

BRIEFING FROM GLOBAL INITIATIVE
TO END ALL CORPORAL PUNISHMENT OF CHILDREN

BRIEFING ON KENYA FOR THE HUMAN RIGHTS COMMITTEE
COUNTRY REPORT TASK FORCE (Adoption of LOI) – October/November 2011

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The human rights obligation to prohibit corporal punishment

The legality and practice of corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity and to equal protection under the law, and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment – rights guaranteed in the International Covenant on Civil and Political Rights and other international human rights instruments. This briefing describes the legality of corporal punishment of children in Kenya and urges the Human Rights Committee to include the issue in its examination of the implementation of the Covenant.

Corporal punishment of children in Kenya

By virtue of the new Constitution of Kenya adopted in 2010, corporal punishment of children is unlawful in all settings, including the family home. However, there are conflicting legal provisions which have yet to be removed from statute and efforts are necessary to ensure implementation of prohibition in practice.

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”.

Article 2(4) of the Constitution 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.” This means that all laws allowing corporal punishment of children are now rendered ineffective, but to send a clear message the following legal provisions should be formally repealed:

- the right of parents and others to “administer reasonable punishment” in article 127 of the Children Act (2001)
- article 11 of the Education (School Discipline) Regulations which allows corporal punishment in certain circumstances
- provisions for corporal punishment in the Prisons Act and Rules
- provisions for corporal punishment in the Borstal Institutions Act and Rules

There is also a need for focused awareness raising and public and professional education in order to implement the prohibition of corporal punishment, as research reveals a high prevalence of and considerable public support for its use. For example, a large scale comparative study of the relationship between gender and physical punishment in a number of countries 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 month prior to the research.¹ An earlier survey of 267 adults and children and interviews with parents, teachers and children 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; 54% of parents said it should not be stopped.²

Recommendations by human rights treaty monitoring bodies

Recommendations by the Committee on the Rights of the Child in 2001 and 2007 focused on the need for law reform to prohibit corporal punishment together with public education and awareness raising campaigns, the promotion of positive discipline and effective monitoring (CRC/C/15/Add.160, Concluding observations on initial report, paras. 33, 34 and 64; CRC/C/KEN/CO/2, Concluding observations on second report, paras. 34 and 35). In 2005, the Human Rights Committee appears to have been mistakenly led to believe that all corporal punishment of children had been prohibited and went on to recommend public information and education campaigns (CCPR/CO/83/KEN, Concluding observations on second report, para. 6).

Now that Kenya has, in fact, prohibited all corporal punishment of children, we hope the Human Rights Committee will raise the issue in its List of Issues for Kenya, in particular asking (i) what measures have been taken to raise awareness of the new law and to promote positive, non-violent forms of education and childrearing, and (ii) what efforts have been made to ensure that all justifications and authorisations for corporal punishment of children are removed from statute. We hope the Committee will subsequently make recommendations to the state party aimed at ensuring that the law does not include any provisions that conflict with the Constitutional prohibition of corporal punishment and that awareness raising and educational measures are put in place to change attitudes and practice towards corporal punishment in practice.

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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¹ 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*

² ANPPCAN Kenya Chapter (2005), *From Physical Punishment to Positive Discipline: Alternatives to Physical/Corporal Punishment in Kenya*, second draft