



South Asia Initiative To End Violence Against Children

3rd Technical Consultation
on
Eliminating Harmful Practices Affecting Children
in
South Asia

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Thimphu, Bhutan

Background Document



SAIEVAC
SAARC Apex Body



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and
In Collaboration with the Special Representative of the Secretary General on Violence against Children
(SRSG-VaC)

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List of Abbreviations and Acronyms

CEE / CIS	Central Eastern European / Central Independent States
CEDAW	Convention on the Elimination of Discrimination Against Women
CM	Child Marriage
CoP	Corporal Punishment
CP	Child Protection
CR	Child Rights
CRC	Convention on the Rights of Children
CSO	Civil Society Organization
FGM	Female Genital Mutilation
HIV / AIDS	Human Immuno-Virus / Acquired Immuno-Deficiency Syndrome
HR	Human Rights
INGO	International Non-Governmental Organization
NACG	National Action and Coordination Group
NCWC	National Commission for Women and Children
SA	South Asia
SAARC	South Asia Association for Regional Cooperation
SACG	South Asia Coordination and Action Group on Violence against Children
SAF	South Asia Forum
SAIEVAC	South Asia Initiative to End Violence against Children
SDF	SAARC Development Fund
SRSF-VaC	Special Representative of the Secretary General on Violence against Children
UN	United Nations
UNICEF	United Nations Children's Fund
VAC	Violence against Children

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Foreword

It is widely known that violence against children takes many different forms but the devastating consequences and adverse effects, which result from harmful practices perpetrated against children in the name of tradition, culture, religion or superstition continues to be a pressing concern. As also highlighted by the Special Representative of the UN Secretary General, all violations of children's rights can legitimately be described as "harmful practices" but what is most troubling is that many of these practices – either traditional or newly emerging – may be sanctioned or condoned by parents, influential community members or wider society at large and in direct opposition to their natural protective roles for children. Here in South Asia challenges also continue as numbers related prevalence of such practices, such as early or child marriage, often place SA Member States at the top of the list.

Building on momentum generated from the Follow Up Regional Consultation and the 3rd SAIEVAC Governing Board Meeting held in Colombo in May 2012 along with subsequent deliberations during the 1st and NACG Regional Consultations held in November 2012 and April 2013 respectively, the 3rd South Asia Technical Consultation on Traditional Practices Harmful to Children provides an opportunity for stakeholders to continue this work. As a follow-up recommendation endorsed during the SAIEVAC 3rd Governing Board Meeting, addressing harmful practices in the South Asia region was identified as an urgent need. Maintaining focus on Child Marriage and Corporal Punishment, as significant progress has been made and key actions to tackle these issues are now underway, it has also been agreed to allow discussion and discourse to expand more widely in order to identify the range of practices (and strategies to address them) present in South Asia.

The third Technical Consultation will continue to build on SAIEVAC's work with partners in eliminating all forms of violence against children in all settings while also addressing the need to enhance awareness and consolidate knowledge on such practices in a holistic manner addressing root causes and barriers associated with abandoning their use. In addition, the sharing of successful strategies or new approaches, which have evolved in the region, will also be explored. Discussions and presentations will also highlight that while legislation is critical, it is crucial to look beyond laws alone at actual implementation, gaps in existing legislation and the role that dual legal systems can play in further perpetuating these practices. As part of preparation work, desk reviews will be completed on Child Marriage and Corporal Punishment and national level activities will be undertaken prior to the event including prioritization of key issues and compilation of case studies and best practices while continued technical guidance and support will be contributed by expert members of the South Asia Coordination and Action Group (SACG). It is hoped that bringing together the wider network of SAIEVAC stakeholders and partners will result in strengthened strategic alliances and assist in amplifying efforts related to changing or shifting these most challenging of social norms.

We also look forward to the shared learning and best practices which will emerge from exchanges between delegates and to address the recommendations generated from this event in support of continued progress in addressing and preventing harmful practices against children not only in the South Asia region but globally as well.

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1. Harmful Practices: Context, Definitions and Continued Challenges for South Asia

"No violence against children is justifiable; all violence against children is preventable!"¹

Background/Context

Violence against children takes a variety of different forms and is influenced by a wide range of factors including both cultural and social dimensions which result in devastating consequences to children impacting upon their health, development, dignity and well-being. The UN Study on Violence against Children (2006), highlights that much violence directed towards children remains hidden or out of view especially when sanctioned by powerful influences or persuasive community leaders which contributes to wider social support and acceptance by both children and perpetrators as an "inevitable and normal" way of life.²

Recognized and condemned by the United Nations in 1954 when the General Assembly adopted a resolution stating that such "customs, ancient laws and practices relating to marriage the family were inconsistent with principles in the 1948 Universal Declaration on Human Rights", across all regions, millions of children continue to suffer from harmful practices based on gender inequality or discrimination aimed towards minority groups or the disabled.³ While all human rights violations can legitimately be described as "harmful practices", those anchored in tradition, culture, religion or superstition are especially difficult to address as they many times are perpetrated or actively condoned by the children's parents or significant adults within the community and often enjoy continued or on-going support from the wider community and beyond.⁴

Harmful practices affect children disproportionately and are more likely to be imposed at an early age. Through encouragement by community leaders, use of such practices often positions both family members and the community in contradictory roles or in opposition to their natural protective functions. At the same time, it has also been noted that children in South Asia are "expected to tolerate violence and be submissive to elders and their relationships with adults are often characterized by obedience and compliance rather than mutual affection and trust"⁵ which further accentuates vulnerability and risk.

¹ United Nations, *Study on Violence against Children*, United Nations, New York, New York, 2006, p. 5.

² Ibid, p. 9.

³ International NGO Council on Violence Against Children, *Violating Children's Rights: Harmful Practices Based on Tradition, Culture, Religion or Superstition*, 2012. p. 14.

⁴ Ibid, p. 17.

⁵ Save the Children, *Stepping Up Child Protection: An Assessment of Child Protection Systems from All Countries in South Asia*, Save the Children, Sweden, Kathmandu, Nepal, 2010, p. 8.

Many child-rights advocates continue to believe that persistent “legal and social acceptance of these violations and the slow progress in identifying and effectively addressing them are symptomatic of children’s low status, possessions rather than individuals and rights-holders, in societies across all regions”⁶ and such practices, linked to growth, development and maturity, continued to be justified in the name of tradition, culture or religion.

Defining Harmful Practices

As highlighted above, past focus on harmful practices included traditional practices affecting women and girls (such as Female Genital Mutilation (FGM) and child marriage) and which were based on traditional customs or beliefs making them extremely difficult to challenge or eliminate. Perpetrated or actively condoned by the child’s parents or significant adults within the community, they are extremely difficult to challenge or eliminate due to wider social support extending from family, to the wider community or sometimes across entire states.⁷ Recent discussion has now expanded the parameters of harmful practices to include both traditional practices and those newly emerging in order to allow the inclusion of contemporary practices not yet deeply embedded as custom or tradition but which need to be immediately addressed to prevent wider and deeper levels of acceptance. In general, all harmful practices stem from cultural, religious or social dimensions. At the same time, separating the description “traditional” from “harmful practices” helps to acknowledge that there are positive traditions which are respected and contribute to healthy child development and care.

What characterizes most harmful practices includes one or more of the following things:

- **Tradition:** the transmission of customs or beliefs from generation to generation;
- **Culture:** the ideas, customs and social behaviour of a particular people or society;
- **Religion:** practices required or encouraged in religious texts or teaching, or believed to be so; and,
- **Superstition:** widely held but irrational beliefs not based upon reason or knowledge.⁸

The General Comment No. 13 (2011) of the Committee on the Rights of Child on “The right of the child to freedom from all forms of violence” also includes a non-comprehensive list of harmful practices which includes several that have great relevance for the South Asia region:

- Corporal punishment and other cruel or degrading forms of punishment;

⁶ International NGO Council on Violence against Children, 2012, p. 11.

⁷ Plan International and the Special Representative to the Secretary General, *Protecting Children from Harmful Practices in Plural Legal Systems*, New York, 2012, p. 5.

⁸ International NGO Council on Violence against Children, 2012, p. 15.

- Female genital mutilation (FGM);
- Early and forced marriage;
- Dowry-related deaths and violence;
- Violent and degrading initiation rites;
- “Honour” crimes” and retribution related acts of violence;
- Accusation of “witchcraft” and related harmful practices such as “exorcism”;
- Son preference and female infanticide⁹.

Key Aspects of Harmful Practices

Many of the identified practices “involve gross and unlawful discrimination against groups of children, including gender discrimination, and in particular, discrimination against children with disabilities.” While some are based on tradition or religious belief, others stem from incorrect information or superstitious beliefs associated with child health and development. Many involve extreme physical or mental violence and pain, leading, in some cases, intentionally to death or serious injury. All are an assault on the child’s human dignity and violate universally agreed international human rights standards.¹⁰ And while those who condone, conduct or oversee such practices are often aware of and may even understand the damage that can result, associated social pressures and the consequences of not conforming to these social norms and negative social stigma which might result, may be viewed as the greater threat or more daunting form of harm to those having decision-making power or control.¹¹

Save the Children further explains that the most common forms of harmful practices in South Asia include cleansing and initiation abuses, use of children as sex slaves for priests and pilgrims, dowry-related abuse and honour killing and that “the most prevalent form of abuse is early and forced marriage with 46% of the world’s child marriages taking place in the region.”¹²

Despite the UN Study’s call to action for all harmful practices to be prohibited by law, they endure and are passed from one generation to the next, are commonly used and often supported by family, community and influential society members and are anchored in gender inequality and discrimination against those who are marginalized, disabled or in situations of increased vulnerability resulting in widespread harm and negative, long-lasting consequences for the children of South Asia.

⁹ International NGO Council on Violence against Children, 2012, p.18.

¹⁰ Ibid, p.9.

¹¹ UNICEF Innocenti Research Centre and the Government of the Netherlands, *A Study on Violence Against Girls*, UNICEF, Florence, Italy, 2009, p. 32.

¹² Save the Children, 2010, p. 39.

While general legislation may be in place, laws may not be actually used or enforced due to social acceptance of these deeply entrenched practices. Alternatively, some practices may be “compartmentalized” or broken apart or embedded within various pieces of legislation “which hampers consideration of commonalities or shared root causes further blocking the design and development of comprehensive strategies which are required to address them.”¹³ And in countries where plural legal systems exist (including here in the South Asia region), the intertwine of national laws with customary and religious laws creates further complexity around legal interpretation and implementation which may obstruct or create additional barriers to fulfillment of children’s rights and protection of their best interests.¹⁴

As a result of discussions held at an international expert consultation on harmful practices organized by the Special Representative on Violence against Children and Plan International in Addis Ababa, Ethiopia in 2012, additional key challenges related to address harmful practices were also identified. The meeting included experts from different parts of the world, including from South Asia and while having a special focus on Africa, also held broader relevance. Challenges identified included the following:

- Inconsistencies in legal regulations, selective implementation and compliance and insufficient resources;
- Lack of awareness within communities;
- Prejudices amongst personnel; and,
- Weak capacity to address children’s rights among law enforcement officials, the judiciary, traditional leaders and judges in customary and religious courts.¹⁵

2. Addressing Harmful Practices in South Asia: Structures and Actions

While international structures, conventions and treaties addressing harmful practices can be found in **Annex 1** at the end of this document, the South Asian Association on Regional Cooperation (SAARC) Convention on Regional Arrangements from the Promotion of Child

¹³Plan International and the Special Representative to the Secretary General, *Protecting Children from Harmful Practices in Plural Legal Systems*, New York, 2012, p. 8.

¹⁴United Nations, *Annual Report of the Special Representative of the Secretary-General on Violence Against Children*, United Nations, New York, New York, 2012, p. 7.

¹⁵Plan International and the Special Representative to the Secretary General, *Protecting Children from Harmful Practices in Plural Legal Systems*, New York, 2012, p. 8.

Welfare in South Asia (2002) sets out roles and responsibilities for States Parties in South Asia to guarantee the following:

- Ensure that their national laws protect the child from any form of discrimination, abuse, neglect, exploitation, torture or degrading treatment, trafficking and violence (Article 4 (3)(a); and to,
- Make civil registration of births, marriages and deaths, in an official registry, compulsory in order to facilitate the effective enforcement of national laws, including the minimum age for employment and marriage (Article 4 (3)(d)).¹⁶

In order to respond to and implement these obligations, the **South Asia Initiative to End Violence Against Children (SAIEVAC)**, an Apex body of SAARC since 2011, identified early marriage as one of its five priority thematic areas (also including corporal punishment, trafficking, child labor and sexual abuse and exploitation) and as part of its 5-year work-plan has included the target that by 2015, all Member State countries will have raised the legal age of marriage for both boys and girls to 18 and fully implemented Article 4 (3)(d) of the Convention.¹⁷

SAIEVAC's Mandate and Focus to Address Harmful Practices

An innovative initiative, SAIEVAC focuses on protection of children and asserts a vision that all children, both girls and boys, throughout South Asia enjoy their rights to protection from all forms of violence in all settings. Initially launched as the South Asia Forum (SAF) in 2005 as part of regional follow-up to the global study on violence against children, it was further strengthened in 2010 through a new governance structure and the development of a five-year work plan. Shifting from Pakistan to Nepal SAIEVAC's structure was further endorsed at a Ministerial meeting taking place in the Maldives in the same year and currently, National chapters have been established in seven South Asia countries.

SAIEVAC's mandate is unique through its role as a regional initiative led by the governments of South Asia in partnership with children themselves, civil society organizations, INGOs and UN agencies. Participatory and inclusive approaches that enable partners to strengthen both child protection activities and networking (including capacity development and exchange of best practices and lessons learned), in support of a systems building approach based upon awareness, prevention and response is under active consideration. Recognized globally, it is

¹⁶ SAARC, *Convention on Regional Arrangements for Protection of Child Welfare in South Asia*, SAARC, Kathmandu, Nepal, 2002.

¹⁷ Plan International and the Special Representative to the Secretary General, *Protecting Children from Harmful Practices in Plural Legal Systems*, New York, 2012, p. 15.

“an example of best practices and partnerships and demonstrates a consolidated effort of various stakeholders – including governments – to work together and find solutions to end violence against children in South Asia.”¹⁸

Efforts related to addressing violence against children also includes exploring and learning more about harmful practices in the region and this now has become an over-arching priority. As mentioned earlier, SAIEVAC’s five key thematic areas do include issues which can be considered harmful practices in the South Asian context – child marriage and corporal punishment – where significant progress has been made. However, at SAIEVAC’s second Technical Consultation, taking place in Colombo in 2012, an initial discussion on harmful practices was held then tabled to the Governing Board and resulted in a recommendation addressing harmful practices in the region. Also prioritized as an urgent need, the issue was selected for focus of the upcoming Technical Consultation planned for 2013. SAIEVAC’s ability to highlight harmful practices as an urgent concern through its extensive regional partner network, to place the topic on regional agendas and to assist in bringing discussions on these sensitive practices more out into the open while at the same time promote learning and capacity building for both government and civil society partners, will all contribute to strengthening dimensions related to awareness, prevention and response actions.

What separates actions and interventions related to other violence-related thematic areas mentioned above, despite definite linkages and interconnectedness, are the different drivers and root causes behind their existence and perpetrator motivations beyond culture, tradition, religion or superstition. For child labor, trafficking, sexual abuse / exploitation more specifically, these would include economic motivations or opportunities for abuse / exploitation based on power dynamics or control issues. However, vulnerability of children due to discrimination, poverty, marginalization, disability or other factors which place them at risk does have a role to play in terms of both harmful practices and other acts of violence against children. These dimensions are especially relevant for South Asia due to levels of gender inequality prevalent in the region and wide ranging diversity and inclusion issues related to caste, ethnicity, education levels, socio-economic status, migrating or displaced populations and emergency contexts which also characterize and contribute to the many challenges of South Asia.

Child / Early Marriage

As highlighted earlier, early / forced marriage remains the most prevalent harmful practice taking place in South Asia with the region being home to more than half the world’s child brides. According to UNICEF, almost half or 46% girls are married before the age of 18¹⁹. 1 in 3 adolescent girls in South Asia are currently married or in union compared to 1 in 14 for the CEE/CIS region.²⁰ Early marriages have lasting and damaging consequences to the health,

¹⁸ Save the Children, 2010, p. 8.

¹⁹ UNICEF, *State of the World’s Children*, UNICEF, New York, New York, 2012.

²⁰ UNICEF, ChildInfo – Child Protection, Progress (updated Jan 2013), downloaded from:

development and well-being of these young women and compromise their right to take part in informed decisions. According to Save the Children (2010), although marriage of underage boys does take place, those most likely to experience child marriage are girls. National statistics on child marriage show that the percentage of women aged 20 – 24 who were married before age 18: 43% Afghanistan, 64% Bangladesh, 47% India, 51% Nepal, 24% Pakistan and 12% in Sri Lanka.²¹

Often taking place due to poverty or lack of economic opportunities for girls in rural areas, these young women are viewed by the family in terms of the economic value they will bring when exchanged for goods, money or livestock or the preference for lower cost of dowry that child brides will bring. Alternatively, some parents view early marriage as a form of protection for their daughters related to their safety, ensuring their wholesome reputation or as a way to secure their future or status (and undoubtedly linked to social pressures) and in some locations, marriage is also used as a means to build alliances between families.

These young brides, again according to Save the Children (2010), are much more prone to experience domestic violence (and less likely to report or take action against this), have lower levels of school attendance and relegated to a lifetime of lower social status than that of their husbands. They also have less reproductive power or control and suffer higher levels of maternal mortality rates, are more susceptible to sexual abuse – including non-consensual sex with their husband – which also makes them more vulnerable to sexually transmitted infections and disease.

Minimum age of marriage is not uniform in the region with some countries having higher minimum age of marriage for boys as opposed to girls. As highlighted earlier, SAIEVAC's recent efforts to ensure that all countries ensure a uniform minimum age of 18 for both boys and girls is underway. In addition, SAIEVAC has also hosted a Regional Meeting on the Girl Child with a special focus on child marriage and facilitated the development of a Regional Action Plan to address the issue of child marriage as an outcome of this meeting. With support of the SACG, SAIEVAC is also planning a number of regional level events which will draw further attention to the issue of child marriage in 2013 and beyond.

Corporal Punishment

Although all countries in South Asia are committed to prohibiting all corporal punishment as a follow-up to the UN Study on Violence against Children Regional Consultation and the follow-up meeting in 2006, corporal punishment is still widely practiced tradition in both schools and at home across the region. Research work in 2009 carried out in Bangladesh found that 91% of children in school experienced physical punishment and 74% also encountered it at home and

www.childinfo.org/marriage-progress.html.

²¹Save the Children, 2010, p 39.

that in Afghanistan in a qualitative study carried out in 2008, all 61 case study families reported violence forms of punishment being used at home.²²

Taking the form of hitting, slapping, kicking, beating, and hair pulling, these practices are often not seen as abuse when used as form a discipline. Use of violence is often justified by parents (and teachers) because this is the traditional form of discipline they experienced or that they are unaware of alternatives. Again reflective of the low status and societal views related to care and treatment of children, the use of all forms of violent punishment against children in all settings, including within the home, at school, in care institutions and within the framework of the justice system, is often so deeply embedded as an adult's right and responsibility related to the upbringing or the disciplining of children, many do not even consider it an issue of concern.

Ending this form of legalized violence has been flagged as a human right imperative and an essential strategy for reducing other forms of violence against children; furthermore, "no State can claim it has an effective child protection system if its laws still authorize and defend the use of corporal punishment."²³In addition, scarce human and financial resources and weak capacity and training, in addition to attitudes and perceptions, contribute to its continued use and persistence. While progress on the issue is slow and steady, the Global Initiative to End Corporal Punishment reports that several South Asia States have publically committed to ending corporal punishment in schools (and in some cases only *some* schools not all) and these include: Afghanistan, Bangladesh, India and Sri Lanka. For additional information, please refer to "SAIEVAC – SAARCLAW Collaboration on Legal Reform to Ban Corporal Punishment" (a Technical Note, 2013)in support of SAIEVAC's Regional Campaign to Prohibit Corporal Punishment of Children included at the end of this document as **Annex 2**.

Additional Issues and Areas of Concern

In addition to these two examples of harmful practices in South Asia, recent discussions taking place at the Regional NACG Consultation taking place in Male in April 2013 identified a number of other harmful practices specifically related to the South Asian context. These issues and practices were flagged as areas of concern and for further attention and discussion at the upcoming Technical Consultation. They include the following (and please see **Annex 3** for a more detailed description / discussion of each):

- **Gender discrimination, son preference and infanticide** (along with care practices and treatment of girls) (Sri Lanka, India, Nepal, Pakistan, Afghanistan (but for boys also in Sri Lanka))
- **Caste issues / discrimination** (Nepal, Pakistan, India)

²² Save the Children Sweden and the Global Initiative to End Corporal Punishment, *Ending Corporal Punishment of Children – A Handbook for Working With and Within Religious Communities*, (no date given).

²³ Save the Children, 2010, p. 35.

- **Discrimination against disabled children or minority children** (Sri Lanka, Nepal, Afghanistan, India)
- **Girl Child Puberty Related Practices (nutritional and isolation practices)** – (Sri Lanka, Nepal and Pakistan)
- **Use of children in various religious practices and enlistment in religious institutes** (Sri Lanka, Nepal, Pakistan – marriage to Koran / child sacrifice)
- **Dowry** (Bangladesh, Nepal and India)
- **Exploiting children for entertainment** (Afghanistan, India, Nepal, Pakistan)
- **Acid violence** (Afghanistan, Pakistan, Bangladesh and India)
- **Virgin preference** (Bangladesh, Nepal, India)
- **Discrimination / isolation of bi-sexual or eunuch boys or males based on sexual orientation**(Pakistan, Bangladesh, India)
- **Giving Away Girls to Settle Disputes and Honor Killings** (Pakistan, Afghanistan)
- **Use of Fatwa** (Bangladesh, India and other locations?)
- **Branding of Girls / Women as Witches** (Nepal)

As articulated by the SRSV-VaC / Plan International Technical Consultation report (2012) which provides a careful analysis of harmful practices, especially in the context of plural legal systems, “legislation provides a critical foundation to protect children from violence, including harmful practices ... and is an expression of accountability and commitment” aimed at enhancing prevention and abandonment and in fighting impunity.²⁴First and foremost there must be comprehensive and clear legal prohibition fully implemented through a multi-sectorial approach with adequate human and financial resources to ensure effective administration. However, as highlighted earlier, legislation alone cannot end the use of harmful practices because even if it is in place, they may not be effectively implemented or respected or observed due to the power of traditional or cultural attitudes. In addition, religious or customary legal systems may also exist, thus creating plural legal systems which create confusion and result in complexity as is the case for South Asia.

The “**states’ obligations under existing international and regional human rights instruments which they have ratified, do not permit the existence of an alternative system of laws which are not compliant with these instruments**” and there should be no hesitation in condemning either laws or procedures which oppose or conflict with these international

²⁴ Plan International and the Secretary General’s Special Representative on Violence against Children, 2012,p 9.

human rights standards.²⁵ In addition, **there should be no impunity for those who perpetrate harmful practices against children**, despite concerns around parental rights (as opposed to their responsibilities) and issues of consent.

Also because it is family and parents who are often directly involved in carrying out or initiating harmful practices, **“criminal law must be enforced in a way that is sensitive to the special nature of family relationships and children’s dependence on” these most important caregivers**”. Formal interventions (including prosecution of parents or removal of children from families) should only be pursued when it recognized as necessary to protect a child from significant harm and be in the “best interests” of the child.²⁶

In assessing the need for additional legislation, once harmful practices are identified **it is important to conduct a careful review of existing laws or legislation (and its interpretation) in order to “determine whether the harmful practice is clearly unlawful and whether prohibition can be effectively enforced without further addition to, or amendment of the law”**. If there is any confusion or impediments to enforcement, then the necessary changes to legislation should be identified and advocated until adopted.”²⁷ While also engaged in this process, it is also important to note, as highlighted by the International NGO Council on Violence against Children (2012), potential **dangers of unintended consequences related to legal reform, which** may change or contribute to adaptations in existing practices. A past example cited concerned reforms aiming to eliminate “exemptions” for “honor” crimes which actually resulted in an increase in the number of minors recruited to perpetrate the crime, as their sentence would be less severe or in encouraging women to commit suicide so as to avoid punishment.²⁸

Moving beyond legislation it is also clearly understood that in order to affect and sustain social change, legislation must be supported by prevention and implementation efforts – including birth registration, awareness raising, education and training and mobilization of the wider community. Recent work around better understanding the dynamics of social norms highlights the fact that often the violation of human rights, including children’s rights, have traditionally been analyzed primarily at the individual level and subsequent development of interventions aimed to change behavior continue to place a focus on the level of the individual. **In reality however, many behaviors or practices are relational or governed by the behavior or expectations of others, and use of such an approach will be largely ineffectual. Instead a more “inter-dependent” perspective is required especially in terms of exploring and**

²⁵ International NGO Council on Violence Against Children, 2012 p. 23.

²⁶ International NGO Council on Violence Against Children, 2012 p. 25.

²⁷ Ibid, p. 24.

²⁸ Ibid, p. 19.

addressing social norms. This approach and perspective is increasingly becoming more relevant especially in terms of addressing challenging or negative practices deeply embedded as part of traditional, cultural or religious scripts which are highly influential in South Asia.

Understanding and altering social norms or social expectations is **based on the understanding that individuals believe that those in their “relevant network” believe that they should or ought to also follow such practices (or perhaps face negative sanctions) even if personally or on an individual level, they may disagree.** Bicchieri (2006) further defines social norms in the following way:

A social norm is a pattern of behavior such that individuals prefer to conform to on the condition that they believe that (a) most people in their relevant network conform to it (empirical expectation), and (b) that most people in their relevant networks believe they ought to conform to it (normative expectation).²⁹

When social expectations or pressure represent a major obstacle or barrier to families who might otherwise consider abandonment of a harmful practice, it is difficult for just one family to go out on a limb and go against the social norm on its own. **What is required is for a collective shift to happen involving a “critical mass” of families who have discussed and collectively agreed about changing or shifting the practice together.**³⁰

What is needed here is a longer-term process for exploration and opportunities for discussion among community members (facilitated or led by “influentials”, elders or community leaders) in order to tease out and recognize inconsistencies between current social practices which are actually in opposition to deeply held core human values shared by the group. South Asia holds the positive potential of strong communities along with a well-organized and vibrant civil society which functions at multiple levels and which could be harnessed in terms of addressing and shifting social norms. The approach has been used to combat FGM in several African nations and more recently, a number of UNICEF offices in South Asia (Bangladesh, Pakistan and India) have begun to apply a social norms perspective to address early marriage and other child protection dimensions.

3. The Technical Consultation Process

Building Upon Past Technical Consultations in South Asia

With an aim to eliminate harmful practices affecting children in the region, the 3rd South Asia Technical Consultation will provide an excellent opportunity to engage with and address many of these critical dimensions. Earlier South Asia Technical Consultations have focused on Care

²⁹Cristina Bicchieri, *Social Change: Psychology and Normative Constraints* (Cambridge University Press (forthcoming) 2006, p. 2.

³⁰ UNICEF Innocenti Research Center and the Government of the Netherlands, *A Study on Violence Against Girls – Report on the International Girl Child Conference*, 2009, p. 37

Standards and Child Friendly Services (2011) and the UN Study on Violence against Children Follow-Up Actions (2012), again in support of child protection systems-building approach, however, have more recently identified harmful practices as an urgent need. Based on a follow-up recommendation endorsed during the SAIEVAC 3rd Governing Board meeting, focus will be maintained on Child Marriage (CM) and Corporal Punishment (CoP) as significant progress has been made in these areas while also allowing discussion to expand more widely in order to address other pressing concerns. This will enable the identification of a range of other harmful practices which are prevalent in South Asia in order to contribute to and further strengthen SAARC's commitment to children.

Building upon previous work and commitments generated during past Technical Consultations, the upcoming event will ensure development of a common understanding of the definition of "harmful practices" and promoting further learning associated with this through enhanced cross-regional learning and additional strengthening of partnerships. The Technical Consultation will also draw from experiences shared and lessons learned from the recent consultation held in Africa in 2012 which focused on protecting children from harmful practices in plural legal systems and the need to expand work beyond legislative reform to address and include other important dimensions and influential stakeholders. In addition, follow-up actions and plans agreed at the two previous South Asia Consultations taking place in 2011 in Kathmandu, Nepal and in Colombo, Sri Lanka in 2012, will also contribute to informing discussions.

Children's Engagement and Participation

Also continuing momentum around the creation of a children's regional forum on violence against children, the Consultation will allow children from South Asia to send forward their views and recommendations and also participate in discussions related to their own protection and other decisions affecting them. Education and awareness raising on the consequences of harmful practices needs to start with children themselves and the Children's Consultation on Harmful Practices, taking place at the national level prior to the regional event, will provide an opportunity for them to be more informed on their rights, gain confidence and skills and become the first line of prevention or social change agents against use of harmful practices. In addition, children's contributions and perspectives can also extend and strengthen learning with regard to new approaches and successful strategies in tackling of these issues. A one-day Preparatory Meeting for Child Governing Board Members and Observers at the regional event will also contribute to this. In addition, the Children's Consultation process will further enhance capacity building of adults and organizations within the region based on skill development and learning related to meaningful and safe child participation through planning for and participating in such forums and events.

Additional Dimensions

In addition to exploring and addressing harmful practices, the Technical Consultation will also create space to recognize, discuss and promote existing positive practices which are often ignored and not well documented but can be drawn from and are deeply embedded in the rich

culture of South Asia - that serve to naturally protect children. The consultation will also highlight the importance of community engagement and involvement of influential religious or traditional leaders who can contribute to the social mobilization process with the ultimate goal of shifting social norms and abandoning such practices. Countries will be invited to share research work, pilot programmes or case studies that are reflective of work which has already begun and which address the harmonization of legal, social and cultural norms and have shown concrete results for children.

Building upon and further contributing to practices, experiences, modalities and time-frames employed for the past two Technical Consultations, it has been agreed that the format of the 3rd Technical Consultation (which will be held on the 24th to the 27th of September in Bhutan) will follow a similar schedule and include concurrent or overlapping sessions as outlined below.

Proposed Technical Consultation Program Schedule:

24 th September:	Arrival of Child Observers and Child Governing Board Members
25 th September:	Preparatory Meeting for Child Governing Board Members and Observers;
25 th September (evening):	Inaugural Event for the Technical Consultation
26 th and 27 th September:	Technical Consultation Eliminating Harmful Practices Affecting Children Based on Tradition, Culture, Religion and Superstition;
28 th and 29 th September:	4 th SAIEVAC Governing Board meeting.

The Consultation will bring together relevant stakeholders in South Asia with the following **overall Goal:**

To contribute to the elimination of harmful practices in South Asia based on renewed SAARC and other commitments.

Key Objectives are to:

- Review measures taken and concrete results achieved by Member States in addressing harmful practices;
- Promote learning through exchange of experiences and sharing of best practices;
- Strengthen children’s participation in their own protection and in relevant decisions affecting them; and,

- Formulate recommendations to strengthen the commitment and accountability of South Asian Governments and relevant actors to end harmful practices.

Key Outputs include:

- Regional recommendations on addressing harmful practices informed by national action plans and country-specific experiences;
- Outcome document generated outlining additional harmful practices, gaps and actions / efforts / approaches required to address these practices in order to further strengthen key stakeholder's commitment and responsibility in ending violence against children; and,
- Learning, knowledge sharing and documentation from the South Asia context contributed towards strengthening global efforts and accelerating progress on combating violence against children.

Additional Resources

Preparations for the 3rd Technical Consultation had their start through detailed discussions and agreement on the way forward at the recent Regional NACG Meeting held in the Maldives from 7 – 9 April 2013. The following actions will be completed in order to strengthen the effectiveness of the consultation and subsequent outcomes:

- A **Background Document** will be prepared and distributed (the document you are now reading) prior to the Consultation that provides a clear definition of harmful practices and sets the stage for ground realities in South Asia;
- **Two technical papers, one on Child Marriage and the other on Corporal Punishment** will also be shared as background reading and to provide an update on progress in these areas (and remaining challenges) prior to the start of the Consultation; and,
- A detailed **Desk Review** will also be completed to assess the current situation and existing information on harmful practices prevalent in different Member States through use of participatory approach and again, to inform the proceedings of the 3rd Technical Consultation.

National Consultations

It is expected that **National Consultations in the eight South Asian countries will take the lead in preparations** for the upcoming Consultation – including national level Children's Consultations - in order to contribute to an effective and meaningful event. National consultations will review efforts in order to monitor progress related to strengthening of child protection systems, include legislation, allocation of budget and other key components in order to provide information, evidence and data reflective of progress and especially as related to impact for children and improvements in their lives.

Objectives for National Consultations

- Review progress against indicators and identify concrete results achieved at the National level in addressing violence against children and harmful practices during the past year;
- Identify and prioritize key practices, successful approaches and lessons learned from in-country experience which can be shared across the region for replication and use;
- Strengthen child participation and roles in addressing harmful practices and their own protection at the national level; and,
- Articulate recommendations based on national experience and continued needs which can contribute to further strengthening the commitment and accountability of government and relevant actors in address and elimination harmful practices.

Outputs for National Consultations

- Country-specific background document or report prepared highlighting status as related to key harmful practices, current or planned activities or actions to address these and concrete results achieved that improved the protection of children from these practices;
- Country-specific presentation generated for sharing at the Regional Consultation which address the dimensions highlighted above;
- Country level Children’s Consultation held and documentation on recommendations completed;
- Nomination and selection of civil society representatives (specifically for Afghanistan and Bangladesh as well as Bhutan and India) to be completed so that new CSO member for SAIEVAC Governing Board and Observers are in place and ready to assume roles and responsibilities; and,
- Final selection of delegates representing each Member State country and who will attend the Technical Consultation and other events completed and formally agreed.

4. Recommendations and Areas for Consideration in Moving Ahead

Addressing and Further Strengthening Legislative Dimensions

As highlighted at the recent (May 2013) SAIEVAC – SAARCLAW Conference in Bhutan, the following specific actions have been agreed upon to review and further strengthen legislative dimensions related to harmful practices and child protection:

- Complete a comprehensive mapping exercise of existing legal frameworks for child rights and protection in South Asia, identifying gaps and challenges and opportunities for harmonization with international instruments, norms and standards;
- Ensure that a proper mechanism is in place to monitor implementation of actions by the judiciary in order to ensure activation of laws and legislation (and contribute to further strengthening of this) related to child protection;
- Support of all countries in South Asia in moving ahead to fulfill their commitments to explicitly prohibit the legal and socio-cultural acceptance of physical and humiliating punishment of children and in the development and implementation of a plan moving from prohibition to elimination of physical and humiliating punishment of children in all settings; and,
- With regard to Child Marriage, it is understood that these issues are often deeply rooted in poverty and affects marginalized communities so there is need for wider partnerships and additional action which complements the passing of legislation.

Ensuring a Universal Registration System

As highlighted by the Africa Harmful Practices Consultation report (2012), increasing the visibility of harmful practices and violence against children requires an efficient data collection system that begins with birth registration. This is critical to prevent harmful practices and to effectively protect child victims. In South Asia Bangladesh's initiative to make birth registration available on-line helps to prevent early or under-age child marriage and perhaps lessons learning and sharing of this approach can assist in strengthen the efforts in other countries in the region.

Explore and Consider Application of a Social Norms Perspective

As mentioned earlier, exploring and learning more about how social norms theory and approaches will be critical to addressing and eliminating the use of harmful practices. Based on early work being carried out in this area in India, Pakistan or Bangladesh it may be useful to consider inviting either international experts or country-specific guest speakers to share progress and experiences on applying a social norms perspective to combating harmful practices.

Engagement of Strategic Stakeholders Including Community and Religious Leaders

The potential benefit of positive use and engagement of religious and other community leaders in addressing both harmful practices and violence against children was discussed at the Male consultation taking place in April of 2013. In addition, as highlighted by the SRSV-VaC and Plan International report (2012), because traditional and religious players play such a powerful role in protecting children from violence, it is important to further strengthen this

collaboration and build upon their influential support for increasing both awareness and clarifying harmful practices in an effort to abandoning them. As evidenced by results from collaborations in other areas (e.g. HIV/ AIDS, immunization and polio eradication and improved hygiene and sanitation practices), religious and other traditional leaders can function as positive role models, share messages, and serve as advocates within the community and contribute to changing specific behaviors or promoting new practices. Yet at the same time, this is also an area of concern as many also harbor doubt or reluctance around meaningful engagement of religious leaders or institutes as they themselves can often be actual perpetrators of violence against children.

It may be highly useful for countries to further investigate past or on-going work which includes engagement / enlistment of religious leaders either around harmful practices or other child protection issues so that discussion, learning and sharing of best practices can be considered and expanded upon during the upcoming Technical Consultation.

Please find additional resources related to this in **Annex 4**.

Support the Protective Role of the Family (Positive Practices)

As also discussed at the Male consultation, it is also extremely important to identify and document the many positive practices that are part of the rich South Asian culture but often forgotten or ignored. These positive practices also contribute to protective dimensions for children especially with regard to the family but can also include the community and wider culture and society. Many of these practices serve to bond children to their parents, wider family and society and, in some cases, although symbolic can provide a specific protective function throughout their entire lives on into adulthood.

It is recommended that country-specific reviews of child caring practices be completed so that many of these positive practices could be identified and mapped across the region and to further consider or investigate how they link to or perhaps serve as a buffer to some of harmful practices mentioned earlier in this report.

Empower Children in Efforts to Prevent and Abandon Use of Harmful Practices

As also highlighted earlier in this document, children's inclusion and participation in learning about and preventing the use of harmful practices is critical to eliminating use and abandonment. Learning about and becoming sensitized to the consequences harmful practices needs to begin with children themselves in order to educate them on their rights, build skills and confidence in becoming the first line of prevention of these practices and in voicing their thoughts, ideas and recommendations in developing solutions for situations / issues which affect them. And as highlighted earlier, engagement of children also provides an opportunity for additional learning about existing good practices and the roles or actions undertaken by children in South Asia as part of community engagement.

Consolidate and Share Data and Research on Harmful Practices

Despite the serious impact of harmful practices, there remains a continued lack of data or research around their use and persistence and this remains as a major challenge in all regions of the world including South Asia. Because evidence is essential to inform legislative and other measures supporting sustained abandonment, it is critical for Member States to collect, analyze and disseminate data and information on harmful practices (and also successful strategies which have evolved to address or eliminate them). SAIEVAC's existing work-plan and planned Regional Resource Hub and Center of Excellence provides additional opportunities for the gathering and sharing of data and best practices from across the region. Formal engagement and collaborations with regional and international academic institutes both within and beyond South Asia can also strengthen investigation and further learning on harmful practices in the region and successful strategies or approaches required to address and eliminate them.

Continue to Build Upon and Strengthen International and Regional Cooperation

Moving forward on SAIEVAC's mandate, the continued strengthening and expansion of the regional partner network – including both government and civil society stakeholders working together – is part of on-going process. The process also includes agreement between SAIEVAC and SAARCLAW to both enhance regional learning and sharing of best practices and strengthen commitment between organizations in order to address issues and demonstrate progress. Such cooperation will achieve key aims of legislation in addressing harmful practices, make explicit disapproval of them on multiple levels and send a message of support to those working to renounce, abandon and alter them.

5. Background Document Annexes

Annex 1: International Structures, Standards and Key Concepts

Explicit references to harmful practices in human rights instruments include the following:

The Convention on the Rights of the Child (CRC): Article 24 (3) – the child’s right to health and health services requires: “States parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)(Under Article 2): “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of elimination discrimination against women and, to this end, undertake:

f. To take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;”

Article 5 requires States Parties “to take all appropriate measures:

- a. “To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of these sexes or on stereotyped roles for men and women;
- b. To ensure that family education includes a proper understanding of maternity as a social function and the recognition of a common responsibility of men and women in the upbringing of children and the development of their children, it being understood that the interest of the children is the primordial consideration in all cases.”

And **Article 16** covers rights relating to marriage, including child marriage; the following provisions are particularly relevant:

1. “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters related to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - a. The same right to enter into marriage;
 - b. The same right to freely choose a spouse and to enter into marriage only with their free and full consent;
 - c. The same rights and responsibilities during marriage and at its dissolution;

- d. The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount.
2. "The betrothal and marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."

Additional references:

The Right of the Child to Freedom from All Forms of Violence

- No violence against children is justifiable; all violence against children is preventable;
- A child rights-based approach to child care-giving and protection requires a paradigm shift towards respecting and promoting the human dignity and the physical and psychological integrity of children as rights-bearing individuals rather than perceiving them primarily as "victim";
- The concept of dignity requires that every child is recognized, respected and protected as a rights holder and as a unique and valuable human being with an individual personality, distinct needs and privacy.

- Committee on the Rights of the Child, Geneva
Comment No. 13, 2011

Article 3: Best Interest of the Child

The Committee emphasizes that the interpretation of a child's best interest must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity.

An adult's judgment of child's best interests cannot override the obligation to respect all the child's rights under the Convention. In particular, the Committee maintains that the best interests of the child are best served through:

- Prevention of all forms of violence and the promotion of positive child-rearing, emphasizing the need for a focus on primary prevention in national coordinating frameworks;

- Adequate investment in human, financial and technical resources dedicated to the implementation of a child rights-based and integrated child protection and support system.
 - Committee on the Rights of the Child, Geneva
Comment No. 13, 2011

Due Diligence

The concept of “*due diligence*” regarding a State’s responsibility for non-state acts is of significance in addressing harmful practices against children. The concept was first developed in *Velasquez Rodriguez v. Honduras*, a case reviewed by the Inter-American Court of Human Rights (IACHR) in 1988, concerning state responsibility for enforced disappearances. The concept establishes that an illegal act, “which violates human rights and is initially not directly attributable to a State ... can lead to the international responsibility of the State, not because of the act itself, but because of lack of *due diligence* to prevent the violation or to respond to it as required by relevant human rights treaty.”

According to the jurisprudence of the CEDAW Committees, “States may ... be responsible for private acts if they fail to act with *due diligence* to prevent violations of rights or to investigate or punish acts, and for providing compensation.” The Committee recommends that States Parties should:

- Ensure that laws against family violence and abuse, rape, sexual assault and other acts of gender-based violence give adequate protection to all women and respect their integrity and dignity; and,
- Take all legal and other measures necessary to provide effective protection of women against gender-based violence, including effective legal measures.

(Excerpted from Plan International and Secretary General’s Special Representative on Violence against Children, Protecting Children for Harmful Practices in Plural Legal Systems, 2012).

Annex 2: SAIEVAC – SAARCLAW Collaboration on Legal Reform to Ban Corporal Punishment



SAIEVAC'S REGIONAL CAMPAIGN TO PROHIBIT AND ELIMINATE ALL CORPORAL PUNISHMENT OF CHILDREN

SAIEVAC-SAARC LAW COLLABORATION ON

LEGAL REFORM TO BAN CORPORAL PUNISHMENT

BACKGROUND

The member Representatives of the eight South Asia governments have come together to form the South Asia Initiative to End Violence against Children (SAIEVAC- the SAARC Apex Body for Children), along with Child Representatives and the South Asia Coordinating Group on Actions Against Violence Against Children (SACG). Together they have made public commitments to prohibit all corporal punishment of children.

Children are increasingly speaking out for themselves, in South Asia and elsewhere, about the hurt caused to them by the acceptance and legality of violence disguised as discipline, by their parents and teachers - by people they want to love and respect. Members of SAIEVAC Children's Forum have confirmed this and highlighted the urgency of addressing the issue and fulfilling their rights to protection from all forms of violence – including all violent punishment.

Following this call from the children of SAARC, in October 2011 SAIEVAC's Governing Body agreed to launch its first regional campaign - to prohibit and eliminate all corporal punishment of children. In May 2012 in Colombo, Sri Lanka, the campaign was formally launched in the presence of children and dignitaries, including the President of SAARC Law. A detailed progress report on the issue had been published by SAIEVAC in December 2011.³¹ SAIEVAC's 5-year work plan aims at reinforcing regional cooperation on ending all corporal punishment of children in all settings and all forms of violence in general. This regional campaign of SAIEVAC has three pillars: "legal reform", "public attitudes" and "public education".

In 2012, through the seminar on "Securing Access to Justice in the Enforcement of Human Rights", SAIEVAC's Regional Secretariat formally established links with SAARCLAW (South Asian Association for Regional Cooperation in Law) to achieve the "Legal Reform" pillar of the campaign in all the SAARC members states, including children's right to protection in general. Another aim of the collaboration is

³¹South Asia Initiative to End Violence against Children (SAIEVAC), Prohibition of Corporal Punishment of Children in South Asia: a progress review, 2011; see www.saievac.info

to seek to strengthen the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.

Hence it is in this context that the SAIEVAC-SAARC Law conference in Bhutan, will also focus on bringing attention of the regional legal fraternity to join hands to work on legal reform to ban corporal punishment of children in all settings in the SAARC member states.

RIGHTS-BASED APPROACH TO CORPORAL PUNISHMENT

The SAIEVAC Regional Programme on corporal punishment is guided by the UNCRC, including children's rights to non-violence, maximum development, non-discrimination and child participation. The programme aims to support all relevant stake holders in each Member State to achieve prohibition and elimination.

SAIEVAC recognises that the global progress in challenging all violent punishment of children, in all settings of their lives, comes from the strong human rights consensus that prohibiting and eliminating it is an immediate human rights obligation. SAIEVAC wants to build on the exciting legislative reform opportunities for quick progress in all the SAARC member states, as relevant bills are in preparation or before parliaments.

THE HUMAN RIGHTS OBLIGATION

Convention on the Rights of the Child

The Convention on the Rights of the Child (UNCRC) has been ratified by all states in South Asia (and by all states globally except the US and Somalia which have both signed the Convention, signifying their intention to ratify). The Committee on the Rights of the Child has recommended prohibition of all corporal punishment to all states in South Asia – in some cases three times – and to over 180 states globally.³²

The Committee's landmark General Comment No. 8 on the right of the child to protection from corporal punishment sets out detailed advice to states on how to fulfil their immediate obligation to prohibit.³³

In its General Comment, "corporal" or "physical" punishment is defined:

"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

³²The Committee on the Rights of the Child has recommended prohibition to: Afghanistan (2011); Bangladesh (1997, 2003, 2009); Bhutan (2001, 2008); India (2000, 2004); Maldives (2007); Nepal (1996, 2005); Pakistan (1994, 2003, 2009); Sri Lanka (1995, 2003, 2010)

³³Committee on the Rights of the Child General Comment No. 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, CRC/C/GC/8, 2006, para. 2; see <http://www2.ohchr.org/english/bodies/crc/comments.htm>

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." (para. 11)

SAARC Convention on Regional Arrangement for the Promotion of Child Welfare

The SAARC Convention on Regional Arrangements on the Promotion of Child Welfare in South Asia³⁴ was signed in January 2002 during the Eleventh Summit in Kathmandu. The Convention envisages facilitating the development of the full potential of the South Asian child and reaffirms the conviction that children in South Asia deserve urgent and focused attention.

CONDEMNATION AS A HARMFUL TRADITIONAL PRACTICE

The Committee on the Rights of the Child also addresses corporal punishment as a harmful traditional practice. Its General Comment No. 13 (2011) comprehensively covers "The right of the child to freedom from all forms of violence". In describing "all forms of violence", the Committee includes harmful practices, stating: "These include, but are not limited to:

- Corporal punishment and other cruel or degrading forms of punishment;
- Female genital mutilation, Amputations, binding, scarring, burning and branding;
- Violent and degrading initiation rites;
- force-feeding of girls;
- fattening;
- virginity testing (inspecting girls' genitalia)
- Forced marriage and early marriage,
- "Honour" crimes;
- "retribution" acts of violence (where disputes between different groups are taken out on children of the parties involved);
- dowry-related death and violence;
- Accusations of "witchcraft" and related harmful practices such as "exorcism" ...; (para. 29)

³⁴<http://saarc-sec.org/SAARC-Conventions/63/>

RECOMMENDATIONS BY OTHER UN TREATY BODIES AND IN THE UNIVERSAL PERIODIC REVIEW

Other UN human rights treaty bodies now echo the Committee on the Rights of the Child in requiring states to prohibit and eliminate all violent punishment, including the Committee against Torture. Also, when states overall human rights records are examined in the Universal Periodic Review (UPR) in the Human Rights Council in Geneva, there are frequent recommendations to ban all corporal punishment. During the first 15 sessions of the UPR at least 66 states have accepted or partially accepted recommendations to prohibit corporal punishment by law.³⁵

THE UN SECRETARY GENERAL’S STUDY ON VIOLENCE AGAINST CHILDREN

Another rights-based context for progress has been the UN Secretary General’s Study on Violence against Children, led by Professor Paulo Sérgio Pinheiro. The Study reported to the UN General Assembly in 2006, having held nine regional consultations, including one in Islamabad for South Asia in 2005. The Study’s key recommendations include the prohibition of all forms of violence, explicitly including all corporal punishment.³⁶ The UN Secretary General’s Special Representative on Violence against Children, Marta Santos Pais, has adopted prohibition of all violence – including all punitive violence – as a key priority within her mandate.³⁷

GLOBAL PROGRESS

Across the world 33 states have enacted a full ban on all corporal punishment of children, including in the family. This is a summary of progress in each setting:

Progress towards prohibition of all corporal punishment of children – April 2013					
	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Prohibited	33	121	157	122	40
Not prohibited	165	77	41	76	158

³⁵For details of the Human Rights Council Universal Periodic Review, see www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx; review dates for South Asian states in the second cycle are: Afghanistan (2014), Bangladesh (2013), Bhutan (2014), India (2012), Maldives (2015), Nepal (2015), Pakistan (2012), Sri Lanka (2012)

³⁶For information about the UN Secretary General’s Study on Violence against Children, see www.unviolencestudy.org

³⁷See <http://srsg.violenceagainstchildren.org/>

WHY IS BANNING CORPORAL PUNISHMENT A PRIORITY?

Some argue that challenging and ending corporal punishment is not a priority, given the extreme breaches of children's rights and the extreme forms of violence that children in most states are facing. But the SAIEVAC campaign is not just challenging a particular form of violence – though it is the most common form of violence against children. As the Committee on the Rights of the Child asserts in its General Comment No. 8, ending corporal punishment is an essential strategy for ending all forms of violence against children: the idea that breaching a child's human dignity and physical integrity is acceptable, or even as some still suggest "in their best interests", makes every other sort of extreme abuse, including sexual exploitation, more likely and easier.

No state can pretend that it has an effective child protection system while its laws and social attitudes still authorise and accept violent punishment of children. Ending all legalised violence against children is the only safe foundation for child protection. But the issue is more than a child protection issue, although corporal punishment does kill thousands of children every year and seriously injures and disables hundreds of thousands more. Just as challenging routine domestic violence has been a fundamental part of women's emancipation and protection, so it is with children. The perceived right to hit, hurt and humiliate children deliberately is the most symbolic reflection of their low status in our societies as less than people, as possessions or objects.

ACHIEVING FULL PROHIBITION OF ALL CORPORAL PUNISHMENT IN LAW

Each of the SAARC member states has its own legal system and includes varied provisions, some of them authorising or condoning violent punishment of children and others limiting or prohibiting violent punishment in some settings of children's lives. Thus each state requires distinct changes in and additions to legislation to achieve full and clear prohibition. A South Asia Consultation on Legislation to End All Corporal Punishment of Children, held with the National Law University Delhi (April 2012), agreed that in every case legislative reforms need to ensure that:

- they recognise fully children's rights to respect for their human dignity and physical and mental integrity and to equal protection under the law, without discrimination on any grounds;
- there is no legislation authorising corporal punishment in any setting, or anything in statute or common law which can be interpreted as providing a justification or defence for corporal punishment or other cruel or degrading punishment of children, however light. The removal of all authorisations, justifications or defences provides children with equal protection under the criminal law from battery, whether or not disguised as discipline or control, in all settings and whoever is the perpetrator;
- "umbrella" legislation on child rights/child protection, applying to children wherever they are, or sectoral laws applying in the settings of children's lives, include explicit prohibition of all corporal punishment and other cruel or degrading forms of punishment;
- The law is formulated so that it can be used effectively as an educational tool, helping to transform attitudes and practice.³⁸

³⁸South Asia Consultation on Legislation to End All Corporal Punishment of Children, National Law University, Delhi, in collaboration with the National Commission for Protection of Children's Rights (India) and the Global Initiative to End All Corporal Punishment of Children, National Law University, Delhi April 18 – 20, 2012 – report available.

COMMITTEE ON THE RIGHTS OF THE CHILD'S ADVICE ON LAW REFORM

In its General Comment No. 8, the Committee advises:

"In light of the traditional acceptance of violent and humiliating forms of punishment of children, a growing number of States have recognized that simply repealing authorization of corporal punishment and any existing defences is not enough. In addition, explicit prohibition of corporal punishment and other cruel or degrading forms of punishment, in their civil or criminal legislation, is required in order to make it absolutely clear that it is as unlawful to hit or 'smack' or 'spank' a child as to do so to an adult, and that the criminal law on assault does apply equally to such violence, regardless of whether it is termed 'discipline' or 'reasonable correction'.

"Once the criminal law applies fully to assaults on children, the child is protected from corporal punishment wherever he or she is and whoever the perpetrator is. But in the view of the Committee, given the traditional acceptance of corporal punishment, it is essential that the applicable sectoral legislation – e.g. family law, education law, law relating to all forms of alternative care and justice systems, employment law – clearly prohibits its use in the relevant settings. In addition, it is valuable if professional codes of ethics and guidance for teachers, carers and others, and also the rules or charters of institutions, emphasize the illegality of corporal punishment and other cruel or degrading forms of punishment."³⁹

³⁹Committee on the Rights of the Child, General Comment No. 8, paras. 34 and 35

Annex 3: Additional Harmful Practices from South Asia

Additional Issues of Interest and Concern for South Asia

Through discussions taking place at the recent Regional NACG Consultation taking place in Male, a number of other harmful practices specifically related to the South Asian context were also identified. These issues and practices were flagged as areas of concern and for further discussion at the upcoming Technical Consultation and include the following practices:

- **Gender discrimination, son preference and infanticide (along with care practices and treatment of girls) (Sri Lanka, India, Nepal, Pakistan, Afghanistan (but for boys also in Sri Lanka))**

The low status of women in societies and traditional preferences for male children (based on cultural or religious practices) and results in the neglect or compromise of basic rights of girls impacting upon their health, nutrition and access to education. In India, despite legislation banning ultrasound technology which leads to sex-specific abortions, social pressure and access to this technology have contributed to a national ratio of 914 girls being born for every 1,000 boys.⁴⁰

- **Caste issues / discrimination (Nepal, Pakistan, India)**

In many countries in South Asia caste and religion plays a guiding role in people's everyday lives but also places them permanently on a social ladder which creates wide disparities among people in terms of access to resources and a better future. Lower caste children often remain trapped in an endless cycle of despair due to have less access to services, resources, education and remaining impoverished. Economic stress builds within families and communities and this places low caste children at greater risk to violence and exploitation.

- **Discrimination against disabled children or minority children (Sri Lanka, Nepal, Afghanistan, India)**

Having a disabled child in the family brings embarrassment and shame as cultural and religious perspectives often prescribe their presence to be associated with a family member committing sins, having bad karma or just the bearer's of bad luck. Such stigma means that these children are often hidden or isolated from the wider community and less likely to go to school. They are also more vulnerable to become victims of sexual, physical or verbal abuse as well.

- **Girl Child Puberty Related Practices (nutritional and isolation practices) – Sri Lanka, Nepal and Pakistan)**

This concerns the isolation or seclusion of girls for a specific period of time (*chhaupadi*) in sparse locations or the withholding (or coming into contact) with certain foods.

⁴⁰ International NGO Council on Violence Against Children, 2012, p. 42.

- **Use of children in various religious practices and enlistment in religious institutes (Sri Lanka, Nepal, Pakistan – marriage to Koran / child sacrifice)**

In a number of locations in South Asia young girls from lower castes (*devadasi*, *devaki*, *deuki* or *jogini*) – and sometimes boys – are given over in service by a family to temples, shrines or religious institutes. Whether to gain good merit, clear away outstanding debt or just as a stop-gap measure to cope up with poverty, these children become servants and are often sexually exploited by priests, pilgrims and other adults they come into contact with.

- **Dowry (Bangladesh, Nepal and India)**

Perpetuating the notion that girls are “economic burdens” and something to be rid of, money, goods, services and even livestock may be exchanged between families for a girl. Those coming from poorer families may have little choice or very limited options and the younger the girl at the time of marriage, the lower dowry can be. Because virginity is also highly valued, both lower age – and in some cases “inspecting or testing” is favored. Dowry causes extreme economic stress within families and in some cases, other children must earn in order to help with the payment. Dowry demands which remain unfilled can also result in horrific consequences for the young bride – including stove burning, beating, mental abuse and isolation and acid attacks.

- **Exploiting children for entertainment (Afghanistan, India, Nepal, Pakistan)**

Especially related to orphans or those from poor families where boys are used as “entertainers” or “*launda* dancers” at marriage processions, gatherings or other ceremonies and who are vulnerable to rape and other forms of abuse. In addition, another centuries-old practice, also known as “*bacha baazi*” (literally boy-play) or the keeping of a pre-adolescent boy by wealthy or powerful men, “has long been a symbol of status and prestige for some wealthy landowners, businessmen and military commanders”⁴¹.

- **Acid violence (Afghanistan, Pakistan, Bangladesh and India)**

An unfortunate tradition found in South Asia, acid attacks against women and girls are used against those who transgress “acceptable” behavior norms (such as refusing a marriage proposal or sexual advance or for disputes within the marriage or household). Most victims are under the age of 25 and a recent study from Bangladesh estimated that 60% of victims were between the ages of 10 – 19 with the intention not to kill but to punish through disfigurement. Fear of the practice inevitably represses girls’ and women’s’ willingness to challenge established norms.⁴²

- **Virgin preference (Bangladesh, Nepal, India)**

See above related to Dowry.

⁴¹ Frederick, J., “Sexual Abuse and Exploitation of Boys in South Asia – A Review of Research Findings, Legislation, Policy and Programming Responses”, *Innocenti Working Paper No. 2010 – 02*, 2009, p. 14.

⁴² International NGO Council on Violence Against Children, 2012, p. 27 – 28.

- **Discrimination / Isolation of Bi-sexual or Eunuch boys or males Based on Sexual Orientation (Pakistan, Bangladesh, India)**

Also linked with traditional or customary practices, *hijras* (of which the majority are castrated) are known as the third gender and assume the dress and habits of women are ritually inducted into an established group become the “daughters” and property of the guru or the head of the household. *Chawas* (men who have sex with men but prefer to retain male dress and do not display feminine characteristics) and *zenana* who opt to wear the clothing of women (and who may or may not be castrated), also represent a variety of sexual identities and allow groups of men and boys to find communities of support within societies which may isolate or stigmatize them. However, these options also may contribute to boys unwillingly being abused; “peer pressure, coupled with discrimination in the family and school, may push a boy into social groups, including *zenana* or *hijra* communities, in which he is sexually abused and perhaps exploited.”⁴³ And in these scenarios, boys may be permanently separated from their families or communities and face castration or other forms of humiliation due to peer pressure rather than their own choice of taking up an alternative sexual identity.

- **Giving Away Girls to Settle Disputes and Honor Killings (Pakistan, Afghanistan)**

Usually involving women or girls who are believed or accused to have brought shame upon the family by overstepping boundaries of religious or cultural norms, relatives will take action to kill order to protect the honor of the family (and are associated with making personal decisions concerning dress, career, marriage or personal relationships). Honor killings violate international human rights treaties including the CRC and the Human Rights Committee address this practice in its General Comment 28 recognizing that any law which imposes or permits more severe penalties on women and girls than men violate the requirement of equal treatment. Efforts to mitigate honor crimes on the grounds of tradition and custom allow perpetrators impunity and to perpetuate the crime. Closely related to motivations associated with acid attacks, such extreme measures seek to control girls and women through extreme intimidation and fear.⁴⁴ UNFP estimates that there around 5,000 honor killings globally every year but also that many are not reported or deaths cited due to suicide; out of 5,000, 1,000 are reported to take place in Pakistan.⁴⁵

- **Use of Fatwa (Bangladesh, India and other locations?)**

In some countries where Sharia Law is not in force (Bangladesh and India), use of an informal mediation system overseen by Islamic scholars or leaders take place and this leads to a social verdict termed a “fatwa”. Although legislation in these countries prohibits the implementation of any punishment based on “fatwa”, women and girls may be subjected to different forms of financial, physical or other humiliating punishments imposed by the community (and sometimes leading to death). According to one estimate, in 2007 there were 35 such fatwa-related incidents of violence committed against women and girls in Bangladesh.⁴⁶

⁴³ Frederick, J., “Sexual Abuse and Exploitation of Boys in South Asia – A Review of Research Findings, Legislation, Policy and Programming Responses”, *Innocenti Working Paper No. 2010 – 02*, 2009, p. 70 – 71.

⁴⁴ Plan International and the Secretary General’s Special Representative on Violence against Children, 2012, p 32.

⁴⁵ Save the Children, 2010, p.40.

⁴⁶ Plan International and the Secretary General’s Special Representative on Violence against Children, 2012, p 42.

- **Branding of Girls / Women as Witches (Nepal)**

Children who are accused of witchcraft or labeled as “witches” are generally those who are already vulnerable and sometimes include children with disabilities, whose births were considered unusual, those who have lost one or more parents or children whose family experiences bad luck or misfortune shortly after their birth. These children are then subject to both physical and psychological violence by family and community members and sometimes even religious leaders; they are stigmatized and discriminated against, mistreated or abused and often abandoned.⁴⁷

⁴⁷ Plan International and the Secretary General’s Special Representative on Violence Against Children, 2012, p 46.

Annex 4: Resources Related to Engagement / Enlistment of Religious and Other Traditional Leaders to Address Harmful Practices and Other Child Protection Issues

The following resources can also be used to guide both further discussions and planned actions as countries move ahead in considering engagement and enlistment of religious leaders:

- Religions for Peace and UNICEF: Commitment to Action and What Religious Communities Can Do to Eliminate Violence Against Children

http://www.unicef.org/eapro/UNICEF_Religions_for_Peace_Feb2010.pdf

- Save the Children: Global Initiative to End All Corporal Punishment – A Handbook for Working With and Within Religious Communities

<http://www.dayofprayerandaction.org/what-we-do/stop-violence-against-children/resources>

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- ⁵ Save the Children, *Stepping Up Child Protection: An Assessment of Child Protection Systems from All Countries in South Asia*, Save the Children, Sweden, Kathmandu, Nepal, 2010, p. 8.
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- ⁷ Plan International and the Special Representative to the Secretary General, *Protecting Children from Harmful Practices in Plural Legal Systems*, New York, 2012, p. 5.
- ⁸ International NGO Council on Violence against Children, 2012, p. 15.
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- ¹¹UNICEF Innocenti Research Centre and the Government of Netherlands, *A Study on Violence Against Girls*,UNICEF, Florence, Italy, 2009, p. 32.
- ¹²Save the Children, 2010, p. 39.
- ¹³ Plan International and the Special Representative to the Secretary General, 2012, p. 8.
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- ¹⁵Plan International and the Special Representative to the Secretary General, 2012, p 8.
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- ²¹Save the Children, 2012, p 39.
- ²²Save the Children Sweden and the Global Initiative to End Corporal Punishment, *Ending Corporal Punishment of Children – A Handbook for Working With and Within Religious Communities*, (no date given).
- ²³Save the Children, p. 35.
- ²⁴ Plan International and the Special Representative to the Secretary General, 2012, p.9.
- ²⁵ International INGO Council on Violence against Children, 2012, p.23.
- ²⁶Ibid, p. 25.
- ²⁷ Ibid, p. 24.
- ²⁸ Ibid, p. 19
- ²⁹ Cristina Bicchieri, *Social Change: Psychology and Normative Constraints* (Cambridge University Press (forthcoming) 2006, p. 2.
- ³⁰ UNICEF Innocenti Research Center and the Government of the Netherlands, *A Study on Violence Against Girls –Report of the International Girl Child Conference*, 2009, p. 37
- ³¹South Asia Initiative to End Violence against Children (SAIEVAC), *Prohibition of Corporal Punishment of Children in South Asia: a progress review*, 2011; see www.saievac.info.
- ³² The Committee on the Rights of the Child has recommended prohibition to: Afghanistan (2011); Bangladesh (1997, 2003, 2009); Bhutan (2001, 2008); India (2000, 2004); Maldives (2007); Nepal (1996, 2005); Pakistan (1994, 2003, 2009); Sri Lanka (1995, 2003, 2010).

- ³³ Committee on the Rights of the Child General Comment No. 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, CRC/C/GC/8, 2006, para. 2; see <http://www2.ohchr.org/english/bodies/crc/comments.htm>
- ³⁴ <http://saarc-sec.org/SAARC-Conventions/63/>
- ³⁵ For details of the Human Rights Council Universal Periodic Review, see www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx; review dates for South Asian states in the second cycle are: Afghanistan (2014), Bangladesh (2013), Bhutan (2014), India (2012), Maldives (2015), Nepal (2015), Pakistan (2012), Sri Lanka (2012).
- ³⁶ For information about the UN Secretary General's Study on Violence against Children, see www.unviolencestudy.org
- ³⁷ See <http://srsg.violenceagainstchildren.org/>
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- ³⁹ Committee on the Rights of the Child, General Comment No. 8, paras. 34 and 35.
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- ⁴⁴ Plan International and the Secretary General's Special Representative on Violence against Children, 2012, p 32.
- ⁴⁵ Save the Children, 2010, p. 40.
- ⁴⁶ Plan International and the Secretary General's Special Representative on Violence against Children, 2012, p 42.
- ⁴⁷ Plan International and the Secretary General's Special Representative on Violence against Children, 2012, p.46.

About SAIEVAC

The South Asia Initiative to End Violence Against Children (SAIEVAC) is a regional inter-governmental body including representatives from civil society and children with a vision that all children, girls and boys, throughout South Asia enjoy their right to an environment free from all forms of violence, abuse, exploitation, neglect and discrimination. SAIEVAC was formally granted the status of SAARC Apex Body for Children during the 17th SAARC Summit in Maldives in November 2011. It is the first ever regional body to represent the cause of South Asian Children at the highest level of SAARC.

SAIEVAC's Vision

- *All children, girls and boys, throughout South Asia enjoy their right to an environment free from all forms of violence, abuse, exploitation, neglect and discrimination.*

SAIEVAC's Aims

- *To ensure the realization of children's rights as stated in the UNCRC and its Optional Protocols ;*
- *To prevent and respond to all forms of neglect, abuse, exploitation and violence against children in all settings;*
- *To promote the adoption, implementation, and monitoring of integrated national strategies with adequate budgets and resource allocation to prevent and protect children from violence and ensure response;*
- *To reinforce regional cooperation to end violence against children in South Asia.*

"In Solidarity with the Children of SAARC"



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