

Corporal punishment of children in Azerbaijan: Briefing for the Universal Periodic Review, 44th session, Oct./Nov. 2023



From the Global Partnership to End Violence Against Children, March 2023

This submission provides an update on the legality of corporal punishment of children in Azerbaijan since its review in the third cycle UPR in 2018. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings and day care.

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 Azerbaijan, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies, and during the 3rd cycle UPR of Azerbaijan in 2018.

We hope the Working Group will note with concern the legality of corporal punishment of children in Azerbaijan. We hope states will raise the issue during the review this year and make a specific recommendation that Azerbaijan accelerates its efforts to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.

1 Review of Azerbaijan in the 3rd cycle UPR (2018) and progress since

Azerbaijan was reviewed in the third cycle of the Universal Periodic Review in 2018 (session 30). Recommendations to prohibit corporal punishment in all settings were made.¹ The Government supported the recommendations, stating 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

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

the field of a child protection in local level. For this reason, adoption of such law will be considered in the future.”²

1.2 Following the review, no legislation to explicitly prohibit corporal punishment of children in all settings seems to have been adopted. A draft Law on Protection of Children against All Forms of Corporal Punishment, which has been in preparation since 2011, does not seem to have been adopted.

1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Azerbaijan. We hope states will raise the issue during the review in 2023 and make a specific recommendation that Azerbaijan intensify its efforts to enact the draft Law on Protection of Children against All Forms of Corporal Punishment to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.**

2 Legality of corporal punishment in Azerbaijan

Summary of current law and opportunities for achieving 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.

Home (lawful): 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

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

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.

2.2 The Government had initially expressed its commitment to prohibition in 2009 by accepting the recommendations made during the Universal Periodic Review (UPR) to prohibit all corporal punishment of children.³ 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.⁴ In 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 2015.⁵ By January 2017 however, no further action had been taken on the Bill.⁶

Alternative care settings (lawful): 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 (lawful): 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 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 (unlawful): 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)).

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

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

⁵ UNICEF, correspondence with the Global Initiative, 1 April 2015

⁶ UNICEF, correspondence with the Global Initiative, January 2017

Penal institutions (unlawful): 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)).

2.7 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).⁷ Further amendments to the Criminal Code were adopted in 2017 but we have been unable to examine them.⁸

Sentence for crime (lawful): 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.

3 Recommendations by human rights treaty bodies

3.1 **CRC:** On three occasions, the Committee on the Rights of the Child has recommended to Azerbaijan that legislation be enacted to explicitly prohibit corporal punishment in all settings: in its concluding observations on the state party’s second report in 2006,⁹ on the third-fourth report in 2012,¹⁰ and on the fifth-sixth report in 2023.¹¹

3.2 **ECSR:** The European Committee of Social Rights found Azerbaijan to be “not in conformity with Article 7§10 of the Charter on the grounds that not all forms of corporal punishment are prohibited in all settings”, in its conclusions of 2015¹² and 2019.¹³

Briefing prepared by End Corporal Punishment on behalf of the Global Partnership to End Violence Against Children

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⁷ 17 March 2016, CCPR/C/AZE/4, Fourth state party report, para. 115

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

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

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

¹¹ 6 February 2023, CRC/C/AZE/CO/5-6, Concluding observations on fifth/sixth report, paras. 24 and 25

¹² January 2016, Conclusions 2015

¹³ March 2020, Conclusions 2019