



Global Initiative to
**End All Corporal Punishment
of Children**

KENYA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 8th session, 2010

From Peter Newell, Coordinator, Global Initiative

info@endcorporalpunishment.org

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General's Study on Violence against Children, as a highly significant issue, both for asserting children's status as rights holders and for the prevention of all forms of violence.

The Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org) has been regularly briefing the Committee on the Rights of the Child on this issue since 2002, and since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee. There is growing progress now across all regions in challenging this very common form of violence against children. But we are concerned that many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope that the UPR Process will give particular attention to states' response, or lack of response, to the concluding observations from treaty bodies, on this and other key issues.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies, and regional human rights mechanisms, have condemned all corporal punishment. In October 2006, the report of the UN Secretary General's Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment, setting a goal of 2009.

Summary

This briefing describes the legality of corporal punishment of children in Kenya despite the repeated recommendations of the Committee on the Rights of the Child in this respect. As at November 2009, the government is considering law reform. We hope the Review will highlight the importance of prohibition of corporal punishment of children, and strongly recommend that the government enact prohibition of all corporal punishment, including through the repeal of article 127 of the Children Act.

1 Legality of corporal punishment in Kenya

1.1 Corporal punishment is lawful in the **home**. Article 127 of the Children Act (2001) concerns cruelty to children but states in subparagraph 5: “Nothing in this section shall affect the right of any parent or other person having the lawful control or charge of a child to administer reasonable punishment on him.” The Draft Constitution (2004) states that every person has the right “not to be subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner” (article 45), but it is not clear that this would apply to parental corporal punishment and as at November 2009, the Constitution had not been formally adopted.

1.2 In February 2009, in a speech presented to a public conference in Nairobi, the Minister for Gender, Children and Social Development stated: “Corporal punishment de-humanizes the child, is brutal and instils fear in the child which inhibits the child’s normal growth, productivity and creativity.” The Hon. Esther Murugi Mathenge noted the recommendation of the Committee on the Rights of the Child that legislation should be introduced explicitly prohibiting corporal punishment in the home and all settings. The Minister concluded: “It is therefore evident that corporal punishment has been overtaken by time. Focus should be placed on alternative forms of instilling discipline and replicating best practices evident elsewhere. It is also incumbent on all of us to identify urgently all the sections in our laws that allow for some caning or corporal punishment so that the necessary action can be taken.” Mr Ahmed Hussein, Director of the Children’s Department in the Ministry for Gender, Children and Social Development, indicated that there was the possibility of reform in the current review of the Children’s Act 2001.

1.3 Draft revisions to the Children Act which would repeal article 127(5) were submitted to the Attorney General in April 2009.

1.4 Corporal punishment is prohibited in **schools**. The provisions in the Education Act (1968) permitting corporal punishment were repealed in 2001, though there is no explicit prohibition in law. The Education Act has been under review since January 2009 and the revised draft reportedly prohibits corporal punishment in schools. The Draft Constitution states that every child has the right to “be free of corporal punishment or other forms of violence or cruel or inhumane treatment in schools and other institutions responsible for the care of children” (article 41).

1.5 Corporal punishment is prohibited in the **penal system** under article 191 of the Children Act, though as at March 2009 legislation authorising its use in prisons and Borstal institutions had yet to be repealed. The Draft Constitution states that a person in custody has the right to respect for human dignity and that international law and standards apply (article 75).

1.6 There is no explicit prohibition of corporal punishment in **alternative care settings** in the Children Act nor in associated rules and regulations. Although the Children and Young Persons Act has been repealed, its subsidiary legislation appears to be still in force, including the Children and Young Persons (Approved Institutions) Regulations (1965), which provide for corporal punishment in an institution or children’s home (article 11). Corporal punishment would be prohibited in alternative care settings by articles 41 and 45 of the Draft Constitution (see above).

2 Recommendations by human rights treaty monitoring bodies

2.1 In its concluding observations on the state party’s second report in 2007, the **Committee on the Rights of the Child** expressed concern at corporal punishment in the home, the penal system, alternative care settings and in employment settings, and recommended explicit prohibition in the home and other settings (CRC/C/KEN/CO/2, paras. 34 and 35). The Committee had made similar recommendations following examination of the initial report in 2001 (CRC/C/15/Add.160, paras. 33, 34 and 64).