



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

MALAWI

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 9th session, 2010

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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 as a matter of priority.

Summary

This briefing describes the legality of corporal punishment of children in Malawi despite the repeated concerns and recommendations of the Committee on the Rights of the Child. We hope the Review will highlight the importance of prohibition of corporal punishment of children, *including within the family home*, and strongly recommend that the government enact and implement legislation to ensure complete prohibition.

1 Legality of corporal punishment in Malawi

1.1 Corporal punishment is lawful in the **home**. Provisions against violence and abuse in the Constitution (1994), the Penal Code and the Children and Young Persons Act (1970) are not interpreted as prohibiting corporal punishment in childrearing. In 2009, a Child (Care, Protection and Justice) Bill was under discussion.

1.2 Corporal punishment is unlawful in **schools** under article 19 of the Constitution, which prohibits corporal punishment “in connection with any judicial proceedings or any other proceedings before any organ of the state”, and the Teachers’ Code of Conduct states that it should not be used, but there is no explicit prohibition in law. A study by the Human Rights Commission of Malawi in 2007 found that despite prohibition, corporal punishment is still used in schools, especially in primary schools.¹ A study by the National Statistics Office in 2005 of more than 4,500 children’s experiences of violence at school found that one fifth had experienced something which made them afraid to go to school, including violent corporal punishment (10.9%) and ill-treatment by the head or teachers (20.9%). The study also found that up to 40% had experienced corporal punishment by parents. From teachers’ own reports, the study found corporal punishment (including manual labour) to be the most common form of “discipline” (36.3%), despite its prohibition.² As at 2009, the government had recommended that the Education Act be revised to include explicit prohibition.

1.3 In the **penal system**, corporal punishment is prohibited as a sentence for crime and as a disciplinary measure in penal institutions under article 19 of the Constitution (see above), but this has not been confirmed in other legislation and corporal punishment is permitted under volume IV, article 28 of the Laws of Malawi, the Children and Young Persons Act (article 16), and the Penal Code. The Revised Penal Code Bill and the Child (Care, Protection and Justice) Bill would explicitly prohibit judicial corporal punishment and disciplinary corporal punishment in penal and care institutions.

1.4 With regard to **alternative care settings**, corporal punishment is unlawful in state institutions under article 19 of the Constitution (see above), but there is no explicit prohibition in other legislation. The Child (Care, Protection and Justice) Bill under discussion in 2009, would explicitly prohibit corporal punishment in care institutions.

2 Recommendations by human rights treaty monitoring bodies

2.1 In 2009, the **Committee on the Rights of the Child** urged the Government of Malawi to expedite the process of reforming the Penal Code and the law on children and explicitly prohibit corporal punishment in all settings, including the home (CRC/C/MWI/CO/2, Concluding observations on second report, para. 39). The Committee had previously recommended prohibition in all settings in 2002 following examination of the initial report (CRC/C/15/Add.174, para. 34).

¹ Malawi Human Rights Commission (2007), *The Existence and Implementation of Laws, Policies, and Regulations in Education and How They Affect the Girl-Child in Malawi*

² Burton, P. (Crime & justice Statistics Division, National Statistics Office) (2005), *Suffering at School: Results of the Malawi Gender-Based Violence in Schools Survey*, Pretoria: Institute for Security Studies