

# Corporal punishment of children in Azerbaijan

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Child population 2,538,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## **Azerbaijan's commitment to prohibiting corporal punishment**

Azerbaijan expressed its commitment to prohibiting all corporal punishment of children by accepting recommendations to do so made during the Universal Periodic Reviews of Azerbaijan in 2009, 2013, and 2018.

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

Prohibition is still to be achieved in the home, 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 and provisions against violence and abuse are not interpreted as prohibiting all 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* – Prohibition of corporal punishment should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

*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).

## Current legality of corporal punishment

### Home

Corporal punishment is lawful in the home. The Law on the Rights of the Child 1998 states in article 12 that “cruel treatment of children by parents and other persons, the application of mental or physical abuse on children, and violation of children’s rights” (unofficial translation) is a cause for deprivation of parental rights, and that violation of children’s rights include the failure by parents to carry out its “obligations on training and education of the child”. Article 27 states that every child has the right to protection of his/her dignity and honour. According to article 45, where the Law contradicts international treaties ratified by Azerbaijan, the international treaties apply. Under the Family Code 1999 the child has the right to respect for his/her dignity by the parents (art. 49) and to protection from parental abuse (art. 51). However, none of these provisions are interpreted as prohibiting all corporal punishment in childrearing. Provisions against violence and abuse in the Criminal Code 1999, the Law on Prevention of Domestic Violence 2010 and the Constitution 2002 are not interpreted as prohibiting all corporal punishment.

In 2009, the Government expressed its commitment to prohibition in accepting the recommendations made during the Universal Periodic Review (UPR) to prohibit all corporal punishment of children;<sup>1</sup> in 2011 a draft Law on Protection of Children against All Forms of Corporal Punishment was prepared. In 2013, the Government accepted recommendations during the UPR to adopt the draft law prohibiting corporal punishment but provided no details on its progress and stated that physical and psychological violence of children is abolished under the Law on the Rights of the Child.<sup>2</sup> As at April 2015, no further progress had been made towards adopting prohibiting legislation and it was anticipated that efforts would be resumed once the new Parliament is in place after elections in October 2015.<sup>3</sup> By January 2017 however, no further action had been taken on the Bill.<sup>4</sup> At the Universal Periodic Review in 2018, the Government supported specific recommendations to enact the draft Law on Protection of Children against All Forms of Corporal Punishment as well as recommendations to enact prohibition of corporal punishment of children in all settings,<sup>5</sup> but gave no indications on the progress of the draft Law.

### Alternative care settings

There is no prohibition of corporal punishment in alternative care settings. The protections in the Law on the Rights of the Child 1998 apply (see under “Home”) but neither these nor the Law on Social Protection of Children Without Parents 1999 explicitly prohibit all corporal punishment. It would be prohibited in the draft Law on Protection of Children against All Forms of Corporal Punishment (see under “Home”).

### Day care

There is no prohibition of corporal punishment in all early childhood care and in day care for older children. The above mentioned protections in the Law on the Rights of the Child 1998 apply (see under “Home”) and article 27 additionally specifies that “internal regulations of schools, pre-school

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<sup>1</sup> 10 June 2009, A/HRC/11/20/Add.1, Report of the working group: Addendum

<sup>2</sup> 19 September 2013, A/HRC/24/13/Add.1, Report of the working group: Addendum, paras. 1 and 10

<sup>3</sup> UNICEF, correspondence with the Global Initiative, 1 April 2015

<sup>4</sup> UNICEF, correspondence with the Global Initiative, January 2017

<sup>5</sup> 11 July 2018, A/HRC/39/14, Report of the Working Group, paras. 140(47), 140(48), 141(26) and 141(27); 10 September 2018, A/HRC/39/14/Add.1 Advance unedited version, Report of the Working Group: Addendum, para. 18

and after-school educational institutions should be based on the principles of justice and mutual respect” but these do not explicitly prohibit all corporal punishment. It would be prohibited in the draft Law on Protection of Children against All Forms of Corporal Punishment (see under “Home”).

## **Schools**

Corporal punishment is considered unlawful under article 32(3)(11) of the Law on Education 2009, which states that students have the right “to be protected from actions that are degrading to honour and human dignity and violate human rights” (unofficial translation). Article 33(3) states that teachers have the obligation “to respect the honour and dignity of students” and “to protect children and youth from all forms of physical and mental abuse”. Article 27 of the Law on the Rights of the Child 1998 states that the regulations of educational institutions must be based on justice and mutual respect. The Code of Administrative Offences 2000 punishes violations of legislation on education, including “the use of physical and/or psychological violence which does not amount to a criminal offence against the pupil in an educational institution” (art. 49(1)).

## **Penal institutions**

Corporal punishment is unlawful as a disciplinary measure in penal institutions. There is no provision for corporal punishment among permitted disciplinary measures in the Code on Execution of Punishments 2000 (arts. 107 and 125), but it is not explicitly prohibited and the use of physical force is permitted in certain circumstances (art. 78). According to article 3(2), if international treaties ratified by Azerbaijan establish other regulations, the rules of the international treaties are applied. The Law on the Rights and Freedoms of Persons in Detention 2012 states in article 27 (unofficial translation): “The detained or imprisoned person should not under any circumstances be subjected to torture or to inhuman or degrading treatment or punishment. Detainees or prisoners in custody should not be held in conditions that undermine human dignity.” The Law allows the use of physical force when absolutely necessary but states that it should not be used on minors (art. 43(2)(2)).

In 2012, the Criminal Code was amended to state that punishment and other measures imposed on persons convicted of a criminal offence may not be cruel, inhuman or degrading (article 9.2).<sup>6</sup> Further amendments to the Criminal Code were adopted in 2017 but we have been unable to examine them.<sup>7</sup>

A draft law on Juvenile Justice was under discussion in 2013. Reporting to the Committee Against Torture in 2015, the Government stated that the bill was still being negotiated.<sup>8</sup> However, the Government mentioned in 2018 that the law provided the “necessary regulatory frameworks for the implementation of juvenile justice”.<sup>9</sup> It is unclear whether a draft Law on Juvenile Justice is still on the agenda.

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<sup>6</sup> 17 March 2016, CCPR/C/AZE/4, Fourth state party report, para. 115

<sup>7</sup> 16 February 2018, A/HRC/WG.6/30/AZE/1, National report to the UPR, para. 78

<sup>8</sup> 2 February 2015, CAT/C/AZE/4, Fourth state party report, para. 317

<sup>9</sup> 16 February 2018, A/HRC/WG.6/30/AZE/1, National report to the UPR, para. 177

## **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Code 1999 or the Criminal Procedure Code 2000.

## **Universal Periodic Review of Azerbaijan's human rights record**

Azerbaijan was examined in the first cycle of the Universal Periodic Review in 2009 (session 4). The following recommendations were made:<sup>10</sup>

“... take the necessary measures so that persons below 18, being under arrest, would not be subject to corporal punishment or other forms of ill-treatment (Hungary); take necessary measures aimed at prohibiting all forms of corporal punishment against children (Brazil)...”

In accepting the recommendations, the Government stated:<sup>11</sup>

“We accept recommendation and note that measures are regularly taken in this regard.

“Corporal punishment, including against children is prohibited and criminalised by legislation. A draft law amending Criminal code and Administrative delinquencies code defines administrative and criminal responsibility of parents and other individuals for cruel treatment of children, psychological and physical violence against them.

“There were also adopted the ‘Law on prevention of abandonment and legal violations of minors’ and ‘Plan of Action on Solving the problem of abandoned and street children in the Republic of Azerbaijan’.”

The mid-term Government report on implementation of the recommendations made during the UPR, dated January 2012, does not address the recommendations on prohibition of corporal punishment.

The second cycle review of Azerbaijan took place in 2013 (session 16). The following recommendations were made:<sup>12</sup>

“Adopt the draft law on protection of children from corporal punishment (Brazil)

“Ensure that the draft law on juvenile justice and the draft law on prohibition of corporal punishment of children is adopted and implemented in line with international standards (Hungary)”

In accepting the recommendations, the Government stated that law reform is under way but also that physical and psychological violence of children is already abolished in the Law on the Rights of the Child.<sup>13</sup>

The 2016 mid-term report does not address the implementation of the above recommendations.

Third cycle examination took place in 2018 (session 30). The following recommendations were extended:<sup>14</sup>

“Prohibit corporal punishment against children and promote nonviolent alternatives as disciplinary measures (Uruguay)

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<sup>10</sup> 29 May 2009, A/HRC/11/20, Report of the working group, para. 96(11)

<sup>11</sup> 10 June 2009, A/HRC/11/20/Add.1, Report of the working group: Addendum

<sup>12</sup> 5 July 2013, A/HRC/24/13, Report of the working group, paras. 109(89) and 109(97)

<sup>13</sup> 19 September 2013, A/HRC/24/13/Add.1, Report of the working group: Addendum, paras. 1 and 10

<sup>14</sup> 11 July 2018, A/HRC/39/14, Report of the Working Group, paras. 140(47), 140(48), 141(26) and 141(27)

“Revise current legislation in order to explicitly prohibit corporal punishment of children in all settings, including at home (Montenegro)”

“Adopt a draft law on the protection of children from all forms of corporal punishment (Kyrgyzstan)

“Safeguard children’s rights by enacting the Draft Law on Protection of Children Against All Forms of Corporal Punishment (Namibia)”

The first two recommendations were supported by Azerbaijan during the interactive dialogue. The remaining two were also supported later on, ahead of the adoption of the final working group report. The Government added that “After adoption of the Law on the protection of children from all forms of corporal punishment, control mechanisms in relation to its fulfilment will demand to implement the strict reforms in the field of a child protection in local level. For this reason, adoption of such law will be considered in the future.”<sup>15</sup>

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

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

(12 March 2012, CRC/C/AZE/CO/3-4, Concluding observations on third/fourth report, paras. 45 and 46)

“While noting that the State party has a draft law on the protection of children against all forms of corporal punishment under consideration, the Committee is concerned that current legislation fails to explicitly prohibit corporal punishment in all contexts.

“The Committee reiterates its previous recommendations (CRC/C/AZE/CO/2, para. 45) and recommends that the State party introduce and fully implement legislation explicitly prohibiting all forms of corporal punishment of children in all settings, including the home. It also recommends that the State party conduct awareness-raising and public education campaigns promoting non-violent, participatory forms of child-rearing and education.”

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

(17 March 2006, CRC/C/AZE/CO/2, Concluding observations on second report, paras. 44 and 45)

“The Committee expresses concern that corporal punishment, while prohibited in schools and in the penal system, remains lawful at home and it is still widely practiced in the society as an accepted measure of discipline.

“The Committee recommends that the State party introduce and fully implement legislation explicitly prohibiting all forms of corporal punishment of children in all settings, including the home. The State party should also conduct awareness-raising and public education campaigns promoting non-violent, participatory forms of child-rearing and education.”

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<sup>15</sup> 10 September 2018, A/HRC/39/14/Add.1 Advance unedited version, Report of the Working Group: Addendum, para. 18

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

(January 2016, Conclusions 2015)

“The Committee recalls that under the Charter, the prohibition of all forms of corporal punishment of children is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2(2001)). The Committee has clearly stated that all forms of corporal punishment must be prohibited in the home, in schools and in institutions and this prohibition must have an explicit legislative basis. The sanctions available must be adequate, dissuasive and proportionate (Complaint No 18/2003, World Organisation against Torture (OMCT) v. Ireland, decision on the merits of 7 December 2004).

“Committee recalls that the Charter was conceived as a whole and in some cases its provisions complement each other, as well as overlap in part (Mental Disability Advocacy Center (MDAC) v. Bulgaria; Complaint No. 41/2007; decision on admissibility of 26 June 2007, §8). This is the case with the protection of children from ill-treatment and abuse. The Committee considers that the fact that the right of children and young persons to social, legal and economic protection is guaranteed under Article 17 of the Charter does not exclude the examination of certain relevant issues relating to the protection of children under Article 7§10. In this connection, the Committee recalls having held the scope of the said two provisions to overlap to a large extent (Conclusions XV-2 (2001), Statement of interpretation on Article 7§10).

“Therefore, since Azerbaijan has not accepted Article 17§1 of the Charter, the Committee will examine the issue relating to corporal punishment under this provision.

“The Committee notes from another source (Global Initiative to end corporal punishment of children) that prohibition is still to be achieved in the home, 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 and provisions against violence and abuse are not interpreted as prohibiting corporal punishment in childrearing.

“Corporal punishment is lawful in the home. The Law on the Rights of the Child 1998 states in Section 12 that “cruel treatment of children by parents and other persons, the application of mental or physical abuse on children, and violation of children’s rights” is a cause for deprivation of parental rights. Under the Family Code 1999 the child has the right to respect for his/her dignity by the parents (Article 49) and to protection from parental abuse (Article 51). However, none of these provisions are interpreted as prohibiting all corporal punishment in childrearing.

“Provisions against violence and abuse in the Criminal Code 1999, the Law on Prevention of Domestic Violence 2010 and the Constitution 2002 are not interpreted as prohibiting all corporal punishment.

“There is no prohibition of corporal punishment in alternative care settings. The protections in the Law on the Rights of the Child 1998 apply but neither these nor the Law on Social Protection of Children Without Parents 1999 explicitly prohibit all corporal punishment.

“Corporal punishment is considered unlawful under Section 32(3)(11) of the Law on Education 2009, which states that students have the right “to be protected from actions that are degrading to honour and human dignity and violate human rights”. Article 33(3) states that teachers have the obligation “to respect the honour and dignity of students” and “to protect children and youth from all forms of physical and mental abuse”.

“The Committee considers that the situation is not in conformity with the Charter as all forms of corporal punishment are not prohibited in the home and in institutions.

“The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§10 of the Charter on the grounds that: ... all forms of corporal punishment are not prohibited in the home and in institutions.”

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

None identified.