

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

**BRIEFING FOR THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
PRE-SESSIONAL WORKING GROUP**

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KENYA (initial report – E/C.12/KEN/1)

Corporal punishment is lawful in the **home**. The Children Act (2001, in force 2002) makes no mention of “reasonable chastisement” but it is presumed that it is acceptable. A landmark 2004 judgment by the Kenyan High Court (*Isaac Mwangi Wachira v Republic High Court of Kenya (Nakuru)* Criminal Application No. 185 of 2004), concerning a man convicted of subjecting his 3-year-old daughter to torture under the Children’s Act, did not condemn all corporal punishment of children, but it did reject the appellant’s argument that he was a parent disciplining his child as a mitigating factor. It also affirmed that a parent’s behaviour under the guise of discipline can constitute cruel, inhuman and degrading treatment (traditionally seen to be committed by the State and not private individuals). In July 2006, the Government announced it was set to review the Children Act 2001 to strengthen children’s protection from violence.

Corporal punishment is prohibited in **schools**, though it continues to be used. In a 2004 survey by Population Communication Africa, over 60% of children reported that they had been or were being physically abused at school, including being slapped in the face, being hit on the body with a cane or stick, and being beaten, kicked or punched or otherwise physically bullied.¹

In a survey on the childhood experiences of 500 young women aged 18-24, 99% reported experiencing physical violence at home and school, most commonly beating with an object (80.8%); other forms of physical violence were punching (60%), kicking (40%), hard work (44%), being choked/burned/stabbed (21%), having spicy/bitter substances put in mouth (12%), being locked or tied up (14%), and being denied food (35%). In 52% of cases, the hitting/punching resulted in “bruises or scratches, broken bones or teeth, or bleeding”; the figure for beating with an object was 64.6%.² In other research involving around 300 adults and children, the most frequent forms of physical discipline used on children were smacking (79%), pulling ears (69%) and cuffing (62%); other corporal punishments included forcing a child to kneel on a hard floor (46%), tapping (44%), forcing a child to stand in the sun (33%) and burning fingers (20%).³

In the **penal system**, corporal punishment is unlawful as a sentence for crime and as a disciplinary measure in penal institutions. Legislation allowing for “disciplinary” corporal punishment of young offenders (the Prisons Act and Rules, and the Borstal Institutions Act and Rules) no longer applies, but as at March 2007 had yet to be repealed.

Corporal punishment is prohibited in institutions but there is no explicit prohibition in relation to all other **alternative care settings**.

We have no information on the legality of corporal punishment of children in **situations of employment**.

¹ 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

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

Following examination of the state party's second report in February 2007, the **Committee on the Rights of the Child** noted that its previous (2001) recommendations on corporal punishment had not been sufficiently followed up (CRC/C/KEN/CO/2 Unedited Version, para. 6). The Committee reiterated its concerns and recommended that the state party "introduce legislation explicitly prohibiting corporal punishment in the home and in all public and private alternative care and employment settings", "conduct public education and awareness raising campaigns on children's rights to protection from all forms of violence and promotion of alternative, participatory, non-violent forms of discipline" and "improve the effectiveness of the monitoring system in order to ensure that abuse of power by teachers or other professionals working with and for children does not take place in schools and other institutions" (para. 34).