

Corporal punishment of children in Bhutan: Briefing for the Universal Periodic Review, 33rd session, May 2019



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

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

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 still lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child.

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 2019 and make a specific recommendation that Bhutan enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal all legal defences for its use.

1 Review of Bhutan in the 2nd cycle UPR (2014) and progress since

- 1.1 Bhutan was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 19). The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information.² A recommendation to “consider prohibition of the use of corporal punishment of children in all settings” was made but the Government did not clearly accept or reject it, stating only that “a National Plan of Action for Child Protection is under implementation”.³
- 1.2 Since the review there has been no change in the legality of corporal punishment, although Bhutan received a third recommendation from the Committee on the Rights of the Child to enact prohibition in all settings.
- 1.3 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in Bhutan. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Bhutan enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal all legal defences for its use.**

¹ 24 February 2014, A/HRC/WG.6/19/BTN/2, Compilation of UN information, paras. 15 and 16

² 7 February 2014, A/HRC/WG.6/19/BTN/3, Summary of stakeholders' views, paras. 4, 5 and 6

³ 2 May 2014, A/HRC/WG.6/19.L.6, Advance Unedited Version, Draft report of the working group, para. 120(36); 17 September 2014, A/HRC/27/8/Add.1, Report of the working group: Addendum, para. 23

2 Legality of corporal punishment in Bhutan

Summary of current law and reforms needed to achieve prohibition

Corporal punishment in Bhutan is prohibited in the penal system but it is still lawful in the home, in alternative and day care settings, and in schools. Prohibition in penal institutions requires confirmation. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including the home, and all legal defences for its use, including in the Penal Code 2004, should be repealed.

- 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 At a meeting of the South Asia Forum in July 2006, following on from the regional consultation in 2005 of the UN Secretary General’s Study on Violence against Children, the Government made a commitment to prohibition in all settings, including the home. In 2010, Government representatives in SAIEVAC (South Asia Initiative to End Violence Against Children) developed a national action plan to achieve prohibition and in 2011 endorsed a report on progress towards prohibiting corporal punishment in South Asia states which included an analysis of the reforms required in Bhutan.⁴ However, subsequent law reform did not achieve full prohibition.
- 2.3 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 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.
- 2.4 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).
- 2.5 The Domestic Violence Prevention Act 2013 defines domestic violence as “violence against a person by another person with whom that person is, or has been in a domestic relationship” (art. 3). Violence is defined as “any act, omission or behaviour towards a person which results in physical, sexual, emotional or economic abuse”, and physical abuse is defined as including “any act or conduct of the defendant which: (a) causes bodily injury, pain, harm, or danger to life; (b)

⁴ SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

impairs the health or development of the victim; or (c) otherwise violates the dignity of the victim” (art. 4). It would appear that this could be interpreted as prohibiting all corporal punishment, but the Act is not clear in this respect and the protection for children is undermined by the provisions for the use of force in the Penal Code 2004 (see above). Rules under the Act came into effect in 2015.⁵ There is no mention of corporal punishment in the Rules – they only provide that “children experiencing domestic violence *on a recurrent basis* [be] registered ...” (emphasis added).

- 2.6 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. 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 below).
- 2.7 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. 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.
- 2.8 Schools (lawful):** Corporal punishment is lawful in schools under article 109 of the Penal Code 2004. 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 11th 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).⁶ 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. The Bhutan Education City Act 2012 is silent on the issue.
- 2.9** 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.⁷ 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.⁸ But there is no clear prohibition in law.
- 2.10 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

⁵ 15 July 2016, CEDAW/C/BTN/Q/8-9/Add.1, Reply to the list of issues on eighth/ninth report, paras. 34 and 35

⁶ Communication with UNICEF Bhutan, August 2018

⁷ Government of Bhutan & UNICEF (2013), *A situation analysis of children, youth and women in Bhutan – 2012*

⁸ [2014], CRC/C/BTN/3-5 Advance Unedited Version, Third-fifth state party report, para. 127

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.

- 2.11 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”.
- 2.12 **Sentence for crime (unlawful):** 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:** The Committee on the Rights of the Child has on three occasions recommended that corporal punishment of children in Bhutan be prohibited in all settings, including the home – in its concluding observations on the initial report in 2001, on the second report in 2008, and on the third/fifth report in 2017.⁹

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@encorporalpunishment.org

The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.

⁹ 9 July 2001, CRC/C/15/Add.157, Concluding observations on initial report, paras. 40 and 41; 8 October 2008, CRC/C/BTN/CO/2, Concluding observations on second report, paras. 37 and 38; 5 July 2017, CRC/C/BTN/CO/3-5, Concluding observations on third/fifth report, paras. 22, 38 and 39