



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

KENYA – COUNTRY REPORT

Child population: 19,652,000 (UNICEF, 2009)

Summary of necessary legal reform to achieve full prohibition

Corporal punishment is prohibited in all settings, including the home.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

Corporal punishment is unlawful in the home. Article 29 of the Constitution (2010) states that every person “has the right to freedom and security of the person, which includes the right not to be – ... (c) subjected to any form of violence from either public or private sources; (d) subjected to torture in any manner, whether physical or psychological; (e) subjected to corporal punishment; or (f) treated or punished in a cruel, inhuman or degrading manner.” Article 20(1) states: “The Bill of Rights applies to all law and binds all State organs and all persons.” Article 53(1) re-affirms that every child “has the right ... (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour”. The right of parents and others to “administer reasonable punishment” in article 127 of the Children Act (2001) has yet to be repealed, but this provision is now void (rendered ineffective) under article 2(4) of the Constitution which states: “Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.” As at February 2011, a Family Protection Bill and a Marriage Bill were under discussion.

Schools

Corporal punishment is unlawful in schools under the Constitution (see above). Article 11 of the Education (School Discipline) Regulations, which allows corporal punishment in certain circumstances, is now void under Article 2(4) of the Constitution as above, but is yet to be formally repealed.

Penal system

Corporal punishment is prohibited as a **sentence for crime** under article 191 of the Children Act and in the Constitution (see above).

Corporal punishment is unlawful as a **disciplinary measure** in juvenile detention centres under article 191 of the Children Act and in the new Constitution (see above). Provisions for corporal punishment in the Prisons Act and Rules, and the Borstal Institutions Act and Rules are now void under article 2(4) of the Constitution as above, but are yet to be formally repealed.

Alternative care

Corporal punishment is unlawful in all alternative care settings under the Constitution (see above). It is explicitly prohibited in charitable institutions in article 17 of the Children (Charitable Children’s Institutions) Regulations (2005). The right of parents and others to “administer reasonable punishment” in article 127 of the Children Act (2001) is now void under article 2(4) of the Constitution as above, but is yet to be formally repealed.

Prevalence research

A study of the relationship between gender and physical punishment in China, Colombia, Italy, Jordan, Kenya, Philippines, Sweden, Thailand and the US, which involved interviews with around 4,000 mothers, fathers and children aged 7-10, found that in Kenya 82% of girls and 97% of boys had experienced “mild” corporal punishment (spanking, hitting, or slapping with a bare hand; hitting or slapping on the hand, arm, or leg; shaking; or hitting with an object), and 61% of girls and 62% of

boys had experienced severe corporal punishment (hitting or slapping the child on the face, head, or ears; beating the child repeatedly with an implement) by someone in their household in the past month. Smaller percentages of parents believed it was necessary to use corporal punishment to bring up their child: for girls, 44% of mothers and 48% of fathers believed it was necessary; for boys, 56% of mothers and 54% of fathers believed it was necessary. (Lansford, J. et al (2010), "Corporal Punishment of Children in Nine Countries as a Function of Child Gender and Parent Gender", *International Journal of Pediatrics*)

A survey of 500 young women in Kenya aged 18-24 concerning their childhood experiences of violence, undertaken by the Africa Child Policy Forum and published in 2006, found that 99% reported experiencing physical violence. Beating with an object was found to be the most prevalent form of physical violence (80.8%), though the research does not investigate the degree to which this and other physical violence was explicitly in the name of "discipline". Prevalence figures for other forms of physical violence were 59.5% for punching, 39.6% kicking, 43.8% hard work, 20.5% being choked/burned/stabbed, 12.3% having spicy/bitter substances put in mouth, 14.3% being locked or tied up, and 35% being denied food. Girls were found to be most vulnerable when aged 10-13 years. Experiencing the violence more than ten times was more likely in the case of beating than other types of physical violence. Most beating with an object was carried out by mothers (23.5%), followed by female teachers (15.3%) and fathers (13.3%). Most hitting/punching was carried out by female teachers (16.1%), followed by mothers (14.2%) and male teachers (11.3%), with medical attention necessary in 20% of cases. In 52.3% of cases, the hitting/punching resulted in "bruises or scratches, broken bones or teeth, or bleeding"; the figure for beating with an object was 64.6%. (Stavropoulos, J. (2006), *Violence Against Girls in Africa: A Retrospective Survey in Ethiopia, Kenya and Uganda*, Addis Ababa, The African Child Policy Forum)

A 2004 survey by Population Communication Africa reported that over 60% of children believed that they had been or were being physically abused at school, including being slapped in the face, being hit on the body with a cane or stick, and being beaten, kicked or punched or otherwise physically bullied. (Johnston, T. (2004), *Gender Series: The Abuse of Nairobi School Children*, Population Communication Africa: Nairobi. Cited in O'Sullivan, M. (2005), "Corporal Punishment in Kenya", *Juvenile Justice Quarterly*, 2(1))

A survey of 267 adults and children and interviews with parents, teachers and children, reported in 2005, found that the most frequent forms of physical discipline used on children were smacking (78.8%), pulling ears (68.8%) and cuffing (61.5%). Other corporal punishments included forcing a child to kneel on a hard floor (45.9%), tapping (43.3%), forcing a child to stand in the sun (33.2%) and burning fingers (19.7%). Almost two thirds of children (62.2%) said they wanted the use of corporal punishment to be stopped. Over half of parents (54%) said that physical punishment should not be stopped. (ANPPCAN Kenya Chapter (2005), *From Physical Punishment to Positive Discipline: Alternatives to Physical/Corporal Punishment in Kenya*, second draft)

According to statistics from UNICEF relating to the period 2001-2007, of girls and women aged 15-49, 68% think that a husband is justified in hitting or beating his wife under certain circumstances. (UNICEF (2009), *Progress for Children: A report card on child protection*, NY: UNICEF)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(19 June 2007, CRC/C/KEN/CO/2, Concluding observations on second report, paras. 6, 7, 34 and 35)

"The Committee notes with satisfaction that some concerns and recommendations (CRC/C/15/Add.160) made upon the consideration of the State party's initial report (CRC/C/3/Add.62) have been addressed through legislative measures and policies. However, recommendations regarding, inter alia, coordination, the various inconsistent, discriminatory and often exceedingly low legal minimum ages, corporal punishment, child labour and juvenile justice, have not

been given sufficient follow-up. The Committee notes that those concerns and recommendations are reiterated in the present document.

“The Committee urges the State party, taking into account General Comment No. 5 (CRC/GC/2003/5) on the general measures of implementation for the Convention on the Rights of the Child, to make every effort to address the recommendations contained in its concluding observations on the initial report that have not yet been implemented, and to address the list of concerns contained in the present concluding observations on the second periodic report.

“The Committee welcomes the legislative prohibition of corporal punishment in schools and institutions under the Children’s Act of 2001 but continues to be concerned at corporal punishment in the home, in the penal system, in alternative-care settings, as well as in employment settings. The Committee is also concerned at the continued use of corporal punishment in practice by certain schools and the lack of measures to enforce the prohibition of this practice.

“The Committee urges the State party, taking into account General Comment No. 8 (CRC/C/GC/8) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, to do the following:

- a) introduce legislation explicitly prohibiting corporal punishment in the home and in all public and private alternative care and employment settings;
- b) conduct public education and awareness raising campaigns on children’s rights to protection from all forms of violence and promotion of alternative, participatory, non-violent forms of discipline;
- c) improve the effectiveness of the 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.”

Committee on the Rights of the Child

(7 November 2001, CRC/C/15/Add.160, Concluding observations on initial report, paras. 33, 34 and 64)

“While the Committee notes that corporal punishment has been formally banned in schools (April 2001) as a matter of policy, it is deeply concerned that this form of punishment continues to be practised in schools, as well as in the juvenile justice system, in the family and in care institutions, with resulting cases of permanent injury and even death.

“The Committee recommends that the State party take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment, in the juvenile justice system, in schools and care institutions, and in the family. The Committee also recommends that the State party monitor the ban on corporal punishment in schools. The Committee encourages the State party to reinforce its public awareness campaigns to promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment at all levels of society.

“The Committee recommends that the State party:

- e) abolish the use of corporal punishment in the juvenile justice system....”

Human Rights Committee

(29 April 2005, CCPR/CO/83/KEN, Concluding observations on second report, para. 6)

“The Committee welcomes the information that Kenya has now prohibited all forms of corporal punishment of children, and notes that implementation of this prohibition should be accompanied by public information and education campaigns.”

Universal Periodic Review

Kenya was examined in the first cycle of the Universal Periodic Review in 2010. No recommendations were made concerning corporal punishment of children (prohibition of corporal punishment in all settings was achieved in the same year). Examination in the second cycle is scheduled for 2015.

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

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