



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

## **PAKISTAN**

### **BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 2<sup>nd</sup> session, 2008**

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**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.**

**The Global Initiative to End All Corporal Punishment of Children has been regularly briefing the Committee on the Rights of the Child on this issue since 2002, and 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. There is growing progress now across all regions in challenging this very common form of violence against children. But we are concerned that many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope that the UPR Process will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies, on this and other key issues.**

**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, setting a goal of 2009.**

**This briefing describes the gaps in prohibition in Pakistan, despite repeated recommendations by the Committee on the Rights of the Child. It also notes Pakistan’s commitment to introducing prohibition and the legal reform measures in process.**

**We hope the Review will highlight with concern Pakistan’s past record of inadequately responding to treaty body recommendations and encourage the government to ensure that draft legislation prohibiting all corporal punishment, including in the home, is enacted and implemented as a matter of urgency.**

## **I: Legality of corporal punishment in Pakistan**

### **The home**

Corporal punishment is lawful in the **home**. Article 89 of the Penal Code 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 ...” This right is also recognised in the Punjab Children’s Ordinance (1983) (article 19) and the Sindh Children Act (1955) (article 48).

The National Child Policy, adopted in May 2006, recognises the right of the child to protection from corporal punishment (article 9), and 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. As at June 2007, this prohibition is stated in the draft Protection of Children Act (2005), which has been presented to the Cabinet and is under scrutiny by the committee responsible for its implementation strategy.

Large scale research has consistently found a high prevalence of corporal punishment of children at home and in schools. For example, in a study published in 2005 of research involving nearly 5,000 children, parents and teachers, not one child reported never having received corporal punishment; cumulatively, the children identified 28 types of punishment used in homes and 43 in schools.<sup>1</sup> In research published in 2001, involving 4,200 schoolchildren, all respondents reported having been physically punished at home.<sup>2</sup>

### **Schools and other settings**

Corporal punishment is lawful in **schools** under article 89 of the Penal Code. It has been prohibited by a Federal Ministerial directive and by ministerial directives in Punjab (2000), Sindh (2004) and North West Frontier Province (2003), but it continues to be used.<sup>3</sup> It is reportedly administered more frequently in schools for children from the “lower segments” of society, with children from higher socioeconomic strata often facing fines instead. It is practised in the formal education system and in the religious madrassas. The draft Protection of Children Act (2005) would prohibit corporal punishment in schools.

Law reform has not yet effectively prohibited corporal punishment of children in the **penal system**. The federal Juvenile Justice System Ordinance (2000, in force from 2001) prohibits any corporal punishment of children under the age of 18 (article 12) but as at June 2006 it had not been implemented in all areas and provinces. The Ordinance supplements rather than replaces other laws (article 14). Prohibition would be achieved by the draft Protection of Children Act (2005).

The Abolition of the Punishment of Whipping Act (1996) prohibited corporal punishment as a sentence for crime except for *hudoon* offences (article 3), punishments for which include lashing, stoning and amputation (Offence of *Zina* (Enforcement of *Haddoon*) Ordinance (1979, amended 2006), Prohibition (Enforcement of *Hadd*) Order (1979), and Offence of *Qazf* (Enforcement of *Hadd*) Ordinance (1979)). The Penal Code, the Code of Criminal Procedure and the *Qisas* and *Diyat* Ordinance (1991) allow for the penalty of *qisas*, a punishment causing similar hurt at the same part of the body of the convicted person as he or she 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

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<sup>1</sup> April 2005, *Disciplining the Child: Practices and Impacts*, Save the Children/UNICEF/Schools and Literacy Dept, Government of NWFP

<sup>2</sup> NCCR, 2001, *Violence against children in the family and in schools: Submission by NGOs Coalition on Child Rights - Pakistan (1) to the CRC Day of General Discussion, 28 September 2001*, NGOs Coalition on Child Rights/UNICEF

<sup>3</sup> Human Rights Commission Pakistan, *State of Human Rights 2003* and *State of Human Rights 2004*

age of 18 years (article 299), allowing for the punishment of *qisas* to be ordered for females. The Abolition of Whipping Act did not repeal or amend the Prisons Act (1894) or the Prison Rules, which allow the superintendent of a jail to order up to 30 lashes (up to 15 for children under the age of 16 years) as a disciplinary measure.

In **alternative care settings**, corporal punishment is lawful under article 89 of the Penal Code. It would be prohibited in the draft Protection of Children Act (2005).

## **II: Recommendations by human rights treaty monitoring bodies**

The **Committee on the Rights of the Child** first expressed concern about corporal punishment of children in Pakistan in 1994, in its concluding observations on the state party's initial report (CRC/C/15/Add.18, paras. 12 and 23). In 2003, following examination of the state party's second report, the Committee expressed deep concern at the use and legality of corporal punishment and made strong recommendations for its prohibition in all settings, including the home. The Committee stated (CRC/C/15/Add.217, paras. 42, 43, 60 and 63):

“The Committee is deeply concerned that the State party's Penal Code (sect. 89) allows for corporal punishment to be used as a disciplinary measure in schools and at the fact that corporal punishment is widely practised, especially within educational and other institutions and within the family, many times resulting in serious injuries. The Committee is further concerned that, despite the 1996 Abolition of the Punishment of Whipping Act, whipping is still used as a sentence for Hadood crimes.

“The Committee recommends that the State party, as a matter of urgency:

- a) repeal section 89 of the Penal Code of 1860 and explicitly prohibit all forms of corporal punishment;
- b) abolish the sentence of whipping, under any circumstance or law;
- c) undertake well-targeted public awareness campaigns on the negative impact of corporal punishment on children, and provide teachers and parents with training on non-violent forms of discipline as an alternative to corporal punishment.

“The Committee ... remains deeply concerned that:

- g) the code of conduct for teachers does not prohibit corporal punishment, nor does it deal with the problem of violence against children in school.

“The Committee recommends that the State party:

- i) take proactive measures to eliminate violence against children in schools, notably by including in the code of conduct for teachers the prohibition of corporal punishment and by limiting the role of school counsellors to those functions that help the pupil and revoking their disciplinary functions.”

The **Committee on the Elimination of Discrimination Against Women** recently expressed concern about the *Qisas* and *Diyat* law (11 June 2007, CEDAW/C/PAK/CO/3, Concluding observations on initial/second/third report, para. 22).