



Global Initiative to
End All Corporal Punishment
of Children

MALAWI – COUNTRY REPORT

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, schools, penal system, alternative care settings

Is there a legal defence for corporal punishment which must be repealed?

??? – We have been unable to establish whether or not a “right” to administer “reasonable punishment” or similar is confirmed in written legislation, but legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that all such punishment is unacceptable and unlawful. Explicit prohibition should be enacted of all forms of corporal punishment, however light, together with repeal of any legal provisions which provide a defence for its use in childrearing.

Other legislative measures necessary

Schools – While corporal punishment in schools is considered unlawful under article 19 of the Constitution, it is not explicitly prohibited in education law. Explicit prohibition should be enacted in relation to all educational settings, including public and private, full and part time, and including religious institutions.

Penal system – Corporal punishment is prohibited by article 19 of the Constitution, but provisions for its use in the Children and Young Persons Act and the Penal Code are still in force. These provisions should be repealed and explicit prohibition enacted of corporal punishment as a sentence for crime and as a disciplinary measure in all institutions accommodating children in conflict with the law.

Alternative care settings – Explicit prohibition should also be enacted in relation to all alternative care settings, including public and private day care, residential care, foster care, etc.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

Corporal punishment is lawful in the home. Provisions against violence and abuse in the Constitution (1994), the Penal Code and the Children and Young Persons Act (1970) are not interpreted as prohibiting corporal punishment in childrearing. A new child law was passed in June 2010, but we have no information on its provisions.

Schools

Corporal punishment is unlawful in schools under article 19 of the Constitution, which prohibits corporal punishment “in connection with any judicial proceedings or any other proceedings before any organ of the state”, and the Teachers’ Code of Conduct states that it should not be used, but there is no explicit prohibition in law. As at 2009, a review of the Education Act was planned and the government had recommended that the revised Act include explicit prohibition.

Penal system

Corporal punishment is prohibited as a **sentence for crime** and as a **disciplinary measure** in penal institutions under article 19 of the Constitution (see above), but this has not been confirmed in other legislation and corporal punishment is permitted under volume IV, article 28 of the Laws of Malawi, the Children and Young Persons Act (article 16), and the Penal Code. As at 2009, it was anticipated that the Revised Penal Code Bill and the Child (Care, Protection and Justice) Bill would explicitly prohibit judicial corporal punishment and disciplinary corporal punishment in penal and care institutions, but we have no further information.

Alternative care

Corporal punishment is unlawful in state institutions under article 19 of the Constitution (see above), but there is no explicit prohibition in other legislation. It was anticipated that the new child law would explicitly prohibit corporal punishment in care institutions, but we have yet to examine the law as it was passed in June 2010.

Prevalence research

A study by the Human Rights Commission of Malawi in 2007 found that despite prohibition, corporal punishment is still used in schools, especially in private schools.¹

A study by the National Statistics Office in 2005 of more than 4,500 children’s experiences of violence at school found that one fifth had experienced something which made them afraid to go to school, including violent corporal punishment (10.9%) and ill-treatment by the head or teachers (20.9%). The study also found that up to 40% had experienced corporal punishment by parents. From teachers’ own

¹ Malawi Human Rights Commission (2007), *The Existence and Implementation of Laws, Policies, and Regulations in Education and How They Affect the Girl-Child in Malawi*

reports, the study found corporal punishment (including manual labour) to be the most common form of “discipline” (36.3%), despite its prohibition.²

According to statistics from UNICEF relating to the period 2001-2007, of girls and women aged 15-49, 28% think that a husband is justified in hitting or beating his wife under certain circumstances.³ A study in 2003 highlighted the acceptance of men’s role in “disciplining” and “correcting” their wives through beatings if they do not fulfil their roles as expected.⁴

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(27 March 2009, CRC/C/MWI/CO/2, Concluding observations on second report, paras. 38 and 39)

“The Committee welcomes the information that the Penal Code Amendment Bill as well as the Child (Care, Protection and Justice) Bill will explicitly abolish corporal punishment. While the Committee notes that the Ministry of Education and Vocational Training has attempted to enforce its ban on corporal punishment by authorizing District Education Managers in all districts to monitor corporal punishment in schools, enforcement still proves difficult.

“The Committee urges the State party to expedite the adoption of the Penal Code amendment and the Child (Care, Protection and Justice) Bill and explicitly prohibit by law corporal punishment in all settings, including in the family, schools, institutional settings, and implement those laws effectively. It also recommends that the State party intensify its awareness-raising campaigns in order to promote the use of alternative forms of discipline in a manner consistent with the child’s human dignity and in accordance with the Convention, especially article 28, paragraph 2, taking into account the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.”

Committee on the Rights of the Child

(1 February 2002, CRC/C/15/Add.174, Concluding observations on initial report, paras. 33 and 34)

“The Committee welcomes that section 19 of the Constitution provides that ‘No person shall be subject to corporal punishment in connexion with any judicial proceedings or in any other proceedings before any organ of the State’. While noting that the Head of State made a statement on radio against corporal punishment within the family and that corporal punishment is banned at schools, it remains concerned that corporal punishment is still widely accepted and practiced at schools, within the family, and in the justice system. The Committee is further concerned that some legal Acts contain provisions which allow corporal punishment.

“The Committee recommends that the State party take legislative measures, including amendment to existing Acts which violate the Constitution, to prohibit all forms of physical and mental violence, including corporal punishment within the juvenile justice system, schools and care institutions as well as within the family. The Committee also recommends that the State party monitor the ban of corporal punishment in schools. The Committee encourages the State party to reinforce its public awareness campaigns, including among community leaders to teach on the harmful effects of corporal

² Burton, P. (Crime & justice Statistics Division, National Statistics Office) (2005), *Suffering at School: Results of the Malawi Gender-Based Violence in Schools Survey*, Pretoria: Institute for Security Studies

³ UNICEF (2009), *Progress for Children: A report card on child protection*, NY: UNICEF

⁴ GTZ, Combating Gender Based Violence Project, *Workshop Report on the presentation of the findings of the baseline study on gender based violence carried out in Rumphu, Dedza and Mulanje*, 14-15 July 2003. Cited in Pelsler, E. et al. (Crime & justice Statistics Division, National Statistics Office) (2005), *Intimate Partner Violence: Results from a National Gender-Based Violence Study in Malawi*, Pretoria: Institute for Security Studies

punishment and to promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment at all levels of society.”

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