

Corporal punishment of children in Belarus: Briefing for the Universal Periodic Review, 36th session, May 2020



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

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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 Belarus, corporal punishment of children is still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the Committee Against Torture.

We hope the Working Group will note with concern the legality of corporal punishment of children in Belarus. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Belarus draft and enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including the home.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools and penal institutions.

There appears to be no confirmation in law of a “right” of parents to discipline/punish children but corporal punishment is widely used and there is no explicit prohibition in law of all corporal punishment. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that all such punishment is unlawful, however light and whoever the perpetrator.

Alternative care settings – Legislation should be enacted to prohibit corporal punishment in all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Legislation should prohibit corporal punishment in all education settings, public and private.

Penal institutions – The law should prohibit corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 9 of the Law on the Rights of the Child 1993 (amended 2013) states in article 9: “Every child has the right to protect his own personality from any type of exploitation and violence. The state provides inviolability of child’s personality, realizes its protection from all types of exploitation including sexual, from physical and (or) psychical violence, cruel or offensive treatment, disparage, including such treatment from parents (guardians) and relatives, from engaging into criminal activity, junction to alcoholic drinks, consumption of drugs, psychotropic substances, analogues thereof, toxic intoxicating substances, compulsion for the prostitution, gambling and making actions connected with making materials or goods of pornographic character, and also from engaging of a child in activities that his/her physical, mental or moral development. The persons, who get to know about the facts of cruel treatment, physical and (or) psychological violence toward a child, which pose a threat for child’s life, health and development, shall immediately report competent state body.”

The Code on Marriage and the Family 1999 states in article 65 that the family is responsible for the education, maintenance and protection of children and that the family has “the pre-emptive right and duty to determine the forms, means and methods of childrearing”; articles 66-1, 67 and 80 protect the child from cruel treatment. The Code confirms the right of children “to live in peace, security and dignity” (art. 184) and “to defend their person, honour and dignity against all forms of exploitation and violence” (art. 189). These provisions, as well as the protections for children in the Criminal Code 1999, the Code on Administrative Offences 2003, the Crime Prevention (Principles) Act 2014 and the Constitution 1994 are not interpreted as prohibiting all corporal punishment in childrearing.

Law reform has strengthened children’s protection from violence but has not prohibited all corporal punishment. According to the national report to the Universal Periodic Review in 2015, the Code of

Administrative Offences has been amended by the addition of administrative penalties for violence against family members to supplement the provisions under criminal law. In 2013, administrative liability was introduced to the Code for battery that does not cause bodily injury and deliberate infliction of pain or physical or mental suffering.¹

A draft domestic violence law is under consideration.² We are not aware of proposals to prohibit all corporal punishment in this context. The President of Belarus, Alexander Lukashenko, said in October 2018 that the draft law needed more work as physical punishment could be useful in raising children.³

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings. Article 30 of the Law on the Rights of the Child 1993 punished “teachers and other staff of children’s homes, boarding schools and other boarding institutions who commit anti-pedagogical or immoral acts against pupils”, but this article was repealed when the Act was amended in 2008. Under the Code on Marriage and Family 1999, orphans and children left without parental care have the right to “respect for their human dignity, protection of rights and legitimate interests” (art. 177), to “live in peace, security and dignity” (art. 184) and to “defend their person, honour and dignity against all forms of exploitation and violence” (art. 189). But the Code does not explicitly prohibit corporal punishment.

Day care

There is no explicit prohibition of corporal punishment in all early childhood care and in day care for older children.

Schools

Corporal punishment is unlawful, though it is not explicitly prohibited. Article 27 of the Law on the Rights of the Child 1993 (amended 2013) states: “Every child has the right on protection his honor and dignity protected by the Constitution of the Republic of Belarus. Discipline and order in educational establishments are kept by methods based on mutual respect and justice and excluding humiliation.”

There is no authorisation for corporal punishment in the Code on Education 2011: students are entitled to “protection of life and health in the educational process” (arts. 31(1.7) and 31(4.6)); teaching staff have the right to “choose pedagogically sound forms and methods of training and education” (arts. 52 and 89(1.4)) and must “respect the honour and dignity of students” (art. 53).

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions under article 9 of the Law on the Rights of the Child 1993, but it is not explicitly prohibited. Article 36 of the Law on the Rights of the Child states that children in special educational or special health care

¹ 9 February 2015, A/HRC/WG.6/22/BLR/1, National report to the UPR, paras. 18 and 129

² 7 May 2018, CAT/C/SR.1626, Summary records of 1626th meeting; 12 January 2016, CAT/C/BLR/5, Fifth report, para. 60; see also <http://en.ngo.by/news/4cae424c4c31.html>, accessed 2 July 2015

³ See <https://abcnews.go.com/International/wireStory/belarus-president-belting-punish-children-58327266>, accessed 16 October 2018

institutions, which includes children in institutions for young offenders, have the right to humane treatment. Similarly, the Law on Prevention of Neglect and Offences of Minors 2003 states that juveniles in detention have the right to be treated “humanely, without degrading treatment” (art. 8). The Criminal and Executive Code 2000 does not include corporal punishment among permitted disciplinary measures in penal institutions (arts. 55, 61, 129, 130 and 185), though it does provide for the use of physical force, including for “the prevention and suppression of offences” and with implements including “rubber sticks” (arts. 78 and 79).

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not among lawful sanctions in the Criminal Code 1999 and Criminal Procedure Code 1999.

Universal Periodic Review of Belarus’ human rights record

Belarus was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). The following recommendation was made:⁴

“Forbid corporal punishment of children and take order in that matter (Brazil)”

The Government accepted the recommendation, but stated that it was already implemented, that “there are specific provisions enshrined in Belarusian legislation prohibiting child abuse, including the corporal punishment of children” and that “the Criminal Code and the Administrative Offences Code establish criminal and administrative liability, respectively, for causing grave, moderate or minor bodily harm, torture and other forms of violence”.⁵ As noted above, according to our research there is no explicit prohibition of corporal punishment in the Law on the Rights of the Child or other legislation.

Examination in the second cycle took place in 2015 (session 22). The Government made no reference to corporal punishment in its national report.⁶ No recommendations were made specifically on corporal punishment during the review but the Government accepted a number of recommendations to combat violence against children.⁷

Recommendations by human rights treaty bodies

The Committee on the Rights of the Child has twice recommended that corporal punishment of children be prohibited in the home, schools and other institutions in Belarus – in its concluding observations on the state party’s second report in 2002⁸ and on the third/fourth report in 2011.⁹

In 2018, the Committee Against Torture recommended that Belarus enact legislation explicitly prohibiting corporal punishment in all settings.¹⁰

⁴ 21 June 2010, A/HRC/15/16, Report of the working group, para. 98(24)

⁵ 15 September 2010, A/HRC/15/16/Add.1, Report of the working group: Addendum, paras. 65, 66 and 67

⁶ 9 February 2015, A/HRC/WG.6/22/BLR/1, National report to the UPR

⁷ 13 July 2015, A/HRC/30/3, Report of the working group, paras. 127(54), 127(62) and 127(65)

⁸ 13 June 2002, CRC/C/15/Add.180, Concluding observations on second report, paras. 39 and 40

⁹ 8 April 2011, CRC/C/BLR/CO/3-4, Concluding observations on third/fourth report, paras. 39 and 40

¹⁰ [May 2018], CAT/C/BLR/CO/5 Advance unedited version, Concluding observations on fifth report, paras. 40 and 41

Prevalence/attitudinal research in the last ten years

A survey conducted in 2012 found that two-thirds (64.5%) of children age 2-14 years were subjected to at least one form of psychological aggression or physical punishment from their parents or other adults in the household in the month preceding the survey. The majority of children experienced psychological aggression (58.7%) while a third (34.2%) were subjected to physical punishment. In contrast, only 7.9% of respondents believed children should be physically punished, reflecting contradictory opinions and practices regarding child “discipline”. Physical punishment is more common among boys than girls (37.2% compared to 31.4%).

(National Statistical Committee of the Republic of Belarus & UNICEF (2013), Multiple Indicator Cluster Survey of the Situation of Children and Women in the Republic of Belarus 2012: Final Report, Minsk, Belarus: National Statistical Committee of the Republic of Belarus & UNICEF)