**BRIEFING ON BOSNIA AND HERZEGOVINA FOR THE COMMITTEE ON THE RIGHTS OF THE CHILD, SESSION 82 PRE-SESSIONAL WORKING GROUP – February 2019**

*From the Global Initiative to End All Corporal Punishment of Children, October 2018*

**This briefing describes the legality of corporal punishment of children in Bosnia and Herzegovina. 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 recommendations to Bosnia and Herzegovina on the issue, the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, the recommendations made by the Human Rights Committee, the Committee on the Rights of Persons with Disabilities, the European Committee of Social Rights, and during the UPR of Bosnia and Herzegovina in 2014 (which the Government accepted), 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 Bosnia and Herzegovina, raise the issue of corporal punishment of children, in particular asking what steps are being taken to fulfil the state’s commitment and enact the amendments under discussion as a matter of priority to explicitly prohibit all corporal punishment of children; and,**
* **in its concluding observations on the fifth/sixth report of Bosnia and Herzegovina, recommend that legislation is immediately enacted to explicitly prohibit corporal punishment of children in all settings including the home, throughout the territory, as a matter of priority.**

**1 The report of Bosnia and Herzegovina to the Committee on the Rights of the Child**

* 1. Bosnia and Herzegovina’s fifth/sixth state party report highlights that current legislation does not explicitly prohibit corporal punishment of children and that the Children’s Council has presented initiatives to amend legislation to introduce “an explicit ban on any physical punishment of children that would be applicable to all the children environments”[[1]](#footnote-2)
	2. As of March 2018, no progress has been made towards enacting law reform.[[2]](#footnote-3) Elections have recently taken place – it remains to be seen whether the new Government will fulfil Bosnia and Herzegovina’s commitment to enact prohibition.

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

2.1 ***Summary:***Corporal punishment is prohibited throughout Bosnia and Herzegovina in schools and in the penal system, and in the Republic of Srpska in homes and all alternative care and day care settings. It is still lawful in homes and in alternative care and day care settings in the Federation of Bosnia and Herzegovina and the District of Brcko.

2.2 ***Home (lawful):*** Law reform has not yet fully prohibited corporal punishment in the home throughout Bosnia and Herzegovina. The Government has stated that physical punishment of children is prohibited under the various family and domestic violence laws.[[3]](#footnote-4) In fact, corporal punishment is unlawful in the home in the Republic of Srpska but it is not explicitly prohibited in the Federation of Bosnia and Herzegovina and the District of Brcko. In the Republic of Srpska, article 97(1) of the RS Family Law 2008 states: “Parents and other family members shall not subject a child to degrading treatments, mental and physical punishment nor abuse….”

2.3 In the District of Brcko, the Family Law 2007 states that the child “has the right to protection against all forms of violence, abuse, maltreatment and neglect” (art. 110), that parental rights “shall be exercised in the best interest of the child” (art. 112), and that parents have a duty to protect the child from violence and to “control the child’s behaviour acting in accordance with its age and degree of maturity” (art. 117), but it does not explicitly prohibit corporal punishment. Article 3 prohibits violence between spouses or family members, referring to the definition of domestic violence in the Criminal Code. The Criminal Code of BD 2004 provision against domestic violence punishes “a person who endangers tranquillity, physical or mental health of a member of his family by applying violence, impudent or remorseless behaviour” (art. 218) but it does not explicitly prohibit corporal punishment.

2.4 In the Federation of Bosnia and Herzegovina, the Family Law 2005 states that the child “has the right to protection from all forms of violence, maltreatment, abuse and neglect” (art. 127), that parental rights “are realised to the best interest of the child” (art. 129) and that parents are obliged to protect the child from violence and “to control his or her behaviour in accordance with the age and maturity of the child” (art. 134), but it does not explicitly prohibit corporal punishment. Article 4 prohibits violent behaviour by a spouse and any other family member, referring to article 4 of the Law on Gender Equality in Bosnia and Herzegovina. This article in the Law on Gender Equality 2003 defines gender-based violence as “any act that causes physical, mental, sexual or economic harm or suffering, as well as threats of such acts that seriously impede a person’s ability to enjoy his or her rights and freedoms on the grounds of the equal treatment of the sexes in public and private life, including trafficking in human beings for the purposes of forced labour, and constraints on or the arbitrary deprivation of freedom”: it does not prohibit corporal punishment of children. New domestic violence legislation has been drafted:[[4]](#footnote-5) we do not know if prohibition of corporal punishment has been proposed in this context.

2.5 Mr Haris Silajdzic, Chairman of the Presidency of Bosnia and Herzegovina, signed up to the Council of Europe’s campaign against corporal punishment. Despite asserting that all corporal punishment is unlawful (see above), the Government has also acknowledged that further reform is required in order to explicitly prohibit corporal punishment.[[5]](#footnote-6) In July 2012, it informed the Committee on the Rights of the Child that a Working Group had been established to draft 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 it is not clear that this would also prohibit corporal punishment in the home.[[6]](#footnote-7) In 2013, when asked by the Committee on Economic, Social and Cultural Rights about progress towards prohibiting corporal punishment of children in all settings, the Government replied that “stronger public sensitisation is required” regarding prohibition in the home and institutions;[[7]](#footnote-8) it made no reference to drafting prohibiting legislation.

2.6 In 2015, the Government indicated its commitment to prohibiting all corporal punishment by accepting the recommendations to do so made during the Universal Periodic Review.[[8]](#footnote-9) The same year, the Government published a 2015-2018 Action Plan for Children which includes an aim to enact legislative reforms prohibiting all corporal punishment, including in the home. In January 2017, the Government reported to the Committee on the Rights of Persons with Disabilities that “in October 2016 the [Bosnia and Herzegovina] Council for Children submitted an initiative to amend the Family Law, the Law on Social and Child Protection, the Law on Protection from Domestic Violence, the Criminal Code and the Law on Health Care in the Federation, [Republic of Srpska] and [District of Brcko], as well as the Framework Law on Preschool and Primary Education and Upbringing and the Sports Law, with the aim of introducing an explicit prohibition of all corporal punishment of children that would apply to all settings where children live.”[[9]](#footnote-10) This was repeated to the Committee on the Rights of the Child in September 2017.[[10]](#footnote-11) The Government also mentioned it was considering adopting a comprehensive Law on Children’s Rights.[[11]](#footnote-12)

2.7 ***Alternative care settings (partially lawful):*** The prohibition of corporal punishment in the home in the Republic of Srpska also applies in alternative care settings, but corporal punishment in care settings in the Federation of Bosnia and Herzegovina and the District of Brcko is not explicitly prohibited.

2.8 ***Day care settings (partially lawful):*** The prohibition of corporal punishment in the home in the Republic of Srpska also applies in early childhood care and in day care for older children, but corporal punishment in day care in the Federation of Bosnia and Herzegovina and the District of Brcko is not explicitly prohibited. 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” (art. 7) but does not prohibit corporal punishment.

2.9 ***Schools (unlawful):***Corporal punishment is unlawful 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” (art. 5) and prohibits “any form of intimidation, abuse, physical punishment, insult, humiliation or degradation or harm to health” (art. 34).

2.10 ***Penal institutions (unlawful):*** Corporal punishment 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 (art. 31). It prohibits inhuman or degrading treatment or punishment (art. 45), states that physical restraint should not be used as a punishment (art. 67), and does not include corporal punishment in the list of permitted disciplinary sanctions (art. 90).

2.11 ***Sentence for crime (unlawful):*** Corporal punishment is not available as a sanction under the Criminal Codes or the Criminal Procedure Codes of the Federation of Bosnia and Herzegovina, the Republic of Srpska or the District of Brcko.

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

3.1 ***CRC:*** The Committee on the Rights of the Child has twice, in 2005 and 2012, expressed concern at corporal punishment of children in Bosnia and Herzegovina and recommended its prohibition in the home and other settings.[[12]](#footnote-13)

3.2 ***HRC:*** In 2017, the Human Rights Committee expressed concern at the continued use of corporal punishment in the home and recommended that Bosnia and Herzegovina take legislative measures to put an end to this practice in all settings.[[13]](#footnote-14)

3.3 ***CRPD:***The Committee on the Rights of Persons with Disabilities recommended in 2017 that the state party explicitly and universally prohibit corporal punishment of children.[[14]](#footnote-15)

3.4 ***ECSR:***In 2012, the European Committee of Social Rights concluded that the situation in Bosnia and Herzegovina is not in conformity with article 17 of the European Social Charter because corporal punishment is not prohibited in the home and other settings.[[15]](#footnote-16) This was reiterated in 2016.[[16]](#footnote-17)

3.5 ***UPR***: During the Universal Periodic Review of Bosnia and Herzegovina in 2014, recommendations were made to prohibit all corporal punishment of children in all settings.[[17]](#footnote-18) In 2015, the Government confirmed its acceptance of these recommendations.[[18]](#footnote-19)

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

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1. [September 2017], CRC/C/BIH/5-6, Fifth/sixth report, page 4 [↑](#footnote-ref-2)
2. Communication with the Ombudsman of Bosnia and Herzegovina, March 2018 [↑](#footnote-ref-3)
3. 13 September 2012 CCPR/C/BIH/Q/2/Add.1, Reply to list of issues, para. 288; 17 December 2010, RAP/RCha/BiH/I(2010), National report to the European Committee of Social Rights, pp. 83ff [↑](#footnote-ref-4)
4. Reported by Human Rights House of Sarajevo in UPR-info (2012), *Bosnia and Herzegovina, Mid-term Implementation Assessment*, November 2012 [↑](#footnote-ref-5)
5. 14 June 2011, CRC/C/BIH/2-4, Second-fourth state party report, para. 133 [↑](#footnote-ref-6)
6. 13 July 2012, CRC/C/BIH/Q/2-4/Add.1, Reply to list of issues, para. 66 [↑](#footnote-ref-7)
7. 30 October 2013, E/C.12/BIH/Q/2/Add.1, Reply to list of issues, para. 234 [↑](#footnote-ref-8)
8. 18 June 2015, A/HRC/29/G/4, Note verbale dated 3 June 2015 from the Permanent Mission of Bosnia and Herzegovina to the United Nations Office and other international organizations in Geneva addressed to the Office of the United Nations High Commissioner for Human Rights [↑](#footnote-ref-9)
9. [January 2017], CRPD/C/BIH/Q/1/Add.1, Reply to the list of issues on initial report, Advance unedited version, para. 8 [↑](#footnote-ref-10)
10. [September 2017], CRC/C/BIH/5-6, Fifth/sixth report, page 16 [↑](#footnote-ref-11)
11. [September 2017], CRC/C/BIH/5-6, Fifth/sixth report, page 4 [↑](#footnote-ref-12)
12. 21 September 2005, CRC/C/15/Add.259, Concluding observations on initial report, paras. 42 and 43 [↑](#footnote-ref-13)
13. [March 2017], CCPR/C/BIH/CO/3, Concluding observations on third report, Advance unedited version, paras. 31 and 32 [↑](#footnote-ref-14)
14. (12 April 2017, CRPD/C/BIH/CO/1, Concluding observations on initial report, Advance unedited version, paras. 14 and 15) [↑](#footnote-ref-15)
15. January 2012, Conclusion 2011 [↑](#footnote-ref-16)
16. (January 2016, Conclusions 2015) [↑](#footnote-ref-17)
17. 7 November 2014, A/HRC/WG.6/20/L.14 Unedited Version, Draft report of the working group, paras, 107(74) and 107(75) [↑](#footnote-ref-18)
18. 18 June 2015, A/HRC/29/G/4, Note verbale dated 3 June 2015 from the Permanent Mission of Bosnia and Herzegovina to the United Nations Office and other international organizations in Geneva addressed to the Office of the United Nations High Commissioner for Human Rights [↑](#footnote-ref-19)