

**BRIEFING ON NEPAL FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
PRESESSIONAL WORKING GROUP – September 2014**

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**This briefing describes the legality of corporal punishment of children in Nepal. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, the repeated recommendations to prohibit made by the Committee on the Rights of the Child and other treaty bodies, the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, Nepal’s publicly stated commitment to full prohibition and law reform currently under way, we hope the Committee will:**

* **in its List of Issues for Nepal, raise the issue of corporal punishment of children, in particular asking what steps are being taken to ensure that all corporal punishment, without exception, is explicitly prohibited in the home and all other settings?**
* **in its concluding observations on Nepal’s third to fifth report, recommend that legislation is enacted to prohibit all corporal punishment in the home and all other settings as a matter of urgency, and that prohibition is enforced through appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

**1 Nepal’s report to the Committee on the Rights of the Child**

1.1 In its third to fifth report to the Committee, the Government states that the Domestic Violence (Offence and Punishment) Act 2009 and its Regulation 2010 prohibit all forms of domestic violence against family members including “acts of reprimand or emotional harm”, that corporal punishment is banned in alternative care settings, and that an Education Bill has been drafted which proposed prohibition in schools.[[1]](#footnote-1)

1.2 The above mentioned domestic violence law does not explicitly prohibit all forms of corporal punishment and the Education Bill fell in 2012 before Parliament was dissolved. There have been moves towards drafting prohibiting legislation following a significant Supreme Court ruling in 2004 (see para 3.2, below) and public statements of commitment to full prohibition, but to date law reform to prohibit all corporal punishment has not been achieved.

**2 Nepal’s commitment to prohibiting corporal punishment and moves towards law reform**

2.1 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. 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 Nepal.[[2]](#footnote-2) The National Child Policy adopted in 2012 states that legislation will be enacted to prohibit corporal punishment in all settings (s8.25).

2.2 A new Child Rights Bill was tabled in Parliament in 2012 which prohibits all kinds of violence against children, including physical and mental punishment (art. 76); it has not yet been enacted. But a draft Civil Code is also under discussion which includes a provision permitting the use of corporal punishment by parents. A new Constitution is being drafted and a draft Penal Code is also under consideration. When examined by the UN Human Rights Committee in 2014, the Government replied to a question about progress towards prohibiting all corporal punishment by asserting that it is unlawful under existing law, but it also stated that “the government expedites the process of amending the relevant provisions of the Children Act and other laws to ensure full compliance with article 19 of the Convention on the Rights of the Child”.[[3]](#footnote-3)

**3 The current legality and practice of corporal punishment of children in Nepal**

3.1 ***Summary:*** Corporal punishment of children in Nepal is unlawful as a sentence for crime, but despite a 2004 Supreme Court ruling against beating of children, legislation does not prohibit corporal punishment in the home, alternative care settings, day care, schools or penal institutions.

3.2 ***Home (lawful):*** Article 7 of the Children Act 1992 states: “No child shall be subjected to torture or cruel treatment. Provided that, the act of scolding and minor beating to the child by his father, mother, member of the family, guardian or teacher for the interests of the child shall himself not be deemed to violate the provision of this section.” Following a writ petition filed by the Centre for Victims of Torture in Nepal on 16 June 2004, the Supreme Court ruled that the restrictive clause in article 7 was unconstitutional and, in accordance with article 88 of the then Constitution 1990, declared the portion “or give him/her minor beating” null and void with immediate effect.[[4]](#footnote-4) The judgment also issued a directive to the Government “to pursue appropriate and effective measures to prevent physical punishment as well as other cruel, inhuman or degrading treatment or punishment or abuse being imposed or inflicted on and likely to be imposed or inflicted on children”. However, there is also a legal defence for parental corporal punishment in Chapter 9 of the *Muluki Ain* 1963 (General Code), which punishes hurt and battery but states in article 4: “... if a person, who has a duty to protect or give education to somebody else, causes injury to the victim upon using a reasonable minimum amount of force, the act of causing injury shall not be deemed to be the offence of hurt in all these situations.” The Domestic Violence (Offence and Punishment) Act 2009 is not interpreted as prohibiting all corporal punishment in childrearing.

3.3 ***Alternative care settings (lawful):***The legal defence in the Children Act was removed by the 2005 Supreme Court decision but this has not been confirmed in legislation and article 4 of Chapter 9 of the *Muluki Ain* allowing the use of “reasonable” force applies (see para. 3.2, above). Article 39 of the Children Act 1992 states that the powers of the chief of a children’s welfare home to punish a child do not include “to batter or detain the child in solitary confinement or to stop giving food and water to such child”, but does not prohibit all corporal punishment. Corporal punishment should not be used in residential institutions according to the Standards for Operation and Management of Residential Child Care Homes 2012 but there is no prohibition in law.

3.4 ***Day care (lawful):*** The legal defence in the Children Act was removed by the 2005 Supreme Court decision but this has not been confirmed in legislation and article 4 of Chapter 9 of the *Muluki Ain* allowing the use of “reasonable” force potentially applies (see para. 3.2, above). Interview research in 2008 in 71 child centres found that punishments included hitting children, isolating them, locking them in the toilet, public humiliation, and forcing them to clean floors and toilets.[[5]](#footnote-5)

3.5 ***Schools (lawful):*** There is no explicit prohibition of corporal punishment in schools in the Education Act 1971 or the Education Regulation 2003, though severe punishment would be prohibited under article 7 of the Children Act 1992 (see para. 3.2). The legal defence available to teachers in the Children Act was removed in 2005 by the Supreme Court ruling already noted but this has not been confirmed in legislation and the legal defence for the use of “reasonable” force in the *Muluki Ain* applies. An Education Act Amendment Bill which would prohibit corporal punishment in schools was approved by cabinet and tabled in parliament in 2012 but failed to be endorsed before Parliament was dissolved. The Ministry of Education was planning to re-submit it to cabinet. Research reported in 2013 documented the use of corporal punishment in government and private schools in Kathmandu, including children being forced to hold their ears and sit up and down repeatedly, being beaten and being forced to maintain painful positions, having their ears or hair pulled, being forced to fight with a friend, being scolded, being hit with a stick or duster and being made to stand on a bench.[[6]](#footnote-6) Earlier research in Kathmandu schools found 82% of students had been physically punished in schools.[[7]](#footnote-7)

3.6 ***Penal institutions (lawful):***There is no explicit prohibition of corporal punishment; article 7 of the Children Act 1992 and the 2005 Supreme Court decision (see para. 3.2) presumably apply. Article 15 of the Children Act prohibits the use of handcuffs, fetters and solitary confinement of children but does not refer to corporal punishment. There is no provision for corporal punishment in the Prisons Act 1963.

3.7 ***Sentence for crime (unlawful):***There is no provision in law for judicial corporal punishment of children. The Abrogation of Some Criminal Cases and Remission of Punishment Act 1963 explicitly prohibited a number of cruel and humiliating punishments, including shaving the head of the offender, impaling/piercing the body, branding the body and forcing the offender to eat forbidden/inedible foods (art. 5). Maoist courts have been revived in a number of areas and sentences include physical punishment. However, this appears to be unlawful under article 100 of the Interim Constitution, which states that the powers of courts must be in accord with the Constitution and other laws.

**4 Recommendations by human rights treaty bodies and during the UPR**

4.1 ***CRC:*** The Committee on the Rights of the Child has twice recommended that corporal punishment of children in Nepal be prohibited and eliminated in the family and other settings – in its concluding observations on the initial report in 1996[[8]](#footnote-8) and on the second report in 2005.[[9]](#footnote-9)

4.2 ***HRC:*** In 2014, the Human Rights Committee recommended that steps, including legislative measures, be taken in Nepal to end corporal punishment of children in all settings.[[10]](#footnote-10)

4.3 ***UPR:*** Nepal’s UPR was held in 2011. No recommendations were made specifically on corporal punishment, but the Government accepted numerous recommendations concerned with strengthening protection for child rights including through law reform.[[11]](#footnote-11)

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. 23 December 2013, CRC/C/NPL/3-5, Third-fifth state party report, paras. 113, 114 and 218 [↑](#footnote-ref-1)
2. SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review* [↑](#footnote-ref-2)
3. 31 March 2014, CCPR/C/NPL/Q/Add.1, Reply to list of issues, para. 35 [↑](#footnote-ref-3)
4. *Mr Devendra Ale et al. v Office of the Prime Minister & Cabinet et al.*, Supreme Court decision 6 January 2005 [↑](#footnote-ref-4)
5. UNICEF & Terre des Hommes (2008), *Adopting the Rights of the Child: A study on intercountry adoption and its influence on child protection in Nepal* [↑](#footnote-ref-5)
6. Sanchar, H. et al (2013), *Physical Punishment at School: a Study (Summary)*, Save the Children Norway [↑](#footnote-ref-6)
7. Reported in *The Rising Nepal*, 24 December 2006 [↑](#footnote-ref-7)
8. 7 June 1996, CRC/C/15/Add.57, Concluding observations on initial report, paras. 10, 12, 19 and 34 [↑](#footnote-ref-8)
9. 21 September 2005, CRC/C/15/Add.261, Concluding observations on second and third combined report, paras. 47, 48 and 76 [↑](#footnote-ref-9)
10. [April 2014], CCPR/C/NPL/CO/2 Advance Unedited Version, Concluding observations on second report, para. 15 [↑](#footnote-ref-10)
11. 8 March 2011, A/HRC/17/5, Report of the working group, paras. 106(13), 106(14), 106(19), 107(18), 108(2), 108(4), 108(11), 108(14) and 108(20) [↑](#footnote-ref-11)