

# Corporal punishment of children in Bosnia and Herzegovina

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Child population 643,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## **Bosnia and Herzegovina's commitment to prohibiting corporal punishment**

Bosnia and Herzegovina expressed its commitment to prohibiting all corporal punishment of children in 2015 when it accepted clearly the recommendation to do so made during the Universal Periodic Review in 2014.

## **Summary of necessary legal reform to achieve full prohibition**

Prohibition is still to be achieved in the home, alternative care settings and day care in the Federation of Bosnia and Herzegovina and in the District of Brcko.

There is no specific legal defence available to parents and others who use corporal punishment but legislation in the Federation of Bosnia and Herzegovina and in the District of Brcko does not explicitly prohibit all corporal punishment in childrearing. The near universal acceptance of a certain degree of violence in “disciplining” children necessitates clarity in law that no corporal punishment is lawful or acceptable. Prohibition should be enacted of all corporal punishment, however light, by all persons with authority over children, including parents.

*Alternative care settings* – Corporal punishment in alternative care settings is prohibited in the Republic of Srpska. Prohibition should now be enacted in legislation application to in all alternative care settings (foster care, institutions, places of safety, emergency care, etc) in the Federation of Bosnia and Herzegovina and in the District of Brcko

*Day care* – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc) the Federation of Bosnia and Herzegovina and in the District of Brcko.

## Current legality of corporal punishment

### Home

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.<sup>1</sup> 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.

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....”

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.

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. New domestic violence legislation has been drafted:<sup>2</sup> we do not know if prohibition of corporal punishment has been proposed in this context. In 2019, the Government reported that the Criminal Code of the Federation of Bosnia and Herzegovina regulated the “prohibition of violence against children, including (...) corporal punishment and any other form of humiliating punishment, especially in a family environment” and stated that this meant there was an explicit ban on corporal punishment in the Federation.<sup>3</sup> However there is no mention of corporal punishment in the Criminal Code of the Federation of Bosnia and Herzegovina. There are no indications that general provisions

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<sup>1</sup> 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

<sup>2</sup> Reported by Human Rights House of Sarajevo in UPR-info (2012), *Bosnia and Herzegovina, Mid-term Implementation Assessment*, November 2012

<sup>3</sup> 26 February 2019, RAP/RCha/BiH/9(2019), National report to the European Committee of Social Rights, page 86

prohibiting violence and abuse are interpreted as prohibiting all forms of corporal punishment of children, however light.

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.<sup>4</sup> 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.<sup>5</sup> 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;<sup>6</sup> it made no reference to drafting prohibiting legislation.

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.<sup>7</sup> 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."<sup>8</sup> This was repeated to the Committee on the Rights of the Child in September 2017.<sup>9</sup> As of February 2019, no progress had been made towards the enactment of the Bill.<sup>10</sup> The Government has mentioned it was considering adopting a comprehensive Law on Children's Rights.<sup>11</sup> A new Action Plan for Children is being developed.

### **Alternative care settings**

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.

### **Day care**

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

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

<sup>5</sup> 13 July 2012, CRC/C/BIH/Q/2-4/Add.1, Reply to list of issues, para. 66

<sup>6</sup> 30 October 2013, E/C.12/BIH/Q/2/Add.1, Reply to list of issues, para. 234

<sup>7</sup> 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

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

<sup>9</sup> [September 2017], CRC/C/BIH/5-6, Fifth/sixth report, page 16

<sup>10</sup> Information provided to the Global Initiative, February 2019

<sup>11</sup> [September 2017], CRC/C/BIH/5-6, Fifth/sixth report, page 4

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.

### **Schools**

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).

### **Penal institutions**

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).

### **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. It 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.

## **Universal Periodic Review of Bosnia and Herzegovina's human rights record**

Bosnia and Herzegovina was examined in the first cycle of the Universal Periodic Review process in 2010 (session 7). No recommendations were made concerning corporal punishment of children.

Examination in the second cycle took place in 2014 (session 20). The following recommendations were made:<sup>12</sup>

"Ensure the explicit legal prohibition of corporal punishment of children in all settings (Croatia);

"Enact legislation explicitly prohibiting all corporal punishment in all settings, including the home, in the District of Brčko and in the Federation of Bosnia and Herzegovina (Sweden)"

The Government accepted the recommendations.<sup>13</sup>

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<sup>12</sup> 7 November 2014, A/HRC/WG.6/20/L.14 Unedited Version, Draft report of the working group, paras, 107(74) and 107(75)

<sup>13</sup> 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

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

### ***Committee on the Rights of the Child***

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

“While noting as positive that corporal punishment is unlawful in schools and as a sentence for crime and disciplinary measure in penal institutions throughout the State party and in the home since the adoption of the 2005 Law on Protection from Domestic Violence, the Committee expresses serious concern that corporal punishment in the home remains widespread in the State party. Furthermore, the Committee is concerned at the wide acceptance of a certain degree of violence in ‘disciplining’ children.

“The Committee recommends that the State party take all appropriate measures to explicitly prohibit corporal punishment in all settings, including the domestic context, throughout its territory. Furthermore, it recommends that the State party strengthen and expand awareness-raising and education programmes, including campaigns, in order to promote positive and alternative forms of discipline and respect for children’s rights with the involvement of children, while raising awareness about the adverse consequences of corporal punishment.”

### ***Committee on the Rights of the Child***

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

“While the Committee notes the new legislative measures being undertaken in both Entities aimed at improving protection of children against violence in family (the new Family Law and the new Law on Protection from Domestic Violence), it is concerned that children are often and increasingly exposed to domestic violence and other forms of abuses, including sexual abuse. Furthermore, the Committee is concerned that corporal punishment in the home is not expressly prohibited in the State party.

“In the light of article 19 of the Convention, the Committee recommends that the State party:

- a) make sure that the legislative measures currently being undertaken – namely, the new Family Law and the new Law on Protection from Domestic Violence – are expeditiously adopted and adequately implemented in both Entities;
- b) undertake a comprehensive study on violence against children, more particularly, on sexual abuse in order to assess the extent, the causes, scope and nature of this phenomenon;
- c) expressly prohibit corporal punishment at home and in institutions;
- d) strengthen awareness-raising and education campaigns with the involvement of children in order to prevent and combat child abuse and to promote positive, non-violent forms of discipline and respect for children’s rights, while raising awareness about the negative consequences of corporal punishment....”

### ***Human Rights Committee***

(13 April 2017, CCPR/C/BIH/CO/3, Concluding observations on third report, paras. 31 and 32)

“While noting that the Action Plan for Children of Bosnia and Herzegovina (2015-2018) envisages the adoption of laws prohibiting corporal punishment of children in all settings, the Committee is concerned that corporal punishment continues, especially in the home...

“The State party should take practical steps, including through legislative measures, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.”

### ***Committee on the Rights of Persons with Disabilities***

(2 May 2017, CRPD/C/BIH/CO/1, Concluding observations on initial report, paras. 14 and 15)

“The Committee is concerned that corporal punishment of children, especially children with disabilities, is not explicitly prohibited in the family and in alternative care and day-care settings in the State party...

“The Committee recommends that the State party:

(a) Explicitly and universally prohibit corporal punishment of children, with particular attention to children with disabilities living in institutions”

### ***European Committee of Social Rights***

(January 2016, Conclusions 2015)

“In its previous conclusion (Conclusions 2011) the Committee considered that there is no explicit prohibition of corporal punishment in the home in the Federation of Bosnia and Herzegovina and the Brčko District.

“The Committee notes from the Global Initiative to End Corporal Punishment that the law reform has not yet fully prohibited corporal punishment in the home throughout Bosnia and Herzegovina. Corporal punishment is unlawful in schools.

“The Committee takes note of the legislation in all entities prohibiting domestic violence against children. Nevertheless, the Committee notes that the Family Law of the Federation of Bosnia and Herzegovina and the Brčko District do not prohibit all forms of corporal punishment.

“As regards the Republika Srpska, the Law on Protection against Domestic Violence in RS prohibits different forms of violence, such a physical, emotional or psychological violence. Physical violence is interpreted as behaviour involving physical force intended to cause certain, even smallest pain and/or discomfort, which leads to real or potential harm to the child.

“The Committee considers that corporal punishment is not explicitly prohibited in the Federation of Bosnia and Herzegovina and the Brčko District in the home. Therefore, the situation is not in conformity with the Charter.

“The Committee asks whether corporal punishment is prohibited in all entities in childcare institutions.”

“The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 17§1 of the Charter on the ground that all forms of corporal punishment are not prohibited in the home in the Federation of Bosnia and Herzegovina and the Brčko District.”

### ***European Committee of Social Rights***

(January 2012, Conclusion 2011)

“The Committee recalls that under Article 17 of the Charter States' domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. There will be no sufficient prohibition in law unless a state can demonstrate that legislation is interpreted as prohibiting corporal punishment and effectively applied as such.

“The Committee notes from another source that corporal punishment is unlawful in the home in the Republic of Srpska (RS) but lawful in the Federation of Bosnia and Herzegovina (FBiH) and the District of Brcko (BD). In the Republic of Srpska, Article 97(1) of the RS Family Law (2002, amended in 2008) states: “Parents and other family members shall not subject a child to degrading treatments, mental and physical punishment nor abuse...” In the Federation of Bosnia and Herzegovina, the FBH Criminal Code (2003), the FBH Law on Protection from Domestic Violence (2005) and the FBH Family Law (2005) prohibit violence in the family but do not explicitly prohibit all corporal punishment in childrearing. Similarly, the BD Criminal Code (2004) and the BD Family Law (2007) prohibit domestic violence but do not explicitly prohibit all corporal punishment of children.

“According to the same source, there is no explicit prohibition of corporal punishment in alternative care settings. 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” (Article 7) but does not prohibit corporal punishment.

“The Committee considers that there is no explicit prohibition of corporal punishment in the home in the Federation of Bosnia and Herzegovina and the District of Brcko. Corporal punishment is not explicitly prohibited in schools and in institutions and therefore the situation is not in conformity with the Charter.

...

“The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment is not prohibited in the home, neither in schools nor in institutions.”

## **Prevalence/attitudinal research in the last ten years**

According to statistics collected in 2010-2011 under round 4 of the UNICEF Multiple Indicator Cluster Survey programme (MICS4), 55.2% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Among Roma children, the figure was 57.6%. Nearly forty per cent (39.6%) of all children and 44.9% of Roma children experienced physical punishment, while a much smaller percentage of mothers and caregivers thought physical punishment was necessary in childrearing (13.8% of all mothers and caregivers; 8% of Roma mothers and caregivers). Nearly five per cent (4.5%) of all children and 7% of Roma children were severely physically punished (hit or slapped on the face, head or ears or hit over and over with an implement); 42.1% of all children and 49.2% of Roma children experienced psychological aggression (being shouted at, yelled at, screamed at or insulted).

(Agency for Statistics of Bosnia and Herzegovina et al (2013), *Bosnia and Herzegovina Multiple Indicator Cluster Survey (MICS) 2011–2012, Final Report*, Sarajevo: UNICEF; Ministry for Human Rights and Refugees of Bosnia and Herzegovina & Agency for Statistics of Bosnia and Herzegovina (2013), *Multiple Indicator Cluster Survey (MICS) 2011–2012, Bosnia and Herzegovina: Roma Survey*, Sarajevo: UNICEF)