

Corporal punishment of children in Nepal: Briefing for the Universal Periodic Review, 23rd session, 2015

From Dr Sharon Owen, Research and Information Coordinator,
Global Initiative, sharon@endcorporalpunishment.org



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 Nepal, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and the Human Rights Committee and Nepal’s longstanding commitment to enacting prohibition.

We hope the Working Group will note with concern the legality of corporal punishment of children in Nepal. We hope states will raise the issue during the review in 2015 and make a specific recommendation that Nepal clearly prohibit all corporal punishment of children in all settings including the home and formally repeal the defences for its use in the Children Act and the *Muluki Ain*.

1 Review of Nepal in the 1st cycle UPR (2011) and progress since then

- 1.1 Nepal was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 10). The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders’ information.² No recommendations were made specifically on corporal punishment but the Government accepted a number of recommendations aimed at strengthening protection for children’s rights, including through legislative measures.³
- 1.2 Prohibiting and eliminating all corporal punishment of children in all settings including the home – through law reform and other measures – is a key obligation under the Convention on the Rights of the Child and other human rights instruments, though it is one frequently evaded by Governments. Since the initial UPR of Nepal in 2011, the legality of corporal punishment of children in Nepal has not changed, though bills have been drafted which reportedly include prohibition. Nepal has long been committed to prohibition.

2 Nepal’s commitment to prohibiting corporal punishment and progress to date

- 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

¹ 13 October 2010, A/HRC/WG.6/10/NPL/2, Compilation of UN information, para. 32

² 30 September 2010, A/HRC/WG.6/10/NPL/3, Summary of stakeholders’ information, paras. 24 and 31

³ 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)

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.⁴ A second report was published in 2014.⁵ The National Child Policy adopted in 2012 states that legislation will be enacted to prohibit corporal punishment in all settings (s8.25). In September 2014, the Ministry of Women, Children and Social Welfare launched the National Campaign against Corporal Punishment of Children in Nepal.⁶

- 2.2 In 2011, a Bill on the Act Concerning Children, which would replace the Children Act 1992 and which prohibits corporal punishment, was tabled in Parliament but has not been enacted. However, a draft Civil Code under discussion includes a provision permitting corporal punishment by parents. A new Child Rights Bill tabled in Parliament in 2012 prohibits all kinds of violence against children, including physical and mental punishment (art. 76), but again it has not been enacted. A new Constitution is being drafted and a draft Penal Code is also under consideration. **These law reforms provide key opportunities for prohibiting all corporal punishment of children in Nepal.**

3 Current legality of corporal punishment in Nepal

- 3.1 **Summary:** In Nepal, corporal punishment of children is unlawful as a sentence for crime but it is not prohibited by law in the home, alternative care settings, day care, schools and 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.⁷ 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.”
- 3.3 **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. 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.

⁴ SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

⁵ SAIEVAC (2014), *Prohibition of corporal punishment of children in South Asia: progress and proposals for reform 2014*

⁶ *ibid.*

⁷ *Mr Devendra Ale et al. v Office of the Prime Minister & Cabinet et al.*, Supreme Court decision 6 January 2005

- 3.4 **Day care (lawful)**: The legal defence for corporal punishment 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.
- 3.5 **Schools (lawful)**: There is no explicit prohibition of corporal punishment in the Education Act 1971 or the Education Regulation 2003, though severe punishment would be prohibited under article 7 of the Children Act 1992. 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. 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.
- 3.6 **Penal institutions (lawful)**: There is no explicit prohibition of corporal punishment, though article 7 of the Children Act 1992 and the 2005 Supreme Court decision 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 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 (art. 5).

4 Recommendations by human rights treaty monitoring bodies

- 4.1 **CRC**: The Committee on the Rights of the Child first raised the issue of corporal punishment in Nepal and recommended it be prohibited in the family and other settings in 1996.⁸ The Committee reiterated its concerns and again recommended prohibition in all settings in 2005.⁹
- 4.2 **HRC**: In 2014, the Human Rights Committee recommended to Nepal that measures be taken – including legislative measures – to end corporal punishment in all settings.¹⁰

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@endcorporalpunishment.org
 March 2015

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.

⁸ 7 June 1996, CRC/C/15/Add.57, Concluding observations on initial report, paras. 10, 12, 19 and 34

⁹ 21 September 2005, CRC/C/15/Add.261, Concluding observations on second and third combined report, paras. 47, 48 and 76

¹⁰ [April 2014], CCPR/C/NPL/CO/2 Advance Unedited Version, Concluding observations on second report, para. 15