

# **MONTENEGRO**

## **BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 15<sup>th</sup> session, 2013**

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Global Initiative to  
**End All Corporal Punishment  
of Children**

*Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.*

*In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.*

*The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.*

**Corporal punishment of children is lawful in Montenegro, despite recommendations to prohibit it by international treaty monitoring bodies.**

**We hope the Working Group will note with concern the legality of corporal punishment in Montenegro. We hope states will raise the issue during the review in 2013 and recommend to Montenegro that legislation is enacted to explicitly prohibit corporal punishment of children in all settings including the home as a matter of priority.**

## **1 The initial review of Montenegro by the Working Group on the Universal Periodic Review (2008)**

1.1 Montenegro was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 3). The issue of corporal punishment of children was not raised during the review, though it was included in the summary of stakeholders' information.<sup>1</sup> However, the following recommendation was made and was accepted by the Government:

“Incorporate international human rights treaties into national law (Croatia)”<sup>2</sup>

1.2 Prohibiting corporal punishment is a key obligation under the Convention on the Rights of the Child and other international human rights instruments. In response to the above recommendation, the Government stated that under the Constitution, international laws prevail over domestic legislation and are directly applicable where relevant and may “not require further processing in the national legislation”.<sup>3</sup> However, the jurisprudence of the Committee on the Rights of the Child and other treaty monitoring bodies is clear: the near universal acceptance of physical punishment in childrearing necessitates law reform to clarify its prohibition.<sup>4</sup>

1.3 The obligation to prohibit corporal punishment is one frequently ignored or evaded by governments. We note that in its 2008 examination of Montenegro's initial state party report the Committee Against Torture specifically asked about abolition of corporal punishment of children in all settings;<sup>5</sup> in response the Government referred to Criminal Code provisions against bodily injury but failed to note that these do not prohibit all corporal punishment of children.<sup>6</sup> In its 2010 examination of Montenegro's implementation of the Convention on the Rights of the Child, the Committee on the Rights of the Child asked whether the Government intended to prohibit all corporal punishment, including in the home; the delegation replied only by stating that it is prohibited in schools.<sup>7</sup> Both Committees went on to recommend law reform to explicitly prohibit all corporal punishment in all settings (see section 3 below).

1.4 Despite the recent enactment of new legislation relating to violence within the family, there has been no change in the legality of corporal punishment of children since the initial UPR of Montenegro in 2008: it is unlawful in schools and the penal system but remains lawful in the home and care settings.

## **2 Legality of corporal punishment in Montenegro**

2.1 Corporal punishment is lawful in the **home**. There is no legal defence for its use enshrined in law but provisions against violence and abuse in the Criminal Code (2004), the Family Act (2007), the Charter on Human and Minority Rights and Civil Liberties (2003) and the Law on Family Violence Protection (2010) are not interpreted as prohibiting all corporal punishment in childrearing. According to a major UNICEF analysis published in 2010, 63% of 2-14 year olds

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<sup>1</sup> 25 September 2008, A/HRC/WG.6/3/MNE/3, Summary of stakeholders' information, para. 14

<sup>2</sup> 6 January 2009, A/HRC/10/74, Report of the Working Group, para. 66(5)); 9 November 2009, A/HRC/10/29, Report of the Human Rights Council on its tenth session, para. 411

<sup>3</sup> 25 February 2009, A/HRC/10/74/Add.1, Report of the Working Group: Addendum, para. 4

<sup>4</sup> For example, see the Committee on the Rights of the Child General Comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, *inter alia*)”

<sup>5</sup> 9 September 2008, CAT/C/MNE/Q/1, List of issues to be considered during the examination of the initial report of Montenegro, Question 24

<sup>6</sup> 10 November 2008, CAT/C/MNE/Q/1/Add.1, Written replies to List of Issues, para. 93

<sup>7</sup> 28 September 2010, CRC/C/SR.1558, Summary record, paras. 22 and 61

experienced violent discipline (physical punishment and/or psychological aggression) in 2005-2006.<sup>8</sup> Disabled children were particularly vulnerable to such “discipline”.<sup>9</sup>

2.2 Corporal punishment is prohibited in **schools** in article 111 of the General Law on Education – “the employment of a teacher who ... (9) humiliates, insults, or punishes students physically ... shall be ceased”. The Law on Primary Education (article 66) and the Law on High School (article 49) do not include corporal punishment among permitted disciplinary measures.

2.3 In the **penal system**, corporal punishment is unlawful as a sentence for crime under the Criminal Code and the Law on Juvenile Perpetrators of Criminal Acts and on Criminal Legal Protection of Minors, which make no provision for judicial corporal punishment. It is considered unlawful as a disciplinary measure in penal institution, but we have not identified an explicit prohibition in law.

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

### **3 Recommendations by human rights treaty monitoring bodies**

3.1 In 2010, the **Committee on the Rights of the Child** expressed concern at the lack of information provided by Montenegro regarding the prohibition of corporal punishment and at its widespread use in the family, schools, institutions and other settings. The Committee recommended law reform to explicitly prohibit it in all settings together with relevant awareness raising campaigns and the promotion of positive, non-violent childrearing and education methods.<sup>10</sup>

3.2 In 2009, the **Committee Against Torture** recommended that Montenegro should adopt and implement legislation prohibiting corporal punishment in all settings as well as carrying out necessary awareness raising and educational campaigns.<sup>11</sup>

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<sup>8</sup> UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

<sup>9</sup> UNICEF (2009), *Progress for Children: A report card on child protection*, NY: UNICEF

<sup>10</sup> 1 October 2010, CRC/C/MNE/CO/1 Advance Unedited Version, Concluding observations on initial report, paras. 36 and 37

<sup>11</sup> 19 January 2009, CAT/C/MNE/CO/1, Concluding observations on initial report, para. 22