

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

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

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The human rights obligation to prohibit corporal punishment of girls and boys

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence: as the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006),¹ addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”. **This briefing updates the information submitted to the Committee’s PSWG in June 2010 in light of recent law reform.**

Prohibition of corporal punishment in the Constitution

With the adoption of the new Constitution in 2010, in force from 27 August 2010, corporal punishment of children is unlawful in all settings, including the home, schools, the penal system and alternative care settings.

Article 29 (Freedom and security of the person) of the new Constitution states:

“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.”

The rights apply to all persons and all settings, public and private. Article 20 (Application of Bill of Rights) states:

- “(1) The Bill of Rights applies to all law and binds all State organs and all persons.
- (2) Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
- (3) In applying a provision of the Bill of Rights, a court shall –
 - a) develop the law to the extent that it does not give effect to a right of fundamental freedom; and

¹ General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” is available at www2.ohchr.org/english/bodies/crc/comments.htm.

b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom....”

Harmonising other laws with the new Constitution

Under article 2 of the Constitution, the prohibition of corporal punishment has immediate effect and overrides other laws which allow adults to physically punish children:

“(1) This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government....

(4) 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....”

However, it is necessary for other legislation to be reviewed and amended to achieve compatibility with the Constitution and ensure its full implementation in society. The right of parents and others to “administer reasonable punishment” currently stated in article 127(5) of the Children Act (2001), the authorisation for school corporal punishment in article 11 of the Education (School Discipline) Regulations, and all other laws which authorise corporal punishment in institutions and other settings, must be repealed. There are immediate opportunities to achieve this reform: draft revisions to the Children Act which would repeal article 127(5) were submitted to the Attorney General in April 2009 and the Education Act has been under review since January 2009.

In light of General Recommendation No. 19 on Violence against women adopted by the Committee on the Elimination of Discrimination Against Women in 1992, of the links between corporal punishment of children and all other forms of violence, including gender-based violence, and Kenya’s achievement of prohibition in the new Constitution, we hope the Committee will recommend that the state party complete the necessary reform of the Children Act, the Education (School Discipline) Regulations and all other relevant legislation as a matter of priority, and support law reform with appropriate public and professional awareness raising and education and the promotion of positive, non-violent parenting and education.

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