

Ending legalised violence against children



Global Initiative to
End All Corporal Punishment
of Children

Report for South Asia Regional Consultation
– the UN Secretary General's Study on Violence against Children

Islamabad, Pakistan 2005

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Hitting people is wrong – and children are people too. Corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity. Its legality breaches their right to equal protection under the law. Urgent action is needed in every region of the world to respect fully the rights of all children – the smallest and most fragile of people.

This report reviews law and policy in relation to corporal punishment and deliberate humiliation of children in each state in South Asia. It makes recommendations for law reform and other measures which it is hoped will be adopted at the Consultation and pursued at a national, regional and international level.

Foreword

Jaap E. Doek

Chairperson

United Nations Committee on the Rights of the Child

One hundred and ninety two governments, including all those in this region, have accepted an obligation to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of violence (article 19 of the United Nations Convention on the Rights of the Child).

The Committee on the Rights of the Child, which monitors implementation of this Convention, has recommended to governments across the region and the world that they should systematically:

- Prohibit all forms of violence, including all corporal punishment however light, in the upbringing of children in their homes, in schools, in care institutions, penal systems and any other place;
- Undertake – at the same time – educational and awareness-raising campaigns to inform parents and others about children's right to protection and about non-violent methods of disciplining and raising children.

Many citizens and politicians express deep concern about increasing violence in their societies. The credibility of this concern is questionable as long as they are not willing to seriously and systematically address the use of violence against children. And nobody should suggest that a little bit of violence is acceptable. That applies equally for adults and children.

If we all want a violence-free society, we must hope that the context of the UN Secretary General's Study on Violence against Children will accelerate moves to prohibit and eliminate all corporal punishment as an unacceptable violation of human dignity and physical integrity.

Jaap E. Doek
Chairperson
Committee on the Rights of the Child
May 2005

The human rights imperative to end all corporal punishment

Rights to respect for human dignity and physical integrity and to equal protection under the law are upheld for everyone – including children – in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Convention on the Rights of the Child (CRC) re-emphasises that children, too, are holders of human rights. The Convention also requires states to protect children from “all forms of physical or mental violence” while in the care of parents or others (article 19).

The Committee on the Rights of the Child – the monitoring treaty body for the CRC – consistently interprets the Convention as requiring prohibition of all corporal punishment, including in the family, linked to awareness-raising and public education. This interpretation is supported by other human rights treaty bodies, both international and regional, and by high-level court judgments in a growing number of states.

States’ human rights obligations to end all currently legalised violence against children are clear and immediate; there can be no justification for delay. Humanity and logic suggest that children should be the first, not the last, members of human societies to be effectively protected from assault and deliberate humiliation.

The case against corporal punishment does not have to be proved. We do not look for evidence of harm to justify prohibition and other measures to end domestic violence against women or elderly people. The issue is one of fundamental rights. But in any case there is overwhelming research evidence to support the human rights imperative for eliminating corporal punishment. Hitting babies and children is dangerous. Harsh and humiliating forms of discipline are associated with the development of violent and anti-social attitudes and actions in childhood and later life and also with psychological difficulties for the victims.

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child...”

UN Convention on the Rights of the Child, article 19



Hitting children is a lesson in bad behaviour; it teaches them that adults who demand their respect believe that violence is a legitimate way to sort out conflicts or impose authority.

Some adults like to suggest that corporal punishment and child “abuse” are two quite separate phenomena. In fact, more or less all physical “abuse” is administered in a context of punishment or control – it **is** corporal punishment. There are different degrees of severity, but all corporal punishment breaches children’s right to respect for their human dignity and physical integrity. We do not try to draw lines and justify any level of violence against women or elderly people – so why children? Zero tolerance is generally accepted as a target for ending domestic violence between adults in the home – so why not for children?

Defenders of corporal punishment suggest that children are different. But their differences – their dependence, developmental state and fragility – certainly do not reduce their human rights or justify less protection from violence. Parents and other carers need to use physical actions to protect and restrain children, especially babies and young children. But such actions are clearly distinguishable from causing pain or humiliation as a form of discipline or control.

Human rights standards in the region

All states in the region have ratified the Convention on the Rights of the Child. None has entered any reservation to reduce its obligation to protect children from all forms of violence. The Committee on the Rights of the Child has not yet examined a report from Afghanistan. To all other states in the region it has expressed concern over the prevalence of corporal punishment and other forms of violence against children – see details in state-by-state analysis beginning on page 16.

The Committee has recommended explicit prohibition of all corporal punishment and awareness-raising and public education to promote positive, non-violent forms of child-rearing and education.

In some cases the Committee has examined two successive reports from states, expressing “profound” concern at the prevalence and persisting legality of corporal punishment of children.

In the case of Sri Lanka, the Human Rights Committee, monitoring compliance with the International Covenant on Civil and Political Rights, has also urged abolition of all corporal punishment in schools and the penal system.

In India, the High Court of New Delhi in 2000 directed the state to ensure “that children are not subjected to corporal punishment in schools and they receive education in an environment of freedom and dignity, free from fear”. The judges noted that India had ratified the Convention on the Rights of the Child and concluded: “Before parting with the case we would like to observe that fundamental rights of the child will have no meaning if they are not protected by the state... The state must ensure that corporal punishment to students is excluded from schools. The state and the schools are bound to recognise the right of the children not to be exposed to violence of any kind connected with education”.

The Cairo Declaration on Human Rights in Islam was adopted by the Organisation of the Islamic Conference in Cairo on August 5 1990, to provide “general guidance” to member states in the field of human rights. Article 1 states: “All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to

human integrity.” Article 2 (d) asserts: “Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari’ah-prescribed reason.”

Article 20 states that it is not permitted to subject an individual “to physical or psychological torture or to any form of maltreatment, cruelty or indignity”. Articles 24 and 25 emphasise that all the rights and freedoms stipulated in the Declaration are subject to the Islamic Shari’ah, which is the only source for explanation or clarification of any of the articles of the Declaration. Reconciling Shari’ah law with international human rights standards is a subject of ongoing debate. Human rights treaty bodies, including the Committee on the Rights of the Child and the Human Rights Committee have asserted that prescribed punishments, including corporal punishment, are incompatible with international standards.

Challenging faith-based defences of corporal punishment

In every state in the world, there are some who assert that their faith approves of, or even requires, corporal punishment of children. But equally, there are respected authorities in all the world’s major faiths who assert that there is nothing inherent in their faith which justifies the continued legality and social approval of corporal punishment of children.

To take good care of and show compassion towards children is one of the most commendable deeds in **Islam**. Islam encourages every human being to place the needs of others above their own. Corporal punishment and other forms of humiliation of children conflict directly with the advice of the Prophet, which is about treating those who are under the age of seven as children (employing tenderness and compassion), treating those from seven to 14 as siblings (with care and concern) and from 14 onwards as close friends (with trust and co-operation). The noble Prophet of Islam emphasised: “Be generous, kind and noble to your children and make their manners good and beautiful.”

Bhuddism promotes the welfare of all beings and the Buddha has disclosed the rights of all human and other beings. Bhuddist love is for the whole world and loving kindness and compassion are highlighted. There is no place for corporal or mental punishment.

For **Hindus**, the prime ethic is that one should never injure another being; life is sacred, to be loved and revered. Corporal punishment is not sanctioned by Hindu tradition or scriptures; the Hindu religion proposes using words, explanation and personal example to motivate and when necessary change the behaviour of children.

In all regions of the world there are minority groups of **Christians** who defend corporal punishment of children as their parental duty, using texts from the book of Proverbs to support this form of punishment, which is often called “Biblical discipline”. But Christians look to the example of Jesus for the way to live their lives. Jesus was a teacher and Rabbi and an expert in interpreting the scriptures. There is no evidence to suggest that he cited the scriptures to justify hitting children. Jesus always treated the vulnerable and defenceless with love and compassion. All the recorded encounters between children and Jesus were kind, gentle and respectful. Positive non-violent parenting best models Christ’s teachings.

Global progress towards ending all corporal punishment

Globally, less than 20 of the 190-plus states have as yet prohibited all corporal punishment, including in the family (for details see www.endcorporalpunishment.org). So only 52 million children out of the world's 2,195 million live in countries where the law gives them equal protection from being assaulted. In about 60 states worldwide, including seven states in South Asia, corporal punishment is still not prohibited by legislation in schools. In almost 100 states, including all those in this region, whipping or caning is still permitted as a sentence of the courts or as a punishment in penal institutions for young offenders. All this state-authorised deliberate and severe violence against children ironically co-exists in these countries with child protection systems. Corporal punishment is also reported in domestic and other situations of child labour.

Prevalence of corporal punishment

One indication of the low priority accorded to this issue is the lack of research into the violent victimisation of children by adults in their homes, schools, other institutions and situations of child labour. No state can judge to what extent it is fulfilling its human rights obligations to children without this basic research.

Where corporal punishment in the family has not been systematically challenged through law reform linked to public education, research from a number of states in each continent suggests that a majority of children are being hit regularly by one or both parents and that up to a third are being punished “severely” – beaten with belts or sticks.

In South Asia there has been some research in some states (see state-by-state analysis beginning on page 16). This suggests that corporal punishment remains socially approved by a majority and severe punishment is still common.

RECOMMENDATIONS

THE GLOBAL INITIATIVE URGES THE SOUTH ASIA REGIONAL CONSULTATION TO ADOPT AND PROMOTE THE FOLLOWING RECOMMENDATIONS FOR IMMEDIATE ACTION IN ALL STATES IN THE REGION. THE AIM SHOULD BE TO ADOPT THE DEADLINE OF THE CONCLUSION OF THE UN SECRETARY GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN IN 2006 FOR IMPLEMENTATION OF LAW REFORM AND PUBLIC EDUCATION TO ELIMINATE CORPORAL PUNISHMENT.

1 Explicitly prohibit all violence against children, including all corporal punishment, in the family and in all other settings. This requires repeal of any existing defences that can be used to justify violent punishment and of any laws that authorise corporal punishment in any setting. Explicit prohibition in sectoral laws applying within the family and to alternative care, schools and the penal system is required to send a clear message.

This action, taken to date by less than 20 countries worldwide, sends a clear signal that children have an equal right to respect for their human dignity and physical integrity. The extent to which the law is respected and effectively and appropriately enforced may vary between states. But no state will make significant progress towards preventing and eliminating violence against children until it has a clear and well-publicised legal framework prohibiting all violence. All states have criminal laws against assault; some have constitutions outlawing inhuman or degrading treatment; most have laws prohibiting "abuse" or cruelty; many have incorporated the Convention on the Rights of the Child and other international instruments into their domestic law. But none of this is adequate to challenge the traditional acceptance of violent and humiliating punishment of children.

2 Ensure that awareness-raising of children's right to protection, promotion of non-violent child-rearing and education and the principles of non-violent conflict resolution are built into all the points of contact with future parents and parents and into the training of all those working with or for children and families. Encourage political, community and faith leaders and educators to support this awareness-raising and public education.

Promoting non-violence does not have to be a separate and expensive process. All those in contact with future parents and parents can build messages into their programmes and activities, from ante-natal classes, through birth registration, immunisation, health surveillance and treatment, pre-school and school and so on. There is no shortage of models of programmes and materials which can be adapted for all states and cultures.

3 Review the extent of violent victimisation of children, including in the family, through interview studies with children themselves, parents and other carers.

Making the true extent of violence against children visible is an essential step towards gaining public support and political priority for its elimination. The methodology exists for such studies, involving confidential interviews with parents and with children, with appropriate ethical safeguards. Studies can be quite small-scale, but must cover children of all ages and children in institutions and other forms of care, as well as children living and/or working on the street and in other situations of child labour.

4 Review safeguards to protect children from all forms of violence in the full range of residential institutions and other forms of alternative care, state and private, and implement any necessary improvements.

Studies in states in all continents suggest that children in institutions and alternative care have suffered physical, mental and sexual violence on a huge scale and remain at risk unless a range of safeguards are implemented. These include effective training and vetting of all staff, regular, confidential reviews of all children's placement and treatment, independent inspection including interviewing of children and staff in private and protection of whistle-blowers.

What is the purpose of law reform against corporal punishment and how will it be implemented?

Children's rights to respect for their human dignity and physical integrity and to equal protection under the law require that the law effectively and equally protects them from all forms of corporal punishment and other humiliating punishment or treatment.

Equal protection for children **does** mean that any assault of a child that would be considered a criminal assault if directed at an adult should be considered and dealt with under the criminal law as a crime. All countries have laws which define and prohibit criminal assault and this definition should include all corporal punishment as a form of assault.

But this principle of equal protection for both adults and children in cases of assault **does not** necessarily mean that cases involving corporal punishment should result in prosecution of parents. This is very seldom in the interests of children, because of children's dependent status, and should only be used as an intervention of last resort.

In every case in which corporal punishment in the family comes to light, the aim must be first to seek to help parents and children through voluntary positive interventions – offers of advice, discussions with other parents and so on – which aim to stop violent and humiliating treatment of children.

In extreme cases of serious and continuing abuse, separating children from their parents may be the only way to protect them. And in those cases, according to the Convention on the Rights of the Child (article 9), there must be a court hearing, focusing on the best interests of the child and with the parents and child represented. In exceptional cases, where it is believed the child is at risk of severe violence, it may be necessary immediately to remove the child or the perpetrator to protect the child. But such measures should be temporary and only continued following a court hearing.

Equal protection under the law

Efforts to reform the law to prohibit all corporal punishment as a form of assault often meet with strong opposition. One of the fears expressed is that it will lead to thousands of parents being prosecuted and put in prison, or children will be taken away and put in institutions; it will turn children against their parents, and so on. But in the growing number of states in which the law has been changed, this has not been the experience. The first aim of these reforms, linked to awareness-raising and public education, is to raise awareness of the right of the child to equal protection. Changing the law and linking this to awareness-raising is likely to change attitudes and reduce violence against children. Adults' sensitivity to violence against children is likely to increase and this may lead to more reporting of such violence.

Controlling prosecution policy in relation to parental corporal punishment

In most countries, there is a code or advice to decide when prosecution for a crime should go ahead. This usually requires certain tests to be satisfied. For example:

- that there is sufficient evidence to make conviction likely;
- that the prosecution is in the public interest.

The prosecution of parents and other close family carers should only proceed when it appears to be the only way to provide the child with effective protection and other supportive interventions have failed. It is important that guidelines are developed and implemented which set out conditions for prosecution in these cases. In addition, detailed guidance is required for all those involved in child protection, including for example social workers, health workers, teachers and police. This should focus on the need for interventions to emphasise the dangers and illegality of hitting children and to seek to provide appropriate support for positive, non-violent parenting.

In advocating law reform, it can be emphasised that minor assaults on adults by adults, while clearly unlawful, very seldom get to court (in many states, the *de minimis* principle is recognised: that the law does not concern itself with trivial matters).

Some opponents of law reform will then respond: "But what is the point of a law if it is unenforceable?" The first answer is that the real purpose of law is education and deterrence to achieve protection, rather than prosecution. Prosecution is always a sign of the failure of the law effectively to deter and prevent a child being assaulted.

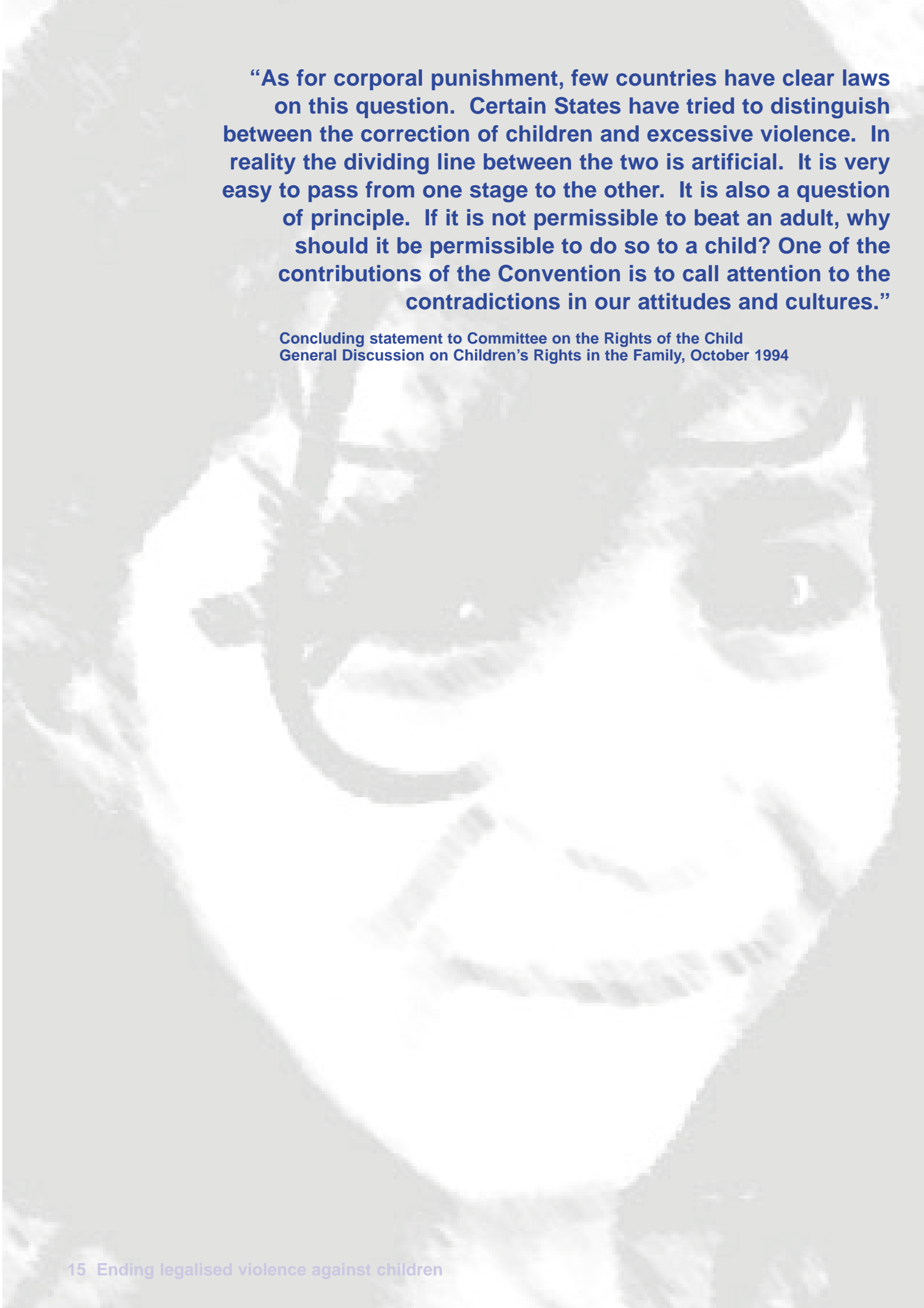
The law will be as enforceable as the law on assault between adults, if the necessary evidence exists – but there will need to be consideration to determine whether prosecution is in the best interests of the victim child as well as in the public interest. In the few cases in which prosecution is considered necessary to protect a child, and in the child’s best interests, it will be easier to pursue if parents can no longer defend assault before the courts as “reasonable punishment”.

In order to deter parents from using corporal punishment in the privacy of their homes, the law needs to send a very clear message. That is the real purpose of explicit law reform. Having clear law that prohibits all corporal punishment enables all those working with and for families and children to promote this clear message.

Enforcing prohibition of corporal punishment outside the family

Corporal punishment in schools, other institutions and forms of care and places of employment must be prohibited explicitly in legislation. Prohibition through administrative circular or guidance is not adequate. Implementation and enforcement of prohibition requires proper administrative measures including awareness-raising of the law among adults and children; building knowledge of the prohibition into training, both initial and in-service, for teachers and other school personnel; rigorous inspection by trained inspectors independent of the institution (including interviews in private with children and adults); and access to advice, advocacy and independent complaints procedures for children and parents and ultimately access to the courts.

Respecting the law will or should become a contractual condition, so that teachers and others who continue to use corporal punishment risk losing their jobs. This in itself will act as a strong deterrent. In cases in which teachers and others, after warning, continue to use corporal punishment, prosecution is a legitimate and necessary response.



“As for corporal punishment, few countries have clear laws on this question. Certain States have tried to distinguish between the correction of children and excessive violence. In reality the dividing line between the two is artificial. It is very easy to pass from one stage to the other. It is also a question of principle. If it is not permissible to beat an adult, why should it be permissible to do so to a child? One of the contributions of the Convention is to call attention to the contradictions in our attitudes and cultures.”

**Concluding statement to Committee on the Rights of the Child
General Discussion on Children’s Rights in the Family, October 1994**



CORPORAL PUNISHMENT IN SOUTH ASIA

State-by-state analysis of legality and prevalence

The information in this section was compiled by the Global Initiative from many sources, including reports to and by the United Nations human rights treaty bodies. We are very grateful to government officials, UNICEF and other UN agencies, NGOs and human rights institutions and many individuals who have helped to compile and check information. Please let us know if you believe any of the information to be incorrect: info@endcorporalpunishment.org
Country reports will be published and updated on the website of the Global Initiative: www.endcorporalpunishment.org

AFGHANISTAN

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Children are protected from severe violence by the Penal Code (1976) (articles 407-412), and from torture and cruel, inhuman or degrading treatment or punishment by the Constitution (2004). Article 54 of the Constitution states: “Family is a fundamental unit of society and is supported by the state. The state adopts necessary measures to ensure physical and psychological well being of family, especially of child and mother, upbringing of children and the elimination of traditions contrary to the principles of sacred religion of Islam” (unofficial translation). Articles 774-789 of the Civil Code (1976) cover “Bodily Offences” and compensation for damage received.

Schools

There is no explicit prohibition of corporal punishment in schools. The Afghanistan Educational Act (1968) makes no reference to corporal punishment or other disciplinary matters. The Penal Code and Constitution prohibit severe abuse.

Penal system

Corporal punishment is lawful as a **sentence for crime**. The Constitution states that Islam is the religion of the state (article 2) and that “no law can be contrary to the beliefs and provisions of the sacred religion of Islam” (article 3). Under article 24, the state “has the duty to respect and protect the liberty and dignity of human beings”, and article 29 prohibits torture and “punishment contrary to human integrity”. Article 4 of the Penal Code states that “any punishment which is discordant to human dignity is not permitted”, and corporal punishment is not among the permitted sentences for crime for persons under 18 years (articles 70-93). However, article 1 of the Penal Code states: “This Law regulates the Ta’seri crime and penalties. Those committing crimes of *Hodod*, *Qassasa* and *Diat* shall be punished in accordance with the provisions of Islamic religious law (the Hanafi religious jurisprudence).” Corporal punishment has been ordered against persons under the age of 18 under Islamic law.

Corporal punishment is also suggested as a punishment under article 44 of the Penal Law for Crimes of Civil Servants and Crimes against Public Welfare (1962), which states: “If a minor who has not reached the age of 15 years commits a crime punishable by this law, the Court with full consideration of his personal circumstance, shall award a proper disciplinary measure (or educational measure) to suit him. Following the execution of the sentence, the Court shall submit the minor to his guardians and instruct them for intensified supervision of his deeds and behaviour.”

The Judicial Reform Commission is reviewing the justice system and its Decree states that international principles applicable to law enforcement officials should be taken into account, including the Standard Minimum Rules for the Treatment of Prisoners (Presidential Decree No.153: Formation of the Judicial Reform Commission and its duties, 2002). A Draft Juvenile Code was submitted to the Ministry of Justice in October 2003 and as at March 2005 was under consideration by the Council of Ministers.

There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions. The Law of Prisons and Jails in Afghanistan (1934) states in article 24 that prison and jail authorities shall be responsible for internal discipline. There is no provision for corporal punishment in this law, nor in the Law of Reward and Punishment of Prisoners in Afghanistan (1959). As at March 2005, a new law was being drafted which may repeal this legislation. Regulations for the Children’s Rehabilitation Centre are also being drafted.

The Law of Police and Gendarmes (1973) provides for the use of physical strength and implements as a means of enforcement, the only constraint being that police “use where possible the lightest means” (article 19). In March 2005, revision of this law was being considered by the Legislative Department of the Ministry of Justice.

Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare. The provisions against violence in the Penal Code and the Constitution (see above) apply.

Prevalence research

In a survey by Save the Children reported in 2003, 82% of children interviewed reported that slapping, kicking and hitting with a stick are common forms of punishment. Hair and ear pulling were reported by nearly 6% of children. Over half reported being hit or severely beaten for being noisy or naughty, almost a quarter for not learning their school lessons, and nearly one in ten for disobeying adults. (Save the Children Sweden Afghanistan, 2003, *Mini Survey Report on Corporal Punishment*, Kabul: Save the Children, cited in Jabeen, F., 2004, *Corporal/physical and psychological punishment of girls and boys in South and Central Asia Region*, Save the Children Sweden Denmark)

BANGLADESH

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Children have limited protection from violence under the Children Act (1974) and Children Rules (1976), and the Suppression of Violence against Women and Children Act (2000, amended 2003). The Penal Code protects children from severe assault in the sections on “criminal force” and “assault”, where criminal force is defined in article 350: “Whoever intentionally uses force to any person, without that person’s consent in order to commit any offence or intending by use of such force to cause or knowing it to be likely that by the use of such force to cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to the other.”

Schools

There is no explicit prohibition of corporal punishment in schools. Periodic Ministerial directives have advised schools to stop its use, but it continues in practice. There is no provision regarding corporal punishment in schools in the Children Act and Children Rules.

Penal system

Corporal punishment is lawful as a **sentence for crime**. Under the Children Act, the Code of Criminal Procedure (1898) applies. The Code allows for whipping of male offenders (up to 15 stripes for persons under 16 years, up to 30 stripes for older persons). The Constitution (article 35) protects persons who have been arrested or detained from torture, cruel, degrading and inhuman treatment but states that this provision “shall not affect the operation of any existing law which prescribes any punishment or procedure for trial”.

Applicable criminal law is secular in Bangladesh and there is no Islamic court, but corporal punishments have been ordered by unauthorised and illegal fatwas, including lashing and stoning, beating with shoes, and caning, particularly in rural areas. Whipping is a common form of punishment ordered by traditional village mediation councils (shalish).

Corporal punishment is lawful as a **disciplinary measure** in penal institutions. Under the Children Act, children (under the age of 16) convicted of offences against the law and children considered “uncontrollable” by their parents may be sent to a certified institute or an approved home. They may also be sent to prison, and street children and girls engaged in prostitution may be detained in vagrant homes. Rule No. 24 of the Children Rules lists sanctions available for infringements of discipline, including “caning not exceeding ten stripes”. The number of strokes should vary according to the age of the person and nature of the offence, should be inflicted on the buttocks or on the palm of the hand, and a medical officer should be present. Other applicable laws include the Jail Code and a 1971 Ordinance to consolidate and amend the law for the custody, protection and treatment of children and trial and punishment of youthful offenders.

Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare. The provisions against violence in the Children Act, Children Rules, the Suppression of Violence against Women and Children Act and the Penal Code (see above) apply.

Prevalence research

A 2004 Save the Children report cites a number of research studies indicating the prevalence of corporal punishment in Bangladesh (Jabeen, F., 2004, *Corporal/physical and psychological punishment of girls and boys in South and Central Asia Region*, Save the Children Sweden Denmark). These include a survey by Save the Children of more than 2,500 child domestic workers in Dhaka which found that almost two thirds of employers said they were prepared to beat their servants (no reference given). Another reported study involved interviews with children living in slums conducted by

UNICEF and the NGO Phulki which revealed that physical and psychological punishment is widely practised in public schools (UNICEF ROSA, 2001, *Corporal Punishment in Schools in South Asia*, submission to the Committee on the Rights of the Child, Day of General Discussion on Violence Against Children 28 September 2001, Kathmandu: UNICEF ROSA).

A study reported in 2005 of 153 children in 16 groups and 109 adults in 13 groups examined behaviours children liked and behaviour children disliked. The children identified a total of 1,043 behaviours that they disliked from people in the immediate family, educational settings and the workplace. Of these, 293 were categorised as physical discipline/punishment, 206 as verbal discipline/punishment, and 66 as other kinds of discipline/punishment, representing the top three disliked behaviours. (Government of Bangladesh/UNICEF/Save the Children Alliance, 2005, *Child Abuse Study: Study Report*, Draft Version, 25 January 2005)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(27 October 2003, CRC/C/15/Add.221, Concluding observations on second report, paras. 43, 44, 77 (e) and 78 (b))

“The Committee expresses its profound concern at the prevalence of corporal punishment in schools, as well as at the fact that corporal punishment is still legal and widely practised within the legal system, in educational and other institutions and in the family.

“The Committee recommends that the State party, as a matter of urgency, review existing legislation and explicitly prohibit all forms of corporal punishment in the family, schools and institutions, as well as carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment, particularly at the local level and in traditional communities.

“The Committee acknowledges the efforts made by the State party to improve the juvenile justice system. However, the Committee remains concerned at the limited progress achieved in establishing a functioning juvenile justice system throughout the country. In particular, the Committee is concerned at:

e) the use of caning and whipping as a sentence for juvenile offenders....

“The Committee recommends that the State party ensure the full implementation of juvenile justice standards, in particular articles 37, 39 and 40 of the Convention, and other United Nations standards in the field of juvenile justice.... In particular, the Committee recommends that the State party:

b) ensure that the imposition of the death penalty, of life imprisonment without possibility of release, and of caning and whipping as sanctions for crimes committed by persons while under 18 is explicitly prohibited by law....”

Committee on the Rights of the Child

(18 June 1997, CRC/C/15/Add.74, Concluding observations on initial report, paras. 18 and 38)

“The Committee is concerned at the lack of appropriate measures to combat and prevent ill-treatment and abuse, including sexual abuse, both within and outside the family, and at the lack of awareness and information on this matter. The persistence of corporal punishment and its acceptance by the society and instances of violence committed by law enforcement officials against abandoned or ‘vagrant’ children are matters of serious concern.

“The Committee recommends that the State party develop public awareness campaigns and measures to provide appropriate assistance to families in carrying out their childrearing responsibilities with a view, inter alia, to preventing domestic violence, prohibiting corporal punishment, and preventing early marriages and other harmful traditional practices.”

BHUTAN

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Schools

Corporal punishment is lawful in schools, though teacher training institutes are reportedly discouraging its use and promoting alternative methods of classroom management. There is no legal provision relating to corporal punishment in schools.

Penal system

We have been unable to ascertain the legal status of corporal punishment as a **sentence for crime**. Under the General Law (*Thrimzhung Chhenpo*), any form of torture is prohibited (section MA 1-7) and persons below the age of 18 may be given half the sentences applicable to adults for criminal offences (section PA-14), but we have no information on whether these include corporal punishment.

There is no prohibition of corporal punishment as a **disciplinary measure** in penal institutions. Laws concerning minors in conflict with the law include the Prison Act (1982) and the Police Act (1980).

Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(9 July 2001, CRC/C/15/Add.157, Concluding observations on initial report, paras. 40 and 41 (a, b, c, d, e, f and g))

“Noting the respect for children in Bhutan, the Committee is concerned that there is insufficient information and awareness of the ill-treatment of children in schools and within the family.

“The Committee recommends that the State party:

- a) conduct a study to assess the nature and extent of ill-treatment of children, and design policies and programmes to address it;
- b) take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children in the family, schools, and in institutions;
- c) carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment;
- d) establish effective procedures and mechanisms to receive, monitor and investigate complaints, including intervention where necessary;
- e) prosecute instances of ill-treatment, ensuring that the abused child is not victimised in legal proceedings;
- f) train teachers, law enforcement officials, care workers, judges and health professionals in the identification, reporting and management of ill-treatment cases; and
- g) seek assistance from, among others, UNICEF and WHO.”

INDIA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Children have limited protection from violence and abuse under the Penal Code (1860, with amendments) and the Juvenile Justice (Care and Protection of Children) Act (2000). A Domestic Violence Bill has been introduced in the Assembly and as at April 2005 is waiting to be passed and notified.

Schools

There is no national prohibition in law of corporal punishment in schools. The government has issued instructions to states to stop its use in schools and the National Policy on Education (1986, modified 1992) states in section 5.6 that “corporal punishment will be firmly excluded from the educational systems”. A draft Free and Compulsory Education for Children Bill which proposes prohibiting corporal punishment in schools, applicable to the whole of India, is under discussion (April 2005).

Some states have prohibited corporal punishment in schools. In 2002, the **Andhra Pradesh** government imposed a ban on corporal punishment in all educational institutions by amending Rule 122 of the Education Rules (1966), violations of which should be dealt with under the Penal Code. Corporal punishment was prohibited in Tamil Nadu in June 2003 through an amendment of Rule 51 of the **Tamil Nadu** Education Rules prohibiting the infliction of mental and physical pain during “corrective” measures. In February 2004, the Calcutta High Court ruled that caning in state schools in **West Bengal** was unlawful, and it was prohibited in **Chandigarh** in the 1990s. In December 2000, the Delhi High Court ruled that provisions for corporal punishment in the **Delhi** School Education Act (1973) were inhumane and detrimental to the dignity of children.

Penal system

Corporal punishment is unlawful as a **sentence for crime** under the Juvenile Justice (Care and Protection of Children) Act, which prohibits torture and other cruel, inhuman or degrading treatment or punishment and does not list corporal punishment among permitted sanctions (article 21).

Corporal punishment is lawful as a **disciplinary measure** in penal institutions. Under the Juvenile Justice Act (1986), children sentenced to detention could be sent to children’s homes and homes for rehabilitation, where corporal punishment is routinely used. The Act also stated that any person in whose custody the juvenile is placed under the Act “shall, while the order is in force, have the like control over the juvenile as he would have if he were his parent” (article 55). This Act has been replaced by the Juvenile Justice (Care and Protection of Children) Act, but we have no



details of its provisions. Other laws relating to the use of corporal punishment as a disciplinary measure in penal institutions are the Child Labour Abolition Act, the Delhi Police Act, the Juvenile Act (1960, with amendments) and the Delhi School Education Rules (Amended).

Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare. Article 24 of the Guardians and Wards Act (1890) (“Duties of guardian of the person”) states: “A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education....” Guardianship may be removed for ill-treatment (article 39). Child care centres are covered by the Children Act. Other laws applicable to the use of corporal punishment and protection from abuse in alternative care settings include the Juvenile Justice Act, the Delhi Police Act, the Probation of Offenders Act (1959), the Women and Children’s Institution (Licensing) Act (1956) and the Immoral Traffic (Prevention) Act (1956).

Prevalence research

A report by Save the Children in 2004 cited two studies relating to the prevalence of corporal punishment in India (Jabeen, F., 2004, *Corporal/physical and psychological punishment of girls and boys in South and Central Asia Region*, Save the Children Sweden Denmark). In one, carried out in Chandigarh in 1986-87, it was found that 98.3% of parents were in favour of physical punishment, and out of 187 school-going children aged 6-10 years, 160 received beatings at home (Butterflies, 2003, *My Name is Today: A Dossier on Children and Children’s Rights. Vol.II: Children and Protection Issues*, New Delhi, India: Butterflies Advocacy and Research Centre. In another, a survey of university students revealed that 91% of males and 86% of females reported having been physically punished as children (SCS, 2001, full reference not given).

A 1996 study supported by UNICEF found that 66% of children in the state of Maharashtra reported being regularly punished by their teachers in class. In Tamil Nadu state the corresponding figure was 87%, with similar prevalence figures in urban and rural schools. (Mode, 1996, “Attitudes Study on Elementary Education in India: A Consolidated Report”, A Study Sponsored by UNICEF India, cited in UNICEF, *Corporal punishment in schools in South Asia: Submitted to the Committee on the Rights of the Child Day of General Discussion on Violence against Children, 28 September 2001*)

As part of the World Studies of Abuse in the Family Environment (WorldSAFE) cross-national project, researchers looked at incidence rates for corporal punishment using the Parent-Child Conflict Tactics Scale, as self-reported by mothers covering the period of the previous 6 months. In rural areas of India, “severe physical punishment” was reported as follows: hitting the child with an object not on the buttocks 36%, kicking 10%, choking 2%, burning 1%, threatening with a knife or gun 1%. “Moderate physical punishment” was reported as follows: spanked buttocks with hand 58%, slapped face or head 58%, pulled hair 29%, hit with knuckles 28%, hit with object on buttocks 23%, pinched child 17%, twisted ear 16%, shook child 12%, put hot pepper in mouth 3%, forced to kneel/stand in uncomfortable position 2%. (Reported in Krug, E. G. et al. (eds) (2002), *World report on violence and health*, Geneva: World Health Organization)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(26 February 2004, CRC/C/15/Add.228, Concluding observations on second report, paras. 44 and 45)

“The Committee notes the decision of the New Delhi High Court of December 2000 regarding prohibition of corporal punishment in the schools under its jurisdiction, but remains concerned that corporal punishment is not prohibited in the schools of other states, in the family, nor in other institutions for children, and remains acceptable in society.

“The Committee strongly recommends that the State party prohibit corporal punishment in the family, in schools and other institutions and undertake education campaigns to educate families, teachers and other professionals working with and/or for children on alternative ways of disciplining children.”

Committee on the Rights of the Child

(23 February 2000, CRC/C/15/Add.115, Concluding observations on initial report, paras. 38, 40, 44 and 45)

“With respect to article 37 (a) of the Convention, the Committee is concerned by numerous reports of routine ill-treatment, corporal punishment, torture and sexual abuse of children in detention facilities, and alleged instances of killings of children living and/or working on the streets by law enforcement officials.

“Amendment to the Juvenile Justice Act is recommended to provide for complaints and prosecution mechanisms for cases of custodial abuse of children. In addition, the Committee recommends the amendment of section 197 of the Code of Criminal Procedure, which requires government approval for prosecution of law enforcement officials when complaints of custodial abuse or illegal detention are alleged; and section 43 of the Police Act, so that police cannot claim immunity for actions while executing a warrant in cases of illegal detention or custodial abuse.

“In the light of articles 19 and 39 of the Convention, the Committee is concerned at the widespread ill-treatment of children in India, not only in schools and care institutions but also within the family.

“The Committee recommends that the State party take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children in the family, schools and care institutions. The Committee recommends that these measures be accompanied by public education campaigns about the negative

consequences of ill-treatment of children. The Committee recommends that the State party promote positive, non-violent forms of discipline as an alternative to corporal punishment, especially in the home and schools. Programmes for the rehabilitation and reintegration of abused children need to be strengthened, and adequate procedures and mechanisms established to receive complaints, monitor, investigate and prosecute instances of ill-treatment.”

MALDIVES

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Children have limited protection from violence and abuse under the Law on the Protection of the Rights of the Child (1991). Chapter 2 concerns the responsibilities of parents and states in article 15: “Special attention should be given to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. The authorities should be informed if this occurs.” Article 18 states: “Severe punishment which may harm the child physically or mentally should not be used.”

Schools

Corporal punishment is prohibited in schools under article 10 of the Law on the Protection of the Rights of the Child, which states: “Punishment in school should be appropriate to the child’s age and should not affect them physically or psychologically.” This is reiterated in the Ministry of Education *Handbook for Teachers* (updated 2002), which also states (in section 2.7): “Maldavian Law does not allow teachers to inflict corporal punishment on students.”

Penal system

Corporal punishment is lawful as a **sentence for crime**. The Law on the Protection of the Rights of the Child prohibits imposing cruel and degrading punishment on children, and the Penal Code (amended 2002) does not include corporal punishment among permitted sentences for crimes that fall outside of *Shari’a* law. However, under the Penal Code, the Sentencing Guidelines 298 (“Rules on Investigation Adjudication and Sentencing in Respect of Offences Committed by Minors”) and the Rules for Sentencing No. 6 (2003), the *Hadd* punishments of Islamic law are applicable to any person who has reached puberty for crimes of apostasy, rebellion, fornication, defamation, drinking, theft and offences relating to homicide. Available sentences include corporal punishment, though the sentence of lashing is reportedly postponed until the young person reaches the age of 18 years.

There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions.

Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare. The Education and Training Centre for Children operates under the Ministry of Education and so corporal punishment is prohibited in that institution under article 10 of the Law on the Protection of the Rights of the Child and the *Handbook for Teachers* (see above).

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(5 June 1998, CRC/C/15/Add.91, Concluding observations on initial report, paras. 16 and 36)

“While aware of the efforts undertaken by the State party for the prevention of ill-treatment of children, the Committee expresses its concern at the insufficient awareness of and lack of information on ill-treatment and abuse, including sexual abuse both within and outside the family, at the insufficient legal protection measures, at the inappropriate resources, both financial and human, as well as at the lack of adequately trained personnel to prevent and combat such abuse. The insufficiency of rehabilitation measures for such children and their limited access to justice are also matters of concern.

“In the light of article 19 of the Convention, the Committee recommends that the State party take all appropriate measures to prevent and combat ill-treatment within the family and sexual abuse of children. It suggests, inter alia, that the authorities set up social programmes to prevent all types of child abuse as well as to rehabilitate the child victims. Law enforcement should be strengthened with respect to such crimes; adequate procedures and mechanisms to deal with complaints of child abuse should be developed, such as special rules of evidence, and special investigators or community focal points.”

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home. Article 7 of the Children's Act (1992) states that "no child shall be subject to torture or cruel treatment" but also that "the act of scolding and minor beating of the child by his father, mother, and [any] member of the family, guardian or teacher for the interests of the child himself shall not be deemed to violate the Act". The Civil Code (*Muluki Ain*) (1963) states that guardians and teachers shall not be held responsible for grievously hurting a child in the course of education or defence. According to the second state party report to the Committee on the Rights of the Child in 2004, article 7 of the Children's Act is in the process of being amended (CRC/C/65/Add.30, para. 140).

Children have limited protection from violence and abuse under other provisions in the Children's Act.

Schools

Corporal punishment is lawful in schools under article 7 of the Children's Act and the Civil Code (see above).

Penal system

Corporal punishment is not available as a **sentence for crime** for children up to the age of 16 under the Children's Act (articles 11 and 15), but we have been unable to ascertain sentences available for persons aged 17. The Compensation for Torture Act (article 31) and the Constitution (article 14) prohibit torture and inhuman and degrading treatment. Rural areas come increasingly under the jurisdiction of Maoist courts, where corporal punishment may be ordered as a sentence.

There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions. Under the Compensation for Torture Act, no person in detention shall be subjected to cruel, inhuman or insulting treatment. The Prisons Act (1962) aims at providing detainees with humanitarian treatment. In 2001, the Supreme Court ordered the banning of handcuffing child offenders. Article 15 of the Children's Act prohibits the use of handcuffs, fetters and solitary confinement of children.

Alternative care

Corporal punishment is lawful in other institutions and forms of childcare. Article 39 of the Children's Act allows the chief of a children's welfare home to impose "light punishment" on a child in order to maintain discipline. Article 7 (see above) also applies. "Minimum Standard Rules" for running child welfare homes were adopted in 1998.

Prevalence research

Research by UNICEF ROSA in 2001 found that 33% of respondents reported being physically punished in the home. (UNICEF ROSA, 2001, *Corporal Punishment in Schools in South Asia*, submission to the Committee on the Rights of the Child, Day of General Discussion on Violence Against Children 28 September 2001, Kathmandu: UNICEF ROSA, cited in Jabeen, F., 2004, *Corporal/physical and psychological punishment of girls and boys in South and Central Asia Region*, Save the Children Sweden Denmark)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(7 June 1996, CRC/C/15/Add.57, Concluding observations on initial report, paras. 10, 12, 19 and 34)

"The Committee is concerned at the inadequate measures adopted to ensure that national legislation fully conforms with the principles and provisions of the Convention. The Committee notes in particular the lack of conformity of legislative provisions concerning non-discrimination including in relation to marriage, inheritance and parental property, torture and corporal punishment. The Committee is also concerned about the gap between existing legislation and its practical implementation.

"... The Committee also expresses its concern at section 7 of the Children's Act which allows parents, members of the family and teachers to beat a child 'if it is thought to be in the interest of the child', as well as at the fact that, as recognized in the State party's report, the views of the child are unlikely to be respected. The persistence of such traditional practices and attitudes seriously hampers the enjoyment of the rights of the child.

"The Committee is concerned that appropriate measures have not yet been taken to effectively prevent and combat any form of ill-treatment and corporal punishment of children within the family. It is seriously worried about the absence of adequate legislation and mechanisms designed to ensure the recovery and reintegration of child victims in the light of article 39 of the Convention.

"In the light of article 19 of the Convention, the Committee further recommends that the Government take all appropriate measures, including of a legislative nature, to combat any form of ill-treatment and sexual abuse of children, including within the family. It suggests, inter alia, that the authorities gather information and initiate a comprehensive study to improve the understanding of the nature and scope of the problem and set up social programmes to prevent all types of child abuse and neglect."

PAKISTAN

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home. Article 89 of the Penal Code (1860, with amendments) enshrines the right of parents, teachers and other guardians to use “reasonable” corporal punishment in disciplining and correcting children under the age of 12. This right is also recognised in the Punjab Children’s Ordinance (1983) (article 19) and the Sindh Children Act (1955) (article 48).

Children have limited protection from violence under other provisions in the Penal Code, the Punjab Children’s Ordinance, the Sindh Children Act, the Guardians and Wards Act, and the Code of Criminal Procedure (1898, with amendments). Article 332 of the Penal Code defines hurt: “whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt.”

Schools

Corporal punishment is lawful in schools under article 89 of the Penal Code (see above). It has been prohibited by a Federal Ministerial directive and by directives in 2003 in the North West Frontier Provinces (1803-30/F. No 13/DS & 1/M&N/G: Corr, 2003) and in 2004 in the Punjab. However, it continues to be used (Human Rights Commission Pakistan, *State of Human Rights* 2003 and *State of Human Rights* 2004). 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.

Penal system

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) although it states in article 14 that this Ordinance “does not derogate from other laws” and that it “shall be in addition to and not in derogation of any other law for the time being in practice”. The Ordinance is not applied in the North West Frontier Province, which is subject instead to the Frontier Crimes Regulation (1901) that allows elders and leaders to administer justice according to *Shari’a* and tribal customs. It is not applied in the Provincially Administered Tribal Areas, in the province of Baluchistan or in any of the 11 Federally Administered Tribal Areas. Rules for carrying out the Ordinance have been issued by the governments of the Sindh and Punjab provinces, but implementation is poor. In Punjab, the High Court of Lahore declared the Ordinance to be unconstitutional and therefore not applicable but following appeal, this ruling was temporarily suspended by the Pakistan Supreme Court in February 2005. As at March 2005, the case had not been concluded.

Corporal punishment as a **sentence for crime** was prohibited in the Abolition of the Punishment of Whipping Act (1996), but this does not apply in the case of *hudoob* offences as article 3 states: “Except in cases where the punishment of whipping is provided for as hadd, the sentence of whipping provided under any law, rule, or regulation for the time being in force shall stand abolished.” Punishments for *hudoob* offences include lashing, stoning and amputation. Applicable laws include the Offence of Zina (Enforcement of *Hadoob*) Ordinance (1979), the Prohibition (Enforcement of *Hadd*) Order (1979) and Offence of *Qazf* (Enforcement of *Hadd*) Ordinance (1979).

The Penal Code and the Code of Criminal Procedure, amended in the early 1990s to bring them into conformity with Islamic law, and the *Qisas and Diyat* Ordinance (1991), promulgated by the Criminal Law Amendment Act (1997), also 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 age of 18 years (article 299), allowing for the punishment of *qisas* to be ordered for females.

The Rules and Orders of the Lahore High Court allow for the whipping of young offenders, up to 15 strikes for persons under the age of 16 years, up to 30 for others (Part D, Chapter 19; Part C, Chapter 20; and Part A, Chapter 22). These provisions may be modified in cases under the *Hudoob* Ordinances of 1979. According to the Human Rights Commission of Pakistan, neither the *Hudoob* Ordinances or the *Qisas and Diyat* law were amended or repealed in 2004 (*State of Human Rights* 2004).

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 the Punjab province, the Borstal Act (1926) permits its use on males in borstal institutions.

Alternative care

Corporal punishment is lawful in other institutions and forms of childcare under article 89 of the Penal Code (see above). The general provisions against violence in the Penal Code, the Punjab Children’s Ordinance, the Sindh Children Act, the Guardians and Wards Act, and the Criminal Procedure Code (see above) apply, and in Punjab, minimum standards for alternative care have been developed by the Social Welfare Department with UNICEF assistance which state that institutions “must ensure protection of every child against any abuse and exploitation by the staff, or by other children”.



Prevalence research

Interviews and questionnaires in 1998 involving 600 heads of government and private primary schools in 14 districts in the North West Frontier Province found that 57.3% felt corporal punishment was “necessary” at school, for reasons including maintaining discipline (68.7%), facilitating learning (55.1%) and building character (50.7%). The most common types of corporal punishment were slapping and beating with a stick, both reported by 41.1% of respondents. 630 mothers and fathers of children in the schools surveyed were also interviewed. 78.1% reported that corporal punishment was practised in the schools, with 64% reporting that their own children had received corporal punishment, most commonly by beating with a stick (44.6%) and in 74 cases the punishment resulted in serious injury. Corporal punishment in schools was felt to be “right” or “wrong but unavoidable” by 67.4% of the parents surveyed. (NGO Coalition on Child Rights with UNICEF, 1998, *Corporal Punishment in Primary Schools of North West Frontier Province Pakistan*)

An interview study of 300 parents in Lahore found 83% of parents reporting that they used corporal punishment, mostly slaps or kicks. About 3% reported using sticks, belts and other implements. (Ahmad, F. & Najam, N. (n.d.), “Physical punishment: parental use, attitude and its intergenerational transmission”)

A survey by the Pakistan Paediatrics Association and UNICEF, the results of which were published in March 2003, showed that more than four out of five children were vulnerable to physical abuse from parents, elders and teachers, with boys more likely than girls to suffer physical abuse. (Cited in Human Rights Commission of Pakistan, 2004, *State of Human Rights 2003*)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(27 October 2003, CRC/C/15/Add.217, Concluding observations on second report, paras. 42, 43 (a, b and c), 60 (g) and 63 (i))

“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.”

Committee on the Rights of the Child

(25 April 1994, CRC/C/15/Add.18, Concluding observations on initial report, paras. 12, 23 and 28)

“... the Committee notes the non-compatibility of certain areas of national legislation with the provisions and principles of the Convention, including the punishment of flogging and the death penalty and life imprisonment for children below the age of 18.

“The hope is ... expressed that ... the State party will take into account the Committee’s concerns, particularly its recommendations with regard to the abolition of flogging and capital punishment for children under the age of 18....

“The Committee also recommends that the State party should develop awareness-raising and training programmes to combat violence against children and prevent their abuse, neglect, abandonment and ill-treatment. Such programmes should be addressed to, inter alia, parents, teachers and law enforcement officials. Consideration should also be given to the establishment of effective complaints procedures in such cases.”

SRI LANKA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home. Although the Penal Code (1883, amended 1995) does not explicitly include a parental “right of reasonable chastisement”, an illustration to one of the offences “on using criminal force” indicates that “reasonable use” of corporal punishment would not be covered by this provision.

Children have some protection from violence and abuse under provisions in the Penal Code, including article 308A on cruelty to children (Amendment Act 1995), which defines cruelty as wilful assault, ill-treatment, neglect or abandonment of children or the causing of children to be treated in such a manner that is likely to cause suffering or injury to health. Other protection is given by the Children's Charter (1980). Part V of the Children and Young Persons Ordinance (1939) covers cruelty to children under the age of 16 years – and also includes “the right of any parent, teacher or other person having lawful control or charge of a child ... to administer punishment to him” – but has never been brought into operation. Pending legislation includes a Prevention of Domestic Violence Bill which defines domestic violence as including all offences in Chapter XVI of the Penal Code (including causing hurt, assault and cruelty to children) committed or caused by a relevant person within the home, and “relevant person” is defined to include the father and mother of an aggrieved person.

Schools

Corporal punishment is lawful in schools under the Education Ordinance (1939) (articles 23 and 56). It is prohibited in Education Circular No. 11/2001 of 30 March 2001, but legislation has not been amended accordingly. The Education Ordinance also permits courts to pass a sentence of caning for persistent truancy from school (articles 56 and 71).

Penal system

Corporal punishment is lawful as a **sentence for crime**. The Constitution recognises the right not to be subjected to torture or to other cruel, inhuman and/or degrading treatment or punishment, but legislation allows for corporal punishment. Whipping is lawful as a sentence for male young offenders under the Corporal Punishment Ordinance (1889), which states that the sentence should not exceed 6 strokes for a boy below 16 years of age and 24 above that age. Other provision for corporal punishment is made in the Penal Code (article 52), the Code of Criminal Procedure Act (1979) (article 14), the Children and Young Persons Ordinance (article 29) and the Probation of Offenders Ordinance No.42 (1944). Whipping as a form of punishment is also recognised by the Prisons Ordinance (articles 81 and 86), the Railways Ordinance No.9 (1902) (articles 24, 26, 27 and 41), the Offensive Weapons Act No.18 (1996) (articles 2-4), the Police Ordinance No.16 (1865) (article 98) and the Dangerous Knives Ordinance No.28 (1906) (article 11). The administration of the sentence of whipping is governed by the Code of Criminal Procedure Act (articles 294-298) and the Prisons Rules (rules 59, 60, 253-255 and 257).

A draft Juvenile Justice Procedure Act, to replace the Children and Young Persons Ordinance, is under discussion (April 2005). The Act will prohibit courts from imposing sentences of corporal punishment on persons below 18 years, convicted of any offence. The Cabinet has also approved the enactment of a Corporal Punishment (Repeal) Act which will prohibit courts from imposing sentences of corporal punishment on any person convicted of an offence.

Corporal punishment is lawful as a **disciplinary measure** in penal institutions. Under the Children and Young Persons Ordinance, young persons aged 12 may be sent to remand homes for temporary care and custody and to approved schools and certified schools for education and training. Under the Youthful Offenders (Training Schools) Ordinance (1939), male offenders who have been convicted by the High Court or who have previous convictions or have violated probation orders may be sent to a Borstal (training) school. There is no prohibition of corporal punishment in these institutions.

Alternative care

There is no prohibition of corporal punishment in other institutions and forms of childcare. The provisions against cruelty in the Penal Code (see above) apply.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(2 July 2003, CRC/C/15/Add.207, Concluding observations on second report, paras. 28 and 29)

“The Committee is deeply concerned that male child offenders can be sentenced to whipping or caning under the Corporal Punishment Ordinance of 1889, and that the Education Ordinance of 1939 permits corporal punishment to be used as a disciplinary measure for boys and girls in schools and that many teachers and principals consider corporal punishment to be an acceptable form of discipline.

“The Committee reiterates its previous recommendation that the State party repeal the Corporal Punishment Ordinance of 1889 and amend the Education Ordinance of 1939 to prohibit all forms of corporal punishment. Furthermore, the Committee recommends that the State party undertake well-targeted public awareness campaigns on the negative impact corporal punishment has on children, and provide teacher training on non-violent forms of discipline as an alternative to corporal punishment.”

Committee on the Rights of the Child

(21 June 1995, CRC/C/15/Add.40, Concluding observations on initial report, paras. 15 and 32)

“With respect to child abuse, including sexual abuse, the Committee is seriously alarmed by the prevalence of this type of abuse. The Committee is worried about the fact that no specific rehabilitation measures exist for abused children and that they are treated like delinquents. Corporal punishment also persists in Sri Lankan society and is accepted in schools.



“The Committee recommends that the State party take measures to combat violence and abuse of children, including sexual abuse and corporal punishment. During the process of reviewing its laws on child abuse, the State party should carefully take into account all the provisions guaranteed by article 19 of the Convention. It further suggests that professional groups, including teachers, law enforcement personnel, social workers and the military, be trained with respect to the provisions on the Convention. International technical assistance could be requested by the authorities in relation to this matter.”

Human Rights Committee

(1 December 2003, CCPR/CO/79/LKA, Concluding observations on the combined fourth and fifth reports, para. 11)

“While noting that corporal punishment has not been imposed as a sanction by the courts for about 20 years, the Committee expresses concern that it is still statutorily permitted, and that it is still used as a prison disciplinary punishment. Moreover, despite directives issued by the Ministry of Education in 2001, corporal punishment still takes place in schools (art.7).

The State party is urged to abolish all forms of corporal punishment as a matter of law and effectively to enforce these measures in primary and secondary schools, and in prisons.”

Human Rights Committee

(27 July 1995, CCPR/C/79/Add.56, Concluding observations on third report, sections 3 and 5)

“The Committee expresses its satisfaction at the Government’s stated policy of not implementing death sentences and that corporal punishment as a penalty has been suspended for the last 10 years.

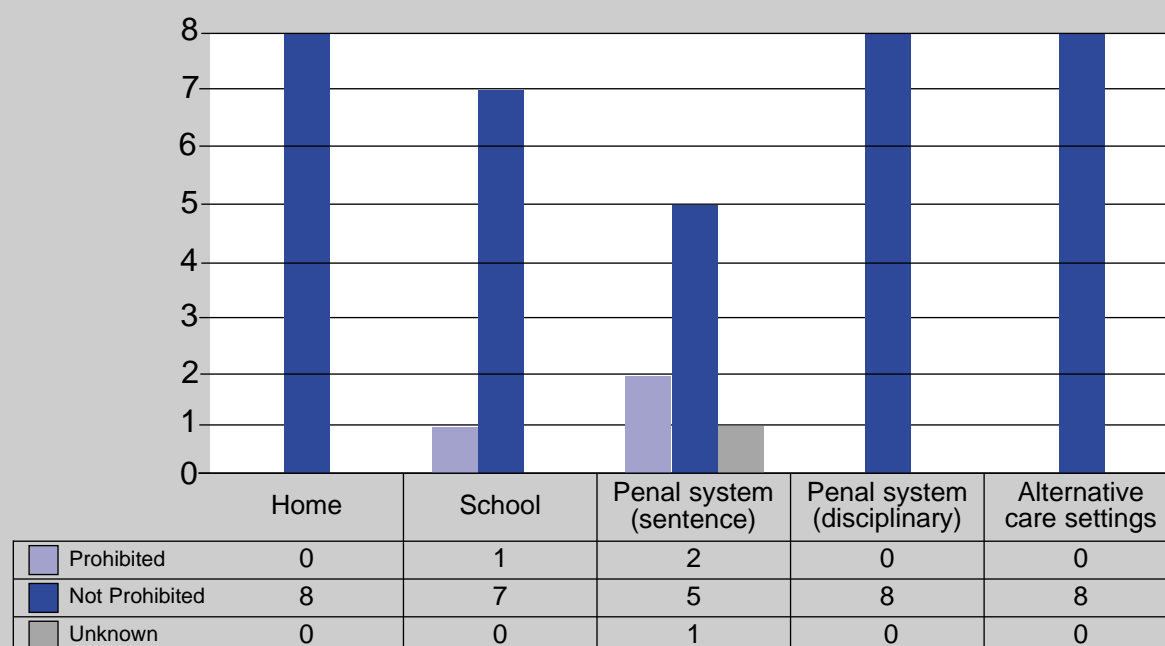
“Noting that the definition of torture given in the Convention Against Torture Act passed by Parliament on 25 November 1994 is somewhat restrictive, the Committee recommends that the Act be amended to bring it into conformity with article 7 of the Covenant, taking into account the Committee’s General Comment No. 20 (44). It further recommends that in view of the statement by the Government that corporal punishment has been suspended the provisions of the domestic legislation allowing this form of punishment be revoked.”

SUMMARY TABLE LEGAL STATUS OF CORPORAL PUNISHMENT OF CHILDREN

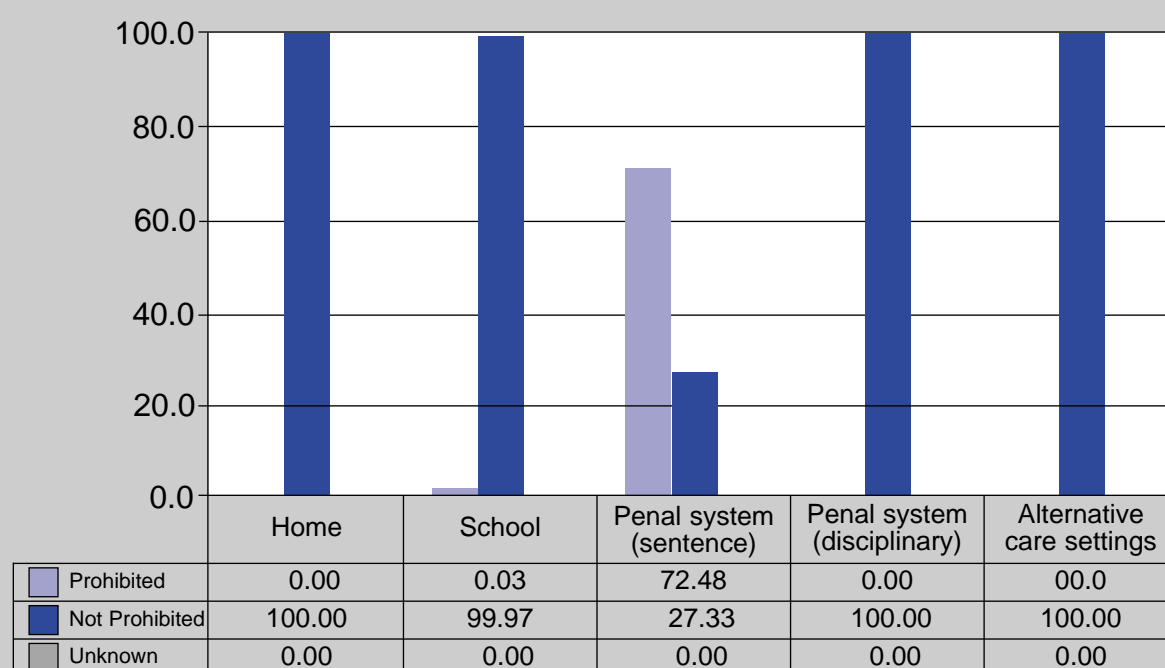
	Prohibited in the home	Prohibited in schools	Prohibited in the penal system		Prohibited in alternative care
			As a sentence for crime	As a disciplinary measure in penal institutions	
Afghanistan	NO	NO	NO	NO	NO
Bangladesh	NO	NO ¹	NO	NO	NO
Bhutan	NO	NO	?	NO	NO
India	NO	NO ²	YES	NO	NO
Maldives	NO	YES	NO	NO	SOME ³
Nepal	NO	NO	YES ⁴	NO	NO
Pakistan	NO	NO ⁵	NO ⁶	NO ⁷	NO
Sri Lanka	NO	NO ⁸	NO ⁹	NO	NO

¹Ministerial directives have advised against its use. ²National Policy on Education recommends prohibition; prohibited in Andhra Pradesh, Tamil Nadu, Chandigarh and Delhi; ruled unlawful in West Bengal by Calcutta High Court; draft Free and Compulsory Education for Children Bill would prohibit at national level. ³Prohibited in the Education and Training Centre for Children. ⁴Except possibly for persons aged 17; traditional Maoist courts in rural areas order corporal punishment. ⁵Prohibited by Federal Ministerial directive and by directives in the North West Frontier and Punjab Provinces. ⁶Prohibited in 2000 Juvenile Justice System Ordinance, but this not applied in all provinces and tribal areas. ⁷Prohibited in 2000 Juvenile Justice System Ordinance, but this not applied in all provinces and tribal areas. ⁸Prohibited by government circular. ⁹Prohibited in Corporal Punishment (Repeal) Act, due to be presented in Parliament shortly after April 2005, and in draft Juvenile Justice Procedure Act currently (April 2005) under discussion.

South Asia states prohibiting corporal punishment of children



Percentage of child population legally protected from corporal punishment



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This report is one in a series prepared by the Global Initiative for submission to each of the nine regional consultations being held in connection with the UN Secretary General's Study on Violence against Children.

The Global Initiative was launched during the Commission on Human Rights in Geneva in 2001. It aims to act as a catalyst to encourage more action and progress towards ending all corporal punishment in all continents; to encourage governments and other organisations to "own" the issue and work actively on it; and to support national campaigns with relevant information and assistance. The context for all its work is implementation of the Convention on the Rights of the Child. We believe ending all corporal punishment is fundamental to improving the status of children and realising their rights to respect for their human dignity and physical integrity and to equal protection under the law.



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

The aims of the Global Initiative are to:

- forge a strong alliance of human rights agencies, key individuals and international and national non-governmental organisations against corporal punishment;
- make corporal punishment of children visible by building a global map of its prevalence and legal status, ensuring that children's views are heard and charting progress towards ending it;
- lobby governments systematically to ban all forms of violence including corporal punishment and to develop public education programmes;
- promote awareness-raising of children's rights to protection and public education on positive, non-violent forms of discipline for children;
- provide detailed technical assistance to support states with these reforms.

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