

# **Corporal punishment of children in Botswana: Briefing for the Universal Periodic Review, 43rd session, April/May 2023**



*From the Global Partnership to End Violence Against Children,  
September 2022*

This submission provides an update on the legality of corporal punishment of children in Botswana since its review in the third cycle UPR in 2018. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care, schools, penal institutions and as a sentence for crime.

**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 recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies, and during the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> cycle UPR of Botswana, respectively in 2008, 2013 and 2018, mainly rejected by the Government of Botswana.**

**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 next year and make a specific recommendation that Botswana enact a legislation to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.**

## **1 Review of Botswana in the 3<sup>rd</sup> cycle UPR (2018) and progress since**

1.1 Botswana was reviewed in the third cycle of the Universal Periodic Review in 2018 (session 29). Recommendations to prohibit corporal punishment in all settings were

<sup>1</sup> 11 April 2018, A/HRC/38/8, Report of the working group, paras. 129(41), 129(42), 129(43) and 129(44)

made<sup>1</sup> and noted (rejected) by the Government. The Government of Botswana clarified that “noted’ recommendations are those Botswana has taken some steps in but not fully implemented the recommendations or is unable to implement the recommendation within this reporting period.”<sup>2</sup>

- 1.2 Following the review, no legislation to explicitly prohibit corporal punishment of children in all settings seems to have been adopted.
- 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 2023 and make a specific recommendation that Botswana intensify its efforts to enact a law to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.**

## 2 Legality of corporal punishment in Botswana

### ***Summary of current law and opportunities for achieving prohibition***

Corporal punishment of children in Botswana is lawful in the home, alternative care settings, day care, schools, penal institutions and as a sentence for crime.

Article 61 of the Children’s Act prohibits only “unreasonable” correction of a child by parents, thereby allowing “reasonable” correction; articles 27 and article 61 expressly state that the legal provisions protecting a child’s dignity and prohibiting cruel treatment do not preclude the use of corporal punishment. These articles should be repealed and replaced by prohibition of all corporal punishment and other cruel and degrading treatment of children.

- 2.1 **Home (lawful):** 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 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”.
- 2.2 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. Article 61 in its entirety states: “(1) No person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment. (2) No person shall subject a child to correction which is unreasonable in kind or in degree relative to the age,

<sup>1</sup> 11 April 2018, A/HRC/38/8, Report of the working group, paras. 129(41), 129(42), 129(43) and 129(44)

<sup>2</sup> 2 May 2018, A/HRC/38/8/Add.1, Report of the working group: Addendum

physical and mental condition of the child and which, if the child by reason of tender age or otherwise is incapable of understanding the purpose and fairness thereof. (3) The provisions of this section shall not be construed as prohibiting the corporal punishment of children in such circumstances or manner as may be set out in this Act or any other law. (4) The Minister shall cause to be put in place parental guidance programmes aimed at developing the capacity of parents to discipline and guide their children appropriately."

2.3 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under articles 27 and 61 of the Children's Act 2009 (see under "Home").

2.4 **Day care (lawful):** Corporal punishment is lawful in day care under articles 27 and 61 of the Children's Act 2009 (see under "Home").

2.5 **Schools (lawful):** Corporal punishment is lawful in schools. 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.

2.6 The above mentioned regulations do not apply to secondary school which are Government schools or aided schools. In these schools, corporal punishment is regulated by the Education (Government and Aided Secondary Schools) Regulations 1978. Corporal punishment shall be administered "only on reasonable grounds and only where it appears that other disciplinary measures would be inadequate or ineffective in the circumstances of the case" (art. 21); it shall be administered by "the headmaster, a teacher or boarding master or matron or parent to whom authority to administer corporal punishment has been delegated by the headmaster; or such other person as the Permanent Secretary may, in writing, in special circumstances, authorize" and, where practicable, in the presence of another member of staff (art. 22). According to article 23: "(1) Corporal punishment shall be moderate and reasonable in nature and shall be administered only on the palms of the hands or across the buttocks with a light cane not more than 1 m long and at the thickest end not more than 1 cm in diameter or with a suitable strap, and no punishment shall exceed five strokes with the cane or strap. (2) No male teacher, except the headmaster, shall inflict corporal punishment upon a female pupil." A record of the punishment must be kept (art. 24) and contravention of the regulations is punishable with a fine or imprisonment (art. 25).

2.7 In primary schools, corporal punishment is regulated by the Education (Primary Schools) Regulations 1980. Here corporal punishment may be administered "for a breach of good order or discipline by the pupil" but not for "backwardness, lack of understanding or inability to do school work or to do it properly" (art. 26) and with the restrictions set out in article 27: "No headteacher or other teacher shall administer corporal punishment to a pupil unless each of

the following conditions is observed- (a) the punishment will, in the opinion of the person administering it, tend to reform the pupil; (b) the person administering the punishment shall be satisfied that it will not worsen any mental or physical disability from which he has reason to believe the pupil suffers; (c) the punishment shall not be administered with any instrument other than a light thupa; (d) the punishment shall not be administered with such severity as to break the skin of the pupil; (e) the punishment shall not be administered to any part of the pupil's body other than, in the case of a boy, his palms or buttocks or the back of his legs or, in the case of a girl, her palms or calves; (f) the punishment shall not exceed three strokes." In addition, under article 28 "where, in the opinion of the headteacher, a pupil is guilty of a serious breach of good order or discipline, the headteacher may administer corporal punishment to the pupil not exceeding five strokes or cause such punishment to be administered to the pupil in his presence by some other teacher". When the punishment exceeds three strokes it must be recorded in the Punishments Register (art. 29). Contravention of the regulations is punishable by fine or imprisonment (art. 30). There are similar provisions in the Education (Private Primary Schools) Regulations 1991 (arts. 11-12). Article 61 of the Children's Act (see under "Home") also applies in schools.

2.8 The Education Act is under review, with the new Education Bill under consultations. It has been proposed to prohibit corporal punishment in schools, but it was reported that most stakeholders consulted were against prohibition.<sup>3</sup> In August 2018, delegates of the Botswana Sectors of Educators Trade Union rejected a motion to prohibit corporal punishment in schools, reportedly arguing that it was an effective and adequately regulated means of discipline.<sup>4</sup> The Government reported in May 2019 that consultations were underway to "consider the total prohibition of corporal punishment in schools".<sup>5</sup>

2.9 **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 (see under "Home"). The Prisons Act is under review.<sup>6</sup>

2.10 **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)).

2.11 Boys may be sentenced to receive up to six strokes (Penal Code, art. 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, art. 305). Under the Criminal Procedure

<sup>3</sup> [September 2017], CRC/C/BWA/2-3, Second-third report, paras. 89, 94 and 218

<sup>4</sup> See <https://thevoicebw.com/bosetu-rejects-abolition-of-corporal-punishment/>, accessed 10 August 2018

<sup>5</sup> 14 May 2019, CRC/C/BWA/Q/2-3/Add.1, Reply to list of issues, para. 36

<sup>6</sup> 6 November 2017, A/HRC/WG.6/29/BWA/1, National report, para. 102

(Corporal Punishment) Regulations 1969, the implement used for males under 18 must be 0.914m long and 9.525mm diameter (art. 2). The caning should be administered on the bare buttocks (art. 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, art. 2); for a person under 18, 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, art. 305). In a customary court, the law states that 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, arts. 2 and 3).

2.12 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 (see under "Home") 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.<sup>7</sup>

2.13 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:** On two occasions, the Committee on the Rights has recommended to Botswana that legislation be enacted to explicitly prohibit corporal punishment in all settings: in its concluding observations on the state party's initial report<sup>8</sup> in 2004 and on the second-third report in 2019.<sup>9</sup>

3.2 **CAT:** In its concluding observations on the state party's initial report, the Committee Against Torture recommended that legislation be enacted to explicitly prohibit corporal punishment in all settings and adopt any domestic legislation that is needed to prevent corporal punishment.

3.3 **CEDAW:** On two occasions, the Committee on the Elimination of Discrimination Against Women that Botswana prohibit corporal punishment in all settings, in its concluding observations on the state party's initial to third report in 2010<sup>10</sup> and on the fourth report in 2019.<sup>11</sup>

3.4 **HRC:** In its concluding observations on the state party's initial report,<sup>12</sup> the Human Rights Committee recommended that the Government abolish all forms of penal corporal

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<sup>7</sup> *The Monitor*, 24 August 2011, cited in African Child Policy Forum & Defence for Children International (2012), *Achieving Child Friendly Justice in Africa*

<sup>8</sup> 3 November 2004, CRC/C/15/Add.242, Concluding observations on initial report, paras. 36 and 37

<sup>9</sup> 26 June 2019, CRC/C/BWA/CO/2-3, Concluding observations on the second/third report, paras. 35, 66 and 67

<sup>10</sup> 26 March 2010, CEDAW/C/BOT/CO/3, Concluding observations on initial to third report, paras. 31 and 32

<sup>11</sup> 14 March 2019, CEDAW/C/BWA/CO/4, Concluding observations on fourth report, paras. 33 and 34

<sup>12</sup> 24 April 2008, CCPR/C/BWA/CO/1, Concluding observations on initial report, para. 19

punishment.

*Briefing prepared by End Corporal Punishment on behalf of the Global Partnership to End Violence Against Children*

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