

Corporal punishment of children in Bosnia and Herzegovina: Briefing for the Universal Periodic Review, 34th session, November 2019



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

From the Global Initiative to End All Corporal Punishment of Children, March 2019

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 still lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Human Rights Committee, the Committee on the Rights of Persons with Disabilities and the European Committee of Social Rights.

We hope the Working Group will note with concern the legality of corporal punishment of children in Bosnia and Herzegovina. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Bosnia and Herzegovina draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, throughout the territory.

1 Review of Bosnia and Herzegovina in the 2nd cycle UPR (2014) and progress since

- 1.1 Bosnia and Herzegovina was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 20). The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information.² The Government accepted two recommendations to prohibit all corporal punishment of children.³
- 1.2 Since the review, there has been no change in the legality of corporal punishment. Following the adoption of the 2015-2018 Action Plan for Children, which includes an aim to enact legislative

¹ 18 August 2014, A/HRC/WG.6/20/BIH/2, Compilation of UN information, para. 29

² 25 July 2014, A/HRC/WG.6/20/BIH/3, Summary of stakeholders' views, para. 39

³ 7 November 2014, A/HRC/WG.6/20/L.14 Unedited Version, Draft report of the working group, paras, 107(74) and 107(75); 18 June 2015, A/HRC/29/G/4, Note verbale dated 3 June 2015 from the Permanent Mission of Bosnia and Herzegovina to the United Nations Office and other international organizations in Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

reforms prohibiting all corporal punishment, legislative amendments were reportedly introduced in 2017.⁴ As of February 2019, no progress had been made towards the enactment of the Bill.⁵

- 1.3 We hope the Working Group will note with concern the continued legality of corporal punishment of children in Bosnia and Herzegovina. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Bosnia and Herzegovina draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, throughout the territory.**

2 Legality of corporal punishment in Bosnia and Herzegovina

Summary of current law and reforms needed to achieve prohibition

Corporal punishment in Bosnia and Herzegovina is prohibited in all settings in the Republic of Srpska. In the District of Brcko and in the Federation of Bosnia and Herzegovina, it is prohibited in schools, in penal institutions and as a sentence for a crime but it is still lawful in the home and in alternative and day care settings. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including the home, throughout the territory.

- 2.1 Home (lawful):** Law reform has not yet fully prohibited corporal punishment in the home throughout Bosnia and Herzegovina. The Government has stated that physical punishment of children is prohibited under the various family and domestic violence laws.⁶ In fact, corporal punishment is unlawful in the home in the Republic of Srpska but it is not explicitly prohibited in the Federation of Bosnia and Herzegovina and the District of Brcko.
- 2.2** In the Republic of Srpska, article 97(1) of the RS Family Law 2008 states: “Parents and other family members shall not subject a child to degrading treatments, mental and physical punishment nor abuse....”
- 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 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

⁴ [January 2017], CRPD/C/BIH/Q/1/Add.1, Reply to the list of issues on initial report, Advance unedited version, para. 8; see also [September 2017], CRC/C/BIH/5-6, Fifth/sixth report, page 16

⁵ Information provided to the Global Initiative, February 2019

⁶ 13 September 2012 CCPR/C/BIH/Q/2/Add.1, Reply to list of issues, para. 288; 17 December 2010, RAP/RCha/BiH/I(2010), National report to the European Committee of Social Rights, pp. 83ff

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. New domestic violence legislation has been drafted:⁷ we do not know if prohibition of corporal punishment has been proposed in this context.

2.5 Mr Haris Silajdzic, Chairman of the Presidency of Bosnia and Herzegovina, signed up to the Council of Europe’s campaign against corporal punishment. Despite asserting that all corporal punishment is unlawful (see above), the Government has also acknowledged that further reform is required in order to explicitly prohibit corporal punishment.⁸ In July 2012, it 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 will prohibit corporal punishment “in all institutions and forms of alternative care for children”, though it is not clear that this would also prohibit corporal punishment in the home.⁹ In 2013, when asked by the Committee on Economic, Social and Cultural Rights about progress towards prohibiting corporal punishment of children in all settings, the Government replied that “stronger public sensitisation is required” regarding prohibition in the home and institutions;¹⁰ it made no reference to drafting prohibiting legislation.

2.6 In 2015, the Government indicated its commitment to prohibiting all corporal punishment by accepting the recommendations to do so made during the Universal Periodic Review.¹¹ The same year, the Government published a 2015-2018 Action Plan for Children which includes an aim to enact legislative reforms prohibiting all corporal punishment, including in the home. In January 2017, the Government reported to the Committee on the Rights of Persons with Disabilities that “in October 2016 the [Bosnia and Herzegovina] Council for Children submitted an initiative to amend the Family Law, the Law on Social and Child Protection, the Law on Protection from Domestic Violence, the Criminal Code and the Law on Health Care in the Federation, [Republic of Srpska] and [District of Brcko], as well as the Framework Law on Preschool and Primary Education and Upbringing and the Sports Law, with the aim of introducing an explicit prohibition of all corporal punishment of children that would apply to all settings where children live.”¹² This was repeated to the Committee on the Rights of the Child in September 2017.¹³ As of February 2019, no progress had been made towards the enactment of

⁷ Reported by Human Rights House of Sarajevo in UPR-info (2012), *Bosnia and Herzegovina, Mid-term Implementation Assessment*, November 2012

⁸ 14 June 2011, CRC/C/BIH/2-4, Second-fourth state party report, para. 133

⁹ 13 July 2012, CRC/C/BIH/Q/2-4/Add.1, Reply to list of issues, para. 66

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

¹¹ 18 June 2015, A/HRC/29/G/4, Note verbale dated 3 June 2015 from the Permanent Mission of Bosnia and Herzegovina to the United Nations Office and other international organizations in Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

¹² [January 2017], CRPD/C/BIH/Q/1/Add.1, Reply to the list of issues on initial report, Advance unedited version, para. 8

¹³ [September 2017], CRC/C/BIH/5-6, Fifth/sixth report, page 16

the Bill.¹⁴ The Government has mentioned it was considering adopting a comprehensive Law on Children's Rights.¹⁵ A new Action Plan for Children is being developed.

- 2.7 Alternative care settings (*partially lawful*):** The prohibition of corporal punishment in the home in the Republic of Srpska also applies in alternative care settings, but corporal punishment in care settings in the Federation of Bosnia and Herzegovina and the District of Brcko is not explicitly prohibited.
- 2.8 Day care (*partially lawful*):** The prohibition of corporal punishment in the home in the Republic of Srpska also applies in early childhood care and in day care for older children, 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.
- 2.9 Schools (*unlawful*):** Corporal punishment is unlawful in schools. The Framework Law on Primary and Secondary Education 2003 confirms children's right to "proper care for the benefit of their physical and mental health and safety, at schools and at all places where they are educated" (art. 5) and prohibits "any form of intimidation, abuse, physical punishment, insult, humiliation or degradation or harm to health" (art. 34).
- 2.10 Penal institutions (*unlawful*):** Corporal punishment is unlawful as a disciplinary measure in penal institutions. 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).
- 2.11 Sentence for crime (*unlawful*):** Corporal punishment is not available as a sanction under the Criminal Codes or the Criminal Procedure Codes of the Federation of Bosnia and Herzegovina, the Republic of Srpska or the District of Brcko.

3 Recommendations by human rights treaty bodies

- 3.1 CRC:** The Committee on the Rights of the Child has twice, in 2005 and 2012, expressed concern at corporal punishment of children in Bosnia and Herzegovina and recommended its prohibition in the home and other settings.¹⁶
- 3.2 HRC:** In 2017, the Human Rights Committee expressed concern at the continued use of corporal punishment in the home and recommended that Bosnia and Herzegovina take legislative measures to put an end to this practice in all settings.¹⁷
- 3.3 CRPD:** The Committee on the Rights of Persons with Disabilities recommended in 2017 that the state party explicitly and universally prohibit corporal punishment of children.¹⁸

¹⁴ Information provided to the Global Initiative, February 2019

¹⁵ [September 2017], CRC/C/BIH/5-6, Fifth/sixth report, page 4

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

¹⁷ [March 2017], CCPR/C/BIH/CO/3, Concluding observations on third report, Advance unedited version, paras. 31 and 32

¹⁸ (12 April 2017, CRPD/C/BIH/CO/1, Concluding observations on initial report, Advance unedited version, paras. 14 and 15)

3.4 **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.¹⁹ This was reiterated in 2016.²⁰

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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 since 2011 the Committee on the Rights of Persons with Disabilities.

¹⁹ January 2012, Conclusion 2011

²⁰ (January 2016, Conclusions 2015)