

Corporal punishment of children in Armenia: Briefing for the Universal Periodic Review, 35th session, January 2020



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

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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 Armenia, corporal punishment of children is still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the European Committee of Social Rights.

We hope the Working Group will note with concern the legality of corporal punishment of children in Armenia. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Armenia draft and enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including the home.

Armenia's commitment to prohibiting corporal punishment

Armenia expressed its commitment to prohibiting all corporal punishment of children by unequivocally accepting recommendations to do so made during the Universal Periodic Reviews of Armenia in 2010 and 2015. Armenia has been a Pathfinder country with the Global Partnership to End Violence Against Children since February 2016.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, some alternative care settings and day care.

There is no defence for the use of corporal punishment enshrined in legislation but there is no explicit prohibition. In theory, the prohibition of physical or psychological violence, cruelty and humiliation in childrearing in article 53 of the Family Code would prohibit corporal punishment by parents, which invariably violates a child's dignity, but the potential for such an interpretation is undermined by the near universal social acceptance and use of corporal punishment in childrearing. Realisation of children's rights to equal protection from assault under the law and to protection from all forms of violence requires clarity in law that no degree or form of corporal punishment is acceptable or lawful, without exception. Explicit prohibition should be enacted of all corporal punishment and other humiliating and degrading treatment, in the home and all other settings where adults exercise authority over children.

Alternative care settings – Corporal punishment is considered unlawful in care institutions under the Rights of the Child Act 1996, though the law does not explicitly refer to corporal punishment. Explicit prohibition should be enacted in relation to all alternative care settings (including foster care, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. The Family Code 2004 (amended 2017) states in article 53(1) (unofficial translation): "Parental rights may not be exercised contrary to the interests of children.... In the exercise of parental rights, parents are not entitled to harm the physical and mental health of children or their moral development. Methods of parenting must exclude any physical or psychological violence as a means of upbringing, as well as scornful, cruel, inhuman treatment, insults and exploitation...." Article 9 of the Rights of the Child Act 1996 states that children have a right to protection from all forms of violence and that no person, including parents, must inflict violence on the child or punishment which affects the child's dignity, and article 22 protects the child's right to honour and dignity. But there is no clear and explicit prohibition of all corporal punishment.

In 2010, the Government stated that it planned to analyse legislation relating to children with a view to harmonising domestic law with international standards.¹ In the same year, the Government accepted the recommendations to prohibit corporal punishment of children made during its Universal Periodic Review.² In 2011, the Government also stated its intention to amend the Rights of the Child Act to prohibit corporal punishment in the family and in other forms of care.³ In 2013, the Government reported to the Committee on the Rights of the Child that amendments to the Family Code which would prohibit all forms of corporal punishment were under consideration in Parliament.⁴

In February 2014, approval was given to an Action Plan deriving from the National Strategy on Human Rights Protection, including measures on the rights of the child. The Plan envisaged the development of a concept and action plan to fight against violence against children, to be presented to the Government by the end of 2014.⁵ In May 2014, the Government reported to the Committee on Economic, Social and Cultural Rights that the adoption of the bill on domestic violence and related legislation had been postponed, with newly revised drafts expected to be submitted to the National Assembly by the end of 2015; the legislation would contain “comprehensive regulations” relating to corporal punishment. The Government also noted that amendments to the Family Code had been proposed to prohibit corporal punishment in institutions and in the family.⁶ In 2015, the Government accepted a recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review of Armenia and confirmed that prohibition will be included in draft amendments to the Family Code.⁷ Amendments to the Family Code adopted in December 2017 (see above) did not however enact a clear and explicit prohibition of all corporal punishment of children.

On the Law on Domestic Violence, the Armenian Gender Policy Strategic Action Plan for 2011-2015 identified the need “to ensure improvement of the legislation aimed to combat gender-based violence” and the goal in relation to this of “harmonization of the legal Acts currently in force with international norms” (para. 50); the Strategic Action Plan to Combat Gender-Based Violence 2011-2015 includes as a preventive goal harmonization of laws with international standards (goal 1.1) and including the issue of gender-based violence in parent education, associated with the outcome of “ruling out of violence in the family and creation of safe environment for the development of the child” (goal 1.6). Neither specifically refers to prohibition of corporal punishment. The Law on the Prevention of Violence within the Family was passed in December 2017. Article 3 of the Law defines physical and psychological violence as the intentional infliction of “severe” physical pain or mental suffering – this effectively protects children from some “severe” forms of corporal punishment but there is no explicit prohibition of all corporal punishment of children, however light.

The National Strategy and Action Plan on the Protection of the Rights of the Child 2017-2021 does not provide a separate activity on corporal punishment, but reportedly priorities the issue of social acceptance of violence in home as a serious concern, and provides several activities on public awareness raising.⁸ Other processes of law reform are also under way which provide opportunities

¹ Letter to former Council of Europe Commissioner for Human Rights Thomas Hammarberg, 21 December 2010

² 6 July 2010, A/HRC/15/9, Report of the working group, para. 93

³ 7 February 2011, RAP/RCha/AR/IV(2011), National report to the European Committee of Social Rights, page 67

⁴ 5 June 2013, CRC/C/SR. 1790, Summary record of 1790th meeting, paras. 3 and 38

⁵ Letter from Yeghishe Kirakosyan, Deputy Minister of Justice, to the Global Initiative, 12 May 2014

⁶ 12 May 2014, E/C.12/2014/SR.16, Summary record, paras. 13 and 33

⁷ 13 April 2015, A/HRC/29/11, Report of the working group, para. 120(117); 5 June 2015, A/HRC/29/11/Add.1, Report of the working group: Addendum, para. 120(117)

⁸ April 2019, Communication with Save the Children Armenia

for enacting prohibition, including the drafting of a new Criminal Code and a Law on the Rights and Social Inclusion of Persons with Disabilities.⁹ Armenia has been a Pathfinder country with the Global Partnership to End Violence Against Children since February 2016. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals.

Alternative care settings

Corporal punishment is unlawful in care institutions under the Rights of the Child Act 1996 (see under “Home”) but there is no explicit prohibition and the law is not interpreted as prohibiting corporal punishment in non-institutional forms of care. Applicable law includes the Law “On social protection of children deprived of parental care” 2002: it does not explicitly prohibit corporal punishment.

Day care

There is no explicit prohibition of corporal punishment in all early childhood care and day care for older children. It is possibly considered unlawful in preschool settings under the Law on Education 1999 (see under “Schools”).

Schools

Corporal punishment is unlawful in schools under the Rights of the Child Act 1996 (see under “Home”) but there is no explicit prohibition. Article 49(2) of the Law on Education 1999 prohibits teaching methods that use physical or mental pressure.

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions under the Rights of the Child Act 1996, the Criminal Code 2003 and the Constitution 1995, but there is no explicit prohibition. The Law on the Treatment of Arrestees and Detainees 2002 prohibits physical violence and inhuman or degrading actions and makes no provision for corporal punishment. Under the Penitentiary Code, the execution of a sentence must not be accompanied by physical violence or degrading treatment and no person sentenced to deprivation of liberty shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not available as a sentence under the Criminal Code 2003 and article 11 of the Code states that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. Article 17 of the Constitution 1995 states that “no one shall be subjected to torture or inhuman or degrading treatment or punishment” and “all persons arrested, detained or deprived of liberty shall have the right to be treated with humanity and with respect for dignity”; there are similar provisions in the Criminal Procedure Code. A draft new Criminal Procedure Code is under discussion (2015) which includes a chapter on juvenile justice.

⁹ For example, see 2 July 2015, A/HRC/29/2 Advance Unedited Version, Report of the Human Rights Council on its twenty-ninth session, para. 496

Universal Periodic Review of Armenia’s human rights record

Armenia was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). The following recommendations were made and were accepted by the Government:¹⁰

“Intensify efforts to prevent and combat violence against children, including corporal punishment (Brazil); adopt specific legislation punishing violence against children, including the prohibition of corporal punishment ... (Uruguay)”

Examination in the second cycle took place in 2015 (session 21). The following recommendation was made:¹¹

“Reform national law in order to prohibit corporal punishment in all settings and to develop an enforcement mechanism and sanctions against corporal punishment of children (Poland)”

The Government accepted the recommendation, stating that it was being implemented and that “for the purpose of reforming national legislation, particularly bringing it in compliance with the European Social Charter (revised), provision of excluding corporal punishment of children has been foreseen in the Draft law on amendments of the Family Code of Armenia”.¹²

Recommendations by human rights treaty bodies

The Committee on the Rights of the Child has on three occasions recommended that Armenia prohibit all corporal punishment of children, in 2000, 2004 and 2013.¹³

In 2014, the Committee on Economic, Social and Cultural Rights recommended that Armenia prohibit corporal punishment of children in all settings.¹⁴

The European Committee of Social Rights has on three occasions concluded that the situation in Armenia was not in conformity with the European Social Charter because corporal punishment of children in the home is not prohibited.¹⁵

Prevalence/attitudinal research in the last ten years

According to UNICEF statistics collected between 2005 and 2013, 70% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Forty-three per cent experienced physical punishment and 66% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). A much smaller percentage (3%) of mothers and caregivers thought physical punishment was necessary in childrearing.

(UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, NY: UNICEF)

¹⁰ 6 July 2010, A/HRC/15/9, Report of the working group, para. 93(25)

¹¹ 27 January 2015, A/HRC/WG.6/21/L.8 Unedited Version, Draft report of the working group, para. 120.117

¹² 5 June 2015, A/HRC/29/11/Add.1, Report of the working group: Addendum, para. 120(117)

¹³ 8 July 2013, CRC/C/ARM/CO/3-4, Concluding observations on third/fourth report, paras. 24 and 25; 26 February 2004, CRC/C/15/Add.225, Concluding observations on second report, paras. 39 and 40; 24 February 2000, CRC/C/15/Add.119, Concluding observations on initial report, paras. 32 and 33

¹⁴ 23 May 2014, E/C.12/ARM/CO/2-3 Advance Unedited Version, Concluding observations on second/third report, para. 19

¹⁵ January 2016, Conclusions 2015; January 2012, Conclusions 2011; 2007, Conclusions XVIII-1, vol.1

The 2010-2011 report of the Public Monitoring Group on the situation in the special education institutions of the Ministry of Education and Science, which studied 13 “special boarding schools” providing alternative care to children, found that staff were violent towards children and encouraged children to punish one another.

(Reported in *Armenia Now*, 16 January 2013)

In April 2014, a visit by the Ombudsman’s office as a National Preventive Mechanism revealed physical and other humiliating punishment of children in boarding institutions for children's care. For example, during the visit children were punished by being forced to stand during the study process and being hit across the fingers with a pen; children were intimidated by management and would not approach them when dealing with conflicts with each other. As a result, the Director of the Boarding Care Institution was dismissed, the Deputy Minister of Labor and Social Affairs of RA, as well as the Head of the responsible Department received admonitions.

(Information provided to the Global Initiative by the Human Rights Defender Institution of the Republic of Armenia, 19 August 2014)