

**BRIEFING ON MONTENEGRO FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
SESSION 78 PRE-SESSIONAL WORKING GROUP – October 2017**

*From the Global Initiative to End All Corporal Punishment of Children, June 2017*

**This briefing describes the legality of corporal punishment of children in Montenegro. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, its previous recommendation to Montenegro on the issue, the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, the recommendation made by the Human Rights Committee in 2014, the Committee Against Torture in 2009 and 2014, and during the UPR of Montenegro in 2013 (accepted by the Government) 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 will:**

* **in its List of Issues for Montenegro, raise the issue of corporal punishment of children, in particular asking whether the 2016 amendments to the Family Law were intended to prohibit *all corporal punishment of children, however light*, and**
* **in its concluding observations on the second/third report of Montenegro, recommend that prohibition of all corporal punishment is enacted and implemented as a matter of priority.**

**1 The report of Montenegro to the Committee on the Rights of the Child**

* 1. Montenegro’s second/third state party report to the Committee mentions the draft amendments to the Family Law,[[1]](#footnote-1) which were passed in July 2016. **We are looking to ascertain whether the amendments were intended to prohibit all corporal punishment of children, however light.**

**2 The legality and practice of corporal punishment of children in Montenegro**

2.1 ***Summary:***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.

2.2 ***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.

2.3 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.[[2]](#footnote-2) 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.

2.4 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,[[3]](#footnote-3) making a clear commitment to enacting prohibiting legislation: “Montenegro will embark on legal amendments to explicitly prohibit corporal punishment of children in all settings….”[[4]](#footnote-4) In March 2014, the Government confirmed that it was preparing “legal amendments to explicitly prohibit corporal punishment of children in all settings”.[[5]](#footnote-5)

2.5 In reporting to the Human Rights Committee in October 2014, the Government again stated that corporal punishment is prohibited in all settings.[[6]](#footnote-6) 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”.[[7]](#footnote-7)

2.6 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.

2.7 ***Alternative care settings (?lawful):*** There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents.

2.8 ***Day care settings (?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).

2.9 ***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.

2.10 ***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. We have not been able to examine the Law on the Treatment of Juveniles in Criminal Procedure 2011.

2.11 ***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 and during the UPR**

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.[[8]](#footnote-8)

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

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 2009[[10]](#footnote-10) and on the second report in 2014.[[11]](#footnote-11)

3.4 ***UPR***: At the second cycle Universal Periodic Review 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.”[[12]](#footnote-12)

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

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1. October 2015, CRC/MNE/2-3, Second/third report, para. 57 [↑](#footnote-ref-1)
2. 14 March 2013, CAT/C/MNE/2, Second state party report, para. 174 [↑](#footnote-ref-2)
3. 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-3)
4. 18 April 2013, A/HRC/23/12/Add.1, Report of the working group: Addendum, para. 21 [↑](#footnote-ref-4)
5. 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-5)
6. 22 October 2014, CCPR/C/MNE/Q/1/Add.1, Reply to list of issues, para. 30 [↑](#footnote-ref-6)
7. 22 October 2014, CCPR/C/MNE/Q/1/Add.1, Reply to list of issues, para. 34 [↑](#footnote-ref-7)
8. 21 October 2010, CRC/C/MNE/CO/1, Concluding observations on initial report, paras. 36 and 37 [↑](#footnote-ref-8)
9. 21 November 2014, CCPR/C/MNE/CO/1, Concluding observations on initial report, para. 13 [↑](#footnote-ref-9)
10. 19 January 2009, CAT/C/MNE/CO/1, Concluding observations on initial report, para. 22 [↑](#footnote-ref-10)
11. 17 June 2014, CAT/C/MNE/CO/2, Concluding observations on second report, para. 21 [↑](#footnote-ref-11)
12. 18 April 2013, A/HRC/23/12/Add.1, Report of the working group: Addendum, para. 21 [↑](#footnote-ref-12)