

Corporal punishment of children in Kyrgyzstan

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Child population 2,170,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Kyrgyzstan's commitment to prohibiting corporal punishment

Kyrgyzstan expressed its commitment to prohibiting corporal punishment in all settings by accepting clearly the recommendation to do so made during the Universal Periodic Review of Kyrgyzstan in 2015.

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 appears to be no confirmation in legislation of a “right” of parents and other to impose corporal punishment on children, such as a right to inflict “reasonable chastisement” or a “power to correct”. However, the near universal acceptance of a certain degree of violence in the name of discipline necessitate clarity in law that all forms of corporal punishment are prohibited, without exception.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings, including foster care, placed of safety, emergency care, etc.

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, preschools, crèches, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. There is no clear prohibition in law of all forms of corporal punishment in childrearing.

The Code on Children 2012 includes as one of the basic principles of child protection “ensuring protection of the child from all forms of violence” (art. 4, unofficial translation); it defines violence/abuse as “any action in relation to the child which violates or endangers its physical or mental development” (art. 5). Article 7 states that the child has the rights to “care from parents and persons replacing them” and to “respect for his/her human dignity”. Article 16(1) states: “Every child has the right to honour and dignity, and security of the person. The state provides personal security of the child, and protects him/her from physical and mental, sexual violence, cruel, brutal, inhuman or degrading treatment...” The Code does not explicitly prohibit all corporal punishment, however light, in childrearing.

The Family Code 2003 states in article 59(2) (unofficial translation): “... The child has the right to education by the parents, ensuring its interests, full development, and respect for human dignity...” Article 61(2) protects the child from abuse by parents; article 70 states: “In the exercise of parental rights, parents have no right to harm the physical and mental health of children, their moral development. The methods of raising children should exclude neglectful, cruel or degrading treatment, abuse or exploitation of children.” But the Code does not explicitly prohibit all corporal punishment, however light, in childrearing.

The Law on Social Legal Protection from Violence in the Family 2003 defines domestic violence as “any intentional act by one family member against another if this action violates the legal rights and freedoms of a family member, causing him physical and mental suffering and causing moral harm or posing a threat to the physical and personal development of a minor member of the family” and the definition of physical violence includes beating and actions which violate the honour, dignity and mental, physical and personal development of the child (art. 1). But the Law does not explicitly state that violent punishment in the guise of “discipline” is prohibited. In reporting to the Committee on the Rights of the Child, the Government acknowledged the inadequacy of this Law in protecting children from violence.¹ However, under examination by the Human Rights Committee in 2014, the Government stated that corporal punishment is prohibited under the Criminal Code.² In fact, there is no explicit prohibition of corporal punishment in the Criminal Code 2014.

During the Universal Periodic Review in 2010, the Government accepted the recommendation to protect children by law from corporal punishment in any setting, but also stated that the law already prohibits corporal punishment.³ However, following the second cycle review of Kyrgyzstan in 2015, the Government clearly accepted the recommendation to prohibit corporal punishment in all settings including the home, indicating its commitment to law reform to achieve prohibition.⁴

Alternative care settings

Corporal punishment is unlawful in residential institutions. In clause 31 of Regulation No. 489 “On the state children’s home (residential institutions) of the system of the Ministry of Education, Science and

¹ 6 June 2012, CRC/C/KGZ/3-4, Third/fourth state party report, para. 72

² 14 March 2014, CCPR/C/SR.3039, Summary record of 3039th meeting, para. 14

³ 16 June 2010, A/HRC/15/2, Report of the working group, paras. 53 and 76(56)

⁴ 9 April 2015, A/HRC/29/4, Report of the working group, para. 117(78)

Culture of the Kyrgyz Republic” 1998, corporal punishment is not included as a permitted measure of discipline.

There is no explicit prohibition of corporal punishment in foster care and other alternative care settings, though children are protected from some corporal punishment under the protection from “cruel, brutal, inhuman or degrading treatment” in article 16 of the Code on Children 2012.

Day care

There is no explicit prohibition of corporal punishment in day care settings, though children are protected from “cruel, brutal, inhuman or degrading treatment” in article 16 of the Code on Children 2012. The Law on Preschool Education 2009 states that children in preschool education have “the right guaranteed by the state ... to be protected from all forms of exploitation and actions that are harmful to their health, as well as physical and psychological abuse, humiliation of dignity” (art. 18, unofficial translation), but it does not explicitly prohibit all corporal punishment.

Schools

Corporal punishment is unlawful in schools, though there appears to be no explicit prohibition. The Law on Education 2003 states in article 29 (unofficial translation): “... Teachers shall ... not apply methods of physical and moral abuse in relation to students.” The Law on the Status of the Teacher 2001 states in article 15: “The teacher shall ... respect the honour and dignity of pupils.” Article 16 of the Code on Children 2012 protects children from “cruel, brutal, inhuman or degrading treatment”.

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions but it is not explicitly prohibited. There is no provision for corporal punishment among the permitted disciplinary measures in the Criminal and Executive Code 1999 (arts. 39-15 and 87), but the Law on Bodies and Organisation of Criminal and Executive (Penitentiary) System 2003 states in article 28 that staff may use physical force if nonviolent methods are ineffective. Article 16 of the Code on Children 2012 protects children from “cruel, brutal, inhuman or degrading treatment”.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not among permitted sentences for offenders under 18 in article 78 of the Criminal Code 1997. The Code on Children 2012 includes among the principles underpinning juvenile justice “prohibition and prevention of all forms of violence in case of administration of law concerning children in conflict with the law” and “prohibition of torture, cruel, inhuman or humiliating treatment or punishment of the minor” (art. 90).

The cases of crimes committed by children are often heard in aksakal (traditional village) courts. Corporal punishment is not included in the measures available to these courts under articles 28 and 29 of the Law on Courts of Aksalals 2002; article 28 also states that the court has no right to impose punishments degrading to human dignity.

Universal Periodic Review of Kyrgyzstan's human rights record

Kyrgyzstan was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). During the review, the Government stated that it “rejected the view that corporal punishment was permitted in Kyrgyzstan, noting that corporal punishment and the infliction of physical or moral suffering on children was prohibited by law”.⁵ Nevertheless, the following recommendations were made and were accepted by the Government:⁶

“Ensure the full legal protection of the freedom of children from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including corporal punishment in any setting, and take further practical measures to stem the occurrence of violence against children (Sweden);

“Stop all acts of intimidation, corporal punishment or arrest linked to the activities of human rights defenders, political activists and journalists, and guarantee freedom of expression, without introducing any provisions restricting its exercise (Argentina)”

The second cycle review took place in 2015 (session 21). During the review, the following recommendation was made and was accepted by the Government:⁷

“Fully prohibit corporal punishment against children in all settings, including at home (Croatia)”

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(7 July 2014, CRC/C/KGZ/CO/3-4, Concluding observations on third/fourth report, paras. 32 and 33)

“The Committee notes that corporal punishment is unlawful in schools, penal institutions and residential care institutions, but is concerned that the implementation of the laws prohibiting corporal punishment is ineffective. The Committee also regrets that corporal punishment is not expressly prohibited in the home and in foster and day care.

“In the light of its general comment No. 8 (2008) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee urges the State party to prohibit in law the use of all forms of corporal punishment in all settings, in particular in the home and foster care, and provide for enforcement mechanisms under its legislation, including providing appropriate sanctions in cases of violation. It also recommends that the State party strengthen and expand awareness-raising and education programmes and campaigns, in order to promote positive, non-violent and participatory forms of child-rearing and discipline.”

Committee on the Rights of the Child

(3 November 2004, CRC/C/15/Add.244, Concluding observations on second report, paras. 37, 38, 43, 44, 45 and 46)

“The Committee is concerned that persons below 18 allegedly continue to be subjected to torture and cruel treatment, in many cases when in police custody or awaiting trial....

⁵ 16 June 2010, A/HRC/15/2, Report of the working group, para. 53

⁶ 16 June 2010, A/HRC/15/2, Report of the working group, paras. 76(56) and 76(57)

⁷ 9 April 2015, A/HRC/29/4, Report of the working group, para. 117(78)

“The Committee recommends that the State party:

- a) undertake all necessary measures to prevent acts of torture and inhuman or degrading treatment or punishment, in particular through training of the police forces;
- b) take measures to investigate, prosecute and sanction those involved in committing acts of torture and inhuman or degrading treatment or punishment against children and young persons....

“While commending the State party for the adoption of the Law on Protection from Violence (2003), the Committee expresses its concern about the abuse and neglect that take place in families, in particular with regard to children and against adolescent girls....

“The Committee recommends that the State party:

- a) enforce and closely monitor the Law on Protection from Violence;
- b) carry out effective public-awareness campaigns and adopt measures to provide information, parental guidance and counselling with a view, inter alia, to preventing violence against children, including the use of corporal punishment....

“The Committee welcomes the fact that the State party considers corporal punishment unacceptable and inadmissible; however, it remains concerned that corporal punishment is not explicitly prohibited in the family, in schools, in other institutions and in childcare settings.

“The Committee urges the State party to expressly prohibit corporal punishment by law in the family, in schools, in institutions and in other childcare settings. It further recommends awareness-raising and promotion of positive, non-violent forms of discipline, especially in families, schools and care institutions.”

Committee on the Rights of the Child

(9 August 2000, CRC/C/15/Add.127, Concluding observations on initial report, paras. 33, 34, 39 and 40)

“The committee is concerned at numerous and continuing reports of ill-treatment of persons under 18 by the militia, including psychological intimidation, corporal punishment, torture and abduction. The Committee is concerned that victims of such treatment are largely from vulnerable groups, such as refugees; that children are often detained for payment from their families; and that fear of reprisals and inadequate complaints procedures discourage children and their parents from filing complaints. Like the Committee Against Torture (CAT/C/23/6), the Committee expresses concern at the absence of a definition of torture in the 1998 Criminal Code and appropriate penalties, and the apparent failure to provide prompt, impartial and full investigation into allegations of torture, as well as the failure to prosecute alleged perpetrators.

“In light of article 37 of the Convention, and recalling the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169), the State party should take all necessary and effective steps to prevent incidents of ill-treatment from occurring. The Committee recommends that the State party implement the recommendations made by the Committee against Torture (CAT/C/23/6); provide the militia with training on how to deal with persons under 18; ensure that persons are adequately informed of their rights when they are detained; ensure that complaints procedures are simplified so that responses are appropriate, timely, child-friendly and sensitive to victims; and provide rehabilitative support to victims.

“The Committee is concerned, as the report acknowledges, that ill-treatment of children takes place in the family, institutions, and schools. The Committee is concerned that violence against women is on the rise and is a problem in Kyrgyzstan, and that this has harmful consequences on children.

“In light of articles 19 and 39 of the Convention, the Committee recommends the State party to ensure that all forms of physical and mental violence, including corporal punishment and sexual abuse against children in the family, schools and care institutions are prohibited. The Committee recommends that these measures be accompanied by public education campaigns about the negative consequences of ill-treatment of children. The Committee recommends the State party to promote positive, non-violent forms of discipline as an alternative to corporal punishment, especially in the home and schools. Programmes for the rehabilitation and reintegration of abused children need to be strengthened. Moreover, adequate procedures and mechanisms need to be established to; receive complaints; monitor, investigate and prosecute instances of ill-treatment; and ensure that the abused child is not victimised in legal proceedings. In regards to violence against girls and women, the Committee recommends the State party to implement the recommendations of the Committee on the Elimination of Discrimination Against Women (A/54/38). Attention should be given to addressing and overcoming socio-cultural barriers that inhibit victims from seeking assistance....”

Human Rights Committee

(23 April 2014, CCPR/C/KGZ/CO/2, Concluding observations on second report, para. 21)

“While noting that violence against children and corporal punishment is legally prohibited in schools and some institutional settings, the Committee remains concerned that corporal punishment continues, especially in the home, where it is traditionally accepted and practised as a form of discipline by parents and guardians (arts. 7 and 24).

The State party should take practical steps, including through legislative measures, where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.”

Human Rights Committee

(24 July 2000, CCPR/CO/69/KGZ, Concluding observations on initial report, para. 19)

“The Committee is concerned about the continued existence of child labour, the problem of mistreatment of children in some educational institutions, cruel punishment and the phenomenon of trafficking of children.

The State party must urgently address these issues so as to ensure the special protection to which children are entitled under article 24 of the Covenant. Specifically, corporal punishment must be prohibited.”

Committee Against Torture

(20 December 2013, CAT/C/KGZ/CO/2, Concluding observations on second report, para. 21)

“Although corporal punishment of children is unlawful in schools, the penal system and certain care settings, the Committee is concerned at allegations that a high number of children experience violence, abuse or neglect in the family and some care settings (art. 16).

The State party should explicitly prohibit corporal punishment of children in all settings, including at home and in institutions and alternative care settings, and ensure awareness-raising and public education measures.”

Committee Against Torture

(18 November 1999, A/54/44, Concluding observations on initial report, paras. 74 and 75)

“The Committee expresses its concern about the following:

b) the numerous and continuing reports of allegations of torture in breach of article 1 of the Convention; and other cruel, inhuman or degrading treatment or punishment (sometimes involving children) by law enforcement personnel, contrary to article 16 of the Convention.

“The Committee recommends that:

b) in view of the numerous reports of allegations of torture and ill-treatment by law-enforcement personnel, the State party take all necessary effective steps to prevent these events from occurring.”

Prevalence/attitudinal research in the last ten years

A survey carried out in 2014 by the National Statistical Committee as part of the global MICS programme found 57% of children age 1-14 years had experienced violent “discipline” (psychological aggression or physical punishment) during the month preceding the survey; 38% had experienced physical punishment and 3% severe physical punishment. Thirty-eight per cent of children reported that they had experienced only non-violent forms of discipline.

(National Statistical Committee of the Kyrgyz Republic & UNICEF (2014), *Kyrgyzstan Multiple Indicator Cluster Survey 2014, Key Findings*, Bishkek, Kyrgyzstan: National Statistical Committee of the Kyrgyz Republic & UNICEF)

Amongst a small sample of eight children in detention centres, half had been subject to disciplinary measures which included physical punishment. Seventy-one per cent of children in state-run residential institutions had been subject to disciplinary measures or punishment; a third said they had received physical punishments such as beatings. When asked to explain further, children recalled being made to clean rooms and wash windows, being made to stand in the corner on one foot, and two children from a psychiatric institution said they were given injections when they misbehaved. All 14 members of staff that were interviewed said they did not support 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)

During its 2012 visit to Kyrgyzstan, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment documented the widespread use of “punishment cells” in which children were held in solitary confinement, usually for 2-3 days but sometimes for longer, in a prison colony for juvenile offenders. The report of the visit recommends that the punishment cells be immediately closed.

(Advance copy, CAT/OP/KGZ/R.1, Report on first periodic visit)

An NGO report to the UN Committee Against Torture documented corporal punishment in a “special boarding school”. Children were beaten, kicked, and forced to beat each other.

(Votslava, J. et al (2013), *Shadow report of NGOs on compliance of obligations in respect of children under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Kyrgyz Republic*, Bishkek: Youth Human Rights Group)

A 2013 shadow report to the UN Committee on the Rights of the Child by a group of NGOs documented that torture (including being beaten, forced to do physical exercise, suffocated and deprived of sleep) was inflicted on children in detention centres, special schools and residential institutions, including as a punishment.

(Utesheva, N. et al (2013), *Shadow report of NGOs on compliance of obligations under the UN Convention on the Rights of the Child by the Kyrgyz Republic*, Association of NGOs for the protection and promotion of child rights, Centre for Child Protection, SOS Children's Villages Kyrgyzstan, Independent Human Rights Group, Legal Clinic "Adilet", Youth Human Rights Group, Children of Tien Shan, Blagodat, Association of Parents of Disabled Children, Haliluya, Voice of Freedom & Master radosti)

A 2012 study of juvenile justice settings documented the use of corporal punishment in a "Centre for Adaptation and Rehabilitation of Juveniles" and a "special school".

(Utesheva N. A. & Korzhova O. A. (2013), *Protecting children from torture and cruel treatment in the context of juvenile justice: research report 2012*, Bishkek: UNICEF)

An NGO documented evidence of injuries caused by strenuous physical exercise used as punishment in a special school for boys aged 11-14.

(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)

Research by NGOs in care institutions found that corporal punishment was common. Punishments included punching children, beating them with a stick, forcing them to clean for long periods, forcing them to stand on one leg with their arms raised, making them spend nights in rooms occupied by older children, depriving them of food and placing them in psychiatric hospitals. Care workers, directors and other staff members punished children. Children said they were often punished for not agreeing with a care worker's opinion or actions.

(*Third/fourth report of Kyrgyzstan to the Committee on the Rights of the Child (2010)*, CRC/C/KGZ/3-4)

In a large-scale national study which involved over 2,000 children, 24% said they had been hit, kicked, beaten or physically hurt in another way by an adult in their family; 16% had experienced this in the past month.; 11% had been hit or attacked with a weapon or other object by a family member. Of the quarter of children who had been physically hurt by an adult in their family, 31% could still feel the pain next day or had a bruise, cut that bled or other injury such as a broken bone; 12% of these children had required medical attention. Forty-four per cent of children said adults in their family had called them names or said things that hurt their feelings; 33% had experienced this in the past month. Fifteen per cent of children had been threatened with violence with a weapon, 10% in the past month. Surveys with 155 parents also revealed very high rates of use of physical and verbal punishment. Positive discipline was widely used (93% of parents had used positive discipline methods such as explaining why a behaviour was wrong or taking away a child's privileges, 87% in the past month), but the majority of parents who used positive discipline also used physical, verbal and psychological violence as a punishment. Sixty-eight per cent of parents had used some kind of corporal punishment, 57% in the past month: 58% had slapped their child on the back, buttocks, leg or arm; 41% had shaken their child; 32% had hit their child with a hard object (including belts, hairbrushes and sticks); 25% had slapped their child on the face or head; 11% had hit their child over and over as hard as they could; 4.5% had thrown their child or knocked them down. Forty-seven per cent of parents had sworn at or cursed their child or called them names, 41% in the past month; 34% had threatened to hit, beat or kick their child, 27% in the past month. The study recommends prohibition of corporal punishment in all settings, including the home.

(Haarr, R. et al (2009), *Child Abuse and Neglect in Families in the Kyrgyz Republic: a National Population-Based Study*, UNICEF)