



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

BOTSWANA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 3rd session, 2008

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Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General's Study on Violence against Children, as a highly significant issue, both for asserting children's status as rights holders and for the prevention of all forms of violence.

The Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org) has been regularly briefing the Committee on the Rights of the Child on this issue since 2002, and 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. There is growing progress now across all regions in challenging this very common form of violence against children. But we are concerned that many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope that the UPR Process will give particular attention to states' response, or lack of response, to the concluding observations from treaty bodies, on this and other key issues.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies, and regional human rights mechanisms, have condemned all corporal punishment. In October 2006, the report of the UN Secretary General's Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment, setting a goal of 2009.

Summary

This briefing describes the legality of corporal punishment of children in Botswana, and the failure to rectify this in proposed draft legislation, despite the recommendations of the Committee on the Rights of the Child. We hope the Review will highlight with concern Botswana's disregard for the Committee's recommendations, and strongly recommend that Botswana introduce legislation as a matter of urgency to prohibit corporal punishment of children in all settings, including the home.

1 Legality of corporal punishment in Botswana

1.1 Corporal punishment of children by parents is lawful in the **home**. There is no defence of “reasonable chastisement” or similar enshrined in existing legislation but draft amendments to the Children Act, presented to Parliament in June 2008, recognise “reasonable” correction of a child by prohibiting only “correction which is unreasonable in kind or in degree” (section 84).

1.2 Corporal punishment is lawful in **schools** under the Education Act (Corporal Punishment) Regulations. The head teacher is authorised to inflict up to five strokes of the cane on a child, but this authority can be delegated to a teacher. Draft amendments to the Children Act confirm the right of teachers to administer “reasonable” correction.

1.3 In June 2007, the Education Secretary for Ngami region reported a Baseline Study which found that 92% of students had been beaten by school, and this was supported by 67% of parents.¹ In a survey by DITSHWANELO on corporal punishment in schools, 90% of respondents said they used corporal punishment on children.²

1.4 In the **penal system**, corporal punishment is lawful as a sentence for crime under the Penal Code, the Criminal Procedure and Evidence Act (article 305), the Customary Courts Act, and the Customary Courts Amendment Act. The Children’s Act (article 20) and the Prisons Act (sections 108 and 109) allow for corporal punishment as a disciplinary measure in penal and other institutions accommodating children in conflict with the law. As at May 2008, a proposed amendment to the Children’s Act would prohibit corporal punishment as a sentence of a children’s court, but this would not apply to customary courts.

1.5 The Children’s Act (article 20) allows for corporal punishment in children’s homes and industrial schools, and draft amendments to the Act confirm the right to administer “reasonable” correction in all **alternative care settings**.

2 Recommendations by human rights treaty monitoring bodies

2.1 In 2004, following examination of the state party’s initial report, the **Committee on the Rights of the Child** expressed “deep concern” at the use and legality of corporal punishment in the home, schools and the juvenile justice system (CRC/C/15/Add.242, para. 36). The Committee strongly recommended prohibition in all settings (para. 37).

¹ Reported in *Daily News*, 13 June 2007

² Correspondence with the Global Initiative, February 2006