

BOTSWANA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 15th session, 2013

*From Dr Sharon Owen, Research Coordinator, Global Initiative,
info@endcorporalpunishment.org*



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

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.

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 also 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 as a matter of priority.

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 in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in Botswana, despite recommendations to prohibit it by the Committee on the Rights of the Child and other treaty bodies and during the initial UPR in 2008.

We hope the Human Rights Council will note with concern the legality of corporal punishment in Botswana and the Government’s continued defence of it. We hope states will raise the issue during the review in 2013 and recommend to Botswana that legislation is enacted to explicitly prohibit corporal punishment of children in all settings, including the home, schools and as a sentence of the courts, as a matter of urgency.

1 The initial review of Botswana by the Human Rights Council (2008)

1.1 Botswana was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 3). The issue of corporal punishment was raised in an advance question by Sweden and was included in the compilation of UN information¹ and the summary of stakeholders' information.² The following recommendations were made:

“Continue to incorporate the provisions of the Convention on the Rights of the Child into domestic legislation, especially article 19(1), in relation to deep concerns about the corporal punishment of children (Chile); consider changing legislation to expressly prohibit all forms of corporal punishment in all settings (at home, in schools and in other institutions) and conduct awareness-raising efforts to change the public's attitude to corporal punishment (Slovenia); to continue efforts to eliminate corporal punishment (Brazil, Sweden), especially in schools (Sweden); to put an end, de jure and de facto, to the practice of corporal punishments in traditional judicial systems (France)”³

1.2 The Government rejected these recommendations, stating: “The Government ... has no plans to eliminate corporal punishment, contending that it is a legitimate and acceptable form of punishment, as informed by the norms of society. It is administered within the strict parameters of legislation in the frame of the Customary Courts Act, the Penal Code and the Education Act.”⁴

1.3 However, the Government accepted the following recommendations:

“Continue to incorporate the provisions of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child into national legislation (Cuba); take further measures to adopt legislation ensuring the implementation of the Convention, in particular in the area of violence prevention and sexual exploitation of children (Czech Republic, Argentina) and ensure girls are protected from sexual abuse (Argentina)”⁵

1.4 During the review the Government drew attention to draft legislation (the Children's Bill) which, it said, would incorporate all the provisions of the Convention on the Rights of the Child – but at the same time reaffirmed and defended the legality of corporal punishment in homes, schools and the penal system.⁶

1.5 Enacting legislation to prohibit corporal punishment of children in all settings – the home, schools, penal system and care settings – is an immediate obligation under the Convention on the Rights of the Child and other human rights treaties. The Children's Act (2009) enacted shortly after Botswana's initial UPR in 2008, failed to prohibit corporal punishment in any setting: on the contrary, it expressly authorises corporal punishment of children, including as a sentence of the courts (see below).

2 Legality of corporal punishment in Botswana

2.1 Corporal punishment is lawful in the **home**. 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

¹ 2 October 2008, A/HRC/WG.6/3/BWA/2, Compilation of UN information, para. 17

² 15 September 2008, A/HRC/WG.6/3/BWA/3, Summary of stakeholders' information, paras. 7, 8 and 11

³ 13 January 2009, A/HRC/10/69, Report of the Working Group, para. 92(20)

⁴ 17 March 2009, A/HRC/10/69/Add.1, Report of the Working Group: Addendum

⁵ 13 January 2009, A/HRC/10/69, Report of the Working Group, para. 92(13)

⁶ 13 January 2009, A/HRC/10/69, Report of the Working Group, paras. 12 and 41, cf paras. 9, 13 and 46

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 Corporal punishment is lawful in **schools** under the Education Act (1967, article 29), the Education (Corporal Punishment) Regulations (1968), the Education (Government and Aided Secondary Schools) Regulations (1978, articles 21-26), the Education (Primary Schools) Regulations (1980, articles 25-30) and the Education (Private Primary Schools) Regulations (1991, articles 11-12). Article 61 of the Children’s Act also applies (see above).

2.3 In the **penal system**, corporal punishment is lawful as a sentence for crime for males. The Penal Code 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; for boys aged 14 and over, corporal punishment can be ordered in addition to or in lieu of imprisonment (article 28(4)). The Magistrates’ Courts Act authorises all magistrates to impose a sentence of whipping (article 60). The Customary Courts Act 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 (article 18). Females may not be sentenced to corporal punishment (Penal Code, article 28(3), Customary Courts Act, article 18(2)). Under the Criminal Procedure and Evidence Act, 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 (article 304(1)).

2.4 Boys may be sentenced to receive up to six strokes (Penal Code, article 28). They must be certified fit to receive the punishment by a medical officer, and the punishment should be inflicted in the presence of a medical officer who must intervene if he considers the boy is not fit to continue (Criminal Procedure and Evidence Act, article 305). Under the Criminal Procedure (Corporal Punishment) Regulations (1969), the implement used for boys under 18 must be 0.914m long and 9.525mm diameter (article 2); the caning should be administered on the bare buttocks (article 3). It must not be carried out in instalments, and must be inflicted privately in a prison or in a customary court (Criminal procedure and Evidence Act, article 305; Corporal Punishment (Designation of Places for Administering) Order 1982, article 2); the court may direct where the punishment should take place and who should administer it, and the parent/guardian has a right to be present (Criminal Procedure and Evidence Act, article 305). In a customary court, corporal punishment should be inflicted with a cane or a thupa and on the buttocks only, with protection placed over the kidneys (Customary Courts (Corporal Punishment) Rules 1972, articles 2 and 3).

2.5 Article 85 of the Children’s Act 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).

2.6 Corporal punishment is lawful as a disciplinary measure in penal institutions under the Prisons Act (1980, articles 109, 114 and 115), the Prisons Regulations (1965, article 18) and article 61 of the Children's Act (see above).

2.7 With regard to **alternative care settings**, corporal punishment is lawful under articles 27 and 61 of the Children's Act (see above).

3 Recommendations by human rights treaty monitoring bodies

3.1 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.⁷

3.2 The **Human Rights Committee** recommended the abolition of all forms of penal corporal punishment in Botswana in 2008.⁸

3.3 In 2010, the **Committee on the Elimination of Discrimination Against Women** recommended prohibition of corporal punishment in all settings.⁹

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@encorporalpunishment.org
July 2012

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

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

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