

# **BANGLADESH**

## **BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 16<sup>th</sup> session, 2013**

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

*Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.*

*In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.*

*The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.*

**Corporal punishment of children is lawful in Bangladesh, despite the Government’s commitment to prohibition since 2006, its acceptance of the recommendation to prohibit all corporal punishment made during the UPR in 2009 and the repeated recommendations on the issue by human rights treaty monitoring bodies.**

**We hope the Working Group will note with concern the legality of corporal punishment in Bangladesh. We hope states will raise the issue during the review in 2013 and recommend to Bangladesh that legislation is enacted to explicitly prohibit corporal punishment of children in all settings including the home as a matter of priority.**

## **1 The initial review of Bangladesh by the Human Rights Council (2009)**

1.1 Bangladesh was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 4). The issue of corporal punishment was included in the compilation of UN information<sup>1</sup> and in the summary of stakeholders' information.<sup>2</sup> The following recommendation was made and was accepted by the Government:<sup>3</sup>

“Taking into account the provisions of the CRC, take further measures to prohibit all forms of violence against children, including corporal punishment and to raise the minimum age of criminal responsibility (Brazil) ...”

1.2 The Government first made an official commitment to prohibiting all corporal punishment, including in the home, in 2006, at a meeting of the South Asia Forum following on from the regional consultation in 2005 of the UN Secretary General's Study on Violence against Children. There has been some progress towards prohibition since the UPR of Bangladesh in 2009. In 2010, Government representatives in SAIEVAC (the South Asia Initiative to End Violence against Children) developed a national action plan to achieve prohibition and draft legislation which would prohibit in some but not all settings was being discussed.

1.3 In 2011 the Supreme Court ruled against the use of corporal punishment in schools, called for prohibition of corporal punishment in the home and immediate repeal of all laws authorising whipping or caning of children as a sentence of the courts, and directed the Government to consider amending the Children Act to make it an offence for parents (and employers) to impose corporal punishment on children. In the same year, the Government endorsed a report on progress towards prohibiting corporal punishment in South Asian states which included an analysis of the reforms required in Bangladesh;<sup>4</sup> a Children Bill was under discussion which in its draft form (November 2010) stated that no child should be subjected cruelty or inhuman and degrading punishment by caregivers but did not prohibit all corporal punishment in childrearing.

1.4 As at September 2012, corporal punishment in schools is unlawful under the 2011 Supreme Court ruling, though explicit prohibition in legislation is yet to be enacted. Corporal punishment is not prohibited in the home, penal system and care settings.

## **2 Legality and practice of corporal punishment in Bangladesh**

2.1 With regard to 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....” Provisions against violence and abuse in the Penal Code, the Children Act (1974) and the Domestic Violence Act (2010) are not interpreted as prohibiting corporal punishment in childrearing.

2.2 In large scale interview research by UNICEF, 99.3% of children reported being verbally abused and threatened regularly by their parents; 74% said they were physically punished by

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<sup>1</sup> 12 December 2008, A/HRC/WG.6/4/BGD/2, Compilation of UN information, para. 19

<sup>2</sup> 24 November 2008, A/HRC/WG.6/4/BGD/3, Summary of stakeholders' information, para. 9

<sup>3</sup> 5 October 2009, A/HRC/11/18, Report of the Working Group, para. 94(16)

<sup>4</sup> South Asia Initiative to End Violence against Children (SAIEVAC) with the Global Initiative to End All Corporal Punishment of Children & Save the Children Sweden (2011), *Corporal Punishment of Children in South Asia: a progress review*

parents or guardians, with 70% usually being slapped, and 40% being regularly beaten or kicked.<sup>5</sup>

2.3 Corporal punishment is unlawful in **schools** according to a Supreme Court judgment issued on 13 January 2011 (Writ Petition No. 5684 of 2010) which stated that it violated the Constitutional prohibition of torture and cruel, inhuman or degrading punishment or treatment. The judgment followed a writ petition filed in July 2010 by Bangladesh Legal Aid and Services Trust and Ain o Salish Kendra with the High Court in Dhaka, as a result of which the Ministry of Education published a circular stating that corporal punishment is prohibited in schools, that it constitutes misconduct and that measures will be taken against perpetrators under the Penal Code, the Children Act and through departmental action (Ministry of Education Circular No. 37.031.004.02.00.134.2010, 8 August 2010, Regarding the Ending of Corporal Punishment on Students in Educational Institutions). The Ministry issued relevant Guidelines which came into effect in April 2011. The prohibition is yet to be confirmed through law reform.

2.4 The above mentioned UNICEF research found that 91% of children experienced physical punishment in school, including being hit on the palm with a ruler or stick (experienced by 76% of students), having to stand in class, being hit on other body parts with a ruler or stick, and being slapped; 23% said they faced corporal punishment every day, 7% reported injuries and bleeding as a result.<sup>6</sup> In a random survey conducted by the NGO Andhra Pradesh Bala Sangham, students from about 12 schools stated they had been subjected to corporal punishment, despite the 2011 Supreme Court judgment.<sup>7</sup>

2.5 In the **penal system**, whipping is lawful as a sentence for crime for males. Under the Code of Criminal Procedure (1898), boys under the age of 16 may be whipped “with a light rattan not less than half an inch in diameter” up to 15 “stripes”, older males up to 30 stripes (article 392). The person to be whipped must be considered fit to receive the punishment, by a medical officer, the Magistrate or the officer present (article 394). According to the Whipping Act (1909), whipping may be given in lieu of or in addition to the punishments specified in the Penal Code for specific offences committed by persons over 16 (articles 3 and 4); offenders under 16 may be whipped in lieu of other punishments for a wider range of crimes under the Penal Code and other laws (article 5). Whipping is a sentence for offences under article 23 of the Cantonments Pure Food Act (1966), articles 9, 10 and 12 of the Suppression of Immoral Traffic Act (1933) and, for boys under the age of 12, article 130 of the Railways Act (1890).

2.6 Corporal punishment is also commonly ordered by traditional village mediation councils (*shalish*), particularly against girls and women. Punishments include caning, whipping, beating and stoning to death, and are often issued as *fatwas* under *Shari'a* law. The practice continues, despite a High Court ruling in July 2010 declaring all kinds of extra-judicial punishment unlawful and observing that cruel punishments at *shalish* are unconstitutional; a ruling in October 2010 declared that Bangladesh is a secular state, again confirming the issuing of *fatwas* as unlawful.

2.7 Corporal punishment is lawful as a disciplinary measure in penal institutions, including certified institutes, approved homes, prisons and vagrant homes. Rule No. 24 of the Children Rules lists sanctions available for infringements of discipline, including “caning not exceeding

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<sup>5</sup> UNICEF (2009), *Opinions of Children of Bangladesh on Corporal Punishment: Children's Opinion Poll 2008*, Dhaka: UNICEF & Ministry of Women and Children Affairs

<sup>6</sup> UNICEF (2009), *Opinions of Children of Bangladesh on Corporal Punishment: Children's Opinion Poll 2008*, Dhaka: UNICEF & Ministry of Women and Children Affairs

<sup>7</sup> Reported in *Deccan Chronicle*, 7 February 2011

ten stripes”, inflicted on the buttocks or on the palm of the hand in the presence of a medical officer. The Prisons Act (1894) authorises whipping up to 30 stripes as a disciplinary punishment for male prisoners.

2.8 Corporal punishment is lawful in **alternative care settings** under article 89 of the Penal Code (see above). Legislation governing care institutions provides for corporal punishment as a disciplinary measure.

### **3 Recommendations by human rights treaty monitoring bodies**

3.1 The **Committee on the Rights of the Child** first recommended to Bangladesh that corporal punishment of children be prohibited in its concluding observations on the initial report in 1997.<sup>8</sup> In 2003, following examination of the second report, the Committee again expressed concern on the issue and recommended prohibition of corporal punishment in the family, schools and institutions and as a sentence for crime.<sup>9</sup> The Committee recommended explicit prohibition of corporal punishment for a third time in 2009.<sup>10</sup>

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<sup>8</sup> 18 June 1997, CRC/C/15/Add.74, Concluding observations on initial report, para. 38

<sup>9</sup> 27 October 2003, CRC/C/15/Add.221, Concluding observations on second report, paras. 43, 44, 77 and 78

<sup>10</sup> 26 June 2009, CRC/C/BGD/CO/4, Concluding observations on third/fourth report, paras. 48 and 49