

Corporal punishment of children in Bhutan



Global Initiative to
End All Corporal Punishment
of Children

Report prepared by the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), last updated April 2015

Child population

256,070 (UNICEF, 2013)

Bhutan is committed to reforming its laws to prohibit corporal punishment in all settings.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools and possibly penal institutions.

Articles 109 and 111 of the Penal Code 2004 provide a defence for the use of force by parents and others in disciplining children. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no degree or kind of corporal punishment is lawful, however light. These articles should be explicitly repealed and corporal punishment prohibited in all settings, including the family home.

Alternative care settings – Corporal punishment should be prohibited in all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Corporal punishment should be explicitly prohibited in all education settings, including public and private.

Penal institutions – Corporal punishment should be prohibited as a disciplinary measure in all institutions accommodating children in conflict with the law.

Detailed country report

Current legality of corporal punishment

Home

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.”

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.¹ However, recent law reform has not achieved full prohibition.

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: we have yet to obtain the full text but the Rules are reportedly silent on the issue of corporal punishment.²

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).

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) 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 are being drafted: we do not know if prohibition of corporal punishment is being proposed in this context.

Alternative care settings

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 (see under “Home”). 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 under “Schools”).

Day care

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 (see under “Home”). 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.

¹ SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

² Information provided to the Global Initiative, November 2014

Schools

Corporal punishment is lawful in schools under article 109 of the Penal Code 2004 (see under “Home”). A notification from the Ministry of Education in 1997 stated that corporal punishment 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. Corporal punishment which reaches a certain degree of severity is prohibited under article 214 of the Child Care and Protection Act 2011 (see under “Home”).

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 used³ but there appears to be no prohibition in law.

Penal institutions

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 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.

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”.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. 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 Government of Bhutan & UNICEF (2013), *A situation analysis of children, youth and women in Bhutan – 2012*

Universal Periodic Review

Bhutan was examined in the first cycle of the Universal Periodic Review in 2009 (session 6). The following recommendation was made:⁴

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

The Government 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

Examination in the second cycle took place in 2014 (session 19). The following recommendation was made:⁶

“Consider prohibition of the use of corporal punishment of children in all settings (Zambia)”

The Government did not clearly accept or reject the recommendation, stating only that “a National Plan of Action for Child Protection is under implementation”.⁷

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(8 October 2008, CRC/C/BTN/CO/2, Concluding observations on second report, paras. 37 and 38)

“The Committee, while noting that the State party is undertaking measures to promote alternative forms of disciplining, is concerned that corporal punishment has yet to be prohibited at home, in schools and in alternative care settings, including monasteries. The Committee is concerned that corporal punishment is still practiced.

“The Committee recommends that the State party:

- a) adopt legislation as soon as possible, explicitly prohibiting all forms of corporal punishment of children in all settings, including the home;
- b) take all measures to ensure the enforcement of the law, conduct capacity building of professionals working with children, carry out awareness raising and public education campaigns against corporal punishment and promote non-violent, participatory methods of childrearing and education, while taking into account the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.”

Committee on the Rights of the Child

(9 July 2001, CRC/C/15/Add.157, Concluding observations on initial report, paras. 40 and 41)

“Noting the respect for children in Bhutan, the Committee is concerned that there is insufficient information and awareness of the ill-treatment of children in schools and within the family.

“The Committee recommends that the State party: ...

- b) take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children in the family, schools, and in institutions;

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

⁶ 2 May 2014, A/HRC/WG.6/19.L.6, Advance Unedited Version, Draft report of the working group, para. 120(36)

⁷ 17 September 2014, A/HRC/27/8/Add.1, Report of the working group: Addendum, para. 23

c) carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment....”

Prevalence/attitudinal research in the last ten years

A situation analysis by UNICEF published in 2012 reported that corporal punishment is "quite commonly" inflicted on children at home, in schools, in the workplace and in other settings. In focus group discussions, parents and children often accepted beating as an element of school discipline.

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

An assessment in 2010 by a an "Eleven-Expert Committee" for the National Commission for Women and Children (NCWC), supported by UNICEF, of the situation of young monks and nuns in their respective regions found that physical punishment (spanking, beating and whipping) was used as a last resort in around 10% of monastic institutions. Most were also using alternative, non-violent forms of discipline.

(National Commission for Women and Children (NCWC) (2011), *Report of Assessment of situation of Young Monks and Nuns in Monastic Institutions by the Eleven Expert Committee Members*)

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April 2015