1 The human rights obligation to prohibit corporal punishment

1.1 The legality and practice of corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity and to equal protection under the law, and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment – rights guaranteed in the International Covenant on Civil and Political Rights and other international human rights instruments.

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, the repeated recommendations to Nepal by the Committee on the Rights of the Child, Nepal’s stated commitment to prohibition and the Government’s acceptance of relevant recommendations made during its Universal Periodic Review in 2011, we hope the Human Rights Committee will:

- raise the issue of corporal punishment of children in its List of Issues for Nepal, in particular asking what progress has been made towards enacting legislation to explicitly prohibit corporal punishment in all settings, including the home, and
- recommend to Nepal, following its examination of the state party’s second report, that legislation is enacted and enforced which explicitly prohibits corporal punishment in all settings, including the home, as a matter of priority, together with appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.
2 Legality of corporal punishment of children in Nepal

2.1 Corporal punishment of children in Nepal is unlawful as a sentence for crime but it is not prohibited in the home, schools, penal institutions and alternative care settings.

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. 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 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. The legal defence available to teachers was removed in 2005 by the above mentioned Supreme Court ruling but this has not been confirmed in legislation and the legal defence in the Muluki Ain applies.

2.4 Penal system – 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.

2.5 Penal system – disciplinary measure in penal institutions (lawful). There is no explicit prohibition of corporal punishment in penal institutions, though article 7 of the Children Act 1992 and the 2005 Supreme Court decision (see under “Home”) presumably apply. Article 15 of the Children Act prohibits the use of handcuffs, fetters and solitary confinement of children but does explicitly prohibit corporal punishment. There is no provision for corporal punishment in the Prisons Act 1963.

2.6 Alternative care settings (lawful). The above mentioned Supreme Court ruling gives children some protection but law reform is still to be achieved. 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

1 Mr Devendra Ale et al. v Office of the Prime Minister & Cabinet et al., Supreme Court decision 6 January 2005
punishment should not be used in residential institutions according to the Minimum Standards of Operations of Child Care Homes 2003 but there is no prohibition in law.

3 Nepal’s commitment to prohibition and progress towards law reform

3.1 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. The National Child Policy adopted in 2012 states that legislation will be enacted to prohibit corporal punishment in all settings (section 8.25).

3.2 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. However, a draft Civil Code is also under discussion which includes a provision permitting the use of corporal punishment by parents.

3.3 An Education Bill which would prohibit corporal punishment in schools was approved by cabinet and tabled in parliament in May 2012 but failed to be endorsed before Parliament was dissolved. In August 2012, the Ministry of Education was planning to re-submit it to cabinet.

3.4 We hope the Human Rights Committee will urge Nepal to prioritise the adoption of these Bills, ensuring that they explicitly prohibit all corporal punishment by all persons, without exception.

4 Recommendations by human rights treaty monitoring bodies and during the Universal Periodic Review

4.1 The Committee on the Rights of the Child first expressed concern at the legality and practice of corporal punishment in the family and other settings in Nepal in 1996. The Committee reiterated these concerns in 2005, recommending prohibition of corporal punishment in the family, schools and other institutions.

4.2 The first cycle Universal Periodic Review of Nepal took place in 2011 (session 10). No recommendations were made specifically on corporal punishment, but the Government accepted a number of recommendations to strengthen the protection and promotion of children’s rights, including through bringing domestic law into line with international human rights standards.

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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2 7 June 1996, CRC/C/15/Add.57, Concluding observations on initial report, paras. 10, 12, 19 and 34
3 21 September 2005, CRC/C/15/Add.261, Concluding observations on second and third combined report, paras. 47, 48 and 76
4 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)