

Corporal punishment of children in Azerbaijan: Briefing for the Universal Periodic Review, 30th session, 2018

*From the Global Initiative to End All Corporal Punishment of
Children, September 2017*



Global Initiative to
**End All Corporal Punishment
of Children**

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 repeated recommendations to prohibit it by the Committee on the Rights of the Child and during the 2nd cycle UPR of Azerbaijan in 2013, and the Government’s commitment to prohibiting all corporal punishment.

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 2018 and make a specific recommendation that Azerbaijan 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.

1 Review of Azerbaijan in the 2nd cycle UPR (2013) and progress since

- 1.1 Azerbaijan was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 16). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders’ information.² The Government accepted two recommendations to adopt the draft Law on Protection of Children against All Forms of Corporal Punishment.³
- 1.2 Since the review in 2013, no progress has been made on the issue of corporal punishment. Despite the Government’s commitment, the draft Law on Protection of Children Against All Forms of Corporal Punishment has not yet been enacted.
- 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 2018 and make a specific recommendation that Azerbaijan 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 priority.**

¹ 11 February 2013, A/HRC/WG.6/16/AZE/2, Compilation of UN information, para. 27

² 29 January 2013, A/HRC/WG.6/16/AZE/3, Summary of stakeholders' views, paras. 7, 29 and 30

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

2 Legality of corporal punishment in Azerbaijan

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Azerbaijan is lawful in the home, alternative care and day care settings. It is unlawful in the penal system and in schools. A draft Law on Protection of Children against All Forms of Corporal Punishment had been under discussion since 2011: this provides an opportunity for explicit prohibition of all corporal punishment.

- 2.1 **Home (*lawful*):** 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.
- 2.2 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;⁴ 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.⁵ 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 2015.⁶ By January 2017 however, no further action had been taken on the Bill.⁷
- 2.3 **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 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.
- 2.4 **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 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.

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

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

⁶ UNICEF, correspondence with the Global Initiative, 1 April 2015

⁷ UNICEF, correspondence with the Global Initiative, January 2017

2.5 **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)).

2.6 **Penal institutions (unlawful)**: 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.⁸

2.7 A draft law on Juvenile Justice Law was under discussion in 2013. Reporting to the Committee Against Torture in 2015, the Government stated that the bill was still being negotiated.⁹

2.8 **Sentence for crime (unlawful)**: 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**: The Committee on the Rights of the Child has twice recommended to Azerbaijan that legislation be enacted to explicitly prohibit all corporal punishment of children in all settings, without exception – in its concluding observations on the second report in 2006¹⁰ and on the third/fourth report in 2012.¹¹

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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.

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

⁹ 2 February 2015, CAT/C/AZE/4, Fourth state party report, para. 317

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

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