

**BRIEFING ON KAZAKHSTAN FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 115th session (Oct/Nov 2015)**

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**This briefing describes the legality of corporal punishment of children in Kazakhstan. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the previous recommendations of the Human Rights Committee to Kazakhstan as well as those made by the Committee on the Rights of the Child, we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues for Kazakhstan, in particular asking what measures have been taken towards enacting explicit prohibition of corporal punishment of children in the home and all other settings, and**
* **recommend, in the concluding observations on the second report, that clear prohibition of all forms of corporal punishment, without exception, be enacted as a matter of priority, together with appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

**1 Kazakhstan’s report to the Human Rights Committee**

1.1 Kazakhstan’s second state party report to the Human Rights Committee (CCPR/C/KAZ/2) describes the measures taken in relation to the previous recommendation of the Committee to put an end to corporal punishment in schools and institutions, to promote non-violent discipline in the family and to raise awareness of the harmful effects of corporal punishment (paras. 154-158). The report refers to a number of legal measures in this respect, including strengthened penalties in the Criminal Code for violence against minors, and the drafting of amendments to the Penalties Enforcement Code and the Code of Administrative Offences aimed at strengthening liability for offences against children.

1.2 While the above mentioned developments enhancing children’s legal protection from violence are of course to be welcomed, they do not amount to prohibition of all corporal punishment. It is crucial that *all* corporal punishment is prohibited, not only that which causes visible injury.

**1.3 We hope the Committee will raise the issue of prohibition of corporal punishment of children in its review of Kazakhstan and recommend that clear prohibition of all forms of corporal punishment, without exception, be enacted as a matter of priority, together with appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

**2 The legality of corporal punishment of children in Kazakhstan**

2.1 ***Summary:*** Corporal punishment of children in Kazakhstan is unlawful in schools, the penal system and some care settings, but it is not fully prohibited in the home and in all forms of alternative care and day care for children.

2.2 ***Home (lawful):*** 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. 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 the Code does not explicitly prohibit all corporal punishment, however light.

2.3 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 it 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: 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”, but we have no evidence that this is interpreted as prohibiting all corporal punishment of children.

2.4 ***Alternative care settings (partially prohibited):*** 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). 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.

2.5 ***Day care (partially prohibited):***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 respect for pupils’ honour and dignity (arts. 47(11) and 51(3)) (see para. 2.8, below), but it is not explicitly prohibited. There is no clear 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.

2.6 ***Schools (unlawful):*** Corporal punishment is considered unlawful in schools 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”.

2.7 ***Penal institutions (unlawful):***There is no provision for corporal punishment among the permitted disciplinary measures specified in the Criminal and Executive Code 1997 (arts. 50, 111, 115, 132 and 134) and in the Law on Prevention of Offenses Among Minors and the Prevention of Children’s Neglect and Homelessness 2004 (art. 22-8). However, 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.[[1]](#footnote-1)

2.8 ***Sentence for crime (unlawful):***There is no provision for judicial corporal punishment in criminal law.

**3 Recommendations by human rights treaty bodies and during the UPR**

3.1 ***CRC:*** The Committee on the Rights of the Child has twice 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[[2]](#footnote-2) and on the second/third report in 2007.[[3]](#footnote-3)

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.[[4]](#footnote-4)

3.3 ***UPR:*** Kazakhstan was reviewed in the first cycle of the Universal Periodic Review in 2010. No recommendations were made specifically on corporal punishment of children, but the Government accepted recommendations to further refine laws aimed at protecting children’s rights.[[5]](#footnote-5) In the second cycle review in 2014 the Government accepted a recommendation to criminalise all forms of violence against children including in the family, but stated that this was already implemented.[[6]](#footnote-6)

*Briefing* *prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. 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 [↑](#footnote-ref-1)
2. 10 July 2003, CRC/C/15/Add.213, Concluding observations on initial report, paras. 37 and 39 [↑](#footnote-ref-2)
3. 19 June 2007, CRC/C/KAZ/CO/3, Concluding observations on second/third report paras. 36 and 37 [↑](#footnote-ref-3)
4. 19 August 2011, CCPR/C/KAZ/CO/1, Concluding observations on initial report, para. 15 [↑](#footnote-ref-4)
5. 23 March 2010, A/HRC/14/10, Report of the working group, paras. 95(9) and 95(44) [↑](#footnote-ref-5)
6. 10 December 2014, A/HRC/28/10, Report of the working group, para. 124(8) [↑](#footnote-ref-6)