

BRIEFING FROM THE GLOBAL INITIATIVE
TO END ALL CORPORAL PUNISHMENT OF CHILDREN

**BRIEFING ON KENYA FOR THE COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST WOMEN**

PRESESSIONAL WORKING GROUP – July 2010

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KENYA (seventh report – CEDAW/C/KEN/7)

Corporal punishment is lawful in the **home**. Article 127 of the Children Act (2001) confirms “the right of any parent or other person having the lawful control or charge of a child to administer reasonable punishment on him”. Draft revisions to the Children Act which would repeal article 127(5) were submitted to the Attorney General in April 2009. As at May 2010, the Draft Constitution (2004) states that every person has the right not to be subjected to corporal punishment (article 29), though it is not clear this would be interpreted as prohibiting all corporal punishment in childrearing.

Corporal punishment is lawful in **schools**. Our previous information was that provisions in the Education Act (1968) permitting corporal punishment had been repealed by Ministry of Education Legal Notice No. 56 in 2001, but article 11 of the Education (School Discipline) Regulations, as amended, apparently states that corporal punishment may be inflicted “in cases of continued or grave neglect of work, lying, bullying, gross insubordination, indecency, truancy or the like”.¹ The Education Act has been under review since January 2009, but we have no further information.

Research has repeatedly revealed a high prevalence of corporal punishment in the home and schools. A survey of 500 young women in Kenya aged 18-24 found that 99% reported experienced physical violence as children, most commonly beating with an object (80.8%) but also punching (59.5%), kicking (39.6%), being choked/burned/stabbed (20.5%), having spicy/bitter substances put in mouth (12.3%) and other acts. Girls were found to be most vulnerable when aged 10-13 years.² In a 2004 survey by Population Communication Africa over 60% of children said they had been or were being physically abused at school, including being slapped in the face, hit on the body with a cane or stick, and beaten, kicked or punched or otherwise physically bullied.³ A 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 punishments included forcing a child to kneel on a hard floor (45.9%), forcing a child to stand in the sun (33.2%) and burning fingers (19.7%).⁴

Corporal punishment is unlawful in the **penal system** under article 191 of the Children Act, but as at May 2010, provisions for it in the Prisons Act and Rules and the Borstal Institutions Act and Rules were still in force. Corporal punishment is prohibited in charitable children’s institutions in article Children (Charitable Children’s Institutions) Regulations (2005), but there is no prohibition of corporal punishment in other **alternative care settings**.

¹ At http://www.kenyalaw.org/kenyalaw/klr_home/index.php, accessed 11 June 2010

² Stavropoulos, J. (2006), *Violence Against Girls in Africa: A Retrospective Survey in Ethiopia, Kenya and Uganda*, Addis Ababa, The African Child Policy Forum

³ Johnston, T. (2004), *Gender Series: The Abuse of Nairobi School Children*, Population Communication Africa: Nairobi. Cited in O’Sullivan, M. (2005), “Corporal Punishment in Kenya”, *Juvenile Justice Quarterly*, vol.2, no.1

⁴ ANPPCAN Kenya Chapter (2005), *From Physical Punishment to Positive Discipline: Alternatives to Physical/Corporal Punishment in Kenya*, second draft

The **Committee on the Rights of the Child** first recommended prohibition of corporal punishment in all settings, including the home, following examination of the state party's initial report in 2001 (CRC/C/15/Add.160, paras. 33, 34 and 64). In its examination of the second report in 2007, the Committee was led to believe that corporal punishment had been prohibited by law in schools (but see above), and made recommendations to prohibit it in other settings, including the home (CRC/C/KEN/CO/2, paras. 6, 7, 34 and 35).

We hope the Committee on the Elimination of Discrimination Against Women will question the government of Kenya in detail on the legality of corporal punishment in schools and emphasise that girls and boys should be legally protected from all corporal punishment. We hope the Committee will urge the government to repeal article 127(5) of the Children Act (the "reasonable punishment" defence) and all other legal provisions authorising corporal punishment, ensure that the prohibition of corporal punishment in the Draft Constitution is retained, and enact legislation to explicitly prohibit corporal punishment in all settings, including the home and schools.