



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

BRIEFING ON AZERBAIJAN FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESESSIONAL WORKING GROUP – Jul 2014

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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), addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. Physical violence against girls and boys in their own home is typically assumed not to be domestic violence because it is inflicted under the guise of “discipline” or “correction” – a rationale totally unacceptable when the victim is an adult woman. **It is for these reasons that we respectfully urge the Committee on the Elimination of Discrimination Against Women to specifically recommend that corporal punishment be prohibited in the home and all settings.**

This briefing describes the legality of corporal punishment of children in Azerbaijan. 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 repeated recommendations to Azerbaijan by treaty monitoring bodies and during the UPR (accepted by the Government), 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 Azerbaijan, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, and**
- **recommend to Azerbaijan, in the concluding observations on the fifth state party report, that legislation which prohibits corporal punishment in all settings, including the home, is adopted as a matter of priority.**

1 The state party's report to CEDAW

1.1 The fifth state report of Azerbaijan to CEDAW includes extensive information on violence against women but makes no reference to corporal punishment of children – punitive violence which may lawfully be inflicted in the home and other settings – nor of steps towards law reform to prohibit this form of violence.¹ **We hope the Committee will, during the review of Azerbaijan, emphasise the importance of prohibiting and eliminating physical punishment of girls and boys within the family when taking measures against family violence.**

2 The legality and practice of corporal punishment of children in Azerbaijan

2.1 **Summary:** In Azerbaijan, corporal punishment is unlawful in the penal system and schools, but it is not prohibited in the home or in all forms of alternative care and day care. The Government has drafted legislation which would achieve prohibition but to date this has not been adopted (see para. 2.3, below).

2.2 **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” is a cause for deprivation of parental rights. 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). But none of these provisions – nor provisions against violence and abuse in the Criminal Code 1999, the Law on Prevention of Domestic Violence 2010 and the Constitution 2002 – are interpreted as prohibiting all corporal punishment in childrearing. UNICEF’s major 2010 analysis of data on child discipline in 2005-2006 found that in Azerbaijan 76% of 2-14 year olds had been violently “disciplined” (with physical punishment and/or psychological aggression) in the month prior to the survey.²

2.3 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.³ In 2011 a draft Law on Protection of Children against All Forms of Corporal Punishment was prepared; in 2013, the Government accepted recommendations made during the UPR to adopt the draft law prohibiting corporal punishment.⁴

2.4 **Alternative care settings (lawful):** There is no prohibition of corporal punishment. The protections in the Law on the Rights of the Child 1998 apply (see para. 2.2, above) but neither these nor the Law on Social Protection of Children Without Parents 1999 explicitly prohibit all corporal punishment.

2.5 **Day care (lawful):** There is no prohibition of corporal punishment in all early childhood care or in day care for older children. The protections in the Law on the Rights of the Child 1998 apply (see para. 2.2, above) but these do not explicitly prohibit all corporal punishment.

2.6 **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”. The Code of Administrative Offences 2000 punishes violations of legislation on education, including

¹ 13 December 2013, CEDAW/C/AZE/5, Fifth state party report

² UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

³ 10 June 2009, A/HRC/11/20/Add.1, Report of the working group: Addendum

⁴ 19 September 2013, A/HRC/24/13/Add.1, Report of the working group: Addendum, paras. 1 and 10

“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)).

- 2.7 **Penal institutions (unlawful):** 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). 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)). A draft law on Juvenile Justice Law was under discussion in 2013.
- 2.8 **Sentence for crime (unlawful):** There is no provision for judicial corporal punishment in criminal law.

3 Recommendations by human right treaty monitoring bodies and during the UPR

- 3.1 **CRC:** The Committee on the Rights of the Child has twice recommended to Azerbaijan that corporal punishment of children be prohibited in all settings including the home – in its concluding observations on the second report in 2006⁵ and on the third/fourth report in 2012.⁶
- 3.2 **UPR:** Recommendations were made to Azerbaijan to prohibit corporal punishment of children during the Universal Periodic Review in 2009⁷ and again in 2013.⁸ The Government accepted the recommendations, stating that law reform is under way.⁹

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⁵ 17 March 2006, CRC/C/AZE/CO/2, Concluding observations on second report, paras. 44 and 45

⁶ 12 March 2012, CRC/C/AZE/CO/3-4, Concluding observations on third/fourth report, paras. 45 and 46

⁷ 29 May 2009, A/HRC/11/20, Report of the working group, para. 96(11)

⁸ 5 July 2013, A/HRC/24/13, Report of the working group, paras. 109(89) and 109(97)

⁹ 19 September 2013, A/HRC/24/13/Add.1, Report of the working group: Addendum, paras. 1 and 10