

# Corporal punishment of children in Malawi

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Child population 8,949,000 (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 and schools.

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. However, it was not until 1964 that Malawi achieved independence from Britain and therefore it can be assumed that the right to “reasonably chastise” children is socially and legally accepted. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that all such punishment is unacceptable and unlawful. 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.

*Alternative care settings* – Prohibition should also be enacted in relation to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

*Day care* – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and in all day care for older children (day centres, after-school childcare, childminding, etc).

*Schools* – Prohibition should be enacted in relation to all educational settings, including public and private, full and part time, and including religious institutions.

## Current legality of corporal punishment

### Home

Corporal punishment is lawful in the home. 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. However, it was not until 1964 that Malawi achieved independence from Britain and therefore it can be assumed that the right to “reasonably chastise” children is socially and legally accepted. Provisions against violence and abuse in the Constitution 1994 and the Penal Code 1929 (amended 2009) are not interpreted as prohibiting corporal punishment in childrearing.

The Child Care, Protection and Justice Act 2010, which defines a child as under 16 (art. 2), states that parents have the responsibility to “protect the child from neglect, discrimination, violence, abuse, exploitation, oppression and exposure to physical, mental, social and moral hazards” and “provide proper guidance, care, assistance and maintenance for the child to ensure his or her survival and development” (art. 3), but it does not prohibit corporal punishment. Article 80 of the Act states that “no person shall subject a child to a social or customary practice that is harmful to the health or general development of the child” but this is not interpreted as prohibiting all corporal punishment in childrearing. The rights of the child are set out in the Third Schedule to the Act, including the right “to exercise, in addition to all rights states [sic] this Schedule and this Act, all the rights set out in the United Nations Convention on the Rights of the Child and the Organization of African Union Charter on the Rights and Welfare of the African Child with appropriate modifications to suit the circumstances in Malawi that are not specifically mentioned in this Act”. Although the Government has previously stated that corporal punishment was prohibited under the Child Care, Protection and Justice Act 2010,<sup>1</sup> it is not clear that this or any other article in the Act would be interpreted as prohibiting corporal punishment in all settings, including the home.

Article 23(4) of the Constitution 1994 states that children “are entitled to be protected from ... treatment, work or punishment that is, or is likely to ... (b) interfere with their education; or (c) be harmful to their health or to their physical, mental or spiritual or social development”. This is not interpreted as prohibiting all corporal punishment in childrearing. In reporting to the Human Rights Committee in 2014, the Government stated that article 19 prohibits corporal punishment, including in the home and alternative care settings.<sup>2</sup> However, this provision specifically prohibits corporal punishment “in connection with any judicial proceedings or any other proceedings before any organ of the state” (see under “Schools”, below): it is difficult to see how this could be interpreted as prohibiting all corporal punishment by parents in childrearing.

In 2007, the Constitution was reviewed: recommendations made by the Malawi Law Commission did not include prohibition of corporal punishment in the home.<sup>3</sup> In February 2017, the Parliament voted to amend article 23(6) of the Constitution to state: “A child shall be a person under the age of eighteen”. Domestic legislation, including the Child Care, Protection and Justice Act 2010, is still to be amended to reflect this change.

The Prevention of Domestic Violence Act 2006 defines “domestic violence” as “includes physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, child,

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<sup>1</sup> 3 February 2017, CRC/C/SR.2185, Summary records of 2185<sup>th</sup> meeting, para. 3

<sup>2</sup> 26 June 2014, CCPR/C/MWI/Q/1/Add.2, Reply to list of issues, paras. 45 and 46

<sup>3</sup> Malawi Law Commission (2007), *Report of the Law Commission on the Review of the Constitution*

any other person who is a member of the household, dependant or parent of a child of that household".<sup>4</sup> It does not prohibit all corporal punishment of children. The Marriage, Divorce and Family Relation Act was passed by the National Assembly in February 2015: it does not prohibit corporal punishment. The Prevention of Domestic Violence Act 2006 is being reviewed.<sup>5</sup>

### **Alternative care settings**

Corporal punishment is unlawful in state institutions under article 19 of the Constitution 1994 (see under "Schools"), but there is no explicit prohibition in other legislation and corporal punishment would appear to be lawful in private institutions and in non-institutional forms of care. In reporting to the Human Rights Committee in 2014, the Government stated that article 19 prohibits corporal punishment, including in alternative care settings:<sup>6</sup> we are making further enquiries but it is difficult to see how the Constitutional prohibition of corporal punishment "in connection with any judicial proceedings or any other proceedings before any organ of the state" could apply to privately-arranged care settings.

There is no explicit prohibition of corporal punishment in the Child Care, Protection and Justice Act 2010: article 179(1) states: "A person to whose care a child is committed under this Act shall, whilst the order is in force, have the like control over the child as if he were the parent of the child responsible for the maintenance of the child..."

### **Day care**

Corporal punishment is unlawful in state-run day care under article 19 of the Constitution 1994 (see under "Schools"), but there is no explicit prohibition in other legislation and corporal punishment would appear to be lawful in privately arranged early childhood care and day care for older children. There is no explicit prohibition of corporal punishment in the Child Care, Protection and Justice Act 2010: article 179(1) states: "A person to whose care a child is committed under this Act shall, whilst the order is in force, have the like control over the child as if he were the parent of the child responsible for the maintenance of the child..."

### **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". It is unclear whether the prohibition applies to private schools. Following a review of the Education Act 1962 in 2009, the Government had recommended that the revised Act include explicit prohibition of corporal punishment. However, the Education Act 2012 is silent on the issue of corporal punishment.

The 2015 National Education Standards for primary and secondary education prohibit the use of corporal punishment. It is unclear whether this also applies to private schools.

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<sup>4</sup> [http://www1.chr.up.ac.za/undp/domestic/docs/legislation\\_13.pdf](http://www1.chr.up.ac.za/undp/domestic/docs/legislation_13.pdf), accessed 23 September 2015

<sup>5</sup> 20 July 2015, CEDAW/C/MWI/Q/7/Add.1, Reply to list of issues, para. 23

<sup>6</sup> 26 June 2014, CCPR/C/MWI/Q/1/Add.2, Reply to list of issues, paras. 45 and 46

## **Penal institutions**

Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 19 of the Constitution (see under “Schools”). There is no provision for it in the Child Care, Protection and Justice Act 2010, though it is not explicitly prohibited. The Act, applicable to children under 16, provides for the manager of a reformatory centre or safety home to “make rules not repugnant to, or inconsistent with, this Act for the maintenance of discipline at the centre or home” (art. 176). The Prisons Act is under review.<sup>7</sup> In August 2017, the Prisons Bill 2003 had not yet been submitted to Parliament.<sup>8</sup> We have no further information.

## **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime under article 19 of the Constitution 1994, which prohibits corporal punishment “in connection with any judicial proceedings or any other proceedings before any organ of the state”. It was previously lawful under the Children and Young Persons Act 1969 (arts. 10 and 16). This Act was repealed by the Children Care, Protection and Justice Act 2010, in which there is no provision for judicial corporal punishment. The Penal Code 1929 also provided for corporal punishment (arts. 25, 28 and others): these provisions were repealed by the Penal Code (Amendment) Act 2009. Provisions relating to judicial corporal punishment in the Criminal Procedure and Evidence Code were repealed in 2010.

## **Universal Periodic Review of Malawi’s human rights record**

Malawi was examined in the first cycle of the Universal Periodic Review in 2010 (session 9). The following recommendation was made:<sup>9</sup>

“Develop and strengthen appropriate legislative measures to address the issue of sexual abuse and exploitation, ensure prompt prosecution of perpetrators, guarantee that no person under the age of 14 is admitted to employment or work, amend the Constitution to raise the minimum age for engaging in hazardous work to 18 years, and enact and implement legislation to ensure the complete prohibition of corporal punishment (Italy)”

The Government did not respond to the corporal punishment element of the recommendation.

Examination in the second cycle took place in 2015 (session 22). No recommendations specifically on corporal punishment of children were made but the Government accepted recommendations to harmonise its laws with international human rights instruments and to increase promotion and protection of child rights.<sup>10</sup>

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<sup>7</sup> Malawi Law Commission, [http://www.lawcom.mw/index.php?option=com\\_content&view=article&id=38:review-of-the-prisons-act&catid=2:general&Itemid=133](http://www.lawcom.mw/index.php?option=com_content&view=article&id=38:review-of-the-prisons-act&catid=2:general&Itemid=133), accessed 23 September 2015

<sup>8</sup> 20 July 2015, A/HRC/30/5, Report of the working group, para. 110.25; [August 2017], CSO complementary report on the status of ACERWC in Malawi, para. 2(27)

<sup>9</sup> 4 January 2011, A/HRC/16/4, Report of the working group, para. 104(22)

<sup>10</sup> 20 July 2015, A/HRC/30/5, Report of the working group, paras. 110(12) and 110(42)

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

### ***Committee on the Rights of the Child***

(6 March 2017, CRC/C/MWI/CO/3-5, Concluding observations on third/fifth report, para. 19)

“In the light of its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee urges the State party to:

- (a) Review the Constitution and legislation to include an express prohibition of corporal punishment in non-State settings, including at home and in all alternative care and day-care settings;
- (b) Strengthen its awareness-raising programmes, including campaigns among parents and relevant professional groups, to promote positive, non-violent and participatory forms of child-rearing and discipline;
- (c) Enlist the assistance of community, cultural and traditional leaders for these purposes.”

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

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

([August 2018], Concluding observations on initial report, para. 21)

“The Committee also notes with concern the prevalence of corporal punishment and the lack of legislation prohibiting the practice in all settings. The Committee urges the State Party to review relevant laws and expressly prohibit corporal punishment in all settings and create awareness in schools, among parents, community, traditional and cultural leaders, and among personnel of the justice system on the negative impacts of corporal punishment on the wellbeing of children. The Committee further recommends that the State Party actively promote positive and non-violent forms of child rearing and correction.”

### **Prevalence/attitudinal research in the last ten years**

According to a 2014 survey, 42.9% of 1–14 year olds were subjected to physical punishment during the month preceding the survey, with 6.4% subjected to severe physical punishment. In contrast, only 5.5% of respondents believed that physical punishment is needed to bring up, raise, or educate a child properly. Over 72% of children were subjected to at least one form of psychological or physical punishment by their parents or other adult household members, while less than 20% of children experienced only non-violent discipline.

(National Statistical Office (2015), *Monitoring the situation of children and women: Malawi MDG Endline Survey 2014*, Zomba, Malawi: National Statistical Office)

A study of the 104 childcare institutions (orphanages, special needs centres, church homes, transit care centres and reformatory centres) in Malawi, which involved interviews with staff in the institutions and focus group discussions with children, documented the use of corporal punishment, including children being whipped, forced to kneel and forced to do hard work.

(UNICEF Malawi & Ministry of Gender, Children and Community Development (2011), *All Children Count: A Baseline Study of Children in Institutional Care in Malawi*, Lilongwe: UNICEF)

In a study in 40 schools, involving interviews with 800 students and 288 teachers, 68.5% of students reported having been whipped/caned (20.5% in the home, 48% in school); 70.6% said they had experienced beating/fighting. More boys than girls reported being beaten (47.2% and 40.7% respectively).

(DevTech Systems, Inc. and Centre for Educational Research and Training (2007), *The Safe Schools program: Students and teacher baseline report on school-related gender-based violence in Machinga district, Malawi*, USAID)

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.

(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*)