

**BRIEFING ON TAJIKISTAN FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE – March 2013**

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**1 The human rights obligation to prohibit corporal punishment**

1.1 The legality and practice of corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity and to equal protection under the law, and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment – rights guaranteed in the International Covenant on Civil and Political Rights and other international human rights instruments.

**This briefing describes the legality of corporal punishment of children in Tajikistan. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the repeated recommendations to Tajikistan by the Committee on the Rights of the Child and other treaty monitoring bodies and the Government’s acceptance of recommendations to prohibit made during the Universal Periodic Review, 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 measures have been taken to ensure the law explicitly prohibits corporal punishment in all settings, including the home, and**
* **recommend to Tajikistan, following its examination of the state party’s second report, that legislation is enacted and enforced which explicitly prohibits corporal punishment in all settings, including the home, 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 Tajikistan’s response to the Human Rights Committee’s previous recommendation on corporal punishment**

2.1 In its concluding observations on Tajikistan’s initial report in 2005, the Human Rights Committee expressed concern at the persistence of corporal punishment in schools and recommended that it be prohibited.[[1]](#footnote-1) The state party’s second report directly addresses this recommendation, stating that there is no official record of any corporal punishment in schools and that article 39 of the Education Act protects students’ rights, honour and dignity.[[2]](#footnote-2)

2.2 Corporal punishment of children is, of course, a violation of their rights, honour and dignity. However, the near universal social and legal acceptance of a degree of violent punishment in childrearing and education means that typically only severe physical punishment is perceived as infringing on a child’s human dignity and right to protection from violence: legislation protecting “honour” and “dignity” is rarely, if ever, understood as prohibiting all forms of corporal punishment, however light. It is for this reason that corporal punishment should be *explicitly* prohibited.

**3 Legality of corporal punishment of children in Tajikistan**

3.1 Corporal punishment of children in Tajikistan is unlawful as a sentence for crime but it is not explicitly prohibited in the home, schools, penal institutions and alternative care settings.

3.2 With regard to the **home**, while the Family Code (2011) states that every child has the right to respect for human dignity (article 55) and that in bringing up their children parents must not use neglectful, cruel, degrading or abusive means (article 65) and 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 (article 8), there is no explicit prohibition of all corporal punishment in childrearing. Provisions against violence and abuse in the Criminal Code (2010) and the Constitution (1994) do not prohibit all corporal punishment in childrearing.

3.3 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]](#footnote-3) It is unclear whether the Government was referring to the above mentioned legislation adopted in 2011 – which does not achieve the necessary prohibition – or to an intention to undertake further law reform.

3.4 In **schools**, article 39 of the Education Act (2004) protects students from humiliating and other unlawful acts against their dignity, but the Act does not explicitly prohibit corporal punishment.

3.5 In the **penal system**, corporal punishment is unlawful as a sentence for crime. There is no provision for it in the Criminal Code or the Code of Criminal Procedure (2010). Cruel, inhuman or degrading treatment or punishment is prohibited in the Penal Enforcement Code (article 10) and the Constitution (article 18). But there is no prohibition of corporal punishment as a disciplinary measure in penal institutions. The Penal Enforcement Code specifies conditions of detention for convicted offenders and prohibits the subjection of a convicted person to cruel, inhuman or degrading treatment (article 10) but does not explicitly prohibit all corporal punishment.

3.6 There is no explicit prohibition of corporal punishment in **alternative care settings**.

**4 Prevalence of corporal punishment in Tajikistan**

4.1 According to UNICEF’s major analysis of child discipline published in 2010, 78% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in Tajikistan in 2005-2006; nearly one in five experienced severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement) and 73% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted).[[4]](#footnote-4)

**5 Recommendations by human rights treaty monitoring bodies and during the Universal Periodic Review**

5.1 As already noted, in 2005 the **Human Rights Committee** recommended that corporal punishment be prohibited in schools in Tajikistan.[[5]](#footnote-5) Other treaty bodies have also recommended law reform to prohibit corporal punishment.

5.2 The **Committee on the Rights of the Child** has twice expressed concern about corporal punishment of children in Tajikistan and recommended that it be explicitly prohibited in the family and other settings – in its concluding observations on the state party’s initial report in 2000[[6]](#footnote-6) and on the second report in 2010.[[7]](#footnote-7)

5.3 In November 2012, the **Committee Against Torture** expressed concern at the widespread corporal punishment of children in the family, schools and other educational establishments in Tajikistan and recommended that legislation be adopted to explicitly prohibit corporal punishment in all settings.[[8]](#footnote-8)

5.4 During the **Universal Periodic Review** of Tajikistan in 2011, a number of recommendations were made to prohibit all corporal punishment of children, including in the home.[[9]](#footnote-9) The Government accepted the recommendations, stating that it considers they have already been implemented and that measures would be taken to implement the law.[[10]](#footnote-10) As noted above, research by the Global Initiative indicates that the necessary law reform has not yet been achieved.

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

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1. 18 July 2005, CCPR/CO/84/TJK, Concluding observations on initial report, para. 23 [↑](#footnote-ref-1)
2. 22 September 2011, CCPR/C/TJK/2, Second state party report to the Human Rights Committee, paras. 308-311 [↑](#footnote-ref-2)
3. CAT/C/TJK/Q/2/Add.1, Written response to the List of Issues, para. 45 [↑](#footnote-ref-3)
4. UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF [↑](#footnote-ref-4)
5. 18 July 2005, CCPR/CO/84/TJK, Concluding observations on initial report, para. 23 [↑](#footnote-ref-5)
6. 23 October 2000, CRC/C/15/Add.136, Concluding observations on initial report, paras. 28, 29, 34 and 35 [↑](#footnote-ref-6)
7. 5 February 2010, CRC/C/TJK/CO/2, Concluding observations on second report, paras. 39 and 40 [↑](#footnote-ref-7)
8. [November 2012], CAT/C/TJK/CO/2 Advance Unedited Version, Concluding observations on second report, para. 16 [↑](#footnote-ref-8)
9. 12 December 2011, A/HRC/19/3, Report of the Working Group, paras. 89(3), 89(4) and 90(28) [↑](#footnote-ref-9)
10. ibid., paras. 89(3) and 89(4) ; 27 February 2012, A/HRC/19/3/Add.1, Report of the Working Group: Addendum, para. 90(28) [↑](#footnote-ref-10)