The human rights obligation to prohibit corporal punishment

The legality and practice of corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity and to equal protection under the law, and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment – rights guaranteed in the International Covenant on Civil and Political Rights and other international human rights instruments. This briefing describes the legality of corporal punishment of children in Bosnia and Herzegovina and urges the Human Rights Committee to include the issue in its examination of the implementation of the Covenant.

The second periodic report to the Human Rights Committee

The second periodic report of Bosnia and Herzegovina to the Human Rights Committee (CCPR/C/BIH/2) describes legislative and other measures to protect children from violence, including domestic violence, but does not refer to the lawful use of corporal punishment in childrearing.

Corporal punishment of children in Bosnia and Herzegovina

Corporal punishment of children in Bosnia and Herzegovina is unlawful in schools and in the penal system throughout the state but it is lawful in the home and in alternative care settings in all regions except the Republic of Srpska.

With regard to the home, article 97(1) of the RS Family Law (2002) in the Republic of Srpska 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, in the District of Brcko, the BD Criminal Code (2004) and the BD Family Law (2007) prohibit domestic violence but do not explicitly prohibit all corporal punishment of children. As at December 2010 the BD Law on Protection from Domestic Violence was in the process of being adopted: we have no details of its provisions.

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” (article 5) and prohibits “any form of intimidation, abuse, physical punishment, insult, humiliation or degradation or harm to health” (article 34).

In the penal system, 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 FBH, RS or BD. It 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 (article 31). It prohibits inhuman or degrading treatment or punishment (article 45), states that physical restraint should not be used as a
punishment (article 67), and does not include corporal punishment in the list of permitted disciplinary sanctions (article 90).

There is no explicit prohibition of corporal punishment in alternative care settings with the possible exception of the Republic of Srpska where the law prohibiting corporal punishment in the home may apply also to 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 “upbrining and education and proper care for the benefit of their physical and mental health and safety” (article 7) but does not explicitly prohibit corporal punishment.

Opportunities for achieving law reform to prohibit corporal punishment

Bosnia has signed up to the Council of Europe campaign against corporal punishment of children (http://www.coe.int/t/dg3/children/corporalpunishment/default_en.asp). The Government recently acknowledged the necessity of enacting explicit prohibition of corporal punishment in the home.¹

Recommendations by human rights treaty monitoring bodies

In its concluding observations on the state party’s initial report in 2005, the Committee on the Rights of the Child recommended explicit prohibition of corporal punishment at home and in institutions, together with relevant awareness raising and the promotion of positive, non-violent discipline (CRC/C/15/Add.259, para. 43).

We hope the Human Rights Committee will raise the issue of corporal punishment of children in its List of Issues for Bosnia and Herzegovina, in particular asking:

- What measures have been taken to ensure that corporal punishment of children is explicitly prohibited, by law, in all settings including the home?

We hope the Committee will subsequently recommend that the state party adopts legislation to explicitly prohibit all corporal punishment of children in all settings, including the home and in all forms of care, as a matter of priority.

¹ 14 June 2011, CRC/C/BIH/2-4, Second to fourth report to the Committee on the Rights of the Child, para. 133