

**BRIEFING ON PAKISTAN FOR THE**

**COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, PRE-SESSIONAL WORKING GROUP, 10-14 October 2016**

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**This briefing describes the legality of corporal punishment of children in Pakistan, and the Government’s stated commitment to prohibiting it in all settings. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the previous (repeated) recommendations to prohibit corporal punishment made to Pakistan by the Committee on the Rights of the Child and during the UPR, the new global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, and the opportunities for achieving prohibition presented by current law reform processes, we hope the Committee on Economic, Social and Cultural Rights will:**

* **raise the issue of corporal punishment of children in its List of Issues for Pakistan, in particular asking how the Government will ensure that prohibition of corporal punishment of children in all settings without exception is achieved in the context of current reforms, and**
* **recommend to Pakistan, following its examination of the state party’s report, that legislation prohibiting all corporal punishment in all settings, including the home, and repealing the defence for corporal punishment in article 89 of the Penal Code and similar provisions in other laws, is enacted and implemented as a matter of priority.**

**1 Pakistan’s report to the Committee on Economic, Social and Cultural Rights**

* 1. Pakistan’s report to the Committee states that according to the Juvenile Justice System Ordinance 2000, corporal punishment shall not be administered to children involved in criminal litigation, but fails to acknowledge that this does not override all other laws – the Ordinance is “in addition to and not in derogation of any other law for the time being in practice” (art. 14) – and it is not in force throughout Pakistan.
  2. The report also refers to a National Plan of Action for Children and its goals, including to protect children from violence and abuse, and various provincial child protection measures. But it makes no mention of recent moves towards prohibiting corporal punishment in some but not all settings: the Prohibition of Corporal Punishment Bill 2016 would prohibit corporal punishment only in settings outside the home – in schools, child care institutions and the juvenile justice system. We hope the Committee will **recommend that current law reform processes are extended to prohibit all corporal punishment in all settings without exception, including through the repeal of article 89 of the Penal Code and of comparable provisions in provincial laws.**

**2 The legality of corporal punishment of children in Pakistan**

2.1 ***Summary:*** Corporal punishment of children is partially – but not wholly – prohibited in schools, penal institutions and as a sentence for crime. It is lawful throughout the state party in the home, alternative care settings and day care.

2.2 ***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.[[1]](#footnote-1) 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.

2.3 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 do not prohibit all corporal punishment of children.

2.4 ***Alternative care settings (lawful):***Corporal punishment is lawful 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 (see above, para. 2.2).

2.5 ***Day care (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 (see above, para. 2.2).

2.6 ***Schools (partially prohibited):*** Corporal punishment is prohibited in some but not all schools. Except where it is explicitly prohibited, corporal punishment is lawful under article 89 of the Penal Code 1860 (see above). Federal and provincial ministerial directives have instructed teachers not to use corporal punishment but it is not prohibited in legislation.

2.7 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 has 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).

2.8 The Balochistan Compulsory and Free Education Ordinance 2013 does not include prohibition of corporal punishment. With regard to Khyber Pakhtunkhwa, the Government states in its current report to the Committee on the Rights of the Child that the Child Protection and Welfare Act 2010 prohibits corporal punishment in government schools,[[2]](#footnote-2) but as already noted (para. 2.2), this prohibition is undermined by article 89 of the Penal Code.

2.9 ***Penal institutions (partially prohibited)***: The Juvenile Justice System Ordinance 2000 prohibits corporal punishment of children in custody (art. 12), but it does not override all other laws – the Ordinance is “in addition to and not in derogation of any other law for the time being in practice” (art. 14) – and it is not in force throughout Pakistan. The Prisons Act 1894 provides for whipping as a punishment for prison offences by male prisoners (art. 46). The prisoner must be certified fit to receive the punishment by a medical officer (art. 50) and the whipping should be inflicted “with a light rattan not less than half an inch in diameter on the buttocks, and in case of prisoners under the age of sixteen ... in the way of school discipline, with a lighter rattan” (art. 53). In the Punjab province, the Borstal Act 1926 permits corporal punishment in borstal institutions (arts. 33 and 36). In Khyber Pakhtunka, corporal punishment is unlawful under the Borstal Institutions Act 2012, which does not include it among permitted disciplinary measures (art. 22).

2.10 ***Sentence for crime (partially prohibited):*** Law reform has not yet achieved complete abolition of corporal punishment as a sentence for crime. Article 12 of the Juvenile Justice System Ordinance 2000 states that no child may be given corporal punishment while in custody: it is not clear that this prohibits corporal punishment of children not given a custodial sentence, though it is reportedly interpreted as prohibiting corporal punishment as a sentence of the courts. However, as noted above (para. 2.9), the Ordinance does not override other laws and is not in force in all areas of the country.

2.11 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 until 2011 children could be sentenced to whipping under articles 6 and 12 of the Frontier Crimes Regulation 1901; these provisions were repealed in 2011. But the Abolition of the Punishment of Whipping Act 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 article 7 of the Offence of *Qazf* (Enforcement of *Hadd*) Ordinance 1979, article 5 of the Offence of *Zina* (Enforcement of *Hudood*) Ordinance 1979, articles 3, 4, 8, 11 and 25 of the Prohibition (Enforcement of *Hadd*) Ordinance 1979 and articles 17 and 21 of the Offences Against Property (Enforcement of *Hudood*) Ordinance 1979. The Execution of the Punishment of Whipping Ordinance 1979 requires the involvement of medical personnel, ensuring the punishment does not result in the convicted person’s death, being present at the punishment, and intervening if necessary. Article 9 of the Offences Against Property (Enforcement of *Hudood*) Ordinance provides for the punishment of amputation – of the right hand for the first offence, the left foot for the second; the amputation must be carried out by an authorised medical officer, who must be of the opinion that it would not cause the death of the convicted person (art. 9).

2.12 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.

**3 Pakistan’s commitment to prohibition and opportunities for achieving 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. 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.[[3]](#footnote-3) 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.”[[4]](#footnote-4)

3.2 A number of bills which address the issue have been discussed over the years, including a Child Protection Bill referred by the National Commission for Child Welfare and Development (NCCWD) to the interior ministry in 2010, which prohibits corporal punishment of children (arts. 58 and 59) though its application to “light” corporal punishment is 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, and efforts are under way to reintroduce it. According to media reports, a new bill – the Prohibition of Corporal Punishment Bill 2014 – was laid before the National Assembly in March 2014.[[5]](#footnote-5)

3.3 In Balochistan, a Child Welfare and Protection Bill that would prohibit corporal punishment in children’s homes and a Corporal Punishment Bill which would prohibit it in education institutions and possibly in care settings are under discussion. A Prohibition of Corporal Punishment Bill is under discussion in Punjab.

3.4 In 2014, the Child Protection System Bill 2014, applicable to Islamabad Capital Territory, was under discussion. The Bill would prohibit corporal punishment in article 38: “Corporal punishment stands abolished in all its kinds and manifestations and its practice in any form is prohibited.” However, the definition of corporal punishment in article 2n suggests that it covers only that which reaches some degree of severity (emphasis added): “Corporal punishment means intentional use of physical force intended to cause a *high degree* of pain or discomfort for discipline, correction and control, changing behaviour or in the belief of education or bringing up the child, that *either results in or has a high likelihood of resulting in* injury, psychological harm, mal-development or deprivation.”

3.5 Recently, two Bills have been introduced to Parliament which the Government has stated are relevant to prohibition of corporal punishment – the Criminal Law (Amendment) Bill 2015 and the Prohibition of Corporal Punishment Bill 2016.[[6]](#footnote-6) However, neither would prohibit all corporal punishment in childrearing. 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.

3.6 The Prohibition of Corporal Punishment Bill 2016 includes a definition of corporal punishment based on the Committee on the Rights of the Child’s definition in General Comment No. 8 and expressly confirms that a child has “the right to be shown respect for his personality and individuality and shall not be made subject to corporal punishment or any other humiliating treatment” (art. 3(1)). But the Bill would prohibit corporal punishment only in settings outside the home – in schools, child care institutions and the juvenile justice system. Article 3(2) states: “Notwithstanding anything contained in section 89 of the Pakistan Penal Code, 1860 (Act XLV of 1860) and any other law for the time being in force, corporal punishment of child by any person is prohibited in all its forms, in schools and other educational institutional *[sic]* including formal and informal, both public and private, in child care institutions and in the juvenile justice system.” The Statement of Objects and Reasons appended to the Bill confirms that its rationale is to eliminate corporal punishment in schools and child care institutions. In its current form therefore, the Bill prohibits corporal punishment in most settings but not in the home and some forms of alternative care.

**3.7 The above mentioned processes of law reform provide key opportunities for prohibiting all corporal punishment of children. It would take only a small amendment to the Prohibition of Corporal Punishment Bill 2016 to extend its application to the home and prohibit all forms of corporal punishment in all settings without exception, including through the repeal of article 89 of the Penal Code and of comparable provisions in provincial laws. Similarly, the Criminal Law (Amendment) Bill provides an immediate opportunity to achieve the reform necessary to prohibit all corporal punishment.**

**4 Recommendations by human rights treaty bodies and during the UPR**

4.1 ***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.[[7]](#footnote-7) 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.[[8]](#footnote-8) In 2009, the Committee recommended repeal of section 89 of the Pakistan Penal Code and explicit prohibition of all corporal punishment in all settings.[[9]](#footnote-9) 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 *Hadood* offences which involve amputation, whipping, stoning and other forms of torture and cruel and degrading punishment.[[10]](#footnote-10)

4.2 ***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.[[11]](#footnote-11)

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. 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) [↑](#footnote-ref-1)
2. 4 May 2015, CRC/C/PAK/5, Fifth state party report, para. 107 [↑](#footnote-ref-2)
3. SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review* [↑](#footnote-ref-3)
4. “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 [↑](#footnote-ref-4)
5. 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 [↑](#footnote-ref-5)
6. 16 March 2016, CRC/C/PAK/Q/5/Add.1, Reply to list of issues, para. 23 [↑](#footnote-ref-6)
7. 25 April 1994, CRC/C/15/Add.18, Concluding observations on initial report, paras. 12 and 23 [↑](#footnote-ref-7)
8. 27 October 2003, CRC/C/15/Add.217, Concluding observations on second report, paras. 42, 43, 60 and 63 [↑](#footnote-ref-8)
9. 15 October 2009, CRC/C/PAK/CO/3-4, Concluding observations on third/fourth report, paras. 47, 48, 80 and 81 [↑](#footnote-ref-9)
10. 3 June 2016, CRC/C/PAK/CO/5, Concluding observations on fifth report, paras. 32-35 [↑](#footnote-ref-10)
11. 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 [↑](#footnote-ref-11)