



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

**BRIEFING ON PAKISTAN FOR THE COMMITTEE ON THE ELIMINATION  
OF DISCRIMINATION AGAINST WOMEN  
PRESESSIONAL WORKING GROUP – July 2012**

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**The human rights obligation to prohibit corporal punishment – a key strategy in eliminating all forms of violence**

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006),<sup>1</sup> addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

**This briefing describes the legality of corporal punishment of children in Pakistan and the extent of, and commitment to, law reform to date. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, and the opportunities for law reform as described in this briefing, we hope the Committee on the Elimination of Discrimination Against Women will:**

- **raise the issue of corporal punishment of girls in its List of Issues for Pakistan, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, and**
- **recommend to Pakistan, in the concluding observations on the sixth state party report, that corporal punishment be explicitly prohibited in all settings, including the home, as a matter of priority.**

<sup>1</sup> General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” is available at [www2.ohchr.org/english/bodies/crc/comments.htm](http://www2.ohchr.org/english/bodies/crc/comments.htm).

## **1 Pakistan's fourth report to CEDAW and lawful, violent "discipline" and punishment of girls**

1.1 The fourth report of Pakistan to CEDAW (24 September 2011, CEDAW/C/PAK/4) provides detailed information on measures to address violence against women, including domestic and other gender based violence. Of particular interest are the Bill on Domestic Violence (paras. 118 and 119) and the amendments to the Hudood Ordinances (para. 120). While both of these go some way towards addressing violence against women, both are inadequate with regard to eradicating the lawful infliction of physical violence on children – girls and boys – and women. There is no mention of section 89 of the Penal Code – which provides a legal defence for the infliction of corporal punishment on children – and there is no acknowledgment that reform of the Hudood Ordinances in 2006 failed to ensure that women and girls could no longer be sentenced to corporal punishment under Islamic law.

1.2 The report makes a single reference to corporal punishment, where measures to ensure girls and women can enjoy the right to education are said to include "zero tolerance for corporal punishment" as part of improving the classroom environment (para. 227). However, as described below, indications from other sources are that the Government is committed to ending the legality and practice of corporal punishment, and we hope the Committee will take this into account in its examination of Pakistan on the issue of ending violence against women and girls.

## **2 The law regarding corporal punishment of children in Pakistan**

2.1 In Pakistan, corporal punishment of children is lawful in the home, schools, penal institutions and care settings; it may also be lawfully imposed by the courts as a sentence for crime under *Shari'a* law.

2.2 Section 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 the Punjab Destitute and Neglected Children Act (2004) and the Sindh Children Act (1955). The Khyber Pakhtunkhwa Child Protection and Welfare Ordinance (2010) prohibits corporal punishment "in all its kinds and manifestations" but 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. The effect of all these legal provisions is to sustain the legality of corporal punishment of children in the home, schools and care settings – i.e. in every place where an adult "has lawful charge" of a child.

2.3 This legal situation undermines efforts to address the problem of corporal punishment, including implementation of the National Child Policy which recognises the right of children to protection from corporal punishment and of the many directives instructing teachers not to use corporal punishment in schools. It therefore also undermines efforts to prohibit and eliminate all forms of violence against women and girls.

2.4 With regard to the penal system, the Abolition of the Punishment of Whipping Act (1996) marked a turning point in the way the state responds to persons convicted of an offence: no longer could they be sentenced under any law to be whipped. The enactment of the Juvenile Justice System Ordinance (2000) was another significant development, applying the

prohibition of penal corporal punishment to all children given a custodial sentence. But these developments did not abolish corporal punishment, including of girls and women, as a sentence of the courts.

2.5 Article 3 of the Abolition of Whipping Act states that the Act does not apply to *hadd* offences – i.e. offences under *Shari'a* law affecting females as well as males from the age of puberty and punishable under the *Hudood* Ordinances by corporal punishment. The 2006 law reform described in the report to the Committee on the Elimination of Discrimination Against Women failed to repeal whipping as provided for in article 7 of the Offence of *Qazf* (Enforcement of *Hadd*) Ordinance (1979), article 5 of the Offence of *Zina* (Enforcement of *Hudood*) Ordinance (1979), articles 3, 4, 8, 11 and 25 of the Prohibition (Enforcement of *Hadd*) Ordinance (1979) and articles 17 and 21 of the Offences Against Property (Enforcement of *Hudood*) Ordinance (1979). Furthermore, the Penal Code and the Code of Criminal Procedure provide for the penalty of *qisas*, a punishment causing similar hurt at the same part of the body of the convicted person as s/he caused to the victim. The Penal Code states that no *qisas* can be ordered when the offender is a minor (article 337-M), but a minor is defined as a male under the age of 18 years (article 299), allowing for the punishment of *qisas* to be ordered for females.

2.6 In the Federally Administered Tribal Areas (FATA) children may also be sentenced to whipping under articles 6 and 12 of the Frontier Crimes Regulation (1901).

### **3 Government commitment to prohibition and opportunities to achieve it**

3.1 At a meeting of the South Asia Forum in July 2006, following on from the regional consultation in 2005 of the UN Secretary General's Study on Violence against Children, the Government made a commitment to prohibition in all settings, including the home. Since then, Government representatives in the South Asian Initiative to End Violence Against Children (SAIEVAC) – an apex body of the South Asian Association for Regional Cooperation (SAARC) – have participated in a regional workshop on law reform and endorsed the publication of a regional progress report on the issue<sup>2</sup> and the launch in May 2012 of a regional campaign to achieve prohibition of corporal punishment of children in all settings in all South Asian states.<sup>3</sup>

3.2 In 2010, a Prohibition of Corporal Punishment Bill was laid before parliament and in 2011 a Domestic Violence Bill was under discussion. In the same year a Child Welfare and Protection Bill was under consideration in Balochistan which would prohibit corporal punishment in some settings. We hope the Committee on the Elimination of Discrimination Against Women, as part of recommendations aimed at ensuring the state party properly addresses all forms of violence against women and girls, will encourage the state party to ensure these reforms comprehensively prohibit corporal punishment of children in all settings and are enacted without unnecessary delay.

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<sup>2</sup> South Asia Initiative to End Violence Against Children with Save the Children Sweden and Global Initiative to End All Corporal Punishment of Children (2011), *Corporal punishment of children in South Asia : Progress towards prohibition*, at [www.saievac.org/cp/publications/prohibition-of-all-corporal-punishment-in-south-asia-a-progress-review/](http://www.saievac.org/cp/publications/prohibition-of-all-corporal-punishment-in-south-asia-a-progress-review/)

<sup>3</sup> The campaign website is [www.saievac.org/cp/](http://www.saievac.org/cp/)

## **4 Recommendations by human right treaty monitoring bodies**

4.1 The Committee on the Rights of the Child first expressed concern at corporal punishment of children in 1994, recommending that it be abolished as a sentence for crime.<sup>4</sup> In 2003 and again in 2009, the Committee recommended law reform to prohibit it in all settings, including the home.<sup>5</sup>

**4.2 In considering the implementation in Pakistan of the Convention on the Elimination of All Forms of Discrimination Against Women, we hope the Committee on the Elimination of Discrimination Against Women will now emphasise to the state party the importance of addressing corporal punishment of children – pursuing its prohibition and elimination – as a vital element in addressing violence against women and girls.**

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*  
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<sup>4</sup> 25 April 1994, CRC/C/15/Add.18, Concluding observations on initial report, paras. 12 and 23

<sup>5</sup> 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