

Corporal punishment of children in Botswana: Briefing for the Universal Periodic Review, 29th session, 2018

*From the Global Initiative to End All Corporal Punishment of
Children, June 2017*



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

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 Botswana, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Human Rights Committee and the Committee on the Elimination of Discrimination Against Women, as well as recommendations made during the 2nd cycle UPR of Botswana in 2013.

We hope the Working Group will note with concern the legality of corporal punishment of children in Botswana. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Botswana clearly prohibit all corporal punishment of children, however light, in every setting of their lives.

1 Review of Botswana in the 2nd cycle UPR (2013) and progress since

- 1.1 Botswana was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 15). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² The Government rejected several recommendations to prohibit it in all settings,³ in contradiction with its international obligations.
- 1.2 Despite the five recommendations on corporal punishment received by Botswana at its second cycle review in 2013, there was no change in its legality. The 2016 mid-term report refers to corporal punishment only to confirm its legality as a sentence for a crime: it does not seem the Government intends to start a reform process, having previously defended the use of corporal punishment, and there are currently no opportunities for law reform.⁴
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Botswana. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Botswana clearly prohibit all corporal punishment of children, however light, in every setting of their lives.**

¹ 9 November 2012, A/HRC/WG.6/15/BWA/2, Compilation of UN information, para. 20

² 29 October 2012, A/HRC/WG.6/15/BWA/3, Summary of stakeholders' views, paras. 15, 16 and 22

³ 22 March 2013, A/HRC/23/7, Report of the working group, paras. 116 and 117; 23 May 2013, A/HRC/23/7/Add.1, Report of the working group: Addendum, para. 30

⁴ [2016], National mid-term report, para. 12.7

2 Legality of corporal punishment in Botswana

Summary of current law and opportunities for achieving prohibition

In Botswana, corporal punishment is lawful in every setting of a child's life.

- 2.1 ***Home (lawful)***: Article 27(3)(h) of the Children's Act 2009 states that every parent has a duty to "respect the child's dignity and refrain from administering discipline which violates such dignity or adversely affects the physical, emotional or psychological well-being of the child or any other child living in the household". But article 27(5) states that this "shall not be construed as prohibiting the corporal punishment of a child in such circumstances or manner as may be set out in this Act, the Penal Code or any other law". There is a similar provision in article 61 of the Act, which prohibits "unreasonable" correction of a child – thereby allowing "reasonable" correction – and explicitly states that the article does not prohibit corporal punishment that is carried out lawfully. It puts a duty on the Minister to ensure parent education for "appropriate" discipline, but does not state that this should be non-violent.
- 2.2 ***Alternative care settings (lawful)***: Corporal punishment is lawful in alternative care settings under articles 27 and 61 of the Children's Act 2009.
- 2.3 ***Day care (lawful)***: Corporal punishment is lawful in day care under articles 27 and 61 of the Children's Act 2009.
- 2.4 ***Schools (lawful)***: Article 29 of the Education Act 1967 provides for the Minister to make regulations to prescribe "the conditions for the administration of corporal punishment". Article 2 of the Education (Corporal Punishment) Regulations 1968 states: "No corporal punishment shall be administered to any pupil (a) at any school; or (b) by any school teacher for anything done by the pupil at school or in respect of his schooling, unless the following conditions are complied with: (i) the punishment shall be administered either by the headmaster or by some other teacher in the presence of the headmaster; (ii) no instrument of punishment other than a light cane shall be used and no punishment shall exceed 10 strokes with the cane; (iii) no male teacher may inflict corporal punishment upon any girl whom he has grounds for believing is over the age of 10 years; (iv) no punishment shall be administered except for offences of a serious or repeated nature." Article 3 states that records must be kept of "the nature of the offence committed by the pupil, the number of strokes administered, the date of the punishment and the name of the person administering the punishment"; article 4 provides for a fine or imprisonment for contravention of the Regulations. Similar provisions can be found in the Education (Government and Aided Secondary Schools) Regulations 1978 and the Education (Primary Schools) Regulations 1980. Article 61 of the Children's Act also applies in schools.
- 2.5 ***Penal institutions (lawful)***: Corporal punishment is lawful as a disciplinary measure in penal institutions under the Prisons Act 1980 (arts. 109, 114 and 115), the Prisons Regulations 1965 (art. 18) and article 61 of the Children's Act 2009.
- 2.6 ***Sentence for crime (lawful)***: Corporal punishment is lawful as a sentence for crime for males. The Penal Code 1964 punishes a number of crimes with corporal punishment, including sexual offences and offences relating to murder, assault, robbery and travelling by train without a ticket (arts. 25, 28, 29, 142, 143, 146, 147, 148, 149, 155, 218, 225, 229, 247, 292, 293, 300, 301, 302, 303 and 316); for persons aged 14 and over, corporal punishment can be ordered in addition to or in lieu of imprisonment (art. 28(4)). The Magistrates' Courts Act 1974 authorises

all magistrates to impose a sentence of whipping (art. 60). The Customary Courts Act 1961 authorises customary courts to order corporal punishment, and they may, at their discretion, order this in addition to or in lieu of any other punishment (art. 18). Females may not be sentenced to corporal punishment (Penal Code, art. 28(3), Customary Courts Act, art. 18(2)). Under the Criminal Procedure and Evidence Act 1939, a court which convicts a person under 18 of an offence may in lieu of the stated punishment order him to be placed in the custody of a suitable person and to receive corporal punishment (art. 304(1)).

- 2.7 The Children's Act 2009 states that every magistrate's court is a children's court and shall hear and determine charges against children aged between 14 and 16 (article 36). Article 61 of the Act applies and article 85 states that a children's court may sentence a child to corporal punishment. According to article 90, it should be not more than six strokes and must be inflicted in accordance with article 305 of the Criminal Procedure and Evidence Act and article 28 of the Penal Code (see above). The Children's Act makes no reference to customary courts. According to one media report, corporal punishment is reportedly not allowed on juveniles under customary law but it is used nonetheless.⁵
- 2.8 Article 7 of the Constitution 1965 protects every person from inhuman or degrading punishment or treatment but states that "nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in the country immediately before the coming into operation of this Constitution".

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** In 2004, the Committee on the Rights of the Child expressed concern at the legality of corporal punishment in the home, schools and juvenile justice system and recommended that it be prohibited in law.⁶
- 3.2 **HRC:** The Human Rights Committee recommended the abolition of all forms of penal corporal punishment in Botswana in 2008.⁷
- 3.3 **CEDAW:** In 2010, the Committee on the Elimination of Discrimination Against Women recommended prohibition of corporal punishment in all settings.⁸

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

⁵ *The Monitor*, 24 August 2011, cited in African Child Policy Forum & Defence for Children International (2012), *Achieving Child Friendly Justice in Africa*

⁶ 3 November 2004, CRC/C/15/Add.242, Concluding observations on initial report, paras. 36 and 37

⁷ 24 April 2008, CCPR/C/BWA/CO/1, Concluding observations on initial report, para. 19

⁸ 26 March 2010, CEDAW/C/BOT/CO/3, Concluding observations on initial to third report, paras. 31 and 32