

# Open Society Georgia Foundation

Tbilisi, July, 2016



Kingdom of the Netherlands

This policy brief is prepared in the framework of the project “monitoring implementation of the EU-Georgia Association Agreement by coalition of civil society organizations” funded by the Embassy of the Kingdom of the Netherlands. The document does not necessarily reflect the views of the donor.

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OPEN SOCIETY GEORGIA FOUNDATION  
ფონდის ღია საზოგადოება საქართველო

This policy brief covers period from October, 2015 till June, 2016.

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## The Government's Compromise on Violence against Children

### POLICY BRIEF

### Executive Summary

This document presents the problem of corporal punishment of children in Georgia and analyses the legal flaws that permit this phenomenon in the country. Children who experience pain and trauma caused by corporal punishment on a daily basis are unable to seek protection under legal and other human rights mechanisms. In fact, corporal punishment is considered to be a natural part of child rearing and appropriate discipline in Georgia today. No state agency ensures that positive parenting techniques are taught to prospective or current parents. Slapping, kicking, shaking, forced ingestion and other forms of punishment are not considered a crime and, accordingly, this treatment of children is permitted. As a result, children's rights remain unprotected.

This policy document presents recommendations to the state legislative and executive branches in order to regulate and minimise the occurrence of corporal punishment of children.

### Introduction

Georgia's initiating of the Association Agreement with the European Union in November 2013 triggered protest by children's rights organisations throughout the country and the Children and Youth Welfare Coalition of Georgia. The motivation

was simple: unlike the agreement initiated with Moldova around the same time, the issue of child protection was missing in the agreement between Georgia and the EU.<sup>1</sup> It is hard to imagine the future of Georgia without child protection and welfare, especially in the format of cooperation with the European Union, where there are high standards for child protection. The fact that the issue was not included suggests that child protection is not a priority for the Georgian Government. The efforts of civil society ultimately brought the government's attention to the issue and spurred the inclusion of a paragraph on child protection in the Association Agenda in 2014.

This policy document covers the active efforts of the civil sector to focus on the issue of child abuse. The theme of chapter 2, paragraph 2.1 of the Association Agenda is to **"focus on measures to protect children from all forms of violence"**. Of the various forms of violence against children, we will focus on the right of children to be protected from corporal and other cruel and degrading forms of punishment, which is still permissible in Georgia. Paragraph 30 of the 2016 Action Plan for the implementation EU-Georgia Association Agreement, which deals with measures to be implemented by the government to eliminate all forms of violence against children, still does not provide for the elaboration of special legislative amendments and change of practices to eliminate corporal punishment of children.

## What does corporal punishment of children mean?

In the Convention on the Rights of the Child, corporal punishment is defined as 'any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light'. Examples of corporal punishment are smacking, slapping or spanking, including with an implement, kicking, shaking or throwing children, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion.<sup>2</sup> In Georgia, politicians and decision-makers do not know this definition. Parents and teachers often ask: **'How can we raise a child without punishment'** or say **'It is my kid and I can do to my child whatever I want'**. In both cases, the child is perceived as an inanimate object subject to the will of the adult.

The comparative approach to discipline of children—proponents of which say that 'soft' punishment is beneficial for a child, while the 'heavier' forms of violence should be banned—is problematic. Establishing what is 'soft' and what is 'hard' is subjective and determined by the adult (perpetrator), who does not necessarily understand the feelings of the child.

This approach varies from the way that violence is permitted in the case of adults. According to Georgian legislation, any so-called mild form of bodily violence is unacceptable in case of an adult, as it is measured not only by the pain or physical suffering inflicted, but also by the feeling of derogation experienced by an adult for example because of a slap on the side of the head. The proponents of separating 'soft' and 'hard' punishments thus legalise the discriminatory treatment of children, who should have higher standards of protection as compared with adults

<sup>1</sup> Democracy and Freedom Watch: Why is child protection missing from the newly signed Association Agreement between the EU and Georgia. Available at (13.06.2016): <http://www.childpact.org/2014/01/10/why-is-child-protection-missing-from-the-newly-signed-association-agreement-between-the-eu-and-georgia/>.

<sup>2</sup> Committee on the Rights of the Child, Forty-Second Session, Geneva, 15 May – 2 June 2006. Available at (04.07.2016) [http://www2.ohchr.org/english/bodies/crc/docs/GC8\\_en.doc](http://www2.ohchr.org/english/bodies/crc/docs/GC8_en.doc)

since they cannot protect their rights and we, the adults, bear responsibility for the protection thereof.

The word 'soft' often misleads even the experts of this field as they erroneously consider that:

(1) the so-called soft violence causes light damage;

(2) soft violence is acceptable for the purposes of enforcing discipline or is justified by religious considerations (educational method).

The erroneous nature of both of these approaches is pointed out in General Comment No. 8 of the UN Committee on the Rights of the Child,<sup>3</sup> according to which any corporal punishment (of whatever intensity) is degrading and damaging to the dignity of a child. International human rights law also prohibits violence of any intensity against children for whatever reason. The violation of child dignity is a significant infringement of the rights of a child as a subject of law.

Proponents of corporal punishment of children, i.e. the so-called 'soft' form of violence, ask: **'How strongly can we beat a child in order to teach them a lesson and on what parts of body so that it is not considered a crime?'** This question expresses the gross and cynical violation of the rights of children – the adults commit violence against children for their benefit and justify such violence as necessary for an appropriate upbringing.

## Child corporal punishment practices in the South Caucasus

The Armenian law, like the laws of many other countries, does not explicitly and clearly ban corporal punishment of children.<sup>4</sup> According to a UNICEF survey carried out in Armenia in 2005-2013, 70 per cent of children aged 2-14 endure corporal punishment and heavy psychological aggression in the home.<sup>5</sup> The same survey conducted at boarding schools revealed that not only the teachers punished the children (e.g. by forcing them to stand during lessons, hitting their fingers with pens, etc.), but also encouraged the children to get rough with each other: 'The 2010-2011 report of the Public Monitoring Group on the situation in the special education institutions of the Ministry of Education and Science, which studied 13 "special boarding schools" providing alternative care to children, found that staff were violent towards children and encouraged children to punish one another.'

In Azerbaijan, as in Armenia, the law does not explicitly and clearly ban corporal punishment of children.<sup>6</sup> Statistical data collected by UNICEF in Azerbaijan in 2005-2006 revealed that 76 per cent of children aged 2-14 experience corporal punishment and psychological violence at home. Almost every fifth child (17%) is subject to cruel physical punishment (slap in the face or knock on the head).<sup>7</sup>

<sup>3</sup> Committee on the Rights of the Child, forty-second session, Geneva (2007). General Comment No. 8. The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. Available at (13.06.2016) <http://www.refworld.org/docid/460bc7772.html>

<sup>4</sup> Global Initiative to End All Corporal Punishment of Children. Country report for Armenia. Available at (15.06.2016): <http://www.endcorporalpunishment.org/progress/country-reports/armenia.html>

<sup>5</sup> Global Initiative to End All Corporal Punishment of Children. Prevalence/attitudinal research in Armenia (last ten years). Available at (15.06.2016): <http://www.endcorporalpunishment.org/research/prevalence-research/armenia.html>

<sup>6</sup> Global Initiative to End All Corporal Punishment of Children. Country report for Azerbaijan. Available at (15.06.2016): <http://www.endcorporalpunishment.org/progress/country-reports/azerbaijan.html>

<sup>7</sup> Global Initiative to End All Corporal Punishment of Children. Prevalence/attitudinal research in Azerbaijan. Available at (15.06.2016) <http://www.endcorporalpunishment.org/research/prevalence-research/azerbaijan.html>

## Legal framework

The Global Initiative to End All Corporal Punishment of Children – a reputable international organisation advocating for a ban on corporal punishment of children – prepared a report on corporal punishment in Georgia in 2013 and updated it again in 2016.<sup>8</sup> According to the report, corporal punishment is not fully and clearly prohibited by Georgian legislation. Although the legislative acts provide for the 'prohibition of violence against children in all its forms', because corporal punishment of children for upbringing purposes is not considered to be violence, the said legislation is not applied for the punishment of children unless the latter has severe consequences (signs of violence, bodily injuries, etc.).

## Regulation of corporal punishment in the families

In 2014, a change was introduced to the Civil Code of Georgia that banned child-rearing methods that result in physical or psychological pain to children. Specifically Part 11 of Article 1198 of the Civil Code of Georgia reads: 'The use by a parent / legal representative of child rearing methods causing physical and/or mental suffering of minors is impermissible'. However, this article is not sufficient for a total ban on corporal punishment. The idea of 'suffering' used in the article excludes corporal punishment or degrading treatment that does not reach the level of suffering outlined in the article, even though this is explicitly prohibited by the standards of international human rights law.

Georgia's legislation on domestic violence poses a similar problem in that it does not ban corporal punishment. Article 4 of the Law on the Prevention of Domestic Violence, Protection and Support of Victims of Domestic Violence protects from domestic violence any member of the family, including children; however, as in the case of the Civil Code, the physical violence is also required to reach a degree of intensity that surpasses corporal punishment and degrading treatment. In 2014 amendments to the domestic violence law introduced a clause on child neglect as a special form of violence, but did not go so far as to ban the corporal punishment of children.

## Corporal punishment of children not considered a crime

Article 125 of the Criminal Code of Georgia identifies battery as a crime. The wording of the article and application in practice, however, do not treat corporal punishment of children as a crime and therefore provides for no sanctions. Article 125 falls in the chapter on crimes against health, and the benefit protected by the article, according to a number of commentators on the Criminal Code,<sup>9</sup> is human health. Under international law, the prohibition of corporal punishment of children is primarily focused on the violation of child dignity and ensuring physical and moral integrity. Therefore, the object of protection is not only health, but child dignity and moral integrity, which do not necessarily involve damage to health.

<sup>8</sup> Corporal Punishment of Children in Georgia (2016), report prepared by the Global Initiative to End All Corporal Punishment of Children. Available at (13.06.2016): <http://endcorporalpunishment.org/assets/pdfs/states-reports/Georgia.pdf>

<sup>9</sup> M. Lekveishvili, N.Todua, G.Mamulashvili (2011). Private part of Criminal Code, 119.

Applying Article 125 in cases of corporal punishment is further complicated by the definition of 'battery' in Georgian legislation: 'Battery implies several hits which result in visible spots and marks.'<sup>10</sup> This definition is further reinforced by case law referring to Article 125, which states: 'Battery [...] means several hits on the body of another person at a time, which causes physical pain of the victim'. Just one hit is not considered battery.'<sup>11</sup> This approach makes it impossible to identify corporal punishment within the scope of the Article.

Especially noteworthy is the record, which says that it is important to identify the desire to inflict pain on the part of the perpetrator (subjective side of the action) in order to an action to qualify as battery. Under the circumstances, when the corporal punishment of children is employed as a child rearing method and used to enforce discipline, it is unrealistic to apply Article 125 in respect of the corporal punishment of children.

### Corporal punishment in child care and educational institutions

The report by the Global Initiative to End All Corporal Punishment of Children says that corporal punishment is neither explicitly prohibited by legislation regulating child care institutions and alternative forms of child care, nor by acts regulating day care centres and other child care agencies. The only exception is the Law of Georgia on General Education, Article 19, Paragraph 1, which prohibits corporal punishment of children (although using different definitions). The Article reads: 'School discipline should be protected by methods, which are based on respect for the freedom and dignity of the student and the teacher'. However, the article does not specify the forms of corporal punishment and does not include an explicit ban of this phenomenon.

### Corporal punishment practice in Georgia

A national survey on violence against children conducted in Georgia in 2013 by UNICEF<sup>12</sup> revealed that about 60 per cent of those people who suffered physical violence in their childhood agreed that physical punishment is permissible.

<sup>10</sup> M. Lekveishvili, N.Todua, G.Mamulashvili (2011). Private part of Criminal Code

<sup>11</sup> Case # N010100113272383, Batumi City Court.

<sup>12</sup> UNICEF (2013). Survey on violence against children. Available (13.06.2016) at: [http://unicef.ge/uploads/Unicef\\_VAC\\_GEO\\_Final3\\_02\\_09.pdf](http://unicef.ge/uploads/Unicef_VAC_GEO_Final3_02_09.pdf)

**Table 1: Experience of corporal punishment in childhood and current attitudes towards the corporal punishment of children<sup>13</sup>**

	Physical punishment is permissible	Physical punishment is impermissible
Often suffered physical punishment	67%	33%
Sometimes suffered physical punishment	58%	42%
Never suffered physical punishment	39%	61%
Total	45%	55%

**When we get angry with a child, it's okay; it is not violence ... Sometimes it is also necessary to give a child a spanking ... We had a case in Batumi when a parent beat the child to death. It really was a brutal beating; only brutal beating is considered to be violence, while spanking is necessary sometimes.**

**-Teacher, Adjara.**

The most important finding of the UNICEF survey is the tolerance of corporal punishment by professionals employed in child care and educational institutions. In particular, as the survey findings revealed, teachers often believe that a response to violence against children is necessary only when the violence reaches a certain intensity. The intensity and frequency is of crucial significance to them. Hence they believe that no response is necessary in cases when corporal punishment does not include physical violence. Forty per cent of the surveyed school supervisors and 69 per cent of teachers believe so. Some professionals think that only life-threatening forms of violence are impermissible, while slapping and scolding are disciplinary (therefore permissible) penalties.

## Analysis

As the above statistics and analysis of practices show, the corporal punishment of children is still an unresolved issue for Georgia. Unfortunately, this phenomenon has not been identified as a human rights violation. Accordingly, no work for its elimination has started in any direction.

The prevalence of this phenomenon is demonstrated in numerous studies on violence against children.<sup>14,15</sup> However, it seems that its damaging effects are not obvious enough to carry out legislative changes and develop corresponding policy.

<sup>13</sup> ibidem.

<sup>14</sup> UNICEF (2013). Survey on violence against children (13.06.2016), available at: [http://unicef.ge/uploads/Unicef\\_VAC\\_GEO\\_Final3\\_02\\_09.pdf](http://unicef.ge/uploads/Unicef_VAC_GEO_Final3_02_09.pdf)

<sup>15</sup> UNICEF (2008). Survey on violence against children (13.06.2016), available at: [http://unicef.ge/uploads/The\\_National\\_Study\\_on\\_Violence\\_against\\_Children\\_in\\_Georgia\\_in\\_Georgian.pdf](http://unicef.ge/uploads/The_National_Study_on_Violence_against_Children_in_Georgia_in_Georgian.pdf)

The apparent indifference on the part of decision-makers is based on a lack of information about international human rights standards and mechanisms in the field of child protection on the one hand, and the general understanding of children as **the property of the adults** on the other hand. Parents, teachers and other individuals involved in raising children who have no knowledge about positive parenting methods, consider punishment to be the only way to raise children. In many cases, religious institutions support the idea that instructing a child through physical punishment is acceptable, and listening to and considering the opinion of children is viewed as spoiling them.

The current legal framework leaves the issue of corporal punishment of children totally unaddressed, making it impossible to appropriately respond to this vicious practice. A police officer, who along with a social worker are the first responders in cases of violence against children, is legally unable to address corporal punishment and other degrading actions.

The responsibility for addressing the issue of corporal punishment explicitly rests on the state legislative and executive authorities. In 2015, after the report by the Georgian Coalition for Children and Youth Welfare on children's rights was sent to the United Nations Universal Periodic Review<sup>16</sup> mechanism, many countries gave recommendations to the Government of Georgia to eradicate corporal punishment of children (Estonia, Hungary, Poland).<sup>17</sup> The Government of Georgia took into consideration these recommendations and committed to improving the relevant regulations and policy development. Activity to this end has not been observed as yet.

## Conclusion

The prohibition of corporal punishment in legislation is the only explicit possibility to minimise all forms of child abuse. As long as Georgian legislation permits corporal punishment, children cannot be protected from more serious crimes. No form or intensity of violence, including battery, should be acceptable. Criminal law should prohibit corporal punishment in any form and intensity, as it is necessary to fundamentally change the public tolerance of violence against children and its harmful consequences. Civil and Administrative Law must make it clear that corporal punishment is prohibited both in families and child care and educational institutions. Legislative changes must be supported by appropriate public policies and programmes, which will establish the social norm of a non-violent upbringing of children.

<sup>16</sup> UPR Submission, Children's Rights, Georgia. Report available at (13.06.2016): <http://phr.ge/assets/uploads/%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%94%E1%83%91%E1%83%98/12.pdf>

<sup>17</sup> United Nations General Assembly, Human Rights Council, Thirty First Session, Report of the Working Group on the Universal Periodic Review. 13 January, 2015. Available at (13.06.2016): <https://documents-dds-ny.un.org/doc/UN-DOC/GEN/G16/005/04/PDF/G1600504.pdf?OpenElement>

## Recommendations

In order for the Government of Georgia to immediately fulfil its obligations under international treaties and ensure the protection of children from corporal punishment and violence, it is necessary to:

1. Promptly introduce legislative amendments clearly stating a ban on children's corporal and other degrading and cruel punishment in the following statutory laws: the Criminal Code, the Civil Code, Law of Georgia on the Prevention of Domestic Violence, Protection and Assistance of Victims of Domestic Violence, Law of Georgia on General Education and other relevant regulations.
2. Familiarise with the new legislative changes the community of professionals in charge of child protection (social workers, police officers, prosecutors, judges, lawyers) and the general public, as well as carry out an awareness raising campaign targeted at children.
3. Introduce updated mechanisms for notification, referral and response in respect to corporal and other degrading punishment against children.
4. Introduce courses to teach methods of positive discipline for parents and child care and education specialists.