

Corporal punishment of children in Pakistan

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Child population 77,779,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, some schools, some penal institutions and as a sentence for crime. Prohibition has been achieved in all settings in Pakistan administered Gilgit-Baltistan.

Article 89 of the Penal Code states that “Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person....” There are similar provisions in the Punjab Destitute and Neglected Children Act 2004 (art. 35), the Sindh Children Act 1955 (art. 48), the Khyber Pakhtunkhwa Child Protection and Welfare Act 2010 (arts. 33 and 44) and possibly other provincial laws. These provisions should be amended/repealed to ensure that no law can be construed as providing a defence for the use of corporal punishment on children. All corporal punishment should be prohibited, however light, by parents and all persons with authority over children.

Alternative care settings – Corporal punishment should be prohibited throughout Pakistan in all alternative care settings (foster care, institutions, places of safety, emergency care, etc). Prohibition in alternative care settings has been achieved in the Islamabad Capital Territory and in Sindh.

Day care – Corporal punishment should be prohibited throughout Pakistan in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc). Prohibition in day care has been achieved in the Islamabad Capital Territory and in Sindh.

Schools – Corporal punishment is prohibited in schools in Islamabad Capital Territory and in Sindh; it is prohibited for 5-16 year olds in government schools in Punjab and possibly in Khyber Pakhtunkhwa. Prohibition should now be extended to schools throughout Pakistan, for children of all ages, and including in non-government schools.

Penal institutions – Provisions for whipping in prisons in the Prisons Act 1894 and the Borstal Act 1926 should be repealed and corporal punishment prohibited as a disciplinary measure in all institutions accommodating children in conflict with the law throughout Pakistan. Prohibition in penal institutions has been achieved in the Islamabad Capital Territory and in Sindh.

Sentence for crime – All judicial corporal punishment should be prohibited, including under Shari’a law and traditional legal systems, and all legal provisions authorising such punishment of children should be repealed.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. 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 There are similar provisions in the Punjab Destitute and Neglected Children Act 2004 (art. 35) and the Sindh Children Act 1955 (art. 48). The Khyber Pakhtunkhwa Child Protection and Welfare Act 2010 prohibits corporal punishment “in all its kinds and manifestations” but it states that this is “as provided under section 89 of the Pakistan Penal Code 1860” (art. 33) and allows for “reasonable punishment” by parents (article 44); the definition of corporal punishment (art. 2) covers only that which reaches a certain severity. In 2012, rules under the Act were being drafted.

The National Child Policy adopted in 2006 recognises the right of the child to protection from corporal punishment but there is no prohibition in law. Provisions against violence and abuse in the Penal Code 1860, the Domestic Violence (Prevention and Protection) Act 2012, the Punjab Destitute and Neglected Children Act 2004, the Sindh Children Act 1955, the Sindh Child Protection Authority Act 2011, the Guardians and Wards Act 1890, and the Code of Criminal Procedure 1898 are not interpreted as prohibiting corporal punishment of children.

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.² 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 required to combat corporal punishment and protect and promote rights of the child.”³

In recent years, a number of bills which address the issue have been under discussion, including a Child Protection Bill referred by the National Commission for Child Welfare and Development (NCCWD) to the interior ministry in 2010, which included prohibition (arts. 58 and 59) though its application to “light” corporal punishment was unclear. A Prohibition of Corporal Punishment Bill was laid before parliament in 2010 which would prohibit corporal punishment in education and care settings but not by parents in the family home; the Bill was passed by the National Assembly in

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)

² SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

³ “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*

March 2013 but fell before the election. In March 2014, a new Prohibition of Corporal Punishment Bill was laid before the National Assembly;⁴ this again failed to pass through the Senate.⁵

The Government reported in March 2016 that two Bills had been introduced to Parliament which were relevant to prohibition of corporal punishment – the Criminal Law (Amendment) Bill 2015 and the Prohibition of Corporal Punishment Bill 2015.⁶ The Criminal Law (Amendment) Bill 2015 was enacted in 2016 and amended 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 has, potential to harm or injure the child by causing physical or psychological injury to him”. It did not clearly prohibit corporal punishment of children and did not amend section 89 of the Penal Code which provides a legal defence for its use. The Prohibition of Corporal Punishment Bill 2015, applicable in Islamabad Capital Territory, was adopted in February 2017 (see under “Alternative care”) and also did not prohibit corporal punishment in childrearing. It was reported in 2018 that a Child Protection Bill was being drafted and would prohibit all corporal punishment of children⁷ – we have no further information.

The Global Initiative no longer considers Pakistan committed to prohibiting all corporal punishment of children without delay, as law reform in recent years has failed to achieve prohibition of all corporal punishment in all settings and there is no evidence that the Government intends to introduce such legislation in the near future.

In May 2014, the Child Protection System Bill 2014, applicable to Islamabad Capital Territory, was passed in the lower house of the Senate.⁸ The Bill would have prohibited 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 suggested that it covered only that which reached 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.” The Islamabad Capital Territory Child Protection Act 2018 includes corporal punishment in the definition of physical violence but does not define it. In February 2020, the Islamabad High Court suspended the application of section 89 of the Penal Code in Islamabad Capital Territory following a petition calling for a ban on corporal punishment in schools.⁹ We are enquiring about the impact of the Act and the judgment on the legality of corporal punishment in Islamabad Capital Territory.

In Balochistan, a Child Welfare and Protection Bill which 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. The Balochistan Child Protection Act 2016 does not address corporal punishment of children. A Prohibition of Corporal Punishment Bill is under discussion in Punjab.

The Pakistan administered area of Gilgit-Baltistan prohibited in August 2016 all corporal punishment of children by passing the Gilgit-Baltistan Prohibition of Corporal Punishment Act. Article 2 of the Act

⁴ 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

⁵ SPARC - Society for the Protection of the Rights of the Child, correspondence with Global Initiative, 7 September 2015

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

⁷ See <https://nation.com.pk/24-Nov-2018/child-protection-bill-prepared>, accessed 14 December 2018

⁸ <http://tinyurl.com/omrn8ag>, accessed 15 May 2014

⁹ Information provided to the Global Initiative, February 2020; see also <https://www.dawn.com/news/1534226/ihc-bans-corporal-punishment-for-children-at-schools>, last accessed 5 March 2020

defines corporal punishment based on the Committee on the Rights of the Child's definition. Article 3 states that children have "the right to be shown respect for [their] personality and individuality and shall not be made subject to corporal punishment or any other humiliating or degrading treatment" and that "corporal punishment of children by any person is prohibited in all its forms in the family and work place, in schools and other educational institutions including formal, non-formal and religious, both public and private, in child care institutions including foster care, rehabilitation centers and any other alternative care settings, both public and private, and in the juvenile justice system".

Alternative care settings

Corporal punishment is lawful in alternative care settings under article 89 of the Penal Code 1860, article 35 of the Punjab Destitute and Neglected Children Act 2004 and article 48 of the Sindh Children Act 1955 (see under "Home"). The Gilgit-Baltistan Prohibition of Corporal Punishment Act prohibits all corporal punishment of children in alternative care settings (see under "Home").

The Prohibition of Corporal Punishment Act 2017 was passed on 20 February 2017 and applies in Islamabad Capital Territory. The Act takes the definition of corporal punishment from the Committee on the Rights of the Child's General Comment No. 8; and 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 institutions including formal and non-formal, both public and private, in child care institutions and in the juvenile justice system." Child care institutions are defined as "an institution, an orphanage or a place of safety which houses one or more children for the purposes of providing alternative care or foster care and may include a children's home or shelter either on permanent or temporary basis whether public or private, registered or unregistered". The juvenile justice system is defined as "the system provided in the Juvenile Justice System ordinance, 2000 (XXII of 2000)". The prohibition extends to "other non-physical forms of punishment which are cruel and degrading".

In January 2017, the Sindh provincial assembly passed the Sindh Prohibition of Corporal Punishment Act, which was then promulgated on 22 March 2017. The Act applies to the Sindh province and prohibits all corporal punishment of children in "work places, in schools and other educational institutions including formal, non-formal, and religious, both public and private, in child care institutions including foster care, rehabilitation centers and any other alternative care settings, both public and private, and in the Juvenile Justice System" (art. 3(2)). There have been reports of the Act not having been properly implemented by the Sindh government¹⁰ – we are enquiring for more information.

Day care

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 under "Home").

The Gilgit-Baltistan Prohibition of Corporal Punishment Act, the Prohibition of Corporal Punishment Act 2017, applicable in the Islamabad Capital Territory, and the Sindh Prohibition of Corporal

¹⁰ See <https://tribune.com.pk/story/2126225/1-sindh-assembly-strong-legislation-weak-execution/>, last accessed 5 March 2020

Punishment Act 2016 prohibit all corporal punishment and humiliating and degrading treatment of children in day care settings (see under “Home” and “Alternative care”).

Schools

Corporal punishment is prohibited in some but not all schools. Except where it is explicitly prohibited, corporal punishment is lawful in schools under article 89 of the Penal Code 1860 (see under “Home”). A federal ministerial directive and ministerial directives in all Provinces have instructed teachers not to use corporal punishment but it is not prohibited in legislation.

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

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 report to the Committee on the Rights of the Child in 2015 that the Child Protection and Welfare Act 2010 prohibits corporal punishment in government schools,¹¹ but as already noted, this prohibition is undermined by article 89 of the Penal Code (see under “Home”, above). A September 2017 Peshawar High Court judgment called for the Government of Khyber Pakhtunkhwa to legislate to ban corporal punishment in schools; a Bill to do so was approved by the Cabinet in April 2018.¹²

A Islamabad Capital Territory Prohibition of Corporal Punishment Bill was in discussions in the National Assembly in May 2019 to prohibit corporal punishment in educational institutions.¹³ Following the Islamabad High Court decision in February 2020 to suspend section 89 of the Penal Code in Islamabad Capital Territory (see under “Home”), a Bill to prohibit corporal punishment in schools has reportedly been approved by the Cabinet.¹⁴ It is unclear whether the Islamabad Capital Territory Prohibition of Corporal Punishment Act 2017 is still in force.

The Gilgit-Baltistan Prohibition of Corporal Punishment Act prohibits all corporal punishment of children in schools (see under “Home”).

Penal institutions

The Juvenile Justice System Act 2018 (JJSA) repealed and replaced the Juvenile Justice System Ordinance 2000. Article 16(2) of the JJSA repeated article 12 of the Juvenile Justice System Ordinance 2000, which stated that no child may be given corporal punishment while in custody. The Ordinance

¹¹ 4 May 2015, CRC/C/PAK/5, Fifth state party report, para. 107

¹² See <https://www.urdupoint.com/en/pakistan/khyber-pakhtunkhwa-cabinet-with-chief-ministe-311625.html>, accessed 25 April 2018

¹³ See <https://tribune.com.pk/story/1977218/1-na-panel-clears-bill-corporal-punishment-capitals-schools/>, last accessed 5 March 2020

¹⁴ See <https://www.geo.tv/latest/275756-bill-banning-corporal-punishment-in-schools-approved-by-cabinet-says-rights-minister>, last accessed 11 March 2020

had not overridden all other laws (art. 14 stated that the Ordinance was “in addition to and not in derogation of any other law for the time being in practice”) and was not in force throughout Pakistan. The JSA does override all contrary provisions (art. 23) but it is unclear whether it is in force throughout Pakistan.

Article 46(12) of the Prisons Act 1894 provides for whipping as a punishment for prison offences by male prisoners. 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(2)).

In the Punjab province, the Borstal Act 1926 permits corporal punishment on males in borstal institutions (arts. 33 and 36). In Khyber Pakhtunkhwa, corporal punishment is unlawful under the Borstal Institutions Act 2012, which does not include it among permitted disciplinary measures (article 22). The Gilgit-Baltistan Prohibition of Corporal Punishment Act prohibits all corporal punishment of children in penal institutions (see under “Home”). The Prohibition of Corporal Punishment Act 2017, applicable in the Islamabad Capital Territory, and the Sindh Prohibition of Corporal Punishment Act 2016 prohibit all corporal punishment and humiliating and degrading treatment of children in the juvenile justice system as defined in the Juvenile Justice System Ordinance 2000 (see under “Alternative care”).

Sentence for crime

Law reform has not yet achieved complete abolition of corporal punishment as a sentence for crime. As stated above, article 16(2) of JSA repeated article 12 of the Juvenile Justice System Ordinance 2000, which stated 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 article 12 of the Ordinance was reportedly interpreted as prohibiting corporal punishment as a sentence of the courts. The Government reported in 2017 that according to the Ordinance “degrading punishments such as death, handcuffing, or any other corporal punishment shall not be awarded to the children”.¹⁵ It is unclear whether the JSA is in force in all of Pakistan.

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. The Frontier Crimes (Amendment) Regulation 2011 removed these whipping provisions.

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

¹⁵ 4 February 2016, E/C.12/PAK/1, Initial report, para. 114

the death of the convicted person (art. 9). The Government has reported that the Offence of *Zina* (Enforcement of *Hudood*) Ordinance 1979 had been repealed but we have been unable to confirm this information.¹⁶

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.

In 2009, the Central Government passed the Nizam-e-Adi (Sharia'h) Regulation 2009, which formally established Sharia law in some areas of Khyber Pakhtunkhwa and overrides all laws and regulations in conflict with it (art. 19). The Regulations establishes that all cases which come to the courts should be heard in Sharia courts (art. 14).

The Prohibition of Corporal Punishment Act 2017, applicable in the Islamabad Capital Territory, and the Sindh Prohibition of Corporal Punishment Act 2016 prohibit all corporal punishment and humiliating and degrading treatment of children in the juvenile justice system as defined in the Juvenile Justice System Ordinance 2000 (see above and under "Alternative care") – it is unclear whether this amounts to prohibition of corporal punishment as a sentence for a crime. The Gilgit-Baltistan Prohibition of Corporal Punishment Act prohibits all corporal punishment of children as a sentence for a crime (see under "Home").

Universal Periodic Review of Pakistan's human rights record

Pakistan was examined in the first cycle of the Universal Periodic Review in 2008 (session 2). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendation was made and was accepted by the Government:¹⁷

"Continue to promote the rights of children, with the hope that the pending Child Protection Bill in Parliament and the Child protection policy being formulated will soon be adopted, (the Philippines), rapidly implement the draft law on the protection of children and speed up the implementation of the 2000 edict for justice for minors (Switzerland)"

Examination in the second cycle took place in 2012 (session 14). No recommendations were made concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:¹⁸

"Continue developing the institutional framework with respect to the promotion and protection of human rights (Jordan);

"Continue its ongoing review of national laws to ensure that they are in line with its international human rights law obligations (Turkmenistan)/Review of all relevant legislation and procedures to ensure systematic incorporation of international human rights obligations and their implementation on all levels of the government (Czech Republic)/Align its national legislation with the ratified international human rights treaties (Slovenia)/Continue working

¹⁶ 29 June 2017, E/C.12/2017/SR.30, Summary record of 30th meeting, para. 33

¹⁷ 4 June 2008, A/HRC/8/42, Report of the working group, para. 106(12)

¹⁸ 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

on the harmonization of its legislative domestic framework with the international human rights instruments to which it is a party (Nicaragua);

“Promote the review of national legal provisions in the area of human rights, including constitutional provisions, to bring them into line with international standards (Mexico);

“Expedite the adoption of the Charter of Child Rights Bill (Bhutan);

“Continue its ongoing efforts to advance the rights of women and make similar efforts in the protection and promotion of the rights of children, especially by adopting the relevant legal instruments (Republic of Korea);

“Continue to enhance its efforts to protect women, children and other vulnerable groups against discrimination and violence (Singapore);

“Continue its policies on improving the rights of the child (Jordan)”

Third cycle examination took place in 2017 (session 28). The following recommendation was made:¹⁹

“Consider the implementation of the necessary safeguards for the protection of children against corporal punishment (Cuba)”

The Government supported the recommendation.²⁰

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(3 June 2016, CRC/C/PAK/CO/5, Concluding observations on fifth report, paras. 32, 33, 34, 35, 79 and 80)

“... The Committee is seriously concerned that *Shariah* Law allows children to be subjected to punishments for *Haddood* offences involving amputation, whipping, stoning and other forms of cruel and degrading punishments.

“With reference to the Committee’s general comment No. 13 (2011) on the right of the child to freedom from all forms of violence and Sustainable Development Goal 16.2, the Committee ... recommends that the State party review its laws and practices and exempt all children below the age of 18 years from punishment for *Haddood* offences which involve amputation, whipping, stoning and other forms of torture and cruel and degrading punishment.

“The Committee notes the efforts of the State party to eradicate corporal punishment in schools through directives and establishing of hotlines. However, it is concerned about its widespread use in all settings.

“In the light of its general comment No. 8 (2006) on corporal punishment, the Committee urges the State Party to eradicate and prohibit all forms of corporal punishment. It also recommends that the State party undertake awareness raising campaigns on the harmful effect of corporal punishment with a view to changing the general attitude towards the practice and promote positive, non-violent and participatory forms of child-rearing and discipline.

“The Committee deplores the worsening situation of juvenile justice in the State party and is seriously concerned about: ...

¹⁹ 29 December 2017, A/HRC/37/13, Report of the working group, para. 152(281)

²⁰ 16 February 2018, A/HRC/37/13/Add.1 Advance unedited version, Report of the working group: Addendum

b) Sentencing to death and lengthy prison terms of children by the judiciary mostly for terrorism related crimes or *Haddood* offences under the Shariah Law....

“In the light of its general comment No. 10 (2007) on children’s rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. In particular, the Committee urges the State party to: ...

b) review its legislation with a view to prohibiting cruel and inhuman punishments of all persons below the age of 18 years, including death sentences, lengthy prison terms and sentences,

c) ensure the prevalence of the Juvenile Justice System Ordinance of 2000 over all other laws, including Shariah Law. The attention of the State party is drawn to sections 11 (penalties for children convicted of offences) and 12(a) (no death penalty for children) of the Ordinance which both apply ‘notwithstanding anything to the contrary contained in any law for the time being in force’”

Committee on the Rights of the Child

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

“The Committee welcomes the State party’s commitment to eradicate corporal punishment in all settings, as demonstrated by the incorporation of the prohibition of corporal punishment in the National Plan of Action for Children and directives issued in all provinces. The Committee is, however, deeply concerned that corporal punishment is currently lawful under section 89 of the Penal Code of 1860 and extensively used as a disciplinary measure in homes, schools, and alternative care settings and that it is still used in the penal system despite its prohibition through the Juvenile Justice System Ordinance (JJSO).

“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 in all settings;

b) set up an effective monitoring system in order to ensure that abuse of power by teachers or other professionals working with and for children does not take place in schools and other institutions; and

c) introduce public education, awareness-raising and social mobilization campaigns on harmful effects of corporal punishment with a view to changing general attitudes towards this practice and promote positive, non-violent, participatory forms of child-rearing and education.

“The Committee ... is deeply concerned at reports of violence, ill-treatment, corporal punishment, sexual abuse and illegal detention within madrasas and of madrasas being used for military training, as well as instances of recruitment of children to participate in the armed conflict and terrorist activities.

“The Committee recommends that the State party: ...

c) ensure the protection of children from maltreatment within madrasas through the establishment of an adequate monitoring mechanism; ...

e) take into account the Committee’s general comment No. 1 (2001) on the aims of education.”

Committee on the Rights of the Child

(27 October 2003, CRC/C/15/Add.217, Concluding observations on second report, 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.”

Committee on the Rights of the Child

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

“... 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...”

Committee Against Torture

(1 June 2017, CAT/C/PAK/CO/1, Concluding observations on initial report, paras. 30, 31, 38 and 39)

“While noting the adoption of the Anti-Rape Laws (Criminal Amendment Bill), 2016 and the Anti-Honour Killing Law (Criminal Amendment Bill) and the State party’s commitment to addressing those crimes, the Committee is concerned about the reportedly high level of violence against women in the State party, which includes murder, rape, acid crimes, kidnappings, domestic violence and “honour killings”. It is also concerned about the extremely low conviction rates for those crimes, and at reports that parallel justice systems (known as panchayats or *jirgas*), have sentenced women to violent punishment or even death, including stoning, and have provided lenient punishments for

perpetrators of “honour crimes” and in other cases of serious gender-based violence (arts. 2, 14 and 16).

“The Committee urges the State party to:

(c) Further strengthen its efforts to invalidate and ensure that State officials do not recognize or carry out judgments of parallel justice mechanisms or alternative dispute resolution mechanisms, such as panchayats or *jirgas*, that exculpate perpetrators of crimes committed in the name of “honour”, that call for women to be subject to corporal punishment, or that are otherwise inconsistent with the State party’s obligations under the Convention”

“While noting the information provided by the State party’s delegation that they are not implemented in practice, the Committee is concerned that provisions in the State party’s laws allow for the imposition of corporal punishment, including whipping, amputation and stoning (art. 16).

“The State party should take the necessary legislative measures to eradicate and explicitly prohibit all forms of corporal punishment in all settings, as they amount to torture and cruel, inhuman or degrading treatment or punishment, in violation of the Convention.”

Human Rights Committee

([July 2017], CCPR/C/PAK/CO/1, Concluding observations on initial report, Advance unedited version, paras. 13 and 14)

“The Committee is concerned that, despite efforts made by the State party, violence against women is still prevalent. It is particularly concerned that so-called honour killings continue to occur; *qisas* and *diyat* laws are reportedly applied to some of these cases and some *jirgas* in remote areas continue to exercise jurisdiction over these cases...

“The State party should continue its efforts to:...

(b) Effectively enforce anti-honour killings laws, anti-rape law and other relevant laws criminalizing violence against women and domestic violence, and monitor their enforcement throughout the territory;

(c) Enforce the prohibition of the application of *qisas* and *diyat* laws to so-called honour-related crimes and continue to regulate and supervise *jirgas*;

Prevalence/attitudinal research in the last ten years

Research conducted in 2016-17 as part of UNICEF’s Multiple Indicator Cluster Surveys (MICS) programme found 85% of children aged 1-14 in Gilgit-Baltistan experienced some form of violent “discipline” (psychological aggression and/or physical punishment) at home in the month prior to the survey. On average 81% of children experienced psychological aggression, 42% physical punishment and 25% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Only 9% of children experienced only non-violent forms of discipline.

(Planning & Development Department, Government of Gilgit-Baltistan & UNICEF Pakistan (2017), *Gilgit-Baltistan Multiple Indicator Cluster Survey 2016-17, Key Findings*, Gilgit, Pakistan: P&D Department, Government of Gilgit-Baltistan & UNICEF Pakistan)

Research conducted in 2014 as part of UNICEF’s Multiple Indicator Cluster Surveys (MICS) programme found 81% of 1-14 year-old children in Punjab and Sindh experienced some form of violent “discipline” (psychological aggression and/or physical punishment) in the month prior to the survey. On average 76% of children experienced psychological aggression (74% in Punjab, 78% in

Sindh), 66% physical punishment (68% in Punjab, 63% in Sindh) and 31% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly) (27% in Punjab, 35% in Sindh). Only 7% of children experienced only non-violent forms of discipline (6% in Punjab, 8% in Sindh).

(Bureau of Statistics Punjab, Planning & Development Department, Government of the Punjab & UNICEF Punjab (2016), *Multiple Indicator Cluster Survey, Punjab 2014, Final Report*, Lahore, Pakistan: Bureau of Statistics Punjab, Planning & Development Department, Government of the Punjab & UNICEF Punjab; Sindh Bureau of Statistics & UNICEF (2014), *Sindh Multiple Indicator Cluster Survey 2014, Key Findings*, Karachi, Pakistan: Sindh Bureau of Statistics & UNICEF)

In 2014, the Society for the Protection of the Rights of the Child (SPARC) identified corporal punishment in homes, schools and places of work was identified as one of the most pervasive forms of violence against children in Pakistan. SPARC reports a large number of incidents of corporal punishment are left unreported due to a tacit cultural approval, stemming from traditional attitudes towards child rearing, which overlooks (and encourages) acts of violence against children for “disciplinary” purposes.

(Society for the Protection of the Rights of the Child (SPARC) (2014), *The State of Pakistan’s Children*, Islamabad, Pakistan: Society for the Protection of the Rights of the Child (SPARC))

A survey of students aged 12–17 years, conducted between October 2013 and March 2014, found that 44% had experienced physical violence by teachers in school in the last 6 months, and 30% had been locked in the toilet by a teacher. Of the incidents that were reported (20% to a parent and 18% to another teacher) no action was taken in two-thirds of cases. Parents and teachers who participated in the survey said corporal punishment is on the decline in Pakistan, but students said it is still prevalent and is justified as a corrective measure for students who commit mistakes. Teachers expressed a belief that corporal punishment is necessary for ensuring good academic achievement and making students focus more on their studies.

(International Center for Research on Women (ICRW) and Plan International (2014), *Are Schools Safe and Gender Equal Spaces? Findings from a baseline study of school related gender-based violence in five countries in Asia*, Plan International)

In a 2013 study by Plan Pakistan, 20% of teachers “fully agreed” and 47% “partially agreed” that “a small amount of physical punishment is necessary for most children”; 41% of parents and other adult family members fully agreed and 38% partially agreed with the statement. Three quarters of teachers and 84% of parents agreed that teachers were justified in beating students who were rude or disobedient; 65% of teachers thought children who violated school rules “deserved” to be beaten, and 85% of parents thought children who stole “deserved” physical punishment. Twenty per cent of teachers fully agreed and 31% partially agreed that frequent “small amounts” of physical punishment had no harmful effect on a child. Students were asked what the most common kind of physical punishment was: 24% said being beaten on the palms of the hand with a stick or ruler, 22% slaps on the face or head. Other answers included being forced to stand or sit in an uncomfortable position, being struck with a stick or ruler on body parts other than the hand, and being kicked. The study, *Stopping the Fear: Why Teachers Use Corporal Punishment*, involved more than 300 students and 137 teachers at 32 schools, half of which were run by the government and half by NGOs or private organisations.

(Plan Pakistan (2013), *Stopping the Fear: Why teachers use corporal punishment*, Islamabad, Pakistan: Plan Pakistan)

According to a 2010 report by the Society for the Protection of the Rights of the Child (SPARC), up to 35,000 students drop out of high school every year because of corporal punishment.

(Reported in *The Express Tribune*, 27 June 2013)

A 2013 study documented beatings and other physical violence, sometimes amounting to torture, inflicted on child domestic workers.

(Child Rights Movement Punjab et al (2013), *The unending plight of child domestic workers in Pakistan: Exploitation, abuse, torture, rape and murder*, Child Rights Movement Punjab, Institute for Social Justice, Society for the Protection of the Rights of the Child & Pakistan Institute of Labour Education & Research)

A study carried out as part of Plan International's "Learn Without Fear" campaign found that physical punishment was used in 89% of public and private schools in Punjab. Physical punishment was most common in public schools, followed by private schools and then madrasas. It sometimes caused major injury or death.

(Reported in *The Express Tribune*, 19 November 2012)

According to a 2012 report on violence against children in police and pre-trial detention, corporal punishment is inflicted on children as a disciplinary measure in pre-trial detention.

(Sheahan, S. & Randel, B. (2012), *A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries*, Penal Reform International & UKaid)

According to a 2012 report by Plan International, nearly three-quarters of adult Pakistanis believe their religion allows them to slap their children if they do not behave.

(Global Advocacy Team (2012), *Plan's Learn Without Fear campaign: Third progress report*, Woking, UK: Plan)

In a survey carried out by the Society for the Protection of the Rights of the Child (SPARC) in 2011, 76% of parents in the Khyber Pakhtunkhwa province were in favour of corporal punishment of children.

(Reported in *PakistanToday*, 1 January 2012, www.pakistantoday.com.pk)