

Corporal punishment of children in South Asia: Progress towards prohibition



Draft report on regional progress towards prohibiting corporal punishment in all settings for SAIEVAC review and endorsement and subsequent publication: not for circulation

- South Asia Initiative to End Violence against Children (SAIEVAC) •
- Global Initiative to End All Corporal Punishment of Children •
- Save the Children Sweden •



Published 2011 by:

Global Initiative to End All Corporal Punishment of Children www.endcorporalpunishment.org
and Save the Children Sweden www.savethechildren.se, [in association with South Asia Initiative to
End Violence Against Children (SAIEVAC) www.saievac.info]

Acknowledgements

Designed by Simon Scott

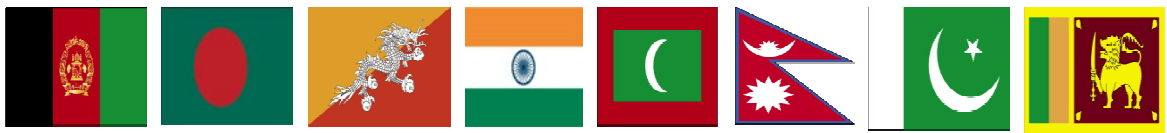
Printed in ??? by ????

Photographs from Save the Children Sweden. Note: The photographs of children are taken from across South Asia and as used in this report are not intended to represent any particular country.

The Global Initiative to End All Corporal Punishment of Children is administered by the Association for the Protection of All Children, APPROACH Ltd, a registered charity No. 328132. Registered office 94 White Lion Street, LONDON N1 9PF, UK.

CONTENTS

Foreword	2
1 The human rights imperative to prohibit corporal punishment	3
2 Global and regional progress towards prohibition	7
3 Regional commitments, action and opportunities	9
4 Legality of corporal punishment in the region: summary table ...	11
5 Country reports	12
AFGHANISTAN.....	12
BANGLADESH	14
BHUTAN.....	17
INDIA.....	19
MALDIVES	21
NEPAL	23
PAKISTAN	26
SRI LANKA.....	29
6 Resources to support law reform	31
7 Organisations campaigning for law reform	32



SOUTH ASIA INITIATIVE TO END VIOLENCE AGAINST CHILDREN (SAIEVAC)

Foreword

SAIEVAC builds on the strong commitments made by all SAARC Member States – Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka – to prohibit and eliminate all forms of violence against children and to implement fully the recommendations of the UN Study on Violence Against Children in South Asia.

An important work of SAIEVAC is to support governments to develop and enforce national legislative measures, in line with the UNCRC and other international and regional legal instruments and agreements, and to address key protection issues. Corporal punishment is one of them and affects millions of children in South Asia, making it one of the most common and socially accepted violations of child rights to protection. SAIEVAC’s objective is that “all States have identified the necessary actions and measures to prohibit all corporal punishment in all settings including law reform and are reinforcing positive parenting practices and positive classroom management programmes.”

In November 2010, SAIEVAC organised its “First SAIEVAC Technical Meeting on Legal Reform and Corporal Punishment” with the participation of government and key civil society representatives from all eight SAARC Member States as well as INGOs and UN agencies working on child protection in the region.

During the meeting, government and civil society representatives jointly developed national plans of action to ban corporal punishment in all settings. One year has passed since November 2010 and it is time to reflect on progress towards ending the legality and practice of corporal punishment and to assess current opportunities for progress.

Many countries have taken initiatives to address corporal punishment at various levels. Some countries have passed or are developing new laws to ban corporal punishment in some settings, in particular schools. But no South Asian country has legislation that bans corporal punishment in all settings and the reality of corporal punishment still affects millions of children – with harmful impacts on their development and wellbeing. The wide social acceptance of corporal punishment is among the biggest challenges and the path to complete elimination of corporal punishment is long, but there are also sources of hope.

SAIEVAC calls for a coordinated effort from all actors to address corporal punishment, using a holistic and coordinated approach, enacting laws, raising awareness and promoting positive parenting and teaching. SAIEVAC is happy to move forward now with the implementation of a regional campaign against corporal punishment across South Asia.

This report is a milestone and should serve as a baseline to assess progress.

With my warmest wishes,

Dr. Rinchen Chopel
Director General
SAIEVAC Secretariat

“Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies.”

Committee on the Rights of the Child, General Comment No. 8, para. 3

The human rights imperative to prohibit corporal punishment



The UN Convention on the Rights of the Child

It is now more than twenty years since the UN Convention on the Rights of the Child (UNCRC) came into force (1990) and almost that long since it was ratified by states in South Asia.¹ From the very beginning, the Committee on the Rights of the Child monitoring its implementation has been clear that compliance requires prohibition of corporal punishment. The Committee has systematically and repeatedly recommended that states parties prohibit corporal punishment in the home and other settings, to date (September 2011) making such recommendations to 162 states, including all in South Asia.

In the context of both accelerating progress towards prohibition in some states and confusion and even deliberate resistance to law reform in others, the Committee clarified the obligation of states to end corporal punishment of children through prohibition in law and other measures in General Comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)”.² The Committee adopted a comprehensive definition of corporal punishment (see box): there can be no justification for laws which condone any degree or form of corporal punishment in childrearing.

Similarly, the Committee makes clear that religious teachings condoning or promoting corporal punishment do not provide a justification for the failure of states to prohibit and eliminate it:

Defining corporal punishment

“The Committee defines ‘corporal’ or ‘physical’ punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking’, ‘slapping’, ‘spanking’) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”

(Committee on the Rights of the Child, General Comment No. 8, para. 11)

“Some raise faith-based justifications for corporal punishment, suggesting that certain interpretations of religious texts not only justify its use, but provide a duty to use it. Freedom of religious belief is upheld for everyone in the International Covenant on Civil and Political Rights (art. 18), but practice of a religion or belief must be consistent with respect for others’ human dignity and physical integrity. Freedom to practise one’s religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others. In certain States, the Committee has found that children, in some cases from a very young age, in other cases from the time that they are judged to have reached puberty, may be sentenced to punishments of extreme violence, including stoning and amputation, prescribed under certain interpretations of religious law. Such punishments plainly violate the Convention and other international human rights standards, as has been highlighted also by the Human Rights Committee and the Committee against Torture, and must be prohibited.” (para. 29)

In the same year as the General Comment was adopted, the final report and recommendations of the UN Study on Violence against Children were presented to the UN General Assembly.³ The Study highlighted the huge extent to which children are subjected to corporal punishment in their homes and other settings in all regions and recommended urgent law reform to prohibit it.

¹ Afghanistan 1994, Bangladesh 1990, Bhutan 1990, India 1992 (accession), Maldives 1991, Nepal 1990, Pakistan 1990, Sri Lanka 1991

² The General Comment is available at www2.ohchr.org/english/bodies/crc/comments.htm

³ The *World Report on Violence against Children* and the *UN Secretary-General’s Report on Violence against Children* can be downloaded at www.unviolencestudy.org

The South Asian Association for Regional Cooperation (SAARC) Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia reaffirms states' commitment to the UNCRC and states that SAARC will assist member states in "facilitating, fulfilling and protecting" children's rights under it (articles II(3) and III(3)). The SAARC Social Charter confirms states parties' obligations to implement the SAARC Convention and to promote the rights of the child (article VII).

Other human rights instruments

The treaty monitoring bodies of other international human rights instruments – many of which have been ratified by states in the region (see page 12) – have interpreted them as requiring prohibition of corporal punishment. For example, recommendations to prohibit corporal punishment of children have been made by the Human Rights Committee, the Committee against Torture, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination Against Women.

Universal Periodic Review

The UPR is a review every four years of UN member states' human rights records by the Human Rights Council. It was established in 2006 and enables each state to describe the actions they have taken to fulfil their international human rights obligations. Recommendations are made which the state responds to and which will be followed up at future sessions. The issue of corporal punishment of children is regularly raised by members of the Council during the reviews and recommendations made to prohibit it in the home and/or other settings. To date (September 2011), such recommendations have been made to almost 100 states, including to Bangladesh, Bhutan and, with regard to the penal system, Maldives (see the country reports in section 5 for details).

Recommendations by treaty monitoring bodies to states in South Asia

The Committee on the Rights of the Child has long expressed concern at corporal punishment of children in the region and repeatedly recommended its prohibition and elimination. The table below provides an overview of these recommendations and indicates whether the recommendation focused on a particular setting or covered the home and all settings.

State	Committee on the Rights of the Child	Other treaty monitoring bodies	Universal Periodic Review
Afghanistan	2011 (all settings)	CESCR 2010 (all settings)	
Bangladesh	2009 (all settings) 2003 (all settings) 1997 (all settings)		2009 (all settings)
Bhutan	2008 (all settings) 2001 (all settings)		2009 (all settings)
India	2004 (all settings) 2000 (all settings)		
Maldives	2007 (all settings)		2010 (penal system)
Nepal	2005 (all settings) 1996 (all settings)		
Pakistan	2009 (all settings) 2003 (all settings) 1994 (penal system)		
Sri Lanka	2010 (all settings) 2003 (schools, penal system) 1995 (schools)	HRC 2003 (schools, penal system) HRC 1995 (penal system)	

Increasing pressure on states: communications, complaints and inquiry procedures

The UNCRC and other international treaties are legal instruments. States which ratify them have a legal obligation under international human rights law to comply with their provisions, and this includes ensuring that all corporal punishment of children is prohibited in all settings, including the home.

Many of the instruments provide mechanisms for increasing pressure on states which fail to meet their obligations. These can be in the form of communications/complaints mechanisms, which allow individual victims or groups of victims to submit a complaint to the committee that monitors implementation of the convention concerning alleged violations of rights under the convention. They normally require that all efforts to resolve the matter within the state have been tried and have failed (domestic remedies have been exhausted).

Another mechanism for pursuing persistent rights violations is a procedure in which the committee monitoring the convention makes inquiries into the situation in a state regarding specific rights in the convention, outside of the normal reporting procedure. There are relevant communications mechanisms and/or inquiry procedures associated with the following instruments:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention on the Rights of Persons with Disabilities (CRPD)

In addition, the Optional Protocol to the Convention against Torture provides for a system of regular visits to places where people are deprived of their liberty “in order to prevent torture and other cruel, inhuman or degrading treatment or punishment” (article 1). An Optional Protocol providing a communication procedure for the Convention on the Rights of the Child was adopted by the UN Human Rights Council in June 2011 and is expected to be finally adopted by the General Assembly in December 2011.⁴



⁴ For further information see www.crin.org/petitions/petition.asp?petid=1007

The following table summarises for each South Asian state the relevant human rights instruments they have ratified and the communications/complaints mechanisms and inquiry procedures that are applicable in that state.⁵

State	Instruments	Communications	Inquiries	Other
Afghanistan	CRC, CAT, ICCPR, ICESCR, CEDAW			
Bangladesh	CRC, CAT, ICCPR, ICESCR, CRPD, CEDAW	CEDAW, CRPD	CAT, CRPD	
Bhutan	CRC, CEDAW			
India	CRC, ICCPR, ICESCR, CRPD, CEDAW			
Maldives	CRC, CAT, ICCPR, ICESCR, CRPD, CEDAW	ICCPR, CEDAW	CAT, CEDAW	CAT OP
Nepal	CRC, CAT, ICCPR, ICESCR, CRPD, CEDAW	ICCPR, CEDAW, CRPD	CAT, CRPD, CEDAW	
Pakistan	CRC, CAT, ICCPR, ICESCR, CRPD, CEDAW			
Sri Lanka	CRC, CAT, ICCPR, ICESCR, CEDAW	ICCPR, CEDAW	CAT, CEDAW	



⁵ For further details see www.endcorporalpunishment.org or email info@endcorporalpunishment.org

Global and regional progress towards prohibition



Worldwide, the pace at which states have realised and acted upon the human rights imperative to give legal protection to children from all forms of corporal punishment has accelerated since Sweden became the first country to achieve full prohibition in 1979. With the achievement of South Sudan's independence in 2011, there are now 30 states in which it is against the law to assault children in the name of discipline or punishment in the family home and all other settings. In the majority of states corporal punishment in the family is still lawful, but parliaments are increasingly passing laws which protect children from corporal punishment in schools (120 states), penal institutions (113 states) and alternative care settings (37 states). In the majority of states worldwide (152) corporal punishment cannot lawfully be imposed on children and young people as a sentence for crime.⁶

Collectively, states in South Asia have a remarkable and long-standing commitment to implementing the recommendations of the UN Study on Violence against Children, including the prohibition and elimination of corporal punishment in all settings. There is strong coordinated action at regional level to promote law reform (see section 3 of this report), and there are currently a number of bills addressing corporal punishment at national level (see section 5). However, for the most part these commitments and activities have not yet led to the enactment of laws prohibiting all corporal punishment – however light it is – in all settings of children's lives.

- 95.5% of the world's total child population live in countries where they are not legally protected from all forms of corporal punishment by parents: 29.1% of these live in South Asia
- 54.6% of the global child population live in countries where they are not legally protected from corporal punishment in schools: 44.7% of these live in South Asia
- 56.2% of children worldwide live in countries where they are not protected by law from corporal punishment in penal institutions: 49.6% of these are in South Asia
- 93.8% of children worldwide live in countries where corporal punishment in all forms of alternative care is not prohibited, 29.7% of which are in South Asia
- 39.9% of children across the world live in countries where for committing an offence under criminal, traditional and/or religious law they can lawfully be ordered to receive corporal punishment: 67.6% of these are in South Asia.

(Analysis based on UNICEF child population figures)⁷

There is research in almost all states in the region highlighting the real extent to which children are being subjected to corporal punishment in their homes and other settings (see section 5). A quarter of the world's children live in South Asia: the positive impact of achieving law reform to prohibit corporal punishment in South Asian countries should not be underestimated.

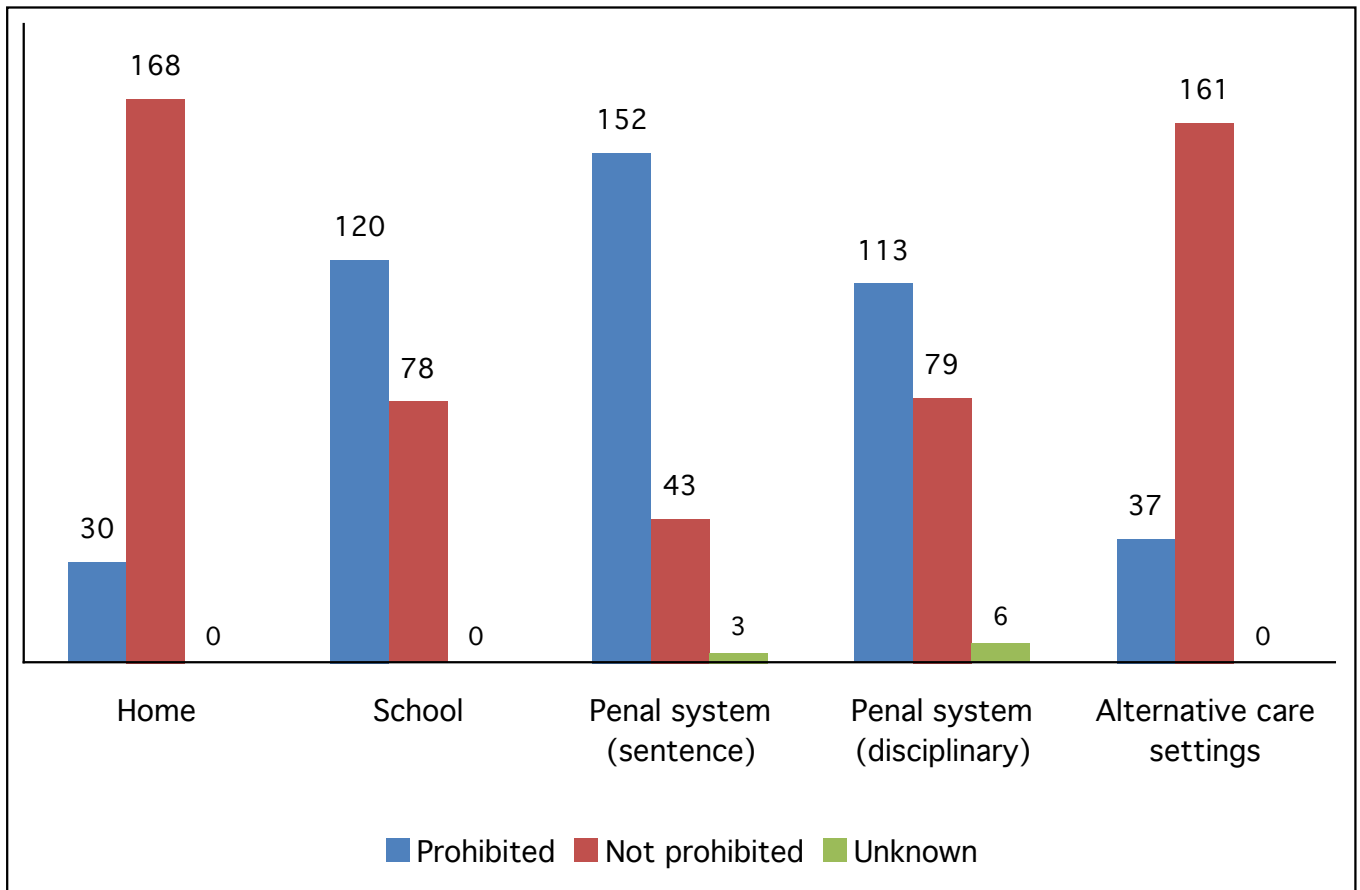
If corporal punishment was prohibited in all settings in all eight South Asian states:

- 32.3% of the world's children would be legally protected from all corporal punishment by parents
- 69.8% of the world's children would be legally protected from all corporal punishment in schools
- 71.3% of the global child population would be protected in law from all corporal punishment in penal institutions
- 34.1% of the global child population would live in countries where they would be protected in law from corporal punishment in all forms of alternative care
- 87% of the world's children would live in countries where commission of an offence under criminal, traditional and/or religious law could not result in them being ordered by the courts to receive corporal punishment.

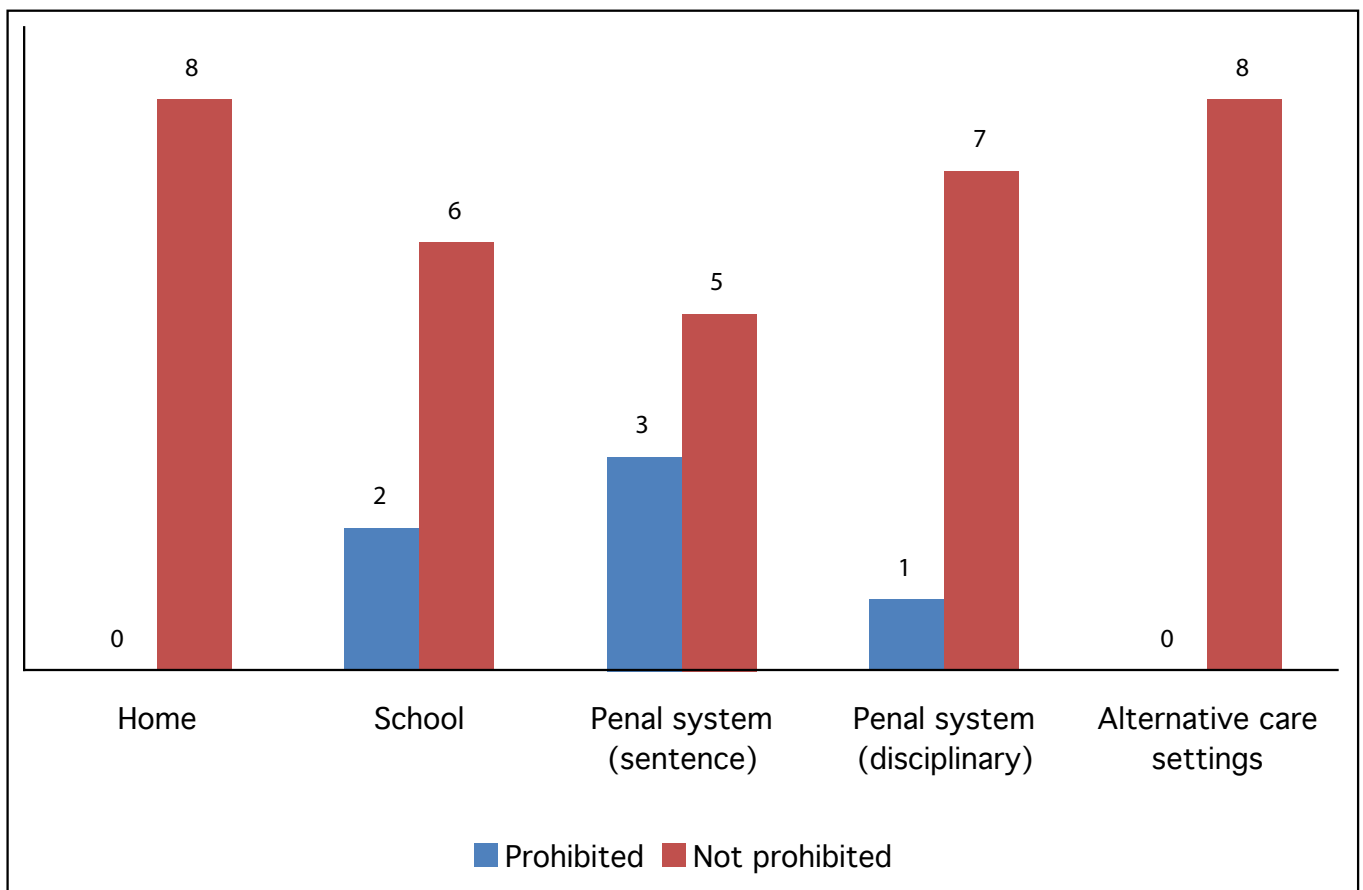
⁶ The total number of states included in the analysis is 198, comprising all states which have ratified the UNCRC except Vatican City, plus Palestine, Somalia, Taiwan, US and Western Sahara. Information as at September 2011

⁷ The analysis uses child population figures (2009) from UNICEF (www.unicef.org, accessed July 2011); where no UNICEF figures are available – for Bolivia, DR Congo, DPR Korea, Republic of Korea, Republic of Moldova, Montenegro, Serbia, Cyprus and Western Sahara – the source is *World Population Prospects 2009* (2010, 0-19 population) (http://esa.un.org/wpp/unpp/panel_population.htm, accessed July 2011); the source for Taiwan (2005) is the Children Bureau, Ministry of Interior

Progress worldwide



Progress in South Asia



Regional commitments, action and opportunities



The South Asia Initiative to End Violence against Children (SAIEVAC)

States in South Asia are committed to prohibiting and eliminating corporal punishment of children in all settings – strong commitments which date back to the Regional Consultation on the UN Study on Violence against Children in Islamabad in May 2005.

One major outcome of the Consultation was the formation of the **South Asia Forum for Ending Violence against Children (SAF)**, comprising representatives from the Governments of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, representatives of civil society, and a group of children working on the issue of violence against children. The Forum met regularly and received financial and technical support from the South Asia Coordinating Group on Violence Against Women and Children (SACG) – an interagency group of UN agencies and international NGOs working on child protection in the region – to coordinate work in the region and to keep the issue of violence against children high on Governments’ agendas.

In 2010, SAF became the **South Asia Initiative to End Violence against Children (SAIEVAC)**. It has a framework with a governing board where government, civil society and children are represented, and a permanent secretariat hosted in Nepal and a strategic plan 2010-2015. The plan complements the SAARC Conventions on Regional Arrangements for the Promotion of Child Welfare in South Asia (see section 1) and on Preventing and Combating Trafficking in Women and Children for Prostitution and supports the major international human rights instruments in the field of child rights and child protection.

SAIEVAC adopted the Kathmandu Commitment to Action for Ending Violence Against Children which includes following up the recommendations of the UN Study, promoting the wellbeing of children as set out in the Social Charter of the South Asian Association for Regional Cooperation (SAARC) and strengthening cooperation at regional and national levels.

Corporal punishment is a key issue for SAIEVAC (see www.saievac.info). In November 2010, with support from SACG,



SAIEVAC organised its first SAIEVAC Technical Meeting on “Legal Reform and Corporal Punishment”, in Kathmandu, Nepal. Over 100 Government and non-government representatives participated, and the Special Representative of the UN Secretary General on Violence against Children, Marta Santos Pais, attended. The details of law reform were discussed in depth and representatives from Government and key civil society organisations from each SAARC Member State developed a National Action Plan to achieve prohibition of corporal punishment in all settings. Governments committed to speeding up law reform and it was decided that in all eight SAARC member states, civil society organisations, including children, would work closely with their SAIEVAC Government representative to implement the action plans, with technical support from SACG.⁸

Ugyen Dema Dorji, one of two child representatives on SAIEVAC governing board, addresses SAIEVAC workshop 2010

⁸ The report of the workshop and the national action plans can be downloaded at www.saievac.info

Immediate opportunities for progress across South Asia

The following table identifies opportunities for law reform to achieve prohibition of corporal punishment in most states in the region. Given Governments' long-standing commitment to prohibition, the support of UN agencies, national and international non-government organisations and the strong regional coordination, states in South Asia are well placed to take advantage of such opportunities.

State	Opportunities for prohibiting corporal punishment
Afghanistan	Penal Code under review (information unconfirmed); possibility of a new child law and/or revision of existing child-related legislation under discussion
Bangladesh	Children Bill under discussion; Education Bill being drafted
Bhutan	Drafting of rules under new Child Care and Protection Act may provide opportunity to prohibit (if approved by parliament)
India	
Maldives	Child protection law and children's home regulations being drafted; Juvenile Justice Bill, Domestic Violence Bill, Education Bill, Prisons Bill, draft Penal Code, Evidence Bill and Criminal Procedure Bill under discussion
Nepal	Child Rights Bill, new Criminal Procedure Code and new Constitution being drafted; draft Criminal Code, draft Civil Code and Education Bill under discussion
Pakistan	Child Protection Bill, Prohibition of Corporal Punishment Bill, Bill revising the Children Act and Domestic Violence Bill under discussion; provincial Child Protection Bills under discussion; Zina laws being reviewed; reform of Frontier Crimes Regulation planned
Sri Lanka	Draft Juvenile Justice Procedure Code and amendments to Children and Young People's Ordinance under discussion; laws being drafted to prohibit in schools, children's homes and prisons

The country reports in section 5 describe existing legislation relevant to corporal punishment in each state, research that has been carried out on the issue, recommendations from treaty monitoring bodies and steps that have been taken towards law reform to achieve prohibition. **It is vital that the pursuit of law reform is based on a thorough understanding of what prohibition means – crucially that *all* forms of corporal punishment are prohibited, however light, and that prohibition applies to children wherever they are, without exception. All legal defences for the use of corporal punishment must be repealed.** Prohibition is achieved when children have the same legal protection from assault that adults have long benefitted from.

In cases of persistent failure to enact prohibition, use can be made of the Convention on the Rights of the Child and other international human rights instruments as legal instruments which place an obligation on Governments to effect law reform and of the various human rights mechanisms which exist to pursue violations of children's human rights (see section 1).

The Global Initiative to End All Corporal Punishment of Children offers technical advice and support on all aspects of law reform: email info@endcorporalpunishment.org.

Legality of corporal punishment in the region: summary table

4

Please note: The following information has been compiled from many sources, including reports to and by the UN human rights treaty bodies. Information in square brackets is unconfirmed. We are very grateful to government officials, UNICEF and other UN agencies, NGOs and human rights institutions, and many individuals who have helped to provide and check information. Please let us know if you believe any of the information to be incorrect: info@endcorporalpunishment.org.

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Afghanistan	✗	✓	✗ ⁹	✗ ¹⁰	✗
Bangladesh	✗	✓ ¹¹	✗	✗	✗
Bhutan	✗ ¹²	✗ ¹³	✓	[✓] ¹⁴	✗ ¹⁵
India	✗	SOME ¹⁶	SOME ¹⁷	SOME ¹⁸	SOME ¹⁹
Maldives	✗ ²⁰	✗ ²¹	✗ ²²	✗ ²³	✗ ²⁴
Nepal	✗ ²⁵	✗ ²⁶	✓	✗ ²⁷	✗ ²⁸
Pakistan	✗	✗ ²⁹	SOME ³⁰	SOME ³¹	✗ ³²
Sri Lanka	✗	✗ ³³	✓	SOME ³⁴	✗ ³⁵

9 Lawful under Islamic law

10 Possibly prohibited in the Law on Juvenile Rehabilitation Centres adopted in 2009

11 Unlawful under 2011 Supreme Court ruling, not yet confirmed in legislation

12 2011 Child Care and Protection Act prohibits only corporal punishment which reaches a certain degree of severity

13 Code of Conduct and ministerial directives state corporal punishment should not be used but no prohibition in law; see also note on home

14 Possibly prohibited in Child Care and Protection Act

15 See note on home

16 Prohibited for children aged 6-14; not prohibited in Jammu and Kashmir

17 Prohibited in state laws but used in traditional justice systems

18 Prohibited in 2007 Juvenile Justice (Care and Protection of Children) Rules except in Jammu and Kashmir

19 Prohibited in care institutions in 2007 Juvenile Justice (Care and Protection of Children) Rules except in Jammu and Kashmir; lawful in non-institutional care

20 Draft Penal Code would include justification for use of force by parents, teachers and others for prevention and punishment of misconduct

21 Ministry of Education advises against corporal punishment but no explicit prohibition in legislation; legislation which would prohibit under discussion (2011); see also note on home

22 Draft Penal Code would authorise judicial corporal punishment

23 See note on home

24 See note on home

25 2005 Supreme Court ruling removed legal defence for corporal punishment by parents, guardians and teachers

26 See note on home

27 See note on home

28 See note on home

29 Legislation which would prohibit under discussion (2011)

30 Prohibited in 2000 Juvenile Justice System Ordinance but this not applicable in all areas

31 Prohibited in 2000 Juvenile Justice System Ordinance but this not applicable in all areas and other laws not amended/repealed

32 Legislation which would prohibit under discussion (2011)

33 Ministerial circular states corporal punishment should not be used but no prohibition in law; legislation to prohibit is being drafted (2011)

34 Prohibited in prisons, lawful in other penal institutions; legislation to prohibit is being drafted (2011)

35 Legislation to prohibit in children's homes is being drafted (2011)

Country reports

5

The following reports present for each country in South Asia the current law relating to corporal punishment of children, research that has helped to make the problem visible, recommendations by human rights treaty bodies, the law reform that is necessary to achieve prohibition in all settings, and the moves that have been made towards achieving such law reform, including summaries of the national action plans developed at the SAIEVAC law reform workshop in Kathmandu, Nepal, November 2010. For more detailed information, see the individual country reports at www.endcorporalpunishment.org. The national action plans and the report of the 2010 SAIEVAC workshop are available at www.saievac.info.

AFGHANISTAN



Legality of corporal punishment of children

Corporal punishment is lawful in the home, the penal system and alternative care settings.

Home:

Article 54(1) of the Penal Code (1976) confirms the “right” of “punishment of son and student by father and teacher, provided the punishment is within the limits of religious and other laws”. Provisions against violence and abuse – e.g. in the Penal Code and the Law on the Elimination of Violence against Women (2009) – are not interpreted as prohibiting all corporal punishment in childrearing. The Juvenile Code (2005) prohibits “contemptuous and harsh punishment, even if for correction and rehabilitation purposes” (article 7), but does not prohibit all corporal punishment.

Schools:

Corporal punishment is prohibited in article 39 of the Education Act (2008).

Sentence for crime:

Corporal punishment is lawful as a sentence for crime under *Shari’a* law. The Constitution (2004) prohibits “punishment contrary to human dignity” (article 29) and the Juvenile Code prohibits “contemptuous and harsh punishment” (article 7). However, according to article 39 of the Juvenile Code, children aged 12-17 may be punished under the Penal Code. While the Penal Code itself does not provide for judicial corporal punishment, it applies only to Tazeeri crime and penalties: *hodod*, *qassass* and *diat* crimes are punished in accordance with Islamic religious law, including corporal punishments.

Penal institutions:

Severe corporal punishment is prohibited under the Juvenile Code (article 7) but there is no explicit prohibition of all corporal punishment. The Law on Prisons and Detention Centers (2005) does not provide for corporal punishment and states that force can be used only if “the detainee or prisoner is escaping, resisting or attacking others or causes disorder which cannot be prevented by any other means” (article 46), but does not explicitly prohibit corporal punishment. A Law on Juvenile Rehabilitation Centres was adopted in 2009 but we have no details.

Alternative care settings: The Juvenile Code applies to children in need of care and protection and prohibits harsh punishment (article 7), but it does not explicitly prohibit all corporal punishment in all forms of care.



Research



Research has made visible the subjection of children to corporal punishment by adults in their homes and other settings. In qualitative research in 2008, involving parents, children and others, corporal punishment was found to occur in all 61 case study families, being inflicted on children as young as 2 or 3, most commonly slapping, verbal abuse, punching, kicking, and hitting with thin sticks, electrical cables and shoes.³⁶ In a previous survey, 82% of children reported that slapping, kicking and hitting with a stick are common forms of punishment; more than half reported being hit or severely beaten for being noisy or naughty, almost a quarter for not learning their school lessons, and nearly one in ten for disobeying adults.³⁷ In a study of almost 250 girls and boys in juvenile rehabilitation centres in 22 provinces, 48% reported being beaten during their arrest and 36% reported being ill-treated in police custody; children under 16 were as likely to report having been beaten as older children.³⁸

Recommendations by human rights treaty bodies

Recommendations to prohibit corporal punishment of children have been made by the Committee on the Rights of the Child³⁹ and the Committee on Economic, Social and Cultural Rights.⁴⁰

Law reform necessary to achieve prohibition in all settings

The “right to punish” in article 54(1) of the Penal Code should be repealed. Legislation should be enacted to explicitly prohibit all corporal punishment of children including by parents in the home, in all forms of alternative care, in all institutions accommodating children in conflict with the law, and as a sentence imposed under Islamic law on all persons under 18 at the time of the offence.

Moves towards law reform

At a meeting of the South Asia Forum in July 2006, following the regional consultation in 2005 of the UN Secretary General’s Study on Violence against Children, the Government made a commitment to prohibiting corporal punishment of children in all settings, including the home.

The national action plan to achieve prohibition developed during the SAIEVAC law reform workshop in Kathmandu, November 2010, confirmed that existing legislation does not prohibit corporal punishment in the home, penal system and care settings, noted the Government’s positive attitude towards law reform, and identified the relevant government departments and bodies and other key organisations and individuals. The following activities were planned, spanning the five years 2011-2015:

Activities	Responsible	Time Scale
Briefing and updating parliamentarians on the status of child related Bills	MoLSAMD	2011
Policy dialogues	MoLSAMD and CSOs	2011
National Consultation on Bill	MoLSAMD and CSOs	2011
Awareness raising in the media (radio/TV/print)	MoLSAMD and CSOs	2011-2013
Awareness raising in schools (government and private)	MoLSAMD, MoE and CSOs	2011-2012
Advocacy efforts	MoLSAMD, MoI, MoH and CSOs	2011-2012
Seminar and policy dialogues on budgetary allocations	MoLSAMD and CSOs	2011-2012
Capacity building of stakeholders (children, parents, government officials, CSOs etc)	MoLSAMD, MoE and CSOs	2013-2015
Training of trainers on alternative forms of discipline for teachers (government and private)	MoLSAMD, MoE and CSOs	2012-2014

³⁶ Smith, Deborah J. (2008), *Love, Fear and Discipline: Everyday violence toward children in Afghan families*, Kabul: Afghanistan Research and Evaluation Unit

³⁷ Save the Children Sweden Afghanistan (2003), *Mini Survey Report on Corporal Punishment*, Kabul: Save the Children, cited in Jabeen, F. (2004), *Corporal/physical and psychological punishment of girls and boys in South and Central Asia Region*, Save the Children Sweden Denmark

³⁸ Afghanistan Independent Human Rights Commission/UNICEF (2008), *Justice for Children: The situation of children in conflict with the law in Afghanistan*

³⁹ 8 April 2011, CRC/C/AFG/1, Concluding observations on initial report, paras. 38 and 61

⁴⁰ 7 June 2010, E/C.12/AFG/CO/2-4, Concluding observations on second to fourth report, para. 28

BANGLADESH



Legality of corporal punishment of children

Corporal punishment is lawful in the home, the penal system and alternative care settings. It is unlawful in schools under a ruling by the Supreme Court in January 2011, but this is not yet reflected in explicit prohibition in legislation passed by parliament.

Home:

Article 89 of the Penal Code (1860) states: “Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person....” Provisions against violence and abuse – e.g. in the Penal Code, the Children Act (1974) and the Domestic Violence Act (2010) – are not interpreted as prohibiting corporal punishment in childrearing.

Schools:

A Supreme Court judgment issued on 13 January 2011 (Writ Petition No. 5684 of 2010) stated that corporal punishment in schools violated the Constitutional prohibition of torture and cruel, inhuman or degrading punishment or treatment. The Ministry of Education subsequently published a circular stating that corporal punishment is prohibited in schools, that it constitutes misconduct and that measures will be taken against perpetrators under the Penal Code, the Children Act and through departmental action (Ministry of Education Circular No. 37.031.004.02.00.134.2010, 8 August 2010, Regarding the Ending of Corporal Punishment on Students in Educational Institutions). Ministerial Guidelines on the issue came into effect in April 2011. Prohibition is yet to be confirmed through law reform.

Sentence for crime:

Whipping is lawful for males. Under the Code of Criminal Procedure (1898), boys under 16 may be whipped “with a light rattan not less than half an inch in diameter” up to 15 “stripes”, older males up to 30 stripes (article 392). The whipping must not be inflicted in instalments and must not be inflicted on females or on males sentenced to death or more than five years imprisonment (article 393). It can be ordered in addition to imprisonment only if the term of imprisonment exceeds three months; it must not be carried out until at least 15 days after sentencing and must be inflicted in the presence of the officer in charge of the jail or of the Judge or Magistrate (article 391). The person to

“Article 35 of our Constitution deals broadly with protection of citizens in respect of trial and punishment. Clause (5) of article 35 provides that ‘no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment’. Taken one step further, it should be obvious that if any person is protected from ‘torture or to cruel, inhuman or degrading punishment or treatment’ after conviction of a criminal offence, then it stands to reason that a child shall not be subjected to such punishment for behaviour in school which cannot be termed a criminal offence.

“Article 28 of the Convention [on the Rights of the Child] is relevant to the issue before us and we have no hesitation to hold that in the light of the Convention corporal punishment upon the children must be prohibited in all settings, including schools, homes and work places. Children who are subjected to corporal punishment or indeed psychological and emotional abuse cannot be expected to develop, freely and properly and will not be able to give their best to this society.”

(Bangladesh Supreme Court judgment, 13 January 2011 (Writ Petition No. 5684 of 2010))

be whipped must be considered fit to receive the punishment, by a medical officer, the Magistrate or the officer present (article 394). While there is no provision for whipping in the Penal Code, under the Whipping Act (1909) whipping may be given in lieu of or in addition to the punishments specified in the Penal Code for specific offences committed by persons over 16 (articles 3 and 4) and children under 16 can be whipped in lieu of other punishments for a wider range of crimes under the Penal Code and other laws (article 5). Whipping is a sentence for offences under article 23 of the Cantonments Pure Food Act (1966), articles 9, 10 and 12 of the Suppression of Immoral Traffic Act (1933) and, for boys under the age of 12, article 130 of the Railways Act (1890). Corporal punishment is also commonly ordered by traditional village mediation councils (*shalish*), particularly against girls and women. Punishments include caning, whipping, beating and stoning to death, and are often issued as *fatwas* under *Shari'a* law. The practice continues, despite High Court rulings in 2010 against such punishments.

Penal institutions:

Corporal punishment is lawful as a disciplinary measure in penal institutions, including certified institutes, approved homes, prisons and vagrant homes. Rule No. 24 of the Children Rules lists sanctions available for infringements of discipline, including “caning not exceeding ten stripes”: the number of strokes should vary according to the age of the person and nature of the offence, should be inflicted on the buttocks or on the palm of the hand, and a medical officer should be present. The Prisons Act (1894) authorises whipping as a punishment for breaches of discipline by male prisoners, up to 30 stripes (article 46); for boys under 16 it must be inflicted “in the way of school discipline” (article 53). According to the Borstal Schools Act (article 4), the Prisons Act applies to borstal schools.

Alternative care settings: Corporal punishment is lawful under article 89 of the Penal Code. Legislation governing care institutions provides for corporal punishment as a disciplinary measure but we have no specific details.⁴¹

Research

A number of studies have exposed children’s vulnerability to corporal punishment in Bangladesh, particularly in homes and schools. Most recently, UNICEF research covering nearly 4,000 households involved interviews with children aged 9-18 and the heads of their households, focus group discussions, case studies and a survey of children living on the street. It found that 91% of children experienced physical punishment in school, including hitting the palm with a ruler or stick (experienced by 76%), standing in class, hitting other body parts with a ruler or stick, and slapping; 23% said they faced corporal punishment every day and 7% reported injuries and bleeding as a result. Corporal punishment was one of the top four reasons children gave for not attending school. Almost all children (99.3%) reported being verbally abused and threatened regularly by their parents; 74% said they were physically punished by parents or guardians, with 70% usually being slapped, 40% being regularly beaten or kicked. Of the 367 children who worked outside the home, 25% experienced physical punishment in their workplace.⁴²

Recommendations by human rights treaty bodies

Recommendations to prohibit corporal punishment of children have been made three times by the Committee on the Rights of the Child.⁴³ The Committee on the Elimination of Discrimination Against Women has expressed concern about punishments inflicted on women and girls through *fatwas*.⁴⁴ A recommendation was made during the Universal Periodic Review of Bangladesh in 2009 to prohibit all corporal punishment, which the Government accepted.⁴⁵



41 Justice M. Imman Ali, Supreme Court of Bangladesh, in correspondence with the Global Initiative, 2 September 2010

42 UNICEF (2009), *Opinions of Children of Bangladesh on Corporal Punishment: Children’s Opinion Poll 2008*, Dhaka: Ministry of Women and Children Affairs, Government of Bangladesh/UNICEF

43 26 June 2009, CRC/C/BGD/CO/4, Concluding observations on third/fourth report, para. 49; 27 October 2003, CRC/C/15/Add.221, Concluding observations on second report, paras. 44 and 78; 18 June 1997, CRC/C/15/Add.74, Concluding observations on initial report, para. 38

44 22 March 2011, CEDAW/C/BGD/CO/7, Concluding observations on sixth/seventh report, paras. 19 and 20

45 5 October 2009, A/HRC/11/18, *Report of the Working Group on the Universal Periodic Review: Bangladesh*, para. 94(16); 9 June 2009, A/HRC/11/18/Add.1, *Report of the Working Group on the Universal Periodic Review: Bangladesh, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, para. 16

Law reform necessary to achieve prohibition in all settings

Article 89 of the Penal Code should be amended/repealed to ensure there is no legal provision that can be construed as providing a legal defence for the infliction of corporal punishment on children. Provisions for judicial whipping in the Code of Criminal Procedure, the Whipping Act, the Railways Act and other laws, and laws authorising corporal punishment in certified institutions, approved homes, prisons, vagrant homes and in all care settings should be repealed. Legislation should be enacted to explicitly prohibit corporal punishment in all settings, including the home, schools, all institutions accommodating children in conflict with the law, all alternative care settings and in all forms of justice, including traditional justice systems.

Moves towards law reform

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. In 2009, the Government accepted the recommendation to prohibit all corporal punishment made during the UPR (see above).

The national action plan to achieve prohibition developed during the SAIEVAC law reform workshop in Kathmandu, November 2010, confirmed that there are a number of laws authorising corporal punishment of children and a comprehensive review of the legislation is necessary. It noted that the Children Bill would explicitly prohibit corporal punishment in care institutions and indicated that a law was being drafted which would prohibit in education institutions. The Bill is still under discussion. The plan outlined in detail the following process of law reform, though did not specify a starting date:

Process	Responsible	Supportive Activities (SAIEVAC)	Time
Review of existing laws	Ministry of Social Welfare (MoWCA, BNWLA, SC, UNICEF)	Consultation with children	6 months
Review of existing policies	Ministry of Women and Children Affairs (MSW, INCIDIN-BNWLA, SC, UNICEF)	Consultation with children	6 months
Dissemination and consultation at stakeholder level (grassroots to national level)	Ministry of Women and Children Affairs (MSW, LGRD, MoO, NGO Network ...)	Stakeholder consultations held at union/upazilla/district/divisional levels, jointly organised by government and CSO	6 months
Preliminary draft for presenting at cabinet	Ministry of Women and Children Affairs (MSW, NGO Network ...)	Technical assistance from civil society, development partners and SAIEVAC	2 months
Web circulation and feedback consultations to finalise draft	Ministry of Social Welfare (MoWCA, NGO Network ...)	<ol style="list-style-type: none"> 1. Stakeholder consultations at union/upazilla/district/divisional levels – organised by government and CSO 2. media campaign 3. tools and method development on alternative forms of discipline 4. professional capacity building 5. Care Standard development 6. message development 7. cross-networking 8. advocacy 	3 months
Submission of draft to cabinet for review and recommendations	Ministry of Women and Children Affairs (MSW and NGO Network ...)		1 month
Vetting and finalisation	Ministry of Law, Justice and Parliamentary Affairs, legislative division (MoWCA, MSW)		2 months
Draft bill place in the National Parliament	Ministry of Law, Justice and Parliamentary Affairs, law, justice and parliament division (MSW and NGO Network)		2 months
Review by Parliamentary standing committee	Ministry of Law, Justice and Parliamentary Affairs, law, justice and parliament div (MSW and NGO Network ...)		3 months
Enactment by parliament	Ministry of Law, Justice and Parliamentary Affairs, law, justice and parliament division (MSW and NGO Network ...)		3 months

The 2011 Supreme Court ruling on school corporal punishment noted above ordered that laws relating to disciplinary action against teachers be amended to identify the imposition of corporal punishment as misconduct, that all laws authorising whipping or caning of children as a sentence of the courts should be immediately repealed, and that the Children Act should be amended to make it an offence for parents and employers to impose corporal punishment on children. In April 2011, a new Children Bill was approved by the cabinet but was yet to be passed by Parliament; in its draft at November 2010 it stated that no child should be subjected to inhuman and degrading punishment but did not prohibit all corporal punishment in childrearing; it included explicit prohibition of corporal punishment in care institutions.

BHUTAN



Legality of corporal punishment of children

Corporal punishment is lawful in the home, schools, alternative care settings and possibly penal institutions. It is unlawful as a sentence for crime.

- Home:** Article 109 of the Penal Code provides for the use of force by parents and other responsible persons for “the prevention of serious misconduct”, provided the force used does not cause or risk causing “death or serious bodily injury” and is “no greater than that which is necessary”. The Child Care and Protection Act (2011) provides for a number of offences against children, including assault (article 212), cruelty (article 213), “harsh or degrading correction or punishment” (article 214) and battery (article 215). Article 214 prohibits harsh or degrading punishment in the home, schools and other institutions but does not cover all corporal punishment; it states that “any corrective measures shall be culturally appropriate and in accordance with rules framed for the discipline of children”. The interpretation of article 215 on battery is unclear. Article 11 of the Act states that programmes and services established under the Act shall “be culturally appropriate including any rules that may be required for the discipline of children”.
- Schools:** Corporal punishment is lawful in schools under article 109 of the Penal Code (see above). A notification from the Ministry of Education in 1997 stated that corporal punishment should not be used, confirmed in the Teacher and Student’s Code of Conduct (1997) and subsequent administrative directives; corporal punishment is discouraged in schools in the promotion of Gross National Happiness; a resolution was adopted at the 11th Annual Education Conference in 2008 to enforce a ban on corporal punishment in schools; and guidance on school discipline was produced in 2011 to encourage positive non-violent forms of discipline. Corporal punishment which reaches a certain degree of severity is prohibited under article 214 of the Child Care and Protection Act (see above). Rules under the Act are yet to be drafted.
- Sentence for crime:** Corporal punishment is unlawful as a sentence for crime. The Constitution (2008) prohibits cruel, inhuman or degrading treatment or punishment (article 7(17)); the Child Care and Protection Act includes a similar provision (article 73), makes no provision for corporal punishment as a sentence of the courts (Chapters 10 to 13) and states that force shall never be used as a means of punishment (article 23).
- Penal institutions:** Corporal punishment appears to be unlawful as a disciplinary measure in penal institutions under the Child Care and Protection Act – articles 73 and 23 (see above) and article 75 which states that a child detained for an offence shall be treated with respect and dignity. However, article 109 of the Penal Code potentially applies (see above) and article 111 states: “A defendant, who is an authorized official of a prison or other correctional institution shall have the defence of justification, if the defendant uses force and: (a) the defendant believes that the force used is necessary to enforce the lawful rules or procedures of the institution; (b) the nature and degree of the force used is not otherwise forbidden by this Penal Code; (c) if deadly force used is justified under this Penal Code; and (d) the force used is no greater than that which is necessary.” Article 2 of the Child Care and Protection Act states that legal provisions in conflict with its provisions are repealed, but we have yet to confirm that this would apply to the defences for the use of force in the Penal Code.
- Alternative care settings:** Corporal punishment is lawful in alternative care settings under article 109 of the Penal Code (see above). The prohibition of “harsh and degrading correction or punishment” in the Child Care and Protection Act prohibits corporal punishment of a certain severity, but not all corporal punishment. Rules under the Act are yet to be drafted.



Research

There appears to have been no research on the nature and extent of corporal punishment of children in Bhutan.

Recommendations by human rights treaty bodies

Recommendations to prohibit corporal punishment of children have been made twice by the Committee on the Rights of the Child.⁴⁶ During the Universal Periodic Review of Bhutan in 2009, recommendations were made to prohibit corporal punishment of children.⁴⁷ The Government stated that existing legislation adequately addresses corporal punishment in the home, that the Child Care and Protection Bill would strengthen this, and that no new legislation on corporal punishment was being considered.⁴⁸

Law reform necessary to achieve prohibition in all settings

Articles 109 and 111 of the Penal Code should be repealed. Legislation should be enacted to explicitly prohibit all forms of corporal punishment, however light, in all settings, including the home, schools and other institutions and all forms of alternative care.

Moves towards law reform

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. Prime Minister Lyonchhoen Jigmi Y Thinley has spoken against corporal punishment in the context of embedding GNH (Gross National Happiness) in schools.⁴⁹

The national action plan to achieve prohibition developed during the SAIEVAC law reform workshop in Kathmandu, November 2010, stated that efforts would be made to lobby for inclusion of prohibition of corporal punishment in all settings in the Child Care and Protection Bill, setting out the following activities to be carried out in the last two weeks of November 2010:

Activity	Process
To lobby with the Legislative Committee, Human Rights Committee, Women and Children's Committee, Social and Cultural Committee and other members of Parliament to include an explicit ban on corporal punishment in all settings in the Child Care and Protection Bill.	Holding briefing sessions providing the rationale and justification
Media briefing on Child Care and Protection Bill, child rights generally and corporal punishment in particular	Press conference
Children's consultation and lobbying on the Child Care and Protection Bill	Discuss elements of Bill

The key government departments and other bodies were listed as the Ministry of Labour and Human Resources, Ministry of Education, Ministry of Health, Ministry of Home and Cultural Affairs, Judiciary, Women and Child Protection Unit (RBP), Religious Institutions, Office of the Attorney General. As noted above, the Child Care and Protection Act is now in force but does not explicitly prohibit corporal punishment in all settings. Other activities were identified in the plan but no time scale given:

Activity	Responsible department/body
Prepare a proper mapping of the indicators of the SAIEVAC thematic areas including corporal punishment and link with nodal agencies or organisations	NCWC
Awareness raising of the CCPA and related instruments in all the institutions, agencies, ministries etc. Advocate for time bound actions	NCWC, Education, MoLHR, MoCHA, UNICEF, Save the Children
Advocacy through media	NCWC
Educating the parents and children on the CCPA	NCWC Education and Children's forum with partner agencies

⁴⁶ 8 October 2008, CRC/C/BTN/CO/2, Concluding observations on second report, para. 38; 9 July 2001, CRC/C/15/Add.157, Concluding observations on initial report, para. 41

⁴⁷ 4 January 2010, A/HRC/13/11, *Report of the Working Group on the Universal Periodic Review: Bhutan*, para. 101(41)

⁴⁸ 10 March 2010, A/HRC/13/11/Add.1, *Report of the Working Group on the Universal Periodic Review: Bhutan, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, para. 41

⁴⁹ Speaking at the 13th Education Conference, as reported in *Kuensel Online*, 1 October 2010

INDIA



Legality of corporal punishment of children

Corporal punishment is lawful in the home, the penal system and alternative care settings. Recent law reform prohibited its use in schools for children aged 6-14 (except in Jammu and Kashmir) but not for other children.

- Home:** Article 89 of the Penal Code (1860), in Jammu and Kashmir the Ranbir Penal Code, states: “Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person....” Provisions against violence and abuse in the Penal Code, the Juvenile Justice (Care and Protection of Children) Act (2000), the Protection of Child Rights Act (2005), the Protection of Women from Domestic Violence Act (2005) and the Constitution are not interpreted as prohibiting all corporal punishment in childrearing.
- Schools:** Corporal punishment is explicitly prohibited in schools in article 17 of the Right to Free and Compulsory Education Act (2009). However, this applies only to children aged 6-14 and not at all in Jammu and Kashmir. Prior to enactment of the Act, corporal punishment was prohibited in schools in Tamil Nadu (2003), Goa (2003), West Bengal (2004), Andhra Pradesh (2002), Dehli (2000) and Chandigarh (1990s): it is likely therefore that all children are protected from corporal punishment in schools in those states (information unconfirmed).
- Sentence for crime:** Corporal punishment is unlawful as a sentence for crime under the Penal Code and the Juvenile Justice (Care and Protection of Children) Act and, in Jammu and Kashmir, the Juvenile Justice Act (1997) and the Ranbir Penal Code, none of which provides for it. But corporal punishment may be imposed under traditional justice systems, such as the Papon system: in the absence of explicit prohibition, this appears to be lawful.
- Penal institutions:** Corporal punishment is unlawful as a disciplinary measure in penal institutions under Chapter VI(a) of the Juvenile Justice (Care and Protection of Children) Rules (2007) but these do not apply in Jammu and Kashmir, where there is no prohibition relating to penal institutions (information unconfirmed).
- Alternative care settings:** Corporal punishment is prohibited in care institutions under Chapter VI of the Juvenile Justice (Care and Protection of Children) Rules (see above); it is lawful in non-institutional forms of care under article 89 of the Penal Code (see above). There is no prohibition of corporal punishment in care settings in Jammu and Kashmir, where it is lawful under the Ranbir Penal Code (see above).



Research

Research has repeatedly demonstrated a high prevalence of corporal punishment of children in India. The first national study on child abuse analysed the experiences of nearly 12,500 children aged 5-18, around 2,300 young adults aged 18-24 and 2,500 stakeholders. More than two in three children (69%) reported experiencing physical abuse – including corporal punishment, most commonly being slapped and kicked (63.7%) and beaten with a stave or stick (31.3%).⁵⁰ A study in 2006 found corporal punishment to be an accepted way of life in the 41 schools visited across four states, most commonly hitting with hands and stick, pulling hair and ears, and telling children to stand for long periods in certain positions; there were at least five beatings a day in every school, in addition to other less severe forms of punishment.⁵¹ In research in urban schools in Andhra Pradesh in 2006, 59% of children said they had been caned on the palms of the hands by a teacher; other punishments included being forced to kneel in uncomfortable positions, being slapped or spanked and beaten on the knuckles.⁵² The World Studies of Abuse in the Family Environment (WorldSAFE) comparative study, which involved surveys with over 14,000 mothers of children under 18 between 1998 and 2003, found that the rate of “moderate” physical discipline in India (including spanking a child’s buttocks, hitting a child with an object, slapping a child’s face and putting hot pepper in a child’s mouth) ranged from 63% in urban and rural communities in Vellore to 89% in a rural community in Bhopal. The rate of harsh physical discipline (including burning, beating up, kicking and smothering a child) ranged from 2.7% in a non-slum community in Delhi to 39% in a rural community in Bhopal, and of harsh psychological punishment such as calling children names, cursing them and threatening to abandon them or kick them out from 40% in a non-slum community in Chennai to 81% in a rural community in Lucknow.⁵³

Recommendations by human rights treaty bodies

The Committee on the Rights of the Child has twice recommended that India prohibit all corporal punishment of children.⁵⁴

Law reform necessary to achieve prohibition in all settings

Article 89 of the Penal Code, and in Jammu and Kashmir the Ranbir Penal Code, should be repealed/amended to ensure that no legal provision exists which can be construed as providing a defence for the use of corporal punishment in childrearing and education. Legislation should be enacted to explicitly prohibit all forms of corporal punishment in all settings, including the home, education settings and other institutions for children of all ages up to 18, all forms of alternative care and in relation to punishments imposed under traditional justice systems. Prohibition should be enacted throughout India, including Jammu and Kashmir.

Moves towards law reform

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 schools and other settings outside the home.

The national action plan to achieve prohibition presented at the SAIEVAC law reform workshop in Kathmandu, November 2010, outlined the progress made in prohibiting corporal punishment in schools and ways to ensure implementation of the prohibition. It identified the Government departments and bodies to be involved in reforming the law: Ministry of Women and Child Development, Ministry of Home Affairs, Ministry of HRD, Ministry of Labour and Employment, Ministry of Law, Ministry of Health and Family Welfare, Ministry of Social Justice and Empowerment, Ministry of Panchayati Raj, Ministry of Railways, Ministry of Minority Affairs, all state governments, National Commission for Protection of Child Rights, State Commissions for Protection of Child Rights, Indian Council for Child Welfare, Disability Commissions, NHRC and SHRCs, NCW and SCWs. Key organisations and individuals for supporting law reform were also identified.



50 Kacker, L., Varadan, S. & Kumar, P. (2007), *Study on Child Abuse: India 2007*, New Delhi: Ministry of Women and Child Development

51 Saath Charitable Trust/Plan International, India (2006), *Impact of Corporal Punishment on School Children: A Research Study – Final Report*

52 Devi Prasad, B. (2006), *Spare the Rod and Save the Child: A Study of the Corporal punishment in urban schools of Andhra Pradesh*, Child Rights Advocacy Foundation-Vijayawada

53 Runyan, D. et al. (2010), “International Variations in Harsh Child Discipline”, *Pediatrics*

54 26 February 2004, CRC/C/15/Add.228, Concluding observations on second report, para. 45; 23 February 2000, CRC/C/15/Add.115, Concluding observations on initial report, paras. 40 and 45

MALDIVES



Legality of corporal punishment of children

Corporal punishment is lawful in the home, schools, the penal system and alternative care settings.

- Home:** Article 18 of the Law on the Protection of the Rights of the Child (1991) and article 18 of the Family Law (2000) prohibit only severe punishment which may harm the child. There is no legal defence for the use of corporal punishment by parents in the existing Penal Code (amended 2002), but legal provisions against violence and abuse are not interpreted as prohibiting corporal punishment of children.
- Schools:** Article 10 of the Law on the Protection of the Rights of the Child states that punishment in school “should be appropriate to the child’s age and should not affect them physically or psychologically” and the Ministry of Education has stated that corporal punishment should not be used but there is no explicit prohibition of corporal punishment in law.
- Sentence for crime:** Corporal punishment is lawful as a sentence for crime. The Law on the Protection of the Rights of the Child prohibits cruel and degrading punishment on children, and the Penal Code does not authorise judicial corporal punishment. However, the Penal Code does not apply to offences under *Shari’a* law or to certain other offences. The Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors (2006) states that children from the age of puberty may be held criminally responsible for committing apostasy, revolution against the state, fornication, falsely accusing a person of fornication, consumption of alcohol, unlawful intentional killing and other offences relating to homicide (articles 4 and 5). These are offences for which *hadd* is prescribed in Islam, including flogging. From the age of 15, children can be convicted of a wider range of offences under *Shari’a* law. The Disobedience Law provides for corporal punishment as a sentence but we have no further information.
- Penal institutions:** There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions.
- Alternative care settings:** Corporal punishment is lawful in alternative care settings.



Research

There appears to be no published research on corporal punishment of children in the Maldives. Large scale unpublished research by UNICEF in 2009, involving over 17,000 people in 2,500 households and 2,000 children in schools found that 47% of children had experienced physical or emotional punishment at home, at school or in the community. Thirty per cent of children at secondary school had been hit by at least one of their caregivers, 21% with an object; 8% of school students had been physically punished by their teachers.⁵⁵ Other research indicates widespread acceptance of violence in the home, with 70% of girls and women aged 15-49 believing that a husband is justified in hitting or beating his wife under certain circumstances.⁵⁶

Recommendations by human rights treaty bodies

The Committee on the Rights of the Child has recommended that corporal punishment of children be prohibited in all settings in the Maldives, including as a sentence for offences.⁵⁷ Recommendations were made to abolish corporal punishment in the penal system during the Universal Periodic Review of the Maldives in 2010.⁵⁸ The Government partially accepted the recommendations, stating that the new draft Penal Code was intended to combine *Shari'a* law with international human rights obligations, although it includes provisions for corporal punishment, and that the Maldives will consult with national and international authorities on the compatibility of corporal punishment with the Maldives Constitution and international human rights law.⁵⁹

Law reform necessary to achieve prohibition in all settings

Legislation should explicitly prohibit corporal punishment in the home and in all education settings, all institutions accommodating children in conflict with the law, all forms of alternative care, and as a sentence of the courts, including under *Shari'a* law.

Moves towards law reform

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 action plan to prohibit corporal punishment developed at the SAIEVAC workshop in Kathmandu, November 2010, confirmed the need to amend/repeal laws allowing corporal punishment. It stated that a Children's Bill was being drafted which would prohibit corporal punishment in all settings, an Education Bill which would prohibit corporal punishment in schools was soon to be tabled in Parliament, and regulations for children's homes were being drafted which would include prohibition. Consideration would also be given to abolition of judicial flogging.

A new Penal Code (2006) has been drafted but it would introduce a legal defence for the use of corporal punishment in the home and other settings. Section 44(a) of the draft stated that "a parent, legal guardian, teacher or other person similarly responsible for the care or supervision of a minor, or a person acting at the request of a person with such responsibility" may justifiably use force on a child for the "prevention or punishment of his misconduct", provided that the force used "does not create a substantial risk of causing death, serious bodily injury, extreme or unnecessary pain or mental distress, or humiliation". The draft also authorises lashes for certain offences (articles 411, 413, 612 and 616), despite recommendations to abolish flogging in a review commissioned by the Attorney General.⁶⁰ The draft is still under discussion.

A new child protection law is being drafted and a number of bills are under consideration, including an Education Bill which would prohibit corporal punishment in schools, a Juvenile Justice Bill, a Domestic Violence Bill, an Evidence Bill and a Criminal Procedure Bill.



⁵⁵ Reported in *Minivan News*, 21 February 2011

⁵⁶ UNICEF (2009), *Progress for Children: A report card on child protection*, NY: UNICEF

⁵⁷ 13 July 2007, CRC/CDV/CO/3, Concluding observations on second/third report, paras. 56, 62, 63 and 99

⁵⁸ 9 November 2010, A/HRC/WG.6/9/L.5, *Draft report of the Working Group on the Universal Periodic Review: Maldives*, paras. 100(55) and 100(58)

⁵⁹ 14 March 2011, A/HRC/16/7/Add.1, *Report of the Working Group on the Universal Periodic Review: Maldives, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, paras. 100.55 and 100.58

⁶⁰ Robinson, Paul H. & Diver, C. S. (2004), *Report on the Criminal Justice System of the Republic of Maldives: Proposals for Reform*, Prepared at the request of the Attorney General of the Maldives [draft], para. 6.4. See also Alder, C. & Polk, K. (2004), *Strategic Plan for the Reform of the Juvenile Justice System*, Prepared at the request of the Attorney General, p. 7

NEPAL



Legality of corporal punishment of children

Corporal punishment is lawful in the home, schools, penal institutions and alternative care settings. A Supreme Court ruling in 2005 rendered void the defence in the Children Act for the use of corporal punishment but the Act has not been revised and the defence still exists in the General Code.

Home:

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 (*Mr Devendra Ale et al. v Office of the Prime Minister & Cabinet et al.* Supreme Court decision 6 January 2005). The judgment directed 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”. There is also a legal defence for parental corporal punishment in Chapter 9 of the *Muluki Ain* (General Code) (1963), 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.” Provisions against violence in the Domestic Violence (Crime and Punishment) Act (2009) are not interpreted as prohibiting all corporal punishment in childrearing.

Schools:

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 (see above). The legal defence available to teachers was rendered null and void by the 2005 Supreme Court ruling already noted but this has not been confirmed in legislation and the defence in the *Muluki Ain* applies (see above).



Sentence for crime: Corporal punishment is unlawful as a sentence for crime. The Interim Constitution (2007) prohibits cruel, inhuman or degrading treatment (article 26). The Children Act, defining a child as under 16 (article 2), prohibits cruel treatment (article 7) and subjecting a child to handcuffs, fetters or solitary confinement (article 15), and does not provide for sentencing to corporal punishment (article 11). Under the Act, children aged 14-15 are liable to reduced sentences under criminal law (article 11) and older children face full sentences under criminal law: criminal law (the *Muluki Ain* and other laws) does not provide for judicial corporal punishment. 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.

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

Alternative care settings: Corporal punishment is lawful in alternative care settings. The legal defence was rendered void by the 2005 Supreme Court decision but this has not been confirmed through law reform and article 4 of Chapter 9 of the *Muluki Ain* applies (see above). 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. Corporal 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.

Research

A 2008 study of 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.⁶¹ Research in schools in Kathmandu reportedly found that 82% of students were physically punished in school.⁶² In 2003, the Centre for Victims of Torture (CVICT), in collaboration with UNICEF, carried out focus group research among students, teachers and parents in four regions. It revealed that corporal punishment was being used in most schools, more commonly in private than public schools; physical punishment was more prevalent in primary schools, psychological punishment in secondary schools. Many teachers and parents reported giving severe punishment to children because they were unaware of alternatives to corporal punishment and knew little about the physical and psychological impacts of harsh punishments.⁶³

Recommendations by human rights treaty bodies

Recommendations to prohibit corporal punishment of children have been made twice by the Committee on the Rights of the Child.⁶⁴



61 UNICEF & Terre des Hommes (2008), *Adopting the Rights of the Child: A study on intercountry adoption and its influence on child protection in Nepal*

62 Reported in *The Rising Nepal*, 24 December 2006

63 Reported in *CVICT*, Monthly Update, June 2004

64 21 September 2005, CRC/C/15/Add.261, Concluding observations on second and third combined report, paras. 48 and 76; 7 June 1996, CRC/C/15/Add.57, Concluding observations on initial report, paras. 10, 12, 19 and 34

Law reform necessary to achieve prohibition in all settings

Article 4 of Chapter 9 of the Muluki Ain and article 7 of the Children Act should be repealed. Explicit prohibition of corporal punishment should be enacted in legislation applicable to all schools (public and private), all institutions accommodating children in conflict with the law, and all forms of alternative care.

Moves towards law reform

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 strategy presented at the SAIEVAC workshop in Kathmandu, November 2010, addressed all forms of violence. With regard to law reform to prohibit corporal punishment in all settings, it noted that corporal punishment is unlawful as a sentence for crime and is banned in residential child care homes by Minimum Standards but also that there is "no specific bill on corporal punishment".

The Ministry of Women, Children and Social Affairs is drafting a new child law, and the Ministry of Law and Justice has drafted a Criminal Code and a Civil Code to replace the *Muluki Ain*. In 2010 an Education Bill was under consideration, but we have no further details. Drafting of a new Constitution is planned.



"... The Constitution of the Kingdom of Nepal, 2047(1990), in Article 14(4), provides that no person who is detained during investigation or for trial in any criminal offense or for any other reason shall be subjected to physical or mental torture nor shall be given any cruel, inhuman or degrading treatment; and any person so treated shall be compensated in a manner as determined by law. In such a situation where the Constitution has guaranteed that no one can subject any person, including one who is arrested and detained in connection with a criminal offense, to physical or mental torture or give any cruel, inhuman or degrading treatment even to a person who has been arrested or detained on a charge of criminal offense, it cannot even be imagined to allow any kind of torture or cruel, inhuman or degrading treatment to any person not accused of any criminal offense or not held in detention...."

"Today's children are tomorrow's future. The State has to create such environment as is conducive to their overall development. The environment conducive for development and the opportunity to develop their personality while spending a respectful life free from torture are the most essential elements for the overall development of children.

"... universally laws have been made fully restricting physical punishment to be imposed on children in the course of discipline or in the name of child welfare. As at 15 April 2003, 27 states of America have restricted physical punishment in schools; and physical punishment has also been restricted in countries such as Austria in 1989, Croatia in 1999, Cyprus in 1994, Denmark in 1997, Finland in 1983, Germany in 2000, Latvia in 1998, Norway in 1987, Sweden in 1979.... There seems no reason for Nepal not to take an initiative in the universal campaign against physical punishment or torture."

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

PAKISTAN



Legality of corporal punishment of children

Corporal punishment is lawful in the home, schools, the penal system and alternative care settings.

Home:

Article 89 of the Penal Code (1860) states: “Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person....” There are similar provisions in article 35 of the Punjab Destitute and Neglected Children Act (2004) and article 48 of the Sindh Children Act (1955). The Khyber Pakhtunkhwa Child Protection and Welfare Ordinance (2010) prohibits corporal punishment “in all its kinds and manifestations” but it states that this is “as provided under section 89 of the Pakistan Penal Code 1860” (article 33) and allows for “reasonable punishment” by parents (article 44); the definition of corporal punishment (article 2) covers only that which reaches a certain severity. Provisions against violence and abuse in the Penal Code, the Punjab Destitute and Neglected Children Act, the Sindh Children Act, the Guardians and Wards Act (1890), and the Code of Criminal Procedure (1898) are not interpreted as prohibiting corporal punishment of children.

Schools:

Corporal punishment is lawful in schools under article 89 of the Penal Code (see above). A federal ministerial directive and ministerial directives in all Provinces have instructed teachers not to use corporal punishment but it is not prohibited in legislation.

Sentence for crime:

Corporal punishment is lawful as a sentence for crime. Article 12 of the Juvenile Justice System Ordinance (2000) states that no child may be given corporal punishment while in custody. It is not clear that this prohibits corporal punishment of children not given a custodial sentence, though it is reportedly interpreted as prohibiting corporal punishment as a sentence of the courts. The Ordinance states that it is “in addition to and not in derogation of any other law for the time being in practice” (article 14), and it is not in force in all areas of the country.



The Abolition of the Punishment of Whipping Act (1996) prohibits whipping as a sentence under any law but it does not apply to the Federally Administered Tribal Areas (FATA), where children may be sentenced to whipping under articles 6 and 12 of the Frontier Crimes Regulation (1901). The Act also states that it does not apply to *hadd* offences (article 3). Some laws against *hadd* offences were amended in 2006 but they continue to authorise corporal punishment and are applicable to children from the onset of puberty. Whipping is provided for in article 7 of the Offence of *Qazf* (Enforcement of *Hadd*) Ordinance (1979), article 5 of the Offence of *Zina* (Enforcement of *Hudood*) Ordinance (1979), articles 3, 4, 8, 11 and 25 of the Prohibition (Enforcement of *Hadd*) Ordinance (1979) and articles 17 and 21 of the Offences Against Property (Enforcement of *Hudood*) Ordinance (1979). The Execution of the Punishment of Whipping Ordinance (1979) requires the involvement of medical personnel, ensuring the punishment does not result in the convicted person's death, being present at the punishment, and intervening if necessary. Article 9 of the Offences Against Property (Enforcement of *Hudood*) Ordinance provides for the punishment of amputation – of the right hand for the first offence, the left foot for the second; the amputation must be carried out by an authorised medical officer, who must be of the opinion that it would not cause the death of the convicted person (article 9). The Penal Code and the Code of Criminal Procedure provide for the penalty of *qisas*, a punishment causing similar hurt at the same part of the body of the convicted person as s/he caused to the victim. The Penal Code states that no *qisas* can be ordered when the offender is a minor (article 337-M), but a minor is defined as a male under the age of 18 years (article 299), allowing for the punishment of *qisas* to be ordered for females.

Penal institutions:

Corporal punishment is lawful as a disciplinary measure in penal institutions. The Juvenile Justice System Ordinance (2000) prohibits corporal punishment of children in custody (article 12), but as noted above it does not override all other laws and is not in force throughout Pakistan. Article 46(12) of the Prisons Act (1894) provides for whipping as a punishment for prison offences by male prisoners. The prisoner must be certified fit to receive the punishment by a medical officer (article 50) and the whipping should be inflicted “with a light rattan not less than half an inch in diameter on the buttocks, and in case of prisoners under the age of sixteen ... in the way of school discipline, with a lighter rattan” (article 53(2)). In the Punjab province, the Borstal Act (1926) permits corporal punishment on males in borstal institutions (articles 33 and 36).

Alternative care settings: Corporal punishment is lawful in alternative care settings under article 89 of the Penal Code, article 35 of the Punjab Destitute and Neglected Children Act and article 48 of the Sindh Children Act (see above).

Research

A number of research studies reveal the prevalence and nature of corporal punishment of children in homes and schools in Bangladesh. In consultations in North West Frontier Province (now Khyber Pakhtunkhwa) with more than 3,500 children aged 6-14, 1,200 parents and nearly 500 teachers, not one child reported never experiencing corporal punishment. The children identified 28 types of punishment used in homes and 43 in schools. The most common punishments at home were hitting with an object (shoe, brick, iron rod, knife, etc), smacking, kicking, punching, hair-pulling and ear-twisting; most common in schools were smacking, hitting with an object, hair-pulling, ear-twisting, and awkward and humiliating physical positions.⁶⁵ In other interview research in Khyber Pakhtunkhwa, all 4,200 school children aged 5-16 said they were physically punished at home, including being slapped on the face (54%) and on the back (29%), hit with a stick (16.6%), kicked (12.3%), having hair pulled (11%), hit with another object (2%), and being shaken (1.1%). The punishment was rated as “very severe” in 17% of cases, “severe” in 52% and “mild” in 31%.⁶⁶



⁶⁵ April 2005, *Disciplining the Child: Practices and Impacts*, Save the Children/UNICEF/Schools and Literacy Dept, Government of NWFP

⁶⁶ NCCR (2001), *Violence against children in the family and in schools: Submission by NGOs Coalition on Child Rights - Pakistan (1) to the CRC Day of General Discussion, 28 September 2001*, NGOs Coalition on Child Rights/UNICEF

Recommendations by human rights treaty bodies

Recommendations to prohibit corporal punishment of children have been made three times by the Committee on the Rights of the Child.⁶⁷

Law reform necessary to achieve prohibition in all settings

Article 89 of the Penal Code and comparable provisions in the Punjab Destitute and Neglected Children Act (article 35), the Sindh Children Act (article 48), the Khyber Pakhtunkhwa Child Protection and Welfare Ordinance (articles 33 and 44) and other laws should be repealed/amended to ensure that no legal provision can be construed as providing a defence for the use of corporal punishment of children. Legislation should explicitly prohibit corporal punishment in the home, in all schools, public and private, all institutions accommodating children in conflict with the law, all forms of alternative care and as a sentence of the courts, including under *Shari'a* law.

Moves towards law reform

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 presentation of the national action plan to achieve prohibition developed during the SAIEVAC law reform workshop in Kathmandu, November 2010, noted two bills then under discussion which address corporal punishment of children – the Corporal Punishment (Amendment) Bill 2009 and the Corporal Punishment Bill 2010 (private member's bill). These Bills, together with various provincial child protection bills, are still under discussion. The action plan identifies 2015 as the target date for achieving prohibition in the home, with the following activities planned for the years 2010-2015:

Activities	Responsible	Time Scale
Briefing and updating parliamentarians on the status of child related Bills	MOSW, MOHR, CSO	2011
Policy dialogues	MOSW, CSO	2011
National consultation on Bill	MOSW	2011
Awareness raising in the media (radio/TV/print)	MOSW, CSO	2011-2013
Talk show	MOSW, CSO	2011-2012
Awareness raising in schools (government and private)	MOE, MOSW, CSO	2011-2012
Advocacy efforts to increase allocations (lobby meeting)	MOSW, CSO	2011-2012
Seminar and policy dialogues on budgetary allocations	MOSW	2011-2012
Capacity building of stakeholders (children, parents, government officials, CSO, etc)	MOSW, CSOs	2013-2015
Training of trainers on alternative forms of discipline for teachers (government and private)	MOSW, MOE, CSOs	2012-2014

⁶⁷ 15 October 2009, CRC/C/PAK/CO/3-4, Concluding observations on third/fourth report, para. 48; 27 October 2003, CRC/C/15/Add.217, Concluding observations on second report, paras. 43 and 63; 25 April 1994, CRC/C/15/Add.18, Concluding observations on initial report, para. 23

SRI LANKA



Legality of corporal punishment of children

Corporal punishment is lawful in the home, schools, penal institutions and alternative care settings.

Home: The Penal Code (1883) was amended in 1995 to provide for the offence of cruelty to children (article 308A, amended further in 2006), but article 82 of the Code states: “Nothing, which is done in good faith for the benefit of a person under twelve years of age, or, of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause/or be intended by the doer to cause, or be known by the doer be likely to cause, to that person...” Illustration (i) of the offence of “criminal force” (article 341) states that a schoolmaster who flogs a student is not using force illegally. Article 71(6) of the Children and Young Persons Ordinance (1939) confirms “the right of any parent, teacher or other person having lawful control or charge of a child ... to administer punishment to him”, though this has possibly been repealed (information unconfirmed). Provisions against violence and abuse in the Children’s Charter (1994) and the Prevention of Domestic Violence Act (2005) are not interpreted as prohibiting all corporal punishment of children.

Schools: Corporal punishment is lawful in schools, as confirmed in the explanation of acceptable criminal force in the Penal Code (see above). Section 2 of Circular No 2005/17, issued by the Ministry of Education in 2005, states that corporal punishment should not be used in schools, but as at 2010 this had not been confirmed in legislation. Provisions in the Education Ordinance (1939) allowing the court to order corporal punishment for persistent truancy (section 56) were repealed by the Corporal Punishment (Repeal) Act No. 23 (2005).

Sentence for crime: Corporal punishment is prohibited as a sentence for crime by the Corporal Punishment (Repeal) Act No. 23, which repeals the Corporal Punishment Ordinance (1889) and all provisions authorising judicial corporal punishment in other laws.

Penal institutions: Corporal punishment is lawful as a disciplinary measure in penal institutions. The Corporal Punishment (Repeal) Act No. 23 repeals corporal punishment in prisons under the Prisons Ordinance, but there is no prohibition relating to other penal institutions for young persons in conflict with the law such as remand homes, approved homes and certified schools. Article 14 of the Youthful Offenders (Training Schools) Ordinance provides for the Minister to make regulations for discipline in training schools, but we have no information concerning such regulations.

Alternative care settings: Corporal punishment is lawful in alternative care settings under articles 82 and 341 of the Penal Code and article 71(6) of the Children and Young Persons Ordinance.



Research

There appears to have been no research into the nature and prevalence of corporal punishment of children in the home and schools in Sri Lanka. A 2005 study into institutional care found that corporal punishment and other cruel treatment occurs in this setting but provided no detailed information.⁶⁸

Recommendations by human rights treaty bodies

Human rights treaty bodies have repeatedly recommended that corporal punishment of children be prohibited in Sri Lanka, including the Committee on the Rights of the Child⁶⁹ and the Human Rights Committee.⁷⁰ In 2005, the Committee Against Torture welcomed the abolition of judicial corporal punishment by Act No. 23.⁷¹

Law reform necessary to achieve prohibition in all settings

Article 82 and illustration (i) of article 341 of the Penal Code, article 71(6) of the Children and Young Persons Ordinance, and all provisions authorising corporal punishment in remand homes, approved schools and Borstal institutions should be repealed. Legislation should be enacted to explicitly prohibit corporal punishment in all settings – the home, schools (public and private), all institutions accommodating children in conflict with the law and all forms of care.

Moves towards law reform

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 action plan developed at the SAIEVAC workshop in Kathmandu, November 2010, confirmed the need to repeal sections 82 and 341 of the Penal Code and to enact legislation to prohibit corporal punishment, noting that a draft child protection bill had reached the cabinet and the remaining process would take approximately a year and a half, providing an immediate opportunity for law reform. In the longer term, the plan noted that there were opportunities to amend the Domestic Violence Act to include explicit prohibition of corporal punishment and to review the provisions in the Youthful Offenders (Training Schools) Ordinance, the Prison Ordinance and other laws. The Government departments and bodies to be involved were identified as the Ministry of Child Development and Women's Affairs, the Ministry of Justice, the Ministry of Rehabilitation and Prison Reforms, the Ministry of Education, the Department of Probation and Child Care Services, the National Child Protection Authority, the Legal Draftsman's Department and the Attorney General's Department. Organisations and key individuals likely to support reform were also listed.

When Sri Lanka was examined by the Committee on the Rights of the Child in 2010, the Government stated its intention to prohibit corporal punishment in remand homes and alternative care settings.⁷² Since February 2011 high level discussions have been held to take the plan forward and consideration is now being given as to whether law reform requires amending existing law or the introduction of a separate law to prohibit corporal punishment of children. Media reports in September 2011 announced that the Ministry of Women Empowerment and Child Welfare is drafting legislation to prohibit corporal punishment in schools, penal institutions and children's homes.⁷³



68 Save the Children in Sri Lanka (2005), *Home Truths: Children's Rights in Institutional Care in Sri Lanka*

69 1 October 2010, CRC/C/LKA/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, para. 41; 2 July 2003, CRC/C/15/Add.207, Concluding observations on second report, para. 29; 21 June 1995, CRC/C/15/Add.40, Concluding observations on initial report, para. 32

70 1 December 2003, CCPR/CO/79/LKA, Concluding observations on the combined fourth and fifth reports, para. 11; 27 July 1995, CCPR/C/79/Add.56, Concluding observations on third report, sections 3 and 5

71 15 December 2005, CAT/C/LKA/CO/1/CRP.2, Concluding observations on second report, para. 3

72 6 October 2010, CRC/C/SR.1567, Summary record of examination by the Committee on the Rights of the Child, para. 42

73 *Sri Lanka Guardian*, 2 September 2011

Resources to support law reform



The following publications can be downloaded free of charge from the relevant websites:

- Committee on the Rights of the Child www2.ohchr.org/english/bodies/crc/comments.htm
- Global Initiative to End All Corporal Punishment of Children www.endcorporalpunishment.org
- Save the Children Sweden <http://resourcecentre.savethechildren.se>
- South Asia Initiative to End Violence Against Children (SAIEVAC) www.saievac.info

General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia) (2006), Committee on the Rights of the Child

Campaigns Manual: Ending corporal punishment and other cruel and degrading punishment of children through law reform and social change (2010), Global Initiative and Save the Children Sweden

Ending corporal punishment of children: A handbook for working with and within religious communities (2011), Global Initiative, Save the Children Sweden and Churches’ Network for Non-violence

Ending legalised violence against children: Global report 2010, Global Initiative and Save the Children Sweden

Global Initiative e-newsletter, published every 2/3 months, to subscribe email info@endcorporalpunishment.org

Prohibiting all corporal punishment of children: Frequently Asked Questions (also available in a child-friendly version) (2009), Global Initiative

Prohibiting corporal punishment of children: A guide to legal reform and other measures (2009), Global Initiative

Report of the 3rd Ministerial Meeting of the South Asia Initiative to End Violence Against Children (SAIEVAC) 23 June 2010 Kathmandu, Nepal

Stepping Up Child Protection: An assessment of Child Protection Systems from all countries in South Asia, including reflections from Central Asia (2010), Kathmandu: Save the Children Sweden, Regional Office for South and Central Asia

The **Global Initiative website** (www.endcorporalpunishment.org) contains detailed information on all aspects of prohibiting corporal punishment, including information and analysis of relevant human rights law, high level court judgments around the world, reports on the legality of corporal punishment and progress towards prohibition in every state worldwide and related facts and figures, summaries of research from all regions, details of legislative and other measures to support law reform, information on international, regional and national campaigns for law reform, and a range of online resources to support reform. Keep up to date by subscribing to the newsletter: email info@endcorporalpunishment.org.

The **Save the Children Sweden (SCS) Resource Centre on Corporal Punishment**

(<http://resourcecentre.savethechildren.se/content/themes/children-exposed-corporal-and-humiliating-punishment>) provides a wide range of information and resources to support law reform to achieve and implement prohibition – including on law reform, the promotion of positive discipline, awareness raising and involving children in the process.

Organisations campaigning for law reform



The following organisations are actively campaigning for law reform in the region:

Hitting people is wrong – and children are people too. Corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity. Its legality breaches their right to equal protection under the law. Corporal punishment in schools breaches the right to education. Urgent action is needed in every region of the world to respect fully the rights of all children – the smallest and most fragile of people.

This Report reviews progress towards prohibition of corporal punishment and deliberate humiliation of children in Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka – states which collectively provide for over a quarter of the global child population – in the context of follow-up to the UN Secretary General’s Study on Violence against Children.



SOUTH ASIA INITIATIVE TO END VIOLENCE AGAINST CHILDREN (SAIEVAC)

SAIEVAC is a regional mechanism initiated in 2005 with the vision of ending all forms of violence against children in South Asia. SAIEVAC works within the mandate of the United Nations Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia. SAIEVAC is governed by representatives from the governments of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, civil society and children. SAIEVAC activities are coordinated by a Regional Secretariat currently hosted by the Government of Nepal and lead by a Director General.

The **Global Initiative** was launched in Geneva in 2001. It aims to act as a catalyst to encourage more action and progress towards ending all corporal punishment in all continents; to encourage governments and other organisations to “own” the issue and work actively on it; and to support national campaigns with relevant information and assistance. The context for all its work is implementation of the Convention on the Rights of the Child. Its aims are supported by UNICEF, UNESCO, human rights institutions, and international and national NGOs.

www.endcorporalpunishment.org • info@endcorporalpunishment.org



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

Save the Children Sweden’s vision is a world in which every child attains the right to survival, protection, development and participation. Our mission is to inspire breakthroughs in the way the world treats children, and to achieve immediate and lasting changes in their lives.

Save the Children Sweden opposes all corporal and other humiliating punishment of children and works in close collaboration with local civil society organisations to promote the prohibition of corporal punishment and the promotion of parental skills to ensure children’s rights to protection as outlined in the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

<http://resourcecentre.savethechildren.se> • info@rb.se



Save the Children

Sweden

For information about the UN Secretary General’s Study on Violence against Children, see www.unviolencestudy.org