**BRIEFING ON AZERBAIJAN FOR THE COMMITTEE AGAINST TORTURE PRESESSIONAL WORKING GROUP, 63rd session (Apr/May 2018)**

*From the Global Initiative to End All Corporal Punishment of Children,* [*January*](mailto:info@endcorporalpunishment.org) *2018*

**This briefing describes the legality of corporal punishment of children in Azerbaijan. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the relevant recommendations made to Azerbaijan during the UPR in 2009 and 2013 and by the Committee on the Rights of the Child, and the new global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee Against Torture will:**

* **raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for Azerbaijan, in particular asking what progress is being made on enacting the draft Law on Protection of Children against All Forms of Corporal Punishment, and**
* **recommend, in the concluding observations on its fifth periodic report, that Azerbaijan enact the draft Law on Protection of Children against All Forms of Corporal Punishment to explicitly prohibit all corporal punishment of children in all settings, including the home, as a matter of priority.**

**1 The legality of corporal punishment of children in Azerbaijan**

1.1 ***Summary:***In Azerbaijan, corporal punishment is unlawful in schools and in the penal system, but children may lawfully be hit and hurt in the guise of “discipline” in the home, and in alternative care and day care settings.

1.2 ***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.

1.3 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;[[1]](#footnote-1) 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.[[2]](#footnote-2) 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.[[3]](#footnote-3) By January 2017 however, no further action had been taken on the Bill.[[4]](#footnote-4)

1.4 ***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.

1.5 ***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.

1.6 ***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)).

1.7 ***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)). 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.[[5]](#footnote-5)

1.8 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.[[6]](#footnote-6)

1.9 ***Sentence for crime (unlawful):*** There is no provision for judicial corporal punishment in the Criminal Code 1999 or the Criminal Procedure Code 2000.

**2 Recommendations by human rights treaty bodies and during the UPR**

2.1 ***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 2006[[7]](#footnote-7) and on the third/fourth report in 2012.[[8]](#footnote-8)

2.2 ***UPR***: In 2009, Azerbaijan accepted a recommendation to prohibit all forms of corporal punishment of children, although in doing so it stated that corporal punishment was already prohibited.[[9]](#footnote-9) Recommendations to adopt the draft law on the prohibition of corporal punishment of children extended in 2013 were accepted. At the time, the Government stated that physical and psychological violence against children was already abolished in the Law on the Rights of the Child.[[10]](#footnote-10)

*Briefing* *prepared by the Global Initiative to End All Corporal Punishment of Children*

[*www.endcorporalpunishment.org*](http://www.endcorporalpunishment.org)*;* [*info@endcorporalpunishment.org*](mailto:info@endcorporalpunishment.org)

1. 10 June 2009, A/HRC/11/20/Add.1, Report of the working group: Addendum [↑](#footnote-ref-1)
2. 19 September 2013, A/HRC/24/13/Add.1, Report of the working group: Addendum, paras. 1 and 10 [↑](#footnote-ref-2)
3. UNICEF, correspondence with the Global Initiative, 1 April 2015 [↑](#footnote-ref-3)
4. UNICEF, correspondence with the Global Initiative, January 2017 [↑](#footnote-ref-4)
5. 17 March 2016, CCPR/C/AZE/4, Fourth state party report, para. 115 [↑](#footnote-ref-5)
6. 2 February 2015, CAT/C/AZE/4, Fourth state party report, para. 317 [↑](#footnote-ref-6)
7. 17 March 2006, CRC/C/AZE/CO/2, Concluding observations on second report, paras. 44 and 45 [↑](#footnote-ref-7)
8. 12 March 2012, CRC/C/AZE/CO/3-4, Concluding observations on third/fourth report, paras. 45 and 46 [↑](#footnote-ref-8)
9. 10 June 2009, A/HRC/11/20/Add.1, Report of the working group: Addendum [↑](#footnote-ref-9)
10. 19 September 2013, A/HRC/24/13/Add.1, Report of the working group: Addendum, paras. 1 and 10 [↑](#footnote-ref-10)