

**BRIEFING ON MONTENEGRO FOR THE COMMITTEE AGAINST TORTURE PRESESSIONAL WORKING GROUP, 59th session (Nov/Dec 2016)**

*From Dr Sharon Owen, Coordinator, Global Initiative,* [*sharon@endcorporalpunishment.org*](mailto:sharon@endcorporalpunishment.org)

**This briefing describes the legality of corporal punishment of children in Montenegro and the Governments commitments and efforts to date to achieve prohibition. 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 previous recommendations to prohibit corporal punishment made to Montenegro by the Committee Against Torture (2009 and 2014) as well as those made by the Committee on the Rights of the Child, the Human Rights Committee and during the UPR, 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 Montenegro, in particular asking what measures are being taken to ensure national law clearly prohibits all corporal punishment of children, including in the home, and**
* **recommend to Montenegro, following its examination of the state party’s report, that legislation is enacted as a matter of priority which clearly prohibits corporal punishment in the home and all other settings.**

**1 The legality of corporal punishment of children in Montenegro and opportunities for reform**

1.1 ***Summary:***Corporal punishment of children is lawful in the home in the home and in alternative care and most day care settings in Montenegro; it is unlawful in preschool settings and in schools and the penal system.

1.2 ***Home (******prohibition not yet achieved):*** There is no legal defence for the use of corporal punishment 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.

1.3 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.[[1]](#footnote-1) 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.

1.4 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,[[2]](#footnote-2) making a clear commitment to enacting prohibiting legislation: “Montenegro will embark on legal amendments to explicitly prohibit corporal punishment of children in all settings….”[[3]](#footnote-3) In March 2014, the Government confirmed that it was preparing “legal amendments to explicitly prohibit corporal punishment of children in all settings”.[[4]](#footnote-4)

1.5 In reporting to the Human Rights Committee in October 2014, the Government again stated that corporal punishment is prohibited in all settings.[[5]](#footnote-5) 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”.[[6]](#footnote-6)

1.6 As at December 2015, a draft new Family Law was under discussion which would prohibit all corporal punishment in article 9a: “(1) The child shall not be subjected to corporal punishment or any other cruel, inhuman or degrading treatment. (2) The prohibition referred to in paragraph 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 paragraph (2) above are obliged to protect the child from the treatments referred to in paragraph 1 above.” It was anticipated that the law would be enacted in 2016.

1.7 ***Alternative care settings (prohibition not yet achieved):***There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents.

1.8 ***Day care (partially prohibited):***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).

1.9 ***Schools (prohibited):***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.

1.10 ***Penal institutions (prohibited):*** Corporal punishment is considered unlawful as a disciplinary measure in penal institution, though we have yet to identify relevant 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.

1.11 ***Sentence for crime (prohibited):*** There is no provision for judicial corporal punishment in criminal law.

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

2.1 ***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 2009[[7]](#footnote-7) and on the second report in 2014.[[8]](#footnote-8)

2.2 ***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.[[9]](#footnote-9)

2.3 ***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.[[10]](#footnote-10)

2.4 ***UPR:*** At the second cycle UPR of Montenegro in 2013, the Government accepted recommendations to explicitly prohibit corporal punishment of children in all settings, stating: “Montenegro will embark on legal amendments to explicitly prohibit corporal punishment of children in all settings; a media campaign will be launched on the consequences of corporal punishment of children.”[[11]](#footnote-11)

*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)

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1. 14 March 2013, CAT/C/MNE/2, Second state party report, para. 174 [↑](#footnote-ref-1)
2. 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 [↑](#footnote-ref-2)
3. 18 April 2013, A/HRC/23/12/Add.1, Report of the working group: Addendum, para. 21 [↑](#footnote-ref-3)
4. 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 [↑](#footnote-ref-4)
5. 22 October 2014, CCPR/C/MNE/Q/1/Add.1, Reply to list of issues, para. 30 [↑](#footnote-ref-5)
6. 22 October 2014, CCPR/C/MNE/Q/1/Add.1, Reply to list of issues, para. 34 [↑](#footnote-ref-6)
7. 19 January 2009, CAT/C/MNE/CO/1, Concluding observations on initial report, para. 22 [↑](#footnote-ref-7)
8. 17 June 2014, CAT/C/MNE/CO/2, Concluding observations on second report, para. 21 [↑](#footnote-ref-8)
9. 21 October 2010, CRC/C/MNE/CO/1, Concluding observations on initial report, paras. 36 and 37 [↑](#footnote-ref-9)
10. 21 November 2014, CCPR/C/MNE/CO/1, Concluding observations on initial report, para. 13 [↑](#footnote-ref-10)
11. 18 April 2013, A/HRC/23/12/Add.1, Report of the working group: Addendum, para. 21 [↑](#footnote-ref-11)