

# Ending family violence in Malawi – confronting physical punishment of girls and boys



Information for the Committee on the Elimination of Discrimination Against Women from the Global Initiative to End All Corporal Punishment of Children ([www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)), September 2015

---

## Introduction: family violence in Malawi and CEDAW’s examination of the seventh state party report

Malawi’s Constitution explicitly prohibits corporal punishment “in connection with any judicial proceedings or any other proceedings before any organ of the state” (art. 19), but within the private sphere of the home and other non-state care settings, girls and boys may be lawfully subjected to violent punishment. The long and deep rooted history of social and legal acceptance of corporal punishment means that even to this day, unless it is severe it is not readily perceived as “violence” *per se* or as an assault on a child’s human dignity. Except in states where it has been explicitly challenged through law reform and public education and awareness raising, it remains taken for granted in childrearing. For all these reasons, unless the law sends a clear message that all physical punishment, however light, is prohibited, it will continue to be considered lawful.

**We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Malawi. In particular, we hope the Committee will:**

- **in its concluding observations on the seventh state party report, recommend that Malawi ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members, including clear prohibition of all physical punishment of children.**

The remainder of this briefing provides the following further details:

1. Information provided to CEDAW by Malawi in respect of corporal punishment
  2. The current law relating to family violence and corporal punishment of children in Malawi and immediate opportunities for reform
  3. Treaty body and UPR recommendations on the issue made to Malawi to date.
- 

## 1 Information provided by Malawi to CEDAW in respect of corporal punishment

- 1.1 Malawi’s seventh state party report describes a number of efforts to combat violence against women but makes no reference to physical punishment of children – violence which may lawfully be inflicted on girls and boys in the home and other settings in the guise of discipline.
- 1.2 The list of issues for Malawi adopted by the Committee asks for information on the progress of reviewing the Prevention of Domestic Violence Act 2006 to address its legal gaps and inconsistencies.<sup>1</sup> The Government’s response again makes no reference to corporal punishment, yet this is the most common form of violence against children, and most commonly takes place in the

---

<sup>1</sup> 16 March 2015, CEDAW/C/MWI/Q/7, List of issues, para. 7

home. No law aimed at preventing domestic violence can be considered complete while it fails to protect all persons in the home from violent assault, even if that is imposed in the guise of “discipline”.

## **2 Laws on domestic violence and corporal punishment of children in Malawi and immediate opportunities for prohibiting violent punishment of girls and boys**

### *Summary*

2.1 In Malawi, the Constitutional protection from corporal punishment is not applicable in the private sphere of the home and other care settings. The current review of the Prevention of Domestic Violence Act 2006 provides an immediate opportunity to enact clear prohibition of all corporal punishment and thus to ensure that the promotion of the family home as a violence-free environment has a firm legal foundation.

### *Detail*

2.2 The law prohibits domestic violence with the exception of physical punishment of children. 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, any other person who is a member of the household, dependant or parent of a child of that household”.<sup>2</sup> It does not prohibit all corporal punishment of children. The Marriage, Divorce and Family Relation Act 2015 does not prohibit corporal punishment.

2.3 The Child Care, Protection and Justice Act 2010 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 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.

2.4 The Government has claimed that article 19 of the Constitution prohibits corporal punishment, including in the home.<sup>3</sup> However, this provision specifically prohibits corporal punishment only “in connection with any judicial proceedings or any other proceedings before any organ of the state”.

**2.5 Protecting children from violent punishment in the home in Malawi requires clear prohibition of all corporal punishment. The Prevention of Domestic Violence Act 2006 is being reviewed: this provides a key opportunity for explicitly prohibiting corporal punishment of children by parents and thereby sending a clear message that the family home is a place where no form of violence is tolerated.**

## **3 Recommendations by human right treaty monitoring bodies and during the UPR**

3.1 Malawi has received recommendations concerning prohibition and elimination of corporal punishment of children from the Committee on the Rights of the Child (2009, 2002)<sup>4</sup> and during the UPR of Malawi (2010)<sup>5</sup> (the Government did not respond to the latter).

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*  
[www.endcorporalpunishment.org](http://www.endcorporalpunishment.org); [info@endcorporalpunishment.org](mailto:info@endcorporalpunishment.org), September 2015

<sup>2</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>3</sup> 26 June 2014, CCPR/C/MWI/Q/1/Add.2, Reply to list of issues, paras. 45 and 46

<sup>4</sup> 27 March 2009, CRC/C/MWI/CO/2, Concluding observations on second report, paras. 38 and 39; 1 February 2002, CRC/C/15/Add.174, Concluding observations on initial report, paras. 33 and 34

<sup>5</sup> 4 January 2011, A/HRC/16/4, Report of the working group, para. 104(22)