



Global Initiative to  
**End All Corporal Punishment  
of Children**

## **NEPAL**

### **BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 10<sup>th</sup> session, 2011**

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*Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General's Study on Violence against Children, as a highly significant issue, both for asserting children's status as rights holders and for the prevention of all forms of violence.*

*The Global Initiative to End All Corporal Punishment of Children ([www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)) has been regularly briefing the Committee on the Rights of the Child on this issue since 2002, and 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. There is growing progress now across all regions in challenging this very common form of violence against children. But we are concerned that many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope that the UPR Process will give particular attention to states' response, or lack of response, to the concluding observations from treaty bodies, on this and other key issues.*

*In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies, and regional human rights mechanisms, have condemned all corporal punishment. In October 2006, the report of the UN Secretary General's Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.*

### **Summary**

**This briefing describes the legality of corporal punishment of children in Nepal despite the repeated recommendations of the Committee on the Rights of the Child. We hope the Review will highlight the importance of prohibiting all corporal punishment of children in all settings, including the home, and urge the Government to ensure that current legal reforms include explicit prohibition of all corporal punishment of children and the repeal of all legal defences for its use.**

## **1 Legality of corporal punishment in Nepal**

1.1 Corporal punishment is lawful in the **home**. Chapter 9 of the *Muluki Ain* (General Code) (1963) 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." Article 7 of the Children Act (1992, in force 1993) 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 (*Mr Devendra Ale et al v Office of the Prime Minister & Cabinet et al*, Supreme Court decision 6 January 2005). The judgment has not yet been confirmed through formally amending the legislation.

1.2 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. Amendments to the Children Act have been drafted, but we have no details. A Criminal Code and a Civil Code to replace the *Muluki Ain* have also been drafted, but we have no detailed information.

1.3 There is no explicit prohibition of corporal punishment in **schools**. In 2008, an Education Bill was under discussion which would have explicitly prohibited corporal punishment but as at July 2010 it appears not to have been enacted.

1.4 In the **penal system**, corporal punishment is unlawful as a sentence for crime for children up to 16 under the Children Act (articles 11 and 15). In 1964, the Act to Repeal Some Criminal Cases and Remitting Punishment abolished a number of cruel punishments including shaving of the head (*Mudne*), pricking with needles (*Khopne*), applying hot metals to the body (*Damal Garne*) and feeding faeces (*Abhaksha*). However, rural areas come increasingly under the jurisdiction of Maoist courts, where corporal punishment may be ordered as a sentence. Corporal punishment is lawful as a disciplinary measure in penal institutions. The Children Act prohibits the use of handcuffs, fetters and solitary confinement (article 15) but as at July 2010 there is no explicit prohibition of corporal punishment.

1.5 Corporal punishment is lawful in **alternative care settings**. Article 39 of the Children Act 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. Article 4 of Chapter 9 of the *Muluki Ain* also applies (see above).

## **2 Recommendations by human rights treaty monitoring bodies**

2.1 The **Committee on the Rights of the Child** has twice expressed concern about corporal punishment in the home and recommended prohibition – in concluding observations on the initial report in 1996 (CRC/C/15/Add.57, paras. 10, 12, 19 and 34) and on the second/third report in 2005 (CRC/C/15/Add.261, paras. 47, 48 and 76).