

Corporal punishment of children in Tajikistan

LAST UPDATED January 2020

Also available online at

www.endcorporalpunishment.org

Child population 3,475,000 (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, day care and penal institutions.

There appears to be no confirmation in legislation of a right to impose “reasonable chastisement” or similar in childrearing, but provisions against violence and abuse of children are not interpreted as prohibiting all corporal punishment in childrearing. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. Prohibition should be enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

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

Penal institutions – Corporal punishment as a disciplinary measure should be prohibited in all institutions accommodating children in conflict with the law.

Current legality of corporal punishment

Home

There appears to be no confirmation in legislation of a right to impose “reasonable chastisement” or similar. The Law on Prevention of Violence in the Family 2013 defines violence in the family as “the intentional illegal act of physical, mental, sexual and economic nature made within the family relations by one member of the family in relation to other member of the family which becomes the cause of infringement of its rights and freedoms, causing of physical pain or harm to its health or threat of causing such harm to health” (art. 1, unofficial translation). It defines physical abuse as “intentional illegal act of one member of the family in relation to other member of the family, as a result of use of physical force which becomes the reason of drawing of physical pain or harm to its health” (art. 1). One of the purposes of the Law is “assistance to increase of responsibility of parents for training and education of children” (art. 2). The Code on Administrative Offences 2008 punishes violence in the family which does not amount to a criminal offence (art. 93).

The Family Code 1998 states that every child has the right to respect for human dignity (art. 55(2)) and the right to protection against abuse from parents and persons in *loco parentis* (art. 57(2)). Article 65(2) of the Code states (unofficial translation): “In exercising parental rights, parents have no right to harm the physical or mental health of children or their moral development. Methods of raising children should exclude neglectful, cruel or degrading treatment or abuse....” But the Code does not explicitly prohibit all forms of corporal punishment in childrearing.

The Law on Parental Responsibility for Education and Upbringing of Children 2011 states that parents have a responsibility to respect the honour and dignity of children and protect them from ill-treatment (art. 8), but it does not explicitly prohibit all corporal punishment. Article 11.1. of the Law On the Protection of the Rights of the Child 2015 states that “every child has the right to life and the conditions necessary for the full physical, mental, spiritual and moral development; a child has the right to freedom, integrity, honour, dignity and privacy”. However, the Law does not mention the right to protection from violence. The Ministry of Education and Science is in the process of developing implementing policies, in cooperation with UNICEF.¹ Provisions against violence and abuse in the Criminal Code 1998 and the Constitution 1994 do not prohibit all corporal punishment in childrearing.

The Government had initially expressed commitment to law reform by accepting recommendations made during the Universal Periodic Review of Tajikistan in 2011 to prohibit corporal punishment of children, stating that it considered these had already been implemented.² But in reporting to the Committee Against Torture in 2012, the Government stated that “measures are being taken in the Republic of Tajikistan to improve domestic legislation, with a view to excluding the use of corporal punishment as a method of maintaining discipline in the family, schools and other educational establishments”.³ A shadow report submitted to the Committee on the Rights of the Child in 2016 also reported that there was no prohibition of corporal punishment of children in Tajikistan. During the second Universal Periodic Review of Tajikistan in 2016, the Government accepted a recommendation to “enforce the prohibition of all corporal punishment of children in all settings, including in the domestic sphere”.⁴ A working group has been established under the National Action

¹ Information provided to the Global Initiative, August 2017

² 12 December 2011, A/HRC/19/3, Report of the working group, paras. 89(3) and 89(4)

³ [n.d.], CAT/C/TJK/Q/2/Add.1, Reply to list of issues, para. 45

⁴ 14 July 2016, A/HRC/33/11, Report of the working group, para. 115(75)

Plan on the implementation of second cycle UPR recommendations “in order to strengthen legislation on direct prohibition of the use of violence against children”.⁵ Tajikistan’s National Action Plan indeed conjugates the action “Improve legislation on explicit prohibition of *violence* against children” (emphasis added) with the recommendation on corporal punishment. Despite the Committee on the Rights of the Child’s clear recommendation to explicitly prohibit all corporal punishment of children in legislation,⁶ the 2018 National Action Plan for the implementation of CRC recommendations does not provide for law reform, instead focusing on awareness-raising and preventative and reporting mechanisms. The Government declared in November 2017 that the Criminal Code criminalised corporal punishment⁷ and in May 2018 that “corporal punishment of children was prohibited by law, including the Family Code”.⁸ The near universal acceptance of corporal punishment in childrearing means that it is not seen as violence or abuse and that provisions protecting children from abuse are not interpreted as prohibiting all corporal punishment: a clear legal ban of all corporal punishment is necessary.

The Global Initiative no longer considers Tajikistan committed to prohibiting all corporal punishment of children without delay. Despite accepting Universal Periodic Review recommendations to do so in 2011, no progress has been made on drafting and adopting prohibiting legislation. Tajikistan has since implied that its current legislation was sufficient and did not commit to law reform in recent relevant National Action Plans.

Alternative care settings

There is no explicit prohibition of corporal punishment in all alternative care settings. Corporal punishment appears to be lawful as for parents (see under “Home”). We have been unable to examine the revised Regulations of Family and Child Support Centres but it appears they do not mention corporal punishment.

Day care

Corporal punishment is prohibited in preschool education under article 25(3) of the Law on Education 2013 (see under “Schools”). There is no explicit prohibition of corporal punishment in other early childhood care and in day care for older children.

Schools

Corporal punishment is prohibited in schools in the Law on Education 2013 (art. 25(3), unofficial translation): “Methods of training and education in educational institutions is performed on the basis of mutual respect between learners, teachers and other workers. Application of physical and psychological violence in relation to learners is forbidden.” Article 21 of the Regulation of Boarding Schools prohibits the use of physical and psychological violence.

⁵ 9 February 2018, CAT/C/TJK/Q/3/Add.1, Reply to the list of issues, para. 105

⁶ 29 September 2017, CRC/C/TJK/CO/3-5, Concluding observations on third/fifth report, Advance unedited version, paras. 4, 21 and 22

⁷ 29 November 2017, CCPR/C/TJK/3, Third periodic report, para. 61

⁸ 14 May 2018, CAT/C/SR.1636, Summary records of 1636th meeting, para. 14; see also 29 November 2017, CCPR/C/TJK/3, Third periodic report, para. 59

Penal institutions

There is no prohibition of corporal punishment as a disciplinary measure in penal institutions. Article 87 of the Code on Execution of Criminal Sanctions 2004 states that physical force may be used if a person sentenced to imprisonment commits socially dangerous acts (such as hostage taking, wilful disobedience, trying to escape, etc.). It does not prohibit all forms of corporal punishment.

There are no specific laws regulating the juvenile justice system. A National Plan of Action on the Reform of the Juvenile Justice System 2017-2021, aimed at aligning domestic legislation with relevant international standards, was adopted in 2017⁹ but did not address corporal punishment. It appears amendments to the Criminal Code relating to detention procedure were enacted in 2016,¹⁰ but the Criminal Code and the Criminal Procedure Code are still being revised.¹¹ We have not been able to obtain access to the text of the amended Criminal Code but there are no indications of provisions relating to corporal punishment.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Code 1998 or the Code of Criminal Procedure 2009. Article 9(2) of the Criminal Code states (unofficial translation): “The penalty and other measures under criminal law applicable to a person who has committed a crime may not be intended to cause physical suffering or humiliation of human dignity.”

Universal Periodic Review of Tajikistan’s human rights record

Tajikistan was examined in the first cycle of the Universal Periodic Review in 2011 (session 12). The following recommendations were made:¹²

“Consider enacting legal prohibition to the use of corporal punishment (Brazil); Enact legislation to achieve the prohibition of corporal punishment of children in all settings, including in the home and in schools as a matter of priority (Romania);

“Adopt legislation to explicitly prohibit all forms of corporal punishment everywhere, launch awareness-raising campaigns on the negative impact of corporal punishment in children; and provide training to teachers, parents, community leaders and penitentiary institutions officers (Uruguay).

“Prohibit corporal punishment of children in all settings and guarantee children’s rights to adequate standard of living with special attention to orphans, providing them with access to safe drinking water and education (Slovenia)”

In accepting these recommendations, the Government stated that it considers they have already been implemented,¹³ and later stated: “Tajikistan accepts this recommendation [90.28] and should like to point out that Tajik law provides a full range of mechanisms to combat corporal punishment of

⁹ [May 2018], CAT/C/TJK/CO/3 Advance unedited version, Concluding observations on third report, para. 5(h)

¹⁰ 27 December 2016, CAT/C/TJK/3, Third report, para. 26

¹¹ Information provided to the Global Initiative, August 2017

¹² 12 December 2011, A/HRC/19/3, Report of the working group, paras. 89(3), 89(4) and 90(28)

¹³ 12 December 2011, A/HRC/19/3, Report of the working group, paras. 89(3) and 89(4)

children at all institutions.... Tajikistan will in future take all necessary measures to implement these provisions.”¹⁴

Tajikistan was examined in the second cycle of the Universal Periodic Review in 2016 (session 25). During the dialogue, noting the State’s acceptance of the recommendations from its first review to prohibit the corporal punishment of children, Sweden stated that more could be done to ensure the effective enforcement of that prohibition.¹⁵ The following recommendation was made and was supported by the Government:¹⁶

“Enforce the prohibition of all corporal punishment of children in all settings, including in the domestic sphere and in care settings (Sweden)”

Examination in the third cycle is scheduled for 2021.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(29 September 2017, CRC/C/TJK/CO/3-5, Concluding observations on third/fifth report, Advance unedited version, paras. 4, 21 and 22)

“The Committee reminds the State party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasizes the importance of all the recommendations contained in the present concluding observations. The Committee would like to draw the State party’s attention to the recommendations concerning the following areas, in respect of which urgent measures must be taken: corporal punishment (para. 22), family environment (para. 25), children with disabilities (para. 29), health and health services, in particular, nutrition (paras. 31 and 33), and administration of juvenile justice (para. 47).”

“The Committee notes the adoption of the Act on Parental Responsibility for the Education and Raising of Children (2011), Prevention of Domestic Violence Act (2013) and its accompanying strategic plan (2014-2023), Education Act (2013) and Children’s Rights Act (2015). It is, however, deeply concerned that:

(a) The legislative framework does not explicitly prohibit corporal punishment against children, including in the home, alternative care, day care settings and penal institutions;

(b) Although corporal punishment against children is prohibited in school, implementation of the prohibition under the Education Act (2013) remains inadequate due to the absence of an established reporting mechanism.

“With reference to its general comment No. 8 (2006) 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:

(a) Explicitly prohibit by law corporal punishment of children in all settings;

(b) Reinforce the capacity and number of officers throughout the country dedicated to preventing family violence and expand their mandate to include all settings where violence is perpetrated against children to ensure that the prohibition of violence against children, including corporal

¹⁴ 27 February 2012, A/HRC/19/3/Add.1, Report of the working group: Addendum, para. 90(28)

¹⁵ 14 July 2016, A/HRC/33/11, Report of the working group, para. 55

¹⁶ 14 July 2016, A/HRC/33/11, Report of the working group, para. 115(75)

punishment, is adequately monitored and enforced in all settings;

(c) Establish reporting mechanisms for the use of corporal punishment in all settings and ensure that investigations, administrative and legal proceedings are initiated promptly and systematically in relation to cases of all violence against children, and that data on cases and their resolution is collected and disaggregated;

(d) Strengthen support for child victims of violence and ensure their access to adequate services for recovery and counselling;

(e) Promote positive, non-violent and participatory forms of child-rearing and discipline through awareness campaigns and trained officers working with families.”

Committee on the Rights of the Child

(5 February 2010, CRC/C/TJK/CO/2, Concluding observations on second report, paras. 39 and 40)

“The Committee notes the State party’s efforts to raise awareness on violence against children, including campaigns ‘protecting children from abuse’ as well as the establishment of rehabilitation centres for women and children. The Committee, however, regrets that these activities are limited to certain regions of the country and corporal punishment is not explicitly prohibited under domestic laws and is extensively used as a disciplinary measure at home, schools, and childcare institutions. The Committee regrets the lack of representative data on corporal punishment of children by parents, teachers and the staff of childcare institutions.

“The Committee recommends that the State party, as a matter of urgency:

a) conduct a study on prevalence of corporal punishment in all settings;

b) enact legislation in order to explicitly prohibit all forms of corporal punishment in all settings;

c) organize awareness campaigns on the negative impact of corporal punishment on children, and provide teachers, parents, community leaders, and personnel working in penal institutions with training;

d) investigate reported cases of corporal punishment and apply adequate sanctions.”

Committee on the Rights of the Child

(23 October 2000, CRC/C/15/Add.136, Concluding observations on initial report, paras. 28, 29, 34 and 35)

“The Committee is concerned at numerous and continuing reports of ill-treatment of persons under the age of 18 by the militia, including psychological intimidation, corporal punishment and torture. The Committee is also concerned that victims of such treatment are largely from vulnerable groups, such as children living and/or working on the streets; and that fear of reprisals and inadequate complaints procedures discourage children and their parents from filing complaints.

“In the light of article 37 of the Convention and the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169 of 17 December 1979, the State party should take all necessary and effective steps to prevent incidents of ill-treatment by law enforcement officials. The Committee recommends that the State party provide the militia with training on how to deal with persons under the age of 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 at the incidence of ill-treatment of children in the family, in institutions and in school. The Committee is also concerned that violence against women is a problem in Tajikistan and that this has harmful consequences on children.

“In the light of articles 19 and 39 of the Convention, the Committee recommends that the State party ensure that all forms of physical and mental violence, including corporal punishment and sexual abuse, against children in the family, in schools and in care institutions are prohibited. The Committee recommends that measures to that effect be accompanied by public education campaigns about the negative consequences of ill-treatment of children. The Committee recommends that the State party promote positive, non-violent forms of discipline as an alternative to corporal punishment, especially in the home and schools....”

Committee Against Torture

([May 2018], CAT/C/TJK/CO/3 Advance unedited version, Concluding observations on third report, paras. 39, 40, 43 and 44)

“While noting the adoption of the Programme for Reform of the Juvenile Justice System 2017-2021 and the existing capacity building programs on juvenile justice, the Committee is concerned that the criminal juvenile system lacks juvenile courts and judges specialized in juvenile justice. It is further concerned about reports that children are frequently placed in pretrial detention and isolation cells in the Juvenile Colony as a disciplinary measure; cases of ill-treatment, including corporal punishment, continue to be reported and there are no effective complaints mechanisms available for detained minors (arts. 11, 12 and 16).

“The Committee urges the State party to:

- (a) Establish an effective and well-functioning juvenile justice system in compliance with international standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines);
- (b) Bring its legislation and practice on solitary confinement into line with international standards by abolishing solitary confinement of juveniles both in law and practice
- (c) Take effective measures to prevent ill-treatment and corporal punishments against children in detention, including by investigating such acts and ensuring that appropriate disciplinary or penal measures are taken and by establishing a complaint mechanism for minors detained in pre-trial and correctional facilities
- (d) Strengthen existing and develop new educational and rehabilitation programs aimed at reducing juvenile recidivism and encouraging pro-social behaviour and provide adequate meaningful activities conducive to their social integration;
- (e) Reduce the use of pretrial detention for juveniles and use non-custodial measures, in line with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).”

“The Committee is concerned at the absence of amendments to national legislation to prevent all corporal punishment of children, particularly in public institutions, by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity that engage the State’s responsibility in accordance with the Convention (arts. 2 and 16).

“The State party should amend national legislation in order to clearly prohibit and prevent all corporal punishment of children, in particular in public institutions through acts or omissions by State agents and others that engage the State’s responsibility in accordance with the Convention. It should promote non-violent disciplinary methods in the education, bringing up of and caring for children through awareness-raising and public education campaigns about the harmful effects of corporal punishment.”

Committee Against Torture

(21 January 2013, CAT/C/TJK/CO/2, Concluding observations on second report, para. 16)

“The Committee is deeply concerned about the lack of any domestic legislation criminalizing acts of violence against women, despite the existence since 2009 of a draft law on ‘social and legal protection against domestic violence’; reports of high prevalence of domestic violence; difficulties in filing complaints; and the reluctance of law enforcement officials to intervene in such cases. It is further concerned about the lack of domestic legislation prohibiting corporal punishment of children, despite allegations of its widespread use in the family, schools and other educational establishments (arts. 2, 12, 13 and 16).

“The State party should strengthen its efforts to prevent, combat and punish violence against women and children, inter alia, by: ...

c) adopting legislation to explicitly prohibit corporal punishment in all settings; ...

f) organizing awareness-raising campaigns on the negative impact of corporal punishment of children, as well on domestic and sexual violence.”

Human Rights Committee

(22 August 2013, CCPR/C/TJK/CO/2, Concluding observations on second report, para. 15)

“The Committee expresses concern that corporal punishment is not explicitly prohibited in schools, and continues to be accepted and practised as a form of discipline by parents and guardians (arts. 7 and 24).

The State party should pursue its intention as stated during the dialogue and amend the Education Act (2004) to explicitly prohibit corporal punishment in schools. The State party should also take practical steps 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

(18 July 2005, CCPR/CO/84/TJK, Concluding observations on initial report, para. 23)

“The Committee is concerned about reports of persistent recourse to corporal punishment as a means of discipline in schools (art. 24).

The State party should take the necessary measures to prohibit this practice.”

Prevalence/attitudinal research in the last ten years

According to a 2016 unpublished UNICEF Baseline Study on Knowledge, Attitudes, Behaviours and Practices related to Children and Women with Disabilities in Tajikistan, 35.3% of respondents believe it is acceptable to punish children without disabilities as part of the “normal upbringing”.

Furthermore, 33.9% of respondents have already hit, slapped or kicked a child without disability. The overwhelming majority of respondents (97%) believe that beating children with disabilities is unacceptable, but 16% believe that punishment of children with disabilities (physical or other forms) is part of the “normal” upbringing process.

(United Nations Partnership to Promote the Rights of Persons with Disabilities (UNPRPD) and UNICEF Tajikistan (2016),
Baseline Study on Knowledge, Attitudes, Behaviours and Practices related to Children and Women with Disabilities.
Analytical report)