

PAKISTAN

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 14th session, 2012

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

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

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

The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in Pakistan, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and Pakistan’s acceptance of the recommendation to promote children’s rights made during the initial UPR in 2008.

We hope the Human Rights Council will note with concern the repeated and unfulfilled treaty body recommendations on corporal punishment and Pakistan’s lack of progress in this respect in implementing the recommendation on children’s rights accepted during the UPR in 2008. We hope states will raise the issue during the review in 2012 and recommend to Pakistan that legislation is enacted to explicitly prohibit corporal punishment of children in all settings, including the home, as a matter of priority.

1 The initial review of Pakistan by the Human Rights Council (2008)

1.1 Pakistan was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 2). No recommendation was made concerning corporal punishment of children though the issue was included in the compilation of UN information¹ and the summary of stakeholders' information.² However, the following recommendation was made and accepted by Pakistan:

“Continue to promote the rights of children, with the hope that the pending Child Protection Bill in Parliament and the Child protection policy being formulated will soon be adopted, (the Philippines), rapidly implement the draft law on the protection of children and speed up the implementation of the 2000 edict for justice for minors (Switzerland);³

1.2 Prohibiting corporal punishment is a key obligation under the Convention on the Rights of the Child and other international human rights instruments, though it is an obligation frequently ignored or evaded by governments. Specifically challenging Pakistan in this respect during its second UPR would reflect the seriousness with which the Human Rights Council views violations of the rights of all persons, including children.

1.3 The Government of Pakistan made a commitment to prohibiting corporal punishment in all settings, including the home, 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. Since the initial UPR of Pakistan in 2008, there have been a number of Bills which would prohibit corporal punishment in some settings – including at federal level a Child Protection Bill (2009) and a Prohibition of Corporal Punishment Bill (2010) and at provincial level the Balochistan Corporal Punishment Bill (2011) – but as at February 2012 law reform has not been achieved. The legality of corporal punishment of children is as it was in 2008, lawful in the home, schools, penal system and alternative care settings.

2 Legality of corporal punishment in Pakistan

2.1 Corporal punishment is lawful in the **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.

2.2 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.

¹ 14 April 2008, A/HRC/WG.6/2/PAK/2, Compilation of UN information, para. 16

² 3 April 2008, A/HRC/WG.6/2/PAK/3, Summary of stakeholders' information, para. 15

³ 4 June 2008, A/HRC/8/42, Report of the Working Group, para. 106(12); 5 August 2008, A/HRC/8/42/Add.1, Report of the Working Group: Addendum, paras. 7, 27, 28 and 29

2.3 In the **penal system**, 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, but it is not clear that this prohibits corporal punishment of children not given a custodial sentence; furthermore, 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), and it does not apply to *hadd* offences (article 3). Some laws against *hadd* offences were amended in 2006 but they continue to punish these offences with corporal punishment and are applicable to children from the onset of puberty. Whipping is provided for in the Offence of *Qazf* (Enforcement of *Hadd*) Ordinance (1979), the Offence of *Zina* (Enforcement of *Hudood*) Ordinance (1979), the Prohibition (Enforcement of *Hadd*) Ordinance (1979) and 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. 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).

2.4 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 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; it 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).

2.5 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).

3 Recommendations by human rights treaty monitoring bodies

3.1 The **Committee on the Rights of the Child** first expressed concern about flogging of children in Pakistan in 1994, and recommended its abolition.⁴ In 2003 and again in 2009, the Committee recommended law reform to prohibit corporal punishment in all settings, including the home.⁵

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⁴ 25 April 1994, CRC/C/15/Add.18, Concluding observations on initial report, paras. 12 and 23

⁵ 27 October 2003, CRC/C/15/Add.217, Concluding observations on second report, paras. 42, 43, 60 and 63; 15 October 2009, CRC/C/PAK/CO/3-4, Concluding observations on third/fourth report, paras. 47, 48, 80 and 81