazakhstan and concluded that beatings of juveniles were common in police custody and in prisons and that corporal punishment was common in a “centre for temporary isolation, adaptation and rehabilitation of juveniles,” which housed children temporarily in need of protection.

(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)

A study in 30 state-run residential institutions found that violent punishment of children in institutions was common: 41.1% of children in “institutions of education for children with deviant behaviour”, 35.1% of children in orphanages and 26.8% of children in shelters reported witnessing violence against children by staff. In orphanages, 29.3% of children had witnessed staff use physical violence (including pinching children, twisting their ears, shaking them, slapping them, hitting them with objects and burning them), 19.2% had witnessed staff use verbal violence (including swearing at and insulting children) and 16.4% had witnessed staff use psychological violence (including preventing children from using the toilet, locking children in a room or small place for a long time and tying children up). In institutions for children with disabilities, more than half the staff reported witnessing staff using violent physical, psychological or verbal punishment. Thirty per cent of staff in “institutions for children with psycho-neurological and severe disabilities” and 18.4% of staff in “special correctional institutions of education” reported witnessing physical violence by staff. In “institutions for children with psycho-neurological and severe disabilities” 53.8% of staff supported the use of corporal punishment. More than 20% thought it was sometimes necessary to shout at children or call them names to get their attention, 14.5% thought children preferred staff who used strict “discipline” and 10.7% thought corporal punishment does not really hurt children. In infant homes, 21.8% of staff reported witnessing staff use violent punishment: 18.3% physical violence, 9.9% verbal violence and 9.9% psychological violence. More than a quarter of staff in infant homes supported the use of corporal punishment. The study involved surveys with nearly 1,000 children aged 9-18, 284 staff in infant homes and 349 staff in institutions for children with disabilities. The report recommended prohibiting corporal punishment in residential institutions and other care settings.

(Haarr, R. N. (2011), *Violence Against Children in State-Run Residential Institutions in Kazakhstan: An Assessment*, UNICEF, National Human Rights Centre (Ombudsman) and Sange Research Centre)