

Corporal punishment of children in Bosnia and Herzegovina: Briefing for the Universal Periodic Review, 20th session, 2014

From Dr Sharon Owen, Research Coordinator, Global Initiative, info@endcorporalpunishment.org



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

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Bosnia and Herzegovina, corporal punishment of children is only partially prohibited, despite recommendations to fully prohibit it by the Committee on the Rights of the Child and the European Committee of Social Rights.

We hope the Working Group will note with concern the legality of corporal punishment in parts of Bosnia and Herzegovina. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted in the District of Brcko and the Federation of Bosnia and Herzegovina which explicitly prohibits all forms of corporal punishment, without exception.

1 The initial review of Bosnia and Herzegovina by the Human Rights Council (2010)

- 1.1 Bosnia and Herzegovina was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 7). The issue of corporal punishment was raised in the compilation of UN information¹ and in the summary of stakeholders information.² However, no recommendations were made specifically on corporal punishment.
- 1.2 Compliance with international human rights law, including the Convention on the Rights of the Child and other human rights treaties, involves enacting legislation to explicitly prohibit all corporal punishment of children in all settings, including the home. But the near universal acceptance of a degree of violent punishment in childrearing and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. In Bosnia and Herzegovina, the law in the Republic of Srpska has been reformed to state clearly that parents must not impose physical punishment on children, but in the

¹ 24 November 2009, A/HRC/WG.6/7/BIH/2, Compilation of UN information, para. 27

² 12 November 2009, A/HRC/WG.6/7/BIH/3, Summary of stakeholders' information, para. 21

Federation of Bosnia and Herzegovina and in the District of Brcko such clarity has not been achieved.

- 1.3 The Council of Ministers has acknowledged that further reform is required in order to explicitly prohibit corporal punishment.³ In July 2012, the Government informed the Committee on the Rights of the Child that a Working Group had been established to draft a Law on Social Protection and a Law on the Protection of Families with Children which would prohibit corporal punishment.⁴ However, in 2013 in reply to a question about progress towards prohibition of corporal punishment, the Committee on Economic, Social and Cultural Rights was told that “stronger public sensitisation is required”.⁵ **We respectfully urge members of the Working Group to make specific recommendations that legislation is amended in the District of Brcko and in the Federation of Bosnia and Herzegovina to clearly and explicitly prohibit all corporal punishment of children in all jurisdictions.**

2 Legality of corporal punishment in Bosnia and Herzegovina

- 2.1 **Summary:** In Bosnia and Herzegovina, corporal punishment of children is unlawful in schools and the penal system throughout the state; it is prohibited in the home and alternative care and day care settings in the Republic of Srpska, but it is not fully prohibited in these settings in the Federation of Bosnia and Herzegovina and the District of Brcko. The UN Convention on the Rights of the Child is part of the legal system of Bosnia and Herzegovina, included in Annex 1 of the Constitution. However, as the Committee on the Rights of the Child has clarified⁶ and as noted above (para. 1.2), compliance with the Convention requires explicit prohibition of corporal punishment in legislation.
- 2.2 **Home (*partially prohibited*):** In the **Republic of Srpska**, corporal punishment is explicitly prohibited in article 97(1) of the RS Family Law 2008: “Parents and other family members shall not subject a child to degrading treatments, mental and physical punishment nor abuse...” At the initiative of the Ombudsman of the Republic of Srpska, the Protocol on Conduct in the Case of Violence, Abuse or Neglect against Children (20 November 2012), a guideline for prevention and intervention with regard to violence against children, was signed by a number of RS government ministries. The Protocol is mandatory for schools, health centres, centres for social welfare and the police and addresses violence against children in any place by any person; according to the Protocol, physical violence includes corporal punishment.⁷
- 2.3 In the **District of Brcko**, the Family Law 2007 states that the child “has the right to protection against all forms of violence, abuse, maltreatment and neglect” (art. 110), that parental rights “shall be exercised in the best interest of the child” (art. 112), and that parents have a duty to protect the child from violence and to “control the child’s behaviour acting in accordance with its age and degree of maturity” (art. 117), but it does not

³ 14 June 2011, CRC/C/BIH/2-4, Second-fourth periodic report, para. 133

⁴ 13 July 2012, CRC/C/BIH/Q/2-4/Add.1, Written replies to the Committee on the Rights of the Child, para. 66

⁵ 30 October 2013, E/C.12/BIH/Q/2/Add.1, Reply to list of issues, para. 234

⁶ 21 August 2006, CRC/C/GC/8, General Comment 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)”, para. 34

⁷ Information provided to the Global Initiative by the Ombudsman for Children of Republic of Srpska/B&H, 12 March 2014

explicitly prohibit corporal punishment. Article 3 prohibits violence between spouses or family members, referring to the definition of domestic violence in the Criminal Code. The Criminal Code of BD 2004 provision against domestic violence punishes “a person who endangers tranquillity, physical or mental health of a member of his family by applying violence, impudent or remorseless behaviour” (art. 218) but it does not explicitly prohibit corporal punishment.

- 2.4 In the **Federation of Bosnia and Herzegovina**, the Family Law 2005 states that the child “has the right to protection from all forms of violence, maltreatment, abuse and neglect” (art. 127), that parental rights “are realised to the best interest of the child” (art. 129) and that parents are obliged to protect the child from violence and “to control his or her behaviour in accordance with the age and maturity of the child” (art. 134), but it does not explicitly prohibit corporal punishment. Article 4 prohibits violent behaviour by a spouse and any other family member, referring to article 4 of the Law on Gender Equality in Bosnia and Herzegovina. This article in the Law on Gender Equality (2003) defines gender-based violence as “any act that causes physical, mental, sexual or economic harm or suffering, as well as threats of such acts that seriously impede a person’s ability to enjoy his or her rights and freedoms on the grounds of the equal treatment of the sexes in public and private life, including trafficking in human beings for the purposes of forced labour, and constraints on or the arbitrary deprivation of freedom”: it does not prohibit corporal punishment of children.
- 2.5 **Alternative care settings (partially prohibited)**: Corporal punishment is prohibited in the **Republic of Srpska** under the Family Law 2008 (see para. 2.2) but it is not explicitly prohibited in alternative care settings in the **Federation of Bosnia and Herzegovina** and the **District of Brcko**.
- 2.6 **Day care (partially prohibited)**: Corporal punishment is prohibited in the **Republic of Srpska** under the Family Law 2008 (see para. 2.2), but corporal punishment in day care in the **Federation of Bosnia and Herzegovina** and the **District of Brcko** is not explicitly prohibited. Preschool provision is governed by the Framework Law on Preschool Upbringing and Education 2007 which states the primacy of the child’s right to “upbringing and education and proper care for the benefit of their physical and mental health and safety” (art. 7) but does not prohibit corporal punishment.
- 2.7 **Schools (unlawful)**: At state level, corporal punishment is unlawful in schools under the Framework Law on Primary and Secondary Education 2003, which prohibits “any form of intimidation, abuse, physical punishment, insult, humiliation or degradation or harm to health” (art. 34). In addition, the Law on Primary Education of the Republic of Srpska classifies any violent behaviour towards students and behaviour including belittling or insulting students as a serious violation of the duties of teachers and staff in schools, with perpetrators liable to dismissal (art. 117); there are similar provisions in the Law on Secondary Education of the Republic of Srpska (art. 87).
- 2.8 **Penal institutions (unlawful)**: The Law on the Execution of Criminal Sanctions, Detention and Other Measures 2005 states that coercive measures may be used only to prevent escape, physical attacks on others, self-injury or damage to property (art. 31). It prohibits inhuman or degrading treatment or punishment (art. 45), states that physical restraint should not be used as a punishment (art. 67), and does not include corporal punishment in the list of permitted disciplinary sanctions (art. 90).

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

3 Recommendations by human rights treaty monitoring bodies

3.1 **CRC**: The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Bosnia and Herzegovina and recommended its prohibition in the home and other settings – in its concluding observations on the initial report in 2005⁸ and on the second-fourth report in 2012.⁹

3.2 **ECSR**: In 2012, the European Committee of Social Rights concluded that the situation in Bosnia and Herzegovina is not in conformity with article 17 of the European Social Charter because corporal punishment is not prohibited in the home and other settings.¹⁰

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@encorporalpunishment.org
March 2014

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.

⁸ 29 November 2012, CRC/C/BIH/CO/2-4, Concluding observations on second-fourth report, paras. 39 and 40

⁹ 21 September 2005, CRC/C/15/Add.259, Concluding observations on initial report, paras. 42 and 43

¹⁰ January 2012, Conclusion 2011