

# Corporal punishment of children in Bhutan: Briefing for the Universal Periodic Review, 47th session, Oct./Nov. 2024

*From End Corporal Punishment, March 2024*

This submission provides an update on the legality of corporal punishment of children in Bhutan since its review in the third cycle UPR in 2019. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care and schools; prohibition in penal institutions requires confirmation.

**The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.**

**In Bhutan, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and other human rights treaty bodies.**

**We hope the Working Group will note with concern the legality of corporal punishment of children in Bhutan. We hope states will raise the issue during the review in 2024 and make a specific recommendation that Bhutan accelerates its efforts to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.**

## 1 Review of Bhutan in the 3<sup>rd</sup> cycle UPR (2019) and progress since

- 1.1 Bhutan was reviewed in the third cycle of the Universal Periodic Review in 2019 (session 33). Several recommendations to prohibit corporal punishment in all settings were extended. The Government supported some of these recommendations and later noted five of them stating "...the Royal Government does not feel the need to pursue legislative reforms or enactment of new legislation."<sup>1</sup>

<sup>1</sup> 3 September 2019, A/HRC/42/8/Add.1 Advance version, Report of the Working Group: Addendum



1.2 Following the review, no legislation to explicitly prohibit corporal punishment of children in all settings has been adopted.

**1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Bhutan. We hope states will raise the issue during the review in 2024 and make a specific recommendation that Bhutan intensify its efforts to enact a law to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.**

## 2 Legality of corporal punishment in Bhutan

### ***Summary of current law and opportunities for achieving prohibition***

Prohibition is still to be achieved in the home, alternative care settings, day care and schools. Prohibition in penal institutions requires confirmation.

Articles 109 and 111 of the Penal Code 2004 provide a defence for the use of force by parents and others in disciplining children. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no degree or kind of corporal punishment is lawful, however light. These articles should be explicitly repealed and corporal punishment prohibited in all settings, including the family home.

2.1 **Home (lawful):** Corporal punishment is lawful in the home. Articles 109 to 112 of the Penal Code 2004 provide for the “use of force for care, discipline, or safety of another”. Article 109 states: “A defendant shall have the defence of justification, if the defendant uses force on an incompetent or incapable person and the defendant is the parent or guardian or other person responsible for the general care and supervision of such person and the force: (a) is used with the purpose of safeguarding or promoting the welfare of the incompetent or incapable person, including the prevention of serious misconduct; (b) used is not designed to cause or known to create a substantial risk of causing death or serious bodily injury; and (c) used is no greater than that which is necessary.”

2.2 The Child Care and Protection Act 2011 provides for a number of offences against children, including assault (art. 212), cruelty (art. 213), “harsh or degrading correction or punishment” (art. 214) and battery (art. 215). Article 214 prohibits “harsh or degrading correction or punishment” in the home, schools and other institutions but does not cover all corporal punishment; it states that “any corrective measures shall be culturally appropriate and in



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accordance with rules framed for the discipline of children". The interpretation of article 215 on battery is unclear. Article 11 of the Act states that programmes and services established under the Act shall "be culturally appropriate including any rules that may be required for the discipline of children". Rules under the Child Care and Protection Act were drafted in 2014 and are silent on the issue of corporal punishment.

- 2.3 The Child Adoption Act 2012 states that "during the course of adoption, the child shall be protected from physical or psychological harm caused, or that may be caused, by being subjected or exposed to abuse, ill-treatment, violence or other behaviours" (art. 4). However, there is no mention of corporal punishment in the Act.
- 2.4 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under the provisions for the use of force for "discipline" in article 109 of the Penal Code 2004 (see under "Home"). The prohibition of "harsh and degrading correction or punishment" in the Child Care and Protection Act 2011 prohibits corporal punishment of a certain severity, but not all corporal punishment. Children without parental care are often sent to monastic institutions, where corporal punishment is discouraged but not prohibited by law (see under "Schools").
- 2.5 **Day care (lawful):** Corporal punishment is lawful in day care under the provisions for the use of force for "discipline" in article 109 of the Penal Code 2004 (see under "Home"). The prohibition of "harsh and degrading correction or punishment" in the Child Care and Protection Act 2011 prohibits corporal punishment of a certain severity, but not all corporal punishment.
- 2.6 **Schools (unlawful):** Corporal punishment is lawful in schools under article 109 of the Penal Code 2004 (see under "Home"). A number of non-legislative measures have been taken against corporal punishment in schools: a notification from the Ministry of Education in 1997 stated that it should not be used, confirmed in the Teacher and Student's Code of Conduct 1997 and subsequent administrative directives; corporal punishment is discouraged in schools in the promotion of Gross National Happiness; a resolution was adopted at the 11<sup>th</sup> Annual Education Conference in 2008 to enforce a ban on corporal punishment in schools, and guidance on school discipline was produced in 2011 to encourage positive non-violent forms of discipline. A new Education policy is being drafted, and there have also been reports of High Court decisions condemning corporal punishment of children in schools (information unconfirmed).<sup>2</sup> The Government stated in 2019 that corporal punishment in schools had been banned.<sup>3</sup> But there is no clear prohibition in law of all corporal punishment in schools, only of "harsh or degrading correction or punishment" in article 214 of the Child Care and Protection Act 2011 (see under "Home"). The Bhutan Education City Act 2012 is silent on the issue.
- 2.7 In monastic institutions, where children from the age of 6 are trained as monks and nuns and where orphaned and abandoned children are also sent, a decree of the *Je Khenpo* (the "chief abbot") reportedly states that corporal punishment should not be used.<sup>4</sup> In the 2013 Annual Conference of the Commission for Monastic Affairs in Bhutan, a resolution on Alternative Forms of Discipline was adopted and the Commission has been undertaking awareness programmes on the issue within monastic institutions.<sup>5</sup> But there is no clear prohibition in law.

<sup>2</sup> Communication with UNICEF Bhutan, August 2018

<sup>3</sup> 3 July 2019, A/HRC/42/8, Report of the Working Group, para. 73

<sup>4</sup> Government of Bhutan & UNICEF (2013), *A situation analysis of children, youth and women in Bhutan – 2012*

<sup>5</sup> [2014], CRC/C/BTN/3-5 Advance Unedited Version, Third-fifth state party report, para. 127



2.8 **Penal institutions ( ?unlawful):** Corporal punishment appears to be unlawful as a disciplinary measure in penal institutions under the Child Care and Protection Act 2011. Article 73 states: "Every child in conflict with the law shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 23 states: "Restraint or force shall be used only when the child poses an imminent threat of injury to oneself or others and only when all other means of control have been exhausted. The use of restraint or force shall never be used as a means of punishment." According to article 75 a child detained for an offence "shall be treated with respect and dignity". However, article 109 of the Penal Code 2004, providing for the use of force for the purpose of "discipline", potentially applies in penal institutions, and article 111 states: "A defendant, who is an authorized official of a prison or other correctional institution shall have the defence of justification, if the defendant uses force and: (a) the defendant believes that the force used is necessary to enforce the lawful rules or procedures of the institution; (b) the nature and degree of the force used is not otherwise forbidden by this Penal Code; (c) if deadly force used is justified under this Penal Code; and (d) the force used is no greater than that which is necessary." Article 2 of the Child Care and Protection Act states that legal provisions in conflict with its provisions are repealed, but we have yet to confirm that this would apply to the defences for the use of force in the Penal Code.

2.9 There is no provision for corporal punishment in the Prison Act 2009, though it does provide for solitary confinement and hard labour. Article 125 states that "instruments of restraint, such as chains and fetters, shall not be applied as a means of punishment".

2.10 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime. The Constitution 2008 prohibits cruel, inhuman or degrading treatment or punishment (art. 7(17)); the Child Care and Protection Act 2011 includes a similar provision (art. 73), makes no provision for corporal punishment as a sentence of the courts (Chapters 10 to 13) and states that force shall never be used as a means of punishment (art. 23).

### 3 Recommendations by human rights treaty bodies

3.1 **CRC:** On three occasions, the Committee on the Rights of the Child has recommended to Bhutan that legislation be enacted to explicitly prohibit corporal punishment in all settings: in its concluding observations on the state party's initial report in 2001,<sup>6</sup> on the state party's second report in 2008,<sup>7</sup> and on the state party's third-fifth report in 2017.<sup>8</sup>

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<sup>6</sup> 9 July 2001, CRC/C/15/Add.157, Concluding observations on initial report, paras. 40 and 41)

<sup>7</sup> 8 October 2008, CRC/C/BTN/CO/2, Concluding observations on second report, paras. 37 and 38

<sup>8</sup> 5 July 2017, CRC/C/BTN/CO/3-5, Concluding observations on third/fifth report, paras. 22, 38 and 39