

BHUTAN

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 19th session, 2014

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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 Bhutan, corporal punishment of children is lawful, despite the repeated recommendations to prohibit it by the Committee on the Rights of the Child and during the first cycle UPR in 2009.

We hope the Working Group will note with concern the legality of corporal punishment in Bhutan. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted in Bhutan to explicitly prohibit corporal punishment of children in all settings, including the home, as a matter of priority.

1 The initial review of Bhutan by the Human Rights Council (2009)

1.1 Bhutan was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 6). The issue of corporal punishment was included in the compilation of UN information¹ and in the summary of stakeholders' information² and was raised in an advance question.³ The following recommendation was made:⁴

“Prohibit corporal punishment of children at home (Slovenia)”

1.2 The Government did not categorically accept or reject the recommendation but stated that existing legislation adequately addresses corporal punishment in the home, that the Child Care and Protection Bill would strengthen this, and that no new legislation on corporal punishment was being considered.⁵

¹ 18 September 2009, A/HRC/WG.6/6/BTN/2, Compilation of UN information, para. 25

² 8 September 2009, A/HRC/WG.6/6/BTN/3, Summary of stakeholders' information, para. 15

³ Advance Question by the Czech Republic

⁴ 4 January 2010, A/HRC/13/11, Report of the working group, para. 101(41)

⁵ 4 January 2010, A/HRC/13/11, Report of the working group, para. 101(41); 10 March 2010, A/HRC/13/11/Add.1, Report of the working group: Addendum, para. 41

1.3 The obligation to reform the law to prohibit corporal punishment, including in the home, is one frequently ignored or evaded by governments. The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. It is not uncommon for states to assert that existing legislation adequately protects children from corporal punishment when, in fact, the law explicitly or implicitly condones a degree of violent punishment in childrearing. **It is for these reasons that we respectfully urge members of the Working Group to specifically recommend prohibition of corporal punishment in the review of Bhutan.**

2 Legality of corporal punishment in Bhutan

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

2.3 ***Schools (lawful)***: Corporal punishment is lawful in schools under article 109 of the Penal Code 2004 (see para. 2.1), though corporal punishment which reaches a certain degree of severity is unlawful under the prohibition of “harsh or degrading correction or punishment” in article 214 of the Child Care and Protection Act 2011.

2.4 ***Penal system – sentence for crime (unlawful)***: There is no provision for judicial corporal punishment in criminal law.

2.5 ***Penal system – disciplinary measure in penal institutions (?unlawful)***: Corporal punishment appears to be unlawful under the Child Care and Protection Act 2011, but it is not explicitly prohibited. Article 111 of the Penal Code 2004 provides a justification for the use of force by “an authorized official of a prison or other correctional institution” in certain circumstances – if “the defendant believes that the force used is necessary to enforce the lawful rules or procedures of the institution”, “the nature and degree of the

force used is not otherwise forbidden by this Penal Code” and “the force used is no greater than that which is necessary”.

2.6 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under article 109 of the Penal Code 2004 (see para. 2.1). The prohibition of “harsh and degrading correction or punishment” in the Child Care and Protection Act 2011 prohibits some but not all corporal punishment.

3 Recommendations by human rights treaty monitoring bodies

3.1 **CRC:** The Committee on the Rights of the Child has twice 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 and on the second report in 2008.⁶

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 in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

⁶ 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