

**BRIEFING ON BOSNIA AND HERZEGOVINA FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 115th session (Oct/Nov 2015)**

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**This briefing describes the legality of corporal punishment of children in Bosnia and Herzegovina. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, and the recommendations to Bosnia and Herzegovina by the Committee on the Rights of the Child, the European Committee of Social Rights and during the UPR (accepted by the Government), we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for Bosnia and Herzegovina, in particular asking what measures have been taken towards enacting explicit prohibition of corporal punishment in the home and all care settings in the District of Brcko and the Federation of Bosnia and Herzegovina, and**
* **following examination of the state party’s report, welcome the prohibition of all corporal punishment in the Republic of Srpska and the Government’s commitment to full prohibition throughout the state party made in accepting the UPR recommendations, and recommend that legislation is enacted and enforced which explicitly prohibits all corporal punishment in the home and all care settings in the District of Brcko and the Federation of Bosnia and Herzegovina, together with appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

**1 The legality of corporal punishment of children in Bosnia and Herzegovina**

1.1 ***Summary:*** Corporal punishment of children is prohibited in all settings, including the home, in the Republic of Srpska. However, in the Federation of Bosnia and Herzegovina and in the District of Brcko it is prohibited in schools and the penal system but is lawful in the home, alternative care settings and day care.

1.2 ***Home (partially prohibited):***In the Republic of Srpska, corporal punishment in the home is explicitly prohibited in the RS Family Law 2008 (art. 97): “Parents and other family members shall not subject a child to degrading treatments, mental and physical punishment nor abuse….”

1.3 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.

1.4 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 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.

1.5 ***Alternative care settings (partially prohibited):***The prohibition of corporal punishment in the home in the Republic of Srpska also applies in alternative care settings, but corporal punishment in alternative care settings in the Federation of Bosnia and Herzegovina and the District of Brcko is not explicitly prohibited.

1.6 ***Day care (partially prohibited):*** The prohibition of corporal punishment in the home in the Republic of Srpska also applies in alternative care settings, but corporal punishment in alternative care settings in the Federation of Bosnia and Herzegovina and the District of Brcko is not explicitly prohibited.

1.7 ***Schools (unlawful):***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).

1.8 ***Penal institutions (unlawful):***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).

1.9 ***Sentence for crime (unlawful):***There is no provision for judicial corporal punishment in criminal law.

**2 Recommendations by human rights treaty bodies and during the UPR**

2.1 ***CRC:*** The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Bosnia and Herzegovina and recommended its prohibition in the home and other settings – in its concluding observations on the initial report in 2005[[1]](#footnote-1) and on the second-fourth report in 2012.[[2]](#footnote-2)

2.2 ***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.[[3]](#footnote-3)

2.3 ***UPR:*** During the second cycle UPR of Bosnia and Herzegovina in 2014, recommendations were made to prohibit all corporal punishment of children in all settings.[[4]](#footnote-4) In 2015, the Government confirmed its acceptance of these recommendations.[[5]](#footnote-5)

*Briefing* *prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. 29 November 2012, CRC/C/BIH/CO/2-4, Concluding observations on second-fourth report, paras. 39 and 40 [↑](#footnote-ref-1)
2. 21 September 2005, CRC/C/15/Add.259, Concluding observations on initial report, paras. 42 and 43 [↑](#footnote-ref-2)
3. January 2012, Conclusion 2011 [↑](#footnote-ref-3)
4. 7 November 2014, A/HRC/WG.6/20/L.14 Unedited Version, Draft report of the working group, paras, 107(74) and 107(75) [↑](#footnote-ref-4)
5. 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 [↑](#footnote-ref-5)