**BRIEFING ON TAJIKISTAN FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 124th session (October/November 2018)**

*From the Global Initiative to End All Corporal Punishment of Children, July 2018*

**This briefing describes the legality of corporal punishment of children in Tajikistan. In light of the obligation under international human rights treaties to prohibit all corporal punishment of children, the global commitment to ending violence against children – including corporal punishment – in the context of the 2030 Agenda for Sustainable Development, the recommendations of the UN Secretary General’s Study on Violence against Children, and those made to Tajikistan by the Human Rights Committee, the Committee on the Rights of the Child, the Committee Against Torture, and during the Universal Periodic Review of Tajikistan in 2011 (which the Government accepted), and the Government’s commitment to enacting prohibition, we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues for Tajikistan, in particular asking what progress is being made towards enacting prohibition of all corporal punishment of children, in all settings, and**
* **in its concluding observations on Tajikistan’s third state party report, recommend that legislation is enacted to prohibit all corporal punishment of children, however light, in all settings, including in the home.**

**1 The report of Tajikistan to the Human Rights Committee**

* 1. Tajikistan’s third periodic report to the Human Rights Committee (CCPR/C/TJK/3) misleadingly states that corporal punishment of children is prohibited “in schools and elsewhere”.[[1]](#footnote-1) Corporal punishment of children is still lawful in several settings including the home, as the provisions against violence and abuse are not interpreted as prohibiting all forms of corporal punishment.

**1.2 In light of the state’s obligation to explicitly prohibit corporal punishment in all settings, we hope the Committee will raise this issue in its review of Tajikistan and recommend that legislation is immediately enacted to explicitly prohibit all corporal punishment of children, in all settings including the home.**

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

2.1 ***Summary:*** Corporal punishment of children in Tajikistan is prohibited in schools and as a sentence for a crime but it is still lawful in the home, in alternative care and some day care settings, and in penal institutions.

2.2 ***Home (lawful):***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).

2.3 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.

2.4 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.[[2]](#footnote-2) Provisions against violence and abuse in the Criminal Code 1998 and the Constitution 1994 do not prohibit all corporal punishment in childrearing.

2.5 During the Universal Periodic Review of Tajikistan in 2011, the Government accepted recommendations to prohibit corporal punishment of children stating that it considered these had already been implemented.[[3]](#footnote-3) However, 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”.[[4]](#footnote-4) 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.

2.6 During the second Universal Periodic Review of Tajikistan in 2016, the Government accepted a recommendation to enforce prohibition of all corporal punishment of children in all settings, including in the domestic sphere.[[5]](#footnote-5) A working group has been established under the National Action Plan on the implementation of second cycle UPR recommendations “in order to strengthen legislation on direct prohibition of the use of violence against children”.[[6]](#footnote-6) 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,[[7]](#footnote-7) 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 May 2018 that “corporal punishment of children was prohibited by law, including the Family Code”.[[8]](#footnote-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.

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

2.8 ***Day care (partially lawful)***: Corporal punishment is prohibited in preschool education under article 25(3) of the Law on Education 2013 (see below). There is no explicit prohibition of corporal punishment in other early childhood care and in day care for older children.

2.9 ***Schools (unlawful):***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.

2.10 ***Penal institutions (lawful):***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.

2.11 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 2017[[9]](#footnote-9) but did not address corporal punishment. It appears amendments to the Criminal Code relating to detention procedure were enacted in 2016,[[10]](#footnote-10) but the Criminal Code and the Criminal Procedure Code are still being revised.[[11]](#footnote-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.

2.12 ***Sentence for crime (unlawful):*** 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.”

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

3.1 ***HRC:*** In 2005 and again in 2013[[12]](#footnote-12) the Human Rights Committee recommended to Tajikistan that corporal punishment of children be prohibited.

3.2 ***CRC:*** The Committee on the Rights of the Child has on three occasions recommended prohibition of all corporal punishment in Tajikistan – in its concluding observations on the state party’s initial report in 2000, on the second report in 2010, and on the third/fifth report in 2017.[[13]](#footnote-13)

3.3 ***CAT:*** In 2013 and again in 2018, the Committee Against Torture recommended prohibition of all corporal punishment of children in Tajikistan.[[14]](#footnote-14)

3.4 ***UPR:*** At its first cycle examination in 2011, Tajikistan received several recommendations to explicitly prohibit corporal punishment in all settings. The Government accepted the recommendations with the caveat that it considered they had already been implemented,[[15]](#footnote-15) and declared: “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 children at all institutions…. Tajikistan will in future take all necessary measures to implement these provisions”.[[16]](#footnote-16) During the dialogue at the second cycle review in 2016, Sweden noted the State’s acceptance of the recommendations from its first review to prohibit the corporal punishment of children and stated that more could be done to ensure the effective enforcement of that prohibition.[[17]](#footnote-17) Tajikistan accepted the ensuing recommendation to enforce the prohibition of all corporal punishment in all settings.[[18]](#footnote-18)0

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

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1. 29 November 2017, CCPR/C/TJK/3, Third report, para. 59 [↑](#footnote-ref-1)
2. Information provided to the Global Initiative, August 2017 [↑](#footnote-ref-2)
3. 12 December 2011, A/HRC/19/3, Report of the working group, paras. 89(3) and 89(4) [↑](#footnote-ref-3)
4. [n.d.], CAT/C/TJK/Q/2/Add.1, Reply to list of issues, para. 45 [↑](#footnote-ref-4)
5. 14 July 2016, A/HRC/33/11, Report of the working group, para. 115(75) [↑](#footnote-ref-5)
6. 9 February 2018, CAT/C/TJK/Q/3/Add.1, Reply to the list of issues, para. 105 [↑](#footnote-ref-6)
7. 29 September 2017, CRC/C/TJK/CO/3-5, Concluding observations on third/fifth report, Advance unedited version, paras. 4, 21 and 22 [↑](#footnote-ref-7)
8. 14 May 2018, CAT/C/SR.1636, Summary records of 1636th meeting, para. 14 [↑](#footnote-ref-8)
9. [May 2018], CAT/C/TJK/CO/3 Advance unedited version, Concluding observations on third report, para. 5(h) [↑](#footnote-ref-9)
10. 27 December 2016, CAT/C/TJK/3, Third report, para. 26 [↑](#footnote-ref-10)
11. Information provided to the Global Initiative, August 2017 [↑](#footnote-ref-11)
12. 18 July 2005, CCPR/CO/84/TJK, Concluding observations on initial report, para. 23; 22 August 2013, CCPR/C/TJK/CO/2, Concluding observations on second report, para. 15 [↑](#footnote-ref-12)
13. 23 October 2000, CRC/C/15/Add.136, Concluding observations on initial report, paras. 28, 29, 34 and 35; 5 February 2010, CRC/C/TJK/CO/2, Concluding observations on second report, paras. 39 and 40; 29 September 2017, CRC/C/TJK/CO/3-5, Concluding observations on third/fifth report, Advance unedited version, paras. 4, 21 and 22 [↑](#footnote-ref-13)
14. 21 January 2013, CAT/C/TJK/CO/2, Concluding observations on second report, para. 16; [May 2018], CAT/C/TJK/CO/3 Advance unedited version, Concluding observations on third report, paras. 39, 40, 43 and 44 [↑](#footnote-ref-14)
15. 12 December 2011, A/HRC/19/3, Report of the working group, paras. paras. 89(3) and 89(4) [↑](#footnote-ref-15)
16. 27 February 2012, A/HRC/19/3/Add.1, Report of the working group: Addendum, para. 90(28) [↑](#footnote-ref-16)
17. 14 July 2016, A/HRC/33/11, Report of the working group, para. 55 [↑](#footnote-ref-17)
18. 14 July 2016, A/HRC/33/11, Report of the working group, para. 115(75) [↑](#footnote-ref-18)