



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

**BRIEFING ON BOSNIA AND HERZEGOVINA FOR THE COMMITTEE ON
THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN
PRESESSIONAL WORKING GROUP – October 2012**

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The human rights obligation to prohibit corporal punishment – a key strategy in eliminating all forms of violence

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006),¹ addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

This briefing describes the legality of corporal punishment of children in Bosnia and Herzegovina and the extent of law reform to date. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, and the opportunities for law reform as described in this briefing, we hope the Committee on the Elimination of Discrimination Against Women will:

- **raise the issue of corporal punishment of girls in its List of Issues for Bosnia and Herzegovina, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, and**
- **recommend to Bosnia and Herzegovina, in the concluding observations on the initial/second state party report, that corporal punishment be explicitly prohibited in all settings, including the home, as a matter of priority.**

¹ General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” is available at www2.ohchr.org/english/bodies/crc/comments.htm.

1 The fourth/fifth report of Bosnia and Herzegovina to CEDAW

1.1 The fourth/fifth report of Bosnia and Herzegovina to CEDAW (21 December 2011, CEDAW/C/BIH/4-5) describes measures to address the problem of violence against women and girls. However, it makes no mention of the violence that may lawfully be inflicted on girls and boys within the family and other settings in the guise of “discipline”.

1.2 The report notes that the state has joined the Council of Europe’s “Stop Domestic Violence against Women” campaign and in this context has made a commitment to combating all domestic violence (para. 66). It fails to mention that Bosnia and Herzegovina has also signed up to the Council of Europe’s “Raise your hand against smacking!” campaign aimed at ensuring corporal punishment of children is prohibited and eliminated in all 47 Council of Europe member states.²

2 The legality and practice of corporal punishment of children in Bosnia and Herzegovina

2.1 Corporal punishment of children in Bosnia and Herzegovina is unlawful in schools and in the penal system but, with the exception of the Republic of Srpska, it is lawful in the home and in alternative care settings.

2.2 With regard to the **home**, in the Republic of Srpska, article 97(1) of the RS Family Law (2008) explicitly prohibits corporal punishment: “Parents and other family members shall not subject a child to degrading treatments, mental and physical punishment nor abuse....” In the Federation of Bosnia and Herzegovina, the FBH Criminal Code (2003), the FBH Law on Protection from Domestic Violence (2005) and the FBH Family Law (2005) prohibit violence in the family but do not explicitly prohibit corporal punishment. Similarly, in the District of Brcko, the BD Criminal Code (2004) and the BD Family Law (2007) prohibit domestic violence but do not explicitly prohibit all corporal punishment of children.

2.3 UNICEF’s major analysis in 2010 of data from 2005-2006 found that in Bosnia and Herzegovina, 38% of 2-14 year olds experienced violent “discipline” (physical punishment and/or psychological aggression) in the home; 3% experienced severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement).³ Disabled children were particularly vulnerable to corporal punishment, with 7% of disabled 2-9 year olds being hit or slapped on the face, head or ears or hit over and over as hard as possible with an implement, compared with 3% of non-disabled children.⁴ Five per cent of girls and women aged 15-49 thought that a husband is justified in hitting or beating his wife under certain circumstances.⁵

2.4 In **schools**, 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” (article 5) and prohibits “any form of intimidation, abuse, physical punishment, insult, humiliation or degradation or harm to health” (article 34).

² The campaign website is at www.coe.int/t/dg3/children/corporalpunishment/default_EN.asp

³ UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

⁴ UNICEF (2009), *Progress for Children: A report card on child protection*, NY: UNICEF

⁵ Ibid.

2.5 In the **penal system**, corporal punishment is unlawful as a sentence for crime: there is no provision for judicial corporal punishment in criminal law. It is unlawful as a disciplinary measure in penal institutions. 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 (article 31); it prohibits inhuman or degrading treatment or punishment (article 45), states that physical restraint should not be used as a punishment (article 67), and does not include corporal punishment in the list of permitted disciplinary sanctions (article 90).

2.6 There is no explicit prohibition of corporal punishment in **alternative care settings** with the possible exception of the Republic of Srpska where the law prohibiting corporal punishment in the home possibly applies also to care settings. Preschool provision is governed by the Framework Law on Preschool Upbringing and Education (2007) which states the primacy of the child's right to "upbringing and education and proper care for the benefit of their physical and mental health and safety" (article 7) but does not prohibit corporal punishment.

3 Opportunities for law reform to achieve prohibition and progress towards it

3.1 As noted above, Bosnia and Herzegovina has signed up to the Council of Europe's campaign against corporal punishment. In July 2012, the Government informed the UN Committee on the Rights of the Child that it had established a Working Group for drafting a Law on Social Protection and a Law on the Protection of Families with Children which will prohibit corporal punishment "in all institutions and forms of alternative care for children", though no indication was given that prohibition would extend to the home.⁶

We hope the Committee on the Elimination of Discrimination Against Women will urge the Government to ensure draft legislation explicitly prohibits corporal punishment in all settings, including the home.

4 Recommendations by human right treaty monitoring bodies

4.1 In its concluding observations on the state party's initial report in 2005, the **Committee on the Rights of the Child** recommended that the state party prohibit corporal punishment at home and in institutions.⁷

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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⁶ 13 July 2012, CRC/C/BIH/Q/2-4/Add.1, Written replies to the Committee on the Rights of the Child, para. 66

⁷ 21 September 2005, CRC/C/15/Add.259, Concluding observations on initial report, paras. 42 and 43