

Corporal punishment of children in Pakistan: Briefing for the Universal Periodic Review, 28th session, 2017

From the Global Initiative to End All Corporal Punishment of Children, March 2017



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

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Pakistan, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment of children in Pakistan. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Pakistan clearly prohibit all corporal punishment of children in all settings, including the home, throughout its territory.

1 Review of Pakistan in the 2nd cycle UPR (2012) and progress since

1.1 Pakistan was reviewed in the second cycle of the Universal Periodic Review in 2012 (session 14).

The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information.² No specific recommendation was made on corporal punishment, but the Government accepted several recommendations relating to children's rights.³

1.2 In 2014, the Government of Pakistan reaffirmed its commitment to prohibition in all settings.

Despite this renewed commitment, federal Bills have so far failed to complete the legislative process. Some provinces have passed legislation prohibiting corporal punishment, mostly in schools.

1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Pakistan. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Pakistan clearly prohibit all corporal punishment of children in all settings and throughout its territory.

¹ 13 August 2012, A/HRC/WG.6/14/PAK/2, Compilation of UN information, paras. 29 and 59

² 26 July 2012, A/HRC/WG.6/14/PAK/3, Summary of stakeholders' views, paras. 22, 37 and 45

³ 26 December 2012, A/HRC/22/12, Report of the working group, paras. 122(16), 122(17), 122(18), 122(24), 122(40), 122(41) and 122(59); 13 March 2013, A/HRC/22/12/Add.1, Report of the working group: Addendum, para. 4

2 Legality of corporal punishment in Pakistan

Summary of current law and opportunities for achieving prohibition

In Pakistan, corporal punishment of children is not fully unlawful in any settings. The Pakistan administered area of Gilgit-Baltistan has prohibited corporal punishment in all settings.

- 2.1 **Home (lawful):** 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....” The courts have confirmed that this article provides a legal defence for corporal punishment of children.⁴ There are similar provisions in the Punjab Destitute and Neglected Children Act 2004 (art. 35) and the Sindh Children Act 1955 (art. 48). The Khyber Pakhtunkhwa Child Protection and Welfare Act 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” (art. 33) and allows for “reasonable punishment” by parents (article 44); the definition of corporal punishment (art. 2) covers only that which reaches a certain severity. In 2012, rules under the Act were being drafted.
- 2.2 The National Child Policy adopted in 2006 recognises the right of the child to protection from corporal punishment but there is no prohibition in law. Provisions against violence and abuse in the Penal Code 1860, the Domestic Violence (Prevention and Protection) Act 2012, the Punjab Destitute and Neglected Children Act 2004, the Sindh Children Act 1955, the Sindh Child Protection Authority Act 2011, the Guardians and Wards Act 1890, and the Code of Criminal Procedure 1898 are not interpreted as prohibiting corporal punishment of children.
- 2.3 At a meeting of the South Asia Forum in July 2006, following on from the regional consultation in 2005 of the UN Secretary General’s Study on Violence against Children, the Government made a commitment to prohibition in all settings, including the home. In 2010, Government representatives in SAIEVAC (South Asia Initiative to End Violence Against Children) developed a national action plan to achieve prohibition and in 2011 endorsed a report on progress towards prohibiting corporal punishment in South Asia states which included an analysis of the reforms required in Pakistan.⁵ On 27 March 2014, the Ministry of Law, Justice and Human Rights announced the launch of a national campaign against corporal punishment of children, in collaboration with SAIEVAC and the South Asia Coordinating Group on Action against Violence against Children (SACG), and reaffirmed its commitment to prohibition in all settings: “The Government of Pakistan will take all legal and administrative measures requires to combat corporal punishment and protect and promote rights of the child.”⁶
- 2.4 In recent years, a number of bills which address the issue have been under discussion, including a Child Protection Bill referred by the National Commission for Child Welfare and Development

⁴ AIR 1949 Bom. 226= ILR (1949) Bom. 46= 50 Cri. L. Jour 789 (DB); AIR 1965 Calcutta 32+AIR 1962 Mad. 216; AIR 1949 Bom. 226 (DB)

⁵ SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

⁶ “Pakistan Breaks the Stick as a Symbolic End to Corporal Punishment in the Country”, *Summary Report compiled by the SAIEVAC Regional Secretariat based on the proceedings of the event and the press release issued by the Ministry of Law, Justice and Human Rights, Government of Pakistan, April 2014*

(NCCWD) to the interior ministry in 2010, which included prohibition (arts. 58 and 59) though its application to “light” corporal punishment was unclear. A Prohibition of Corporal Punishment Bill was laid before parliament in 2010 which would prohibit corporal punishment in education and care settings but not by parents in the family home; the Bill was passed by the National Assembly in March 2013 but fell before the election. In March 2014, a new Prohibition of Corporal Punishment Bill was laid before the National Assembly;⁷ this again failed to pass through the Senate.⁸ As at June 2016, the Criminal Law (Amendment) Bill 2015 had been introduced to Parliament.⁹ The Criminal Law (Amendment) Bill 2015 would amend the Penal Code with the insertion of a new article 328A on “cruelty to a child”, which punishes “whoever wilfully assaults, ill-treats, neglects, abandons or does an act of omission or commission, that results in or have [*sic*] the potential to harm or injure the child by causing physical or psychological injury to him”. The Bill does not clearly prohibit corporal punishment of children and does not amend section 89 of the Penal Code which provides a legal defence for its use.

2.5 A Prohibition of Corporal Punishment Bill is under discussion in Punjab. The Pakistan administered area of Gilgit-Baltistan prohibited in August 2016 all corporal punishment of children by passing the Gilgit-Baltistan Prohibition of Corporal Punishment Act.

2.6 **Alternative care settings (partially lawful):** Corporal punishment is lawful in alternative care settings under article 89 of the Penal Code 1860, article 35 of the Punjab Destitute and Neglected Children Act 2004 and article 48 of the Sindh Children Act 1955. It is prohibited in the Pakistan administered area of Gilgit-Baltistan, in the Islamabad Capital Territory (Prohibition of Corporal Punishment Act 2017) and in Sindh (Sindh Prohibition of Corporal Punishment Act).

2.7 **Day care (partially lawful):** Corporal punishment is lawful in early childhood care and in day care for older children under article 89 of the Penal Code 1860, article 35 of the Punjab Destitute and Neglected Children Act 2004 and article 48 of the Sindh Children Act 1955. The Gilgit-Baltistan Prohibition of Corporal Punishment Act, the Prohibition of Corporal Punishment Act 2017, applicable in the Islamabad Capital Territory, and the Sindh Prohibition of Corporal Punishment Act 2016 prohibit all corporal punishment and humiliating and degrading treatment of children in day care settings.

2.8 **Schools (partially lawful):** Except where it is explicitly prohibited, corporal punishment is lawful in schools under article 89 of the Penal Code 1860. 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.

2.9 In 2012, the Right to Free and Compulsory Education Act 2012 was passed in Islamabad Capital Territory, providing for the right to education for children aged 5-16 and prohibiting corporal punishment in government schools for children of that age (art. 13). The Act operationalises the right to education in article 25-A of the Constitution, and other provinces must enact similar legislation. This had been achieved in Sindh province (Sindh Right of Children to Free and Compulsory Education Act 2013) and Punjab (Punjab Right to Free and Compulsory Education Ordinance 2014). The Prohibition of Corporal Punishment Act 2017, applicable in the Islamabad Capital Territory, and the Sindh Prohibition of Corporal Punishment Act 2016 have extended the prohibition of corporal punishment and humiliating and degrading treatment to all children under 18 years of age in educational settings. The Gilgit-Baltistan Prohibition of Corporal Punishment Act prohibits all corporal punishment of children in schools.

⁷ Reported in *Geo.tv News*, 25 March 2014 (<http://www.geo.tv/article-142347-Bill-prohibiting-corporal-punishment-tabled-in-NA>, accessed 26 March 2014); see also *The Express Tribune Blogs*, 16 March 2014

⁸ SPARC - Society for the Protection of the Rights of the Child, correspondence with Global Initiative, 7 September 2015

⁹ 16 March 2016, CRC/C/PAK/Q/5/Add.1, Reply to list of issues, para. 23

- 2.10 **Penal institutions (partially lawful):** The Juvenile Justice System Ordinance 2000 prohibits corporal punishment of children in custody (art. 12), but it does not override all other laws – article 14 states that the Ordinance is “in addition to and not in derogation of any other law for the time being in practice” – and it 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. In the Punjab province, the Borstal Act 1926 permits corporal punishment on males in borstal institutions (arts. 33 and 36). In Khyber Pakhtunkhwa, corporal punishment is unlawful under the Borstal Institutions Act 2012, which does not include it among permitted disciplinary measures (article 22). The Gilgit-Baltistan Prohibition of Corporal Punishment Act prohibits all corporal punishment of children in penal institutions. The Prohibition of Corporal Punishment Act 2017, applicable in the Islamabad Capital Territory, and the Sindh Prohibition of Corporal Punishment Act 2016 prohibit all corporal punishment and humiliating and degrading treatment of children in the juvenile justice system as defined in the Juvenile Justice System Ordinance 2000.
- 2.11 **Sentence for crime (lawful):** Article 12 of the Juvenile Justice System Ordinance 2000 states that no child may be given corporal punishment while in custody: it is not clear that this prohibits corporal punishment of children not given a custodial sentence, though it is reportedly interpreted as prohibiting corporal punishment as a sentence of the courts. However, as already noted, the Ordinance does not override other laws and is not in force in all areas of the country.
- 2.12 The Abolition of the Punishment of Whipping Act prohibits whipping as a sentence under any law. 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. The Penal Code 1860 and the Code of Criminal Procedure 1898 provide for the penalty of *qisas*, a punishment causing similar hurt at the same part of the body of the convicted person as s/he caused to the victim. The Penal Code states that no *qisas* can be ordered when the offender is a minor (art. 337-M), but a minor is defined as a male under the age of 18 years (art. 299), allowing for the punishment of *qisas* to be ordered for females.
- 2.13 In 2009, the Central Government passed the Nizam-e-Adi (Sharia’h) Regulation 2009, which formally established Sharia law in some areas of Khyber Pakhtunkhwa and overrides all laws and regulations in conflict with it (art. 19). The Regulations establishes that all cases which come to the courts should be heard in Sharia courts (art. 14).
- 2.14 The Prohibition of Corporal Punishment Act 2017, applicable in the Islamabad Capital Territory, and the Sindh Prohibition of Corporal Punishment Act 2016 prohibit all corporal punishment and humiliating and degrading treatment of children in the juvenile justice system as defined in the Juvenile Justice System Ordinance 2000 – it is unclear whether this amounts to prohibition of corporal punishment as a sentence for a crime. The Gilgit-Baltistan Prohibition of Corporal Punishment Act prohibits all corporal punishment of children as a sentence for a crime.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child first expressed concern at corporal punishment of children in Pakistan in 1994, when it recommended the abolition of flogging.¹⁰ In 2003, the Committee recommended the abolition of whipping, repeal of section 89 of the Penal Code and explicit prohibition of all forms of corporal punishment.¹¹ In 2009, the Committee recommended

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

¹¹ 27 October 2003, CRC/C/15/Add.217, Concluding observations on second report, paras. 42, 43, 60 and 63

repeal of section 89 of the Pakistan Penal Code and explicit prohibition of all corporal punishment in all settings.¹² In 2016, the Committee again recommended prohibition of all forms of corporal punishment and, in particular, the exemption of all children below the age of 18 years from punishment for *Haddood* offences which involve amputation, whipping, stoning and other forms of torture and cruel and degrading punishment.¹³

3.2 **UPR:** No specific recommendations to prohibit corporal punishment of children have been made in the Universal Periodic Reviews of Pakistan (in 2008 and 2012). However, general recommendations to strengthen the promotion and protection of child rights, including through legislative measures, have been made and have been accepted by the Government.¹⁴

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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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 since 2011 the Committee on the Rights of Persons with Disabilities.

¹² 15 October 2009, CRC/C/PAK/CO/3-4, Concluding observations on third/fourth report, paras. 47, 48, 80 and 81

¹³ 3 June 2016, CRC/C/PAK/CO/5, Concluding observations on fifth report, paras. 32-35

¹⁴ 4 June 2008, A/HRC/8/42, Report of the working group, para. 106(12); 26 December 2012, A/HRC/22/12, Report of the working group, paras. 122(16), 122(17), 122(18), 122(24), 122(40), 122(41) and 122(59); 13 March 2013, A/HRC/22/12/Add.1, Report of the working group: Addendum, para. 4