

**BRIEFING ON NEPAL FOR THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, PRE-SESSIONAL WORKING GROUP
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**This briefing describes the legality of corporal punishment of children in Nepal. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary-General’s Study on Violence against Children and the repeated recommendations made to Nepal by the Committee on the Rights of the Child, we hope the Committee on Economic, Social and Cultural Rights will:**

* **include the issue of corporal punishment of children in its List of Issues for Nepal, in particular asking what measures have been taken to ensure that the law explicitly prohibits corporal punishment – however light – in the home and all other settings, and**
* **recommend to Nepal, in the concluding observations on the third state party report, that legislation is enacted and enforced which explicitly prohibits all corporal punishment – without exception – in the home and all other settings as a matter of urgency, together with 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 Economic, Social and Cultural Rights**

1.1 The third state party report to the Committee on Economic, Social and Cultural Rights describes legislative measures to address domestic violence and harmful practices but makes no reference to corporal punishment of children – violence which may be lawfully inflicted in the guise of “discipline” – in the home or in any other setting.[[1]](#footnote-1)

**2 The legality and practice of corporal punishment of children in Nepal**

2.1 *Summary:* In Nepal, corporal punishment of children is unlawful as a sentence for crime but it is lawful in the home, alternative care settings, day care, schools and penal institutions.

2.2 *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.[[2]](#footnote-2) 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.”

2.3 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.[[3]](#footnote-3) The National Child Policy adopted in 2012 states that legislation will be enacted to prohibit corporal punishment in all settings (section 8.25). In 2011, a Bill on the Act Concerning Children, which would replace the Children Act 1992, was tabled in Parliament but has not been enacted (2013); the Bill includes prohibition of corporal punishment. 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 (2013).

2.4 *Alternative care settings (lawful):* The legal defence 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. 2.2). 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.

2.5 *Day care (lawful):* Corporal punishment is lawful in early childhood care and in day care for older children. The legal defence 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. 2.2). A 2008 study in 71 child centres found that punishments in child centres included hitting children, isolating them, locking them in the toilet, public humiliation, and forcing them to clean floors and toilets.[[4]](#footnote-4)

2.6 *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. 2.2). The legal defence available to teachers 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 (see para. 2.2). An Education 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. Survey research in schools in the Kathmandu Valley found that a large majority of the children had received corporal punishment at school, most commonly being forced to hold their ears and sit up and down repeatedly, being beaten and being forced to maintain painful positions; other punishments included 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.[[5]](#footnote-5)

2.7 *Penal institutions (lawful):* There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions, though article 7 of the Children Act 1992 and the 2005 Supreme Court decision (see para. 2.2) 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.

2.8 *Sentence for crime (unlawful):* There is no provision for judicial corporal punishment in criminal law. 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 (article 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. A new Constitution is yet to be drafted.

**3 Recommendations by human rights treaty bodies**

3.1 *CRC:* The Committee on the Rights of the Child has twice recommended to Nepal that corporal punishment of children be prohibited in the family and other settings – in its concluding observations on the initial report in 1996 and on the second/third report in 2005.[[6]](#footnote-6)

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

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1. 29 October 2012, E/C.12/NPL/3, Third state party report [↑](#footnote-ref-1)
2. *Mr Devendra Ale et al. v Office of the Prime Minister & Cabinet et al.*, Supreme Court decision 6 January 2005 [↑](#footnote-ref-2)
3. SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review* [↑](#footnote-ref-3)
4. 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-4)
5. Sanchar, H. et al (2013), *Physical Punishment at School: a Study (Summary)*, Save the Children Norway [↑](#footnote-ref-5)
6. 7 June 1996, CRC/C/15/Add.57, Concluding observations on initial report, paras. 10, 12, 19 and 34; 21 September 2005, CRC/C/15/Add.261, Concluding observations on second and third combined report, paras. 47, 48 and 76 [↑](#footnote-ref-6)