

Corporal punishment of children in Georgia: Briefing for the Universal Periodic Review, 23rd session, 2015

From Dr Sharon Owen, Research and Information Coordinator,
Global Initiative, sharon@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 Georgia, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child, the Human Rights Committee and during the 1st cycle UPR of Georgia (rejected by the Government).

We hope the Working Group will note with concern the legality of corporal punishment of children in Georgia. We hope states will raise the issue during the review in 2015 and make a specific recommendation that Georgia clearly prohibit all corporal punishment of children in all settings, including the home.

1 Review of Georgia in the 1st cycle UPR (2011) and progress since then

1.1 Georgia was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 10). The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information.² The following recommendations were made:³

“Develop and implement a comprehensive set of measures to fight discrimination and protect the rights of women and children, adopt a comprehensive legislation to fight the sexual exploitation of children as well as corporal punishment, adopt a plan of action to combat domestic violence and create a mechanism to protect the rights of a child (Russian Federation);

“Develop legislation to explicitly prohibit all forms of corporal punishment of children in all settings, in accordance with the recommendations of the Committee on the Rights of the Child (Mexico)”

1.2 The Government rejected the recommendations, stating: “Georgia shares the aim of the recommendation to prohibit all forms of corporal punishment of children. Georgia however, believes that the existing Georgian legislation provides for a blanket prohibition on all forms of corporal punishment, including directed against children. Its existing national legal framework is in

¹ 15 November 2010, A/HRC/WG.6/10/GEO/2, Compilation of UN information, para. 41

² 15 November 2010, A/HRC/WG.6/10/GEO/3, Summary of stakeholders' information, para. 32

³ 6 March 2011, A/HRC/17/11, Report of the working group, paras. 106(26) and 106 (36)

compliance with international standards and adequately protects children from any form of corporal punishment. Thus, Georgia does not intend to amend the applicable legislation.”⁴

- 1.3 Prohibiting and eliminating all corporal punishment of children in all settings including the home – through law reform and other measures – is a key obligation under the Convention on the Rights of the Child and other human rights instruments, though it is one frequently evaded by Governments. Prohibition of corporal punishment requires clarity in law that all forms of violent punishment, without exception, are prohibited, including within the family home – the near universal acceptance of some degree of physical punishment in childrearing means that general prohibitions of violence and abuse do not achieve the necessary legal clarity and are not interpreted as prohibiting all corporal punishment. Despite the Government’s claims following the 1st cycle UPR, Georgia’s legislation does not send a clear message that all corporal punishment, however light, is prohibited. The new Family Code prohibits the causing of pain to children but does not explicitly prohibit corporal punishment.

2 Legality of corporal punishment in Georgia

- 2.1 **Summary:** In Georgia, corporal punishment of children is unlawful in schools and the penal system but it is not fully prohibited in the home, alternative care settings and day care.
- 2.2 **Home (?lawful):** Provisions against violence and abuse in the Civil Code 1997, the Code of Administrative Offences, the Criminal Code 1999, the Law on Education 1997, the Law on the Elimination of Domestic Violence 2006 and the Constitution 1995 are not interpreted as prohibiting corporal punishment of children. UNICEF’s major 2010 analysis of data on child discipline from 2005-2006 found that 67% of 2-14 year olds in Georgia had been violently “disciplined” in the home in the month prior to the survey.⁵ In December 2014, Georgia enacted a new Family Code, article 1198 of which states that “methods of upbringing of a minor by a parent that cause physical or psychological pain to a minor are inadmissible”. We are currently seeking to ascertain if this is intended to prohibit all corporal punishment in childrearing.
- 2.3 **Alternative care settings (?partially prohibited):** In reporting to the Human Rights Committee in 2000, the Government stated that corporal punishment is prohibited in institutional care establishments.⁶ We have been unable to identify any prohibiting legislation in this respect. There is no explicit prohibition of corporal punishment in other alternative care settings (non-institutional forms of care, foster care, etc). Research has repeatedly found corporal punishment to be used in care institutions.⁷
- 2.4 **Day care (lawful):** There is no explicit prohibition of corporal punishment in formal early childhood care settings (nurseries, crèches, etc) or in formal day care for older children (day centres, after-school childcare, childminding, etc).
- 2.5 **Schools (unlawful):** Corporal punishment is considered unlawful in schools under article 19 of the Law on General Education, which states that school discipline must respect pupils’ dignity, but there is no explicit prohibition of corporal punishment.

⁴ 31 May 2011, A/HRC/17/11/Add.1, Report of the working group: Addendum

⁵ UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

⁶ 26 February 2001, CCPR/C/GEO/2000/2, Second state party report, para.117

⁷ Public Defender of Georgia (2012), *Report on the Monitoring of Residential Childcare Institutions for 2011*, Council of Europe & Public Defender of Georgia; Public Defender of Georgia (2010), *Annual Report for 2010: Monitoring of Children’s Homes*, Council of Europe & Public Defender of Georgia

2.6 **Penal institutions (unlawful)**: Corporal punishment is not a permitted disciplinary measure under the Law on Imprisonment, but there is no explicit prohibition. In 2014, there were plans to draft a Juvenile Justice Code.⁸

2.7 **Sentence for crime (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 recommended three times to Georgia that corporal punishment be prohibited in the home and other settings – in its concluding observations on the state party’s initial report in 2000,⁹ on the second report in 2003¹⁰ and the third report in 2008.¹¹

3.2 **HRC**: In 2014, the Human Rights Committee recommended to Georgia that measures be taken – including legislative measures – to end corporal punishment in all settings.¹²

3.3 **ECSR**: In 2012, the European Committee of Social Rights concluded that the situation in Georgia is not in conformity with article 17.1 f the European Social Charter because corporal punishment of children is not prohibited in the home.¹³

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@endcorporalpunishment.org
March 2015

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 July 2014, Government of Georgia, ICCPR Opening Statement,

⁹ 28 June 2000, CRC/C/15/Add.124, Concluding observations on initial report, paras. 42 and 43

¹⁰ 27 October 2003, CRC/C/15/Add.222, Concluding observations on second report, paras. 44 and 45

¹¹ 23 June 2008, CRC/C/GEO/CO/3, Concluding observations on third report, paras. 31 and 32

¹² [July 2014], CCPR/C/GEO/CO/4, Concluding observations on fourth report, para. 9

¹³ January 2012, Conclusions 2011