

Corporal punishment of children in Kenya

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Child population 22,234,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Law reform has been achieved. Corporal punishment is unlawful in all settings, including the home. However, the right to “administer reasonable punishment”, while rendered void under the Constitutional prohibition, is still to be formally repealed.

Prohibition 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 Protection Against Domestic Violence Act 2015 protects children as well as adults from violence and the threat of it, from direct violence as well as witnessing violence between adults, and from single as well as repeated acts of violence.

The right of parents and others to “administer reasonable punishment” in article 127 of the Children Act 2001, confirming the common law right to punish children, has yet to be repealed, but this provision is now void (rendered ineffective) under article 2(4) of the Constitution: “Any law, including customary law, that is inconsistent with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.”

A Children Act (Amendment) Bill was drafted which would have amended article 18 of the Children Act to include prohibition of corporal punishment: “A person shall not subject a child to torture or other cruel and inhuman punishment or degrading treatment including corporal punishment, any cultural or religious practice which dehumanizes or is injurious to the physical, mental and emotional well being of the child...” Article 2 of the Act would be amended to include a definition of corporal punishment, as “any punishment for correcting behaviour in which physical force is used and intended to cause some degree of pain or discomfort however light”. As at August 2015, the Bill had

not been tabled.¹ In February 2016, the Government reported to the Committee on Economic, Social and Cultural Rights that due to the large number of amendments required, the Bill had been shelved in favour of drafting a completely new child law and that this draft had not yet been finalised.²

A new Children Bill was drafted in 2017 to replace the Children Act 2001. As drafted, it defines corporal punishment as “the use of physical force applied on a child by the use of any means, including a cane or other object, with the intention of inflicting pain or rather discomfort for the purpose of corrective discipline or punishment”. Article 20(3) would prohibit corporal punishment: “Any person who unlawfully deprives a child of his or her liberty or subjects the child to torture or other cruel and inhuman punishment or degrading treatment including corporal punishment, any cultural or religious practice which dehumanizes or is injurious to the physical, mental and emotional wellbeing of the child is guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million shillings or to both.” However, draft article 140(6) states that “Nothing in this section shall affect the right of any parent or other person having the lawful control or charge of a child to administer appropriate punishment in the cause of reasonable disciplinary action.” It was reported in 2019 that the Children Act 2001 was still under review to align it to the new Constitution.³

In reporting to the UN Committee on the Rights of the Child in 2015, the Government described a number of measures aimed at implementing the prohibition of all corporal punishment, including the establishment of a free helpline (116) for children and the development of an action plan based on the findings and recommendations of a study conducted in 2010 (no further details given).⁴

Alternative care settings

Corporal punishment is unlawful in all alternative care settings under the Constitution 2010 (see under “Home”). It is explicitly prohibited in charitable institutions in the Children (Charitable Children’s Institutions) Regulations 2005 (art. 17(6)): “The following shall not be used as a disciplinary measure on children accommodated in an institution – (a) any form of corporal punishment ... (k) any measures which are degrading, dehumanizing or cruel.” 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, but is yet to be formally repealed.

The Government requires all Charitable Children’s Institutions to develop a Child Protection Policy before they can be registered and has developed Guidelines on Best Practices which include information on positive forms of behaviour management; implementation of prohibition is also ensured through regular inspection of the institutions.⁵

Day care

Corporal punishment is unlawful in all early childhood care and all day care for older children under the Constitution 2010 (see under “Home”). The prohibition in the Basic Education Act 2013 (see under “Schools”) is applicable in pre-primary educational institutions and centres. The right of

¹ UNICEF, correspondence with the Global Initiative, August 2015

² 1 March 2016, E/C.12/2016/SR.9, Summary record of 9th meeting, para. 16; 1 March 2016, E/C.12/2016/SR.8, Summary record of 8th meeting, para. 56; 21 January 2016, E/C.12/KEN/Q/2-5/Add.1, para. 105

³ 11 November 2019, A/HRC/WG.6/35/KEN/1, National report to the UPR, para. 41

⁴ [October 2015], CRC/C/KEN/Q/3-5/Add.1 Unedited Version, Reply to list of issues, para. 7

⁵ [October 2015], CRC/C/KEN/Q/3-5/Add.1 Unedited Version, Reply to list of issues, para. 7

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, but is yet to be formally repealed.

Schools

Corporal punishment is unlawful in schools under the Constitution 2010 (see under “Home”). The prohibition is confirmed in the Basic Education Act 2013. Article 4 states: “The provision of basic education shall be guided by the following values and principles: ... (p) elimination of gender discrimination, corporal punishment or any form of cruel and inhuman treatment or torture...” Article 36 (“Prohibition against physical punishment and mental harassment to the child”) states: “(1) No pupil shall be subjected to torture and cruel, inhuman or degrading treatment or punishment, in any manner, whether physical or psychological; (2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment not exceeding six months or both.” Regulations under the previous Education Act remain in force, but 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.

The Teachers Service Commission (Code of Conduct and Ethics for Teachers) Regulations 2015, under the Teachers Service Commission Act (No. 20 of 2012), sets out teachers’ duty to protect children in article 9(1): “A teacher shall... take all reasonable steps to ensure the child is protected from abuse, neglect, harmful cultural practices, all forms of violence, discrimination, inhuman treatment, corporal punishment and exposure to hazardous or exploitative labour.”⁶ There have been reports of the Teachers Service Commission having difficulty implementing the ban in private schools, where it holds no direct powers.⁷

A County Early Childhood Education Bill is under discussion which includes prohibition of corporal punishment in article 70: “(1) No teacher or any staff of an education centre shall administer corporal punishment.... (3) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand or to imprisonment for a term not exceeding four years, or to both.”

In 2015, the Government reported to the Committee on the Rights of the Child that it had developed Guidelines for Positive Discipline in schools and also planned a teacher’s handbook and accompanying training manual.⁸ A Positive Discipline Handbook for Teachers has now been drafted by the Ministry of Education, Science and Technology with the support of civil society partners, and a roll out plan is being developed with stakeholders in the education sector, including the Teachers Service Commission, the Kenya Institute of Curriculum Developments and others. The aim is to have positive discipline included as a subject in the teacher training curriculum, to be assessed in teacher training colleges. A national launch of the Handbook was planned for some time in 2017.⁹ The Government reported in 2018 that it was still in the process of developing alternative discipline guidelines for teachers.¹⁰

⁶ Kenya Gazette Supplement No. 126, 7 August 2015

⁷ See <https://www.standardmedia.co.ke/article/2001278894/tsc-has-no-powers-to-punish-private-school-teachers>, accessed 26 June 2018

⁸ [October 2015], CRC/C/KEN/Q/3-5/Add.1 Unedited Version, Reply to list of issues, para. 7

⁹ Communication to the Global Initiative, July 2016

¹⁰ November 2018, Second/third report to the African Committee of Experts of the Rights and Welfare of the Child, page 27

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in juvenile detention centres under article 191 of the Children Act 2001 and in the new Constitution 2010 (see under “Home”). 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. The prohibition of corporal punishment in the Basic Education Act 2013 (see under “Schools”) applies to school correctional facilities and borstal institutions (art. 2).

Sentence for crime

Corporal punishment is prohibited as a sentence for crime under article 191(2) of the Children Act 2001: “No child offender shall be subjected to corporal punishment.” The prohibition in the Constitution 2010 is also applicable (see under “Home”).

A Child Justice Bill was under discussion which included prohibition in article 77: “(1) No sentence of capital punishment, life imprisonment or corporal punishment may be imposed on a child.” It was reported in 2018 that the provisions of the Child Justice Bill had been incorporated in the Children Bill 2017 (see under “Home”).¹¹ As drafted, the Children Bill 2017 does not explicitly prohibit corporal punishment as a sentence for a crime committed by a child.

Universal Periodic Review of Kenya’s human rights record

Kenya was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:¹²

“Undertake specific measures to ensure the implementation of international United Nations and African human rights conventions, and develop and streamline domestic legislation ensuring the constitutional rights of citizens (Finland);

“Ensure that the new constitution of the country takes greater account of the dimension of human rights protection and promotion, as well as of democracy (Niger);

“Unite behind a new constitution through a fair referendum, and fully implement the result (United Kingdom);

“Exert its utmost efforts in ensuring a free and fair referendum to enable a new constitution to be adopted, in order to establish a firm foundation for the promotion and protection of human rights (Republic of Korea);

“Set up mechanisms to implement the national child act, which incorporates the Convention on the Rights of the Child and which is considered a positive step that grants applicable rights to Kenyan children (Libyan Arab Jamahiriya);

¹¹ November 2018, Second/third report to the African Committee of Experts of the Rights and Welfare of the Child, page 13

¹² 17 June 2010, A/HRC/15/8, Report of the Working Group, paras. 101(5), 101(7), 101(8), 101(9), 101(11), 101(12) and 101(50)

“Continue to implement the core elements of the Children’s Act, which is a great step forwards in the achievement of the Millennium Development Goals (Angola);

“Strengthen protection for women and children against violence and exploitation (Australia)”

The second cycle review took place in 2015 (session 21). No recommendations were made specifically on corporal punishment.

Third cycle examination took place in 2020 (session 35). The following recommendation was supported:¹³

“Prohibit corporal punishment in schools and public institutions (Cyprus)”

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(2 February 2016, CRC/C/KEN/CO/3-5, Concluding observations on third-fifth report, paras. 6, 33 and 34)

“The Committee recommends that the State party take all necessary measures to address its previous recommendations of 2007 (CRC/C/KEN/CO/2) that have not been implemented or sufficiently implemented, in particular, those related to non-discrimination (para. 25), corporal punishment (para 35), harmful traditional practices (para 54), and administration of juvenile justice (para 68).

“The Committee welcomes the enactment of the National Police Service Act (2011) which prohibits torture and degrading treatment by the police, the Basic Education Act (2013) which outlaws corporal punishment at schools, the Protection Against Domestic Violence Act (2015) and the Prevention of Female Genital Mutilation Act (2011). The Committee also welcomes the establishment of a toll free, 24 hour child help lines. Nevertheless, the Committee is concerned at:

- a) repeated reports of police violence against children, including at Langa’ata Road primary school and Dadaab refugee camp;
- b) high prevalence of domestic violence against boys and girls, and gender-based violence against girls, including sexual and physical violence both in public and domestic spheres;
- c) persistent practice of corporal punishment at home and schools despite prohibition under the Constitution, and some legislations, which authorize corporal punishment, still pending for revision;
- d) lack of access to justice by children victims of violence, in particular in cases of sexual violence and harmful practices, due to social stigma, the pressure from family members, low rate of investigation and prosecution, frequent delays in court proceedings, ineffectual sanctions posed, the risk of re-victimization in the justice system and the lack of legal aid and other supports;
- e) limited support available for children victims of violence and girls escaping from harmful practices, including the provision of safe accommodation and support for access to education.

“With reference to the Committee’s general comments No. 8 (2006) on corporal punishment and No. 13 (2011) on the right of the child to freedom from all forms of violence and/or general comment No. 18 (2014) on harmful practices, adopted jointly with the Committee on the Elimination of Discrimination against Women, the Committee urges the State party to:

¹³ 4 February 2020, A/HRC/WG.6/35/L.6 Unedited version, Draft report of the Working Group, para. 142(125)

- a) develop a comprehensive national strategy and a national coordinating framework to prevent and address all forms of violence against children;
- b) effectively enforce the National Police Service Act (2011) to prevent and prohibit ill-treatment of children by the police and investigate thoroughly and promptly all allegations so as to ensure that perpetrators are held accountable;
- c) revise all laws and regulations, which authorize corporal punishment, promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment and raise awareness of parents, guardians, teachers and general public on negative impact of corporal punishment on children;
- d) promptly investigate, prosecute and punish perpetrators of all forms of violence against children in accordance with the severity of the violation, and actively discourage the use of mediation in cases of sexual violence and domestic violence;
- e) provide legal aid to child victims of violence and children who need protection;
- f) reinforce sustainable public education and awareness-raising on harmful effects of violence against children, including corporal punishment, harmful practice and domestic violence;
- g) establish more Child Protection Centres for child victims of violence and children in need of care and protection, including those fleeing from harmful practices and allocate adequate human, technical and financial resources to the provision of protection and support services.”

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."

African Committee of Experts on the Rights and Welfare of the Child

([December 2014], Concluding observations on initial report, para. 23)

"The Committee notes with appreciation the prohibition of corporal punishment under the Constitution, but recommends that it be implemented. The Committee encourages the State Party to raise awareness and give training on a continuous basis on alternative disciplinary measures."

Prevalence/attitudinal research in the last ten years

Research conducted in Bungoma County, Kakamega County and Turkana County in 2013-14 as part of UNICEF's Multiple Indicator Cluster Surveys (MICS) programme, found on average 76% of 1-14 year-old children experienced some form of violent discipline (psychological aggression and/or physical punishment) in the month prior to the survey. On average 54% of children experienced psychological aggression, 66% physical punishment and 12% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Violent discipline of children was found to be more common in

Bungoma County and Kakamega County (82%) than in Turkana County (62%). On average only 7% of children experienced only non-violent forms of discipline (11% in Bungoma County, 14% in Kakamega County, 25% in Turkana County).

(Kenya National Bureau of Statistics, Population Studies and Research Institute & UNICEF (2016), *Bungoma County Multiple Indicator Cluster Survey 2013/14, Final Report*, Nairobi, Kenya: Kenya National Bureau of Statistics, Population Studies and Research Institute & UNICEF; Kenya National Bureau of Statistics, Population Studies and Research Institute & UNICEF (2016), *Kakamega County Multiple Indicator Cluster Survey 2013/14, Final Report*, Nairobi, Kenya: Kenya National Bureau of Statistics, Population Studies and Research Institute & UNICEF; Kenya National Bureau of Statistics, Population Studies and Research Institute & UNICEF (2016), *Turkana County Multiple Indicator Cluster Survey 2013/14, Final Report*, Nairobi, Kenya: Kenya National Bureau of Statistics, Population Studies and Research Institute & UNICEF)

A study of parents' perceptions on the use of corporal punishment in pre-primary institutions in Kenya found that 78% of parents agreed that teachers should use corporal punishment to modify deviant behaviour; 78% agreed that reasonable punishment is beneficial to preschool learners; 70% disagreed that corporal punishment should be abandoned and 76% disagreed that corporal punishment degrades the parents. The majority of parents (87%) indicated that they never viewed corporal punishment as child abuse, while 63% of parents agreed that teachers should be allowed to use corporal punishment with discretion.

(Kimengi, I. N. & Mwai, B. K. (2014), "Perceptions of parents on the use of corporal punishment in pre-primary institutions in Kenya", *International Journal of Education and Research*, 2(10), 663-680)

According to a survey carried out in Nyanza province in 2011, 88% of children aged 2-14 years were subjected to some form of violent "discipline" (psychological aggression or physical punishment) by adult household members in the month preceding the survey; 79% experienced physical punishment, 21% severe physical punishment. Only about 8% experienced only non-violent discipline. The survey found that 62% of mothers/caregivers believe children should be physically punished, ranging from 79% in Migori County to 48% in Kisumu.

(Kenya National Bureau of Statistics (2013), *Nyanza Province Multiple Indicator Cluster Survey 2011, Final Report*, Nairobi, Kenya: Kenya National Bureau of Statistics)

A study involving more than 1,000 girls in Ghana, Kenya and Mozambique analysed the impact of ActionAid's 2008-2013 project "Stop Violence Against Girls in School". The project included awareness raising and lobbying for the adoption and implementation of legal and policy measures that ensure education is free from corporal punishment in the three countries. The study found that in 2013 the use of some forms of corporal punishment had reduced since the baseline survey carried out in 2009. In Kenya in 2013, 55% of girls had been beaten in the past year compared to 80% in 2009, although the proportion of girls who had been whipped in the past year increased from 50% in 2009 to 70% in 2013. Girls' most recent experiences of corporal punishment usually took place in school. The study recommends measures to implement the prohibition of corporal punishment in schools.

(ActionAid International (2013), *Stop Violence Against Girls in School: A cross-country analysis of change in Ghana, Kenya and Mozambique*, Johannesburg: ActionAid)

In a national survey carried out in 2010, nearly half of the 13-17 year olds involved (48.7% of girls and 47.6% of boys) reported having been slapped, pushed, punched, kicked, whipped, beaten or threatened or attacked with a weapon in the past year. Two thirds (66%) of females and 73% of males aged 18-24 reported experiencing this before they were 18. Perpetrators included authority figures, parents and adult relatives. The survey involved 1,306 females and 1,622 males aged 13-24.

(UNICEF Kenya Country Office et al (2012), *Violence against Children in Kenya: Findings from a 2010 National Survey*, Nairobi: UNICEF Kenya Country Office, Division of Violence Prevention, National Center for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention & Kenya National Bureau of Statistics)

Seventy-one per cent of Kenyans think governments should completely outlaw all violence in schools. However, over half of adult Kenyans 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)

According to statistics collected under round 4 of the UNICEF Multiple Indicator Cluster Survey programme (MICS4), 77.7% of children aged 2-14 in Mombasa informal settlements experienced violent "discipline" (physical punishment and/or psychological aggression) in the home in the month prior to the survey, carried out in 2009. Over two thirds (67.9%) experienced "minor" physical punishment, 19.1% severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement) and 51% psychological aggression (being shouted at, yelled at, screamed at or insulted). Forty per cent of mothers and caregivers thought physical punishment was necessary in childrearing.

(Kenya National Bureau of Statistics (2010), *Mombasa Informal Settlement Survey, Kenya, 2009*, Nairobi: Kenya National Bureau of Statistics)

A study of the relationship between gender and physical punishment in China, Colombia, Italy, Jordan, Kenya, Philippines, Sweden, Thailand and the US, which used interviews with around 4,000 mothers, fathers and children aged 7-10, found that in Kenya 82% of girls and 97% of boys involved in the study 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).

(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*)