

Corporal punishment of children in Montenegro: Briefing for the Universal Periodic Review, 29th session, 2018

*From the Global Initiative to End All Corporal Punishment of
Children, June 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 Montenegro, corporal punishment of children may still be lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture and the Human Rights Committee, as well as those made during the 2nd cycle UPR of Montenegro in 2013.

We hope the Working Group will raise the issue of corporal punishment during the review in 2018 and make a specific recommendation that Montenegro enact and implement a legal ban of all corporal punishment of children, however light, in every setting of their lives, as a matter of priority.

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

1.1 Montenegro was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 15). 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 three recommendations to prohibit all corporal punishment of children.³

1.2 Since the review in 2013, Montenegro enacted amendments to the Family Law which state "Child shall not be subjected to corporal punishment or any other cruel, inhuman or degrading treatment" and extends this to parents, guardians and all other persons taking care of or coming into contact with the child. We welcome the enactment and are trying to ascertain whether the amendments intended to prohibit all corporal punishment, however light.

1.3 We hope the Working Group will raise the issue of corporal punishment during the review in 2018 and make a specific recommendation that Montenegro enact and implement a legal ban of all corporal punishment of children, however light, in all settings.

¹ 9 November 2012, A/HRC/WG.6/15/MNE/2, Compilation of UN information, para. 20

² 8 November 2012, A/HRC/WG.6/15/MNE/3, Summary of stakeholders' views, para. 20

³ 21 March 2013, A/HRC/23/12, Report of the working group, paras. 117(17) and 118(5); 18 April 2013, A/HRC/23/12/Add.1, Report of the working group: Addendum, para. 21

2 Legality of corporal punishment in Montenegro

Summary of current law and opportunities for achieving prohibition

In Montenegro, corporal punishment is unlawful in schools and in the penal system. We are trying to establish its legality in the home and in alternative care and day care settings with regards to the 2016 Family Law.

- 2.1 **Home (?lawful):** There is no legal defence for its use enshrined in law but provisions against violence and abuse in the Criminal Code 2004, the Family Act 2007, the Charter on Human and Minority Rights and Civil Liberties 2003 and the Law on Family Violence Protection 2010 do not include explicit prohibition of all corporal punishment in childrearing.
- 2.2 In reporting to the Committee Against Torture (CAT) in December 2012, the Government stated that corporal punishment is prohibited under articles 70 and 87 of the Family Law.⁴ Article 70 of the Family Law 2007 states that “parents must not subject the child to humiliating actions and penalties that offend human dignity of the child and they are under an obligation to protect the child from such actions of other persons”. However, this does not give a clear message that all forms of corporal punishment, without exception, are prohibited in childrearing. Article 87 addresses abuse of parental rights, stating that such abuse is present if a parent “abuses the child in a physical, sexual or emotional manner”, but there is no indication that this is interpreted as prohibiting all corporal punishment. The Law on Prevention of Family Violence 2010 protects family members, including children, from physical force inflicted by other family members, whether or not it results in bodily injury. There is no indication that this applies to the use of force in “disciplining” children.
- 2.3 Despite the Government’s 2012 statement to CAT on this issue, it subsequently accepted recommendations to prohibit corporal punishment in all settings made during the Universal Periodic Review of Montenegro in 2013,⁵ making a clear commitment to enacting prohibiting legislation: “Montenegro will embark on legal amendments to explicitly prohibit corporal punishment of children in all settings...”⁶ In March 2014, the Government confirmed that it was preparing “legal amendments to explicitly prohibit corporal punishment of children in all settings”.⁷
- 2.4 In reporting to the Human Rights Committee in October 2014, the Government again stated that corporal punishment is prohibited in all settings.⁸ However, it also reported that the National Plan of Action for Children 2013-2017 “envisages the implementation of at least three national campaigns to raise public awareness about the negative impact of corporal punishment of children in all settings” and that “there are plans for legislative amendments in order to explicitly define the prohibition of all forms of corporal punishment of children within the family, alternative forms of protection, schools, and institutions of children’s and social welfare”.⁹

⁴ 14 March 2013, CAT/C/MNE/2, Second state party report, para. 174

⁵ 21 March 2013, A/HRC/23/12, Report of the working group, para. 118(5); 18 April 2013, A/HRC/23/12, Report of the working group: Addendum, para. 21

⁶ 18 April 2013, A/HRC/23/12/Add.1, Report of the working group: Addendum, para. 21

⁷ Statement by the Special Representative-Ambassador to the UN Human Rights Council, Ambassador Ms Maric-Dordevic, 25th session of the Human Rights Council, March 2014

⁸ 22 October 2014, CCPR/C/MNE/Q/1/Add.1, Reply to list of issues, para. 30

⁹ 22 October 2014, CCPR/C/MNE/Q/1/Add.1, Reply to list of issues, para. 34

- 2.5 In July 2016 a new Family Law was passed by the Parliament. Its article 9a states: “(1) Child shall not be subjected to corporal punishment or any other cruel, inhuman or degrading treatment. (2) The prohibition referred to in para 1 above shall pertain to parents, guardians and all other persons taking care of or coming into contact with the child. (3) The persons referred to in para 2 above are obliged to protect the child from any treatment referred to in para 1 above.” As the Law does not contain a definition of the term “corporal punishment”, we are trying to ascertain whether the intention of article 9a was to prohibit all corporal punishment, however light, in all settings.
- 2.6 **Alternative care settings (?lawful):** There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents.
- 2.7 **Day care (?partially lawful):** Corporal punishment is prohibited in the provision of preschool education under article 111 of the General Law on Education (see below), but it is not explicitly prohibited in other early childhood care (nurseries, crèches, etc) or in day care for older children (day centres, after-school childcare, childminding, etc).
- 2.8 **Schools (unlawful):** Corporal punishment is prohibited in schools in article 111 of the General Law on Education – “the employment of a teacher who ... (9) humiliates, insults, or punishes students physically ... shall be ceased”. The Law on Primary Education (art. 66) and the Law on High School (art. 49) do not include corporal punishment among permitted disciplinary measures.
- 2.9 **Penal institutions (unlawful):** Corporal punishment is considered unlawful as a disciplinary measure in penal institution, but we have not identified an explicit prohibition in law. The Law on the Treatment of Juveniles in Criminal Procedure 2011 came into force in 2012: we have yet to examine the full text.
- 2.10 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime under the Criminal Code and the Law on Juvenile Perpetrators of Criminal Acts and on Criminal Legal Protection of Minors, which make no provision for judicial corporal punishment. Under the Law on Execution of Criminal Sanctions any actions which involve subjecting a convicted person to ill-treatment or against human dignity are prohibited.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child examined the initial state party report of Montenegro in 2010 and recommended prohibition of corporal punishment of children in all settings.¹⁰
- 3.2 **HRC:** In 2014, the Human Rights Committee recommended to Montenegro that steps be taken – including legislative measures – to end corporal punishment of children in all settings.¹¹
- 3.3 **CAT:** The Committee Against Torture has twice recommended to Montenegro that corporal punishment of children be explicitly prohibited in all settings – in its concluding observations on the initial state party report in 2009¹² and on the second report in 2014.¹³

¹⁰ 21 October 2010, CRC/C/MNE/CO/1, Concluding observations on initial report, paras. 36 and 37

¹¹ 21 November 2014, CCPR/C/MNE/CO/1, Concluding observations on initial report, para. 13

¹² 19 January 2009, CAT/C/MNE/CO/1, Concluding observations on initial report, para. 22

¹³ 17 June 2014, CAT/C/MNE/CO/2, Concluding observations on second report, para. 21

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@encorporalpunishment.org

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.