

Corporal punishment of children in Malawi: Briefing for the Universal Periodic Review, 22nd session, 2015

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

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Malawi, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and a recommendation to do so made during the 1st cycle UPR in 2010 (to which the Government did not respond). There are opportunities presented by current processes of law reform to enact prohibiting legislation.

We hope the Working Group will note with concern the legality of corporal punishment of children in Malawi. We hope states will raise the issue during the review in 2015 and make a specific recommendation to Malawi to use the opportunities presented by the Constitutional review and the enactment of the Marriage, Divorce and Family Relation Bill to prohibit all forms of corporal punishment in the home and in all forms of alternative care and day care.

1 Review of Malawi in the 1st cycle UPR (2010) and progress since then

1.1 Malawi was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 9). In its national report the Government drew attention to the prohibition in Malawi legislation of corporal punishment “in connection with any judicial proceedings or in any other proceedings before any organ of the state”.¹ The issue of corporal punishment was also raised in the compilation of UN information² and the summary of stakeholders’ information.³ During the review the following recommendation was made:⁴

“Develop and strengthen appropriate legislative measures to address the issue of sexual abuse and exploitation, ensure prompt prosecution of perpetrators, guarantee that no person under the age of 14 is admitted to employment or work, amend the Constitution to raise the minimum age for engaging in hazardous work to 18 years, and enact and implement legislation to ensure the complete prohibition of corporal punishment (Italy)”

1.2 The Government did not respond to the corporal punishment element of the recommendation.

¹ 21 October 2010, A/HRC/WG.6/9/MWI/1, National report to the UPR, para. 32

² 4 August 2010, A/HRC/WG.6/9/MWI/2, Compilation of UN information, paras. 25 and 26

³ 10 August 2010, A/HRC/WG.6/9/MWI/3, Summary of stakeholders information, para. 19

⁴ 4 January 2011, A/HRC/16/4, Report of the working group, para. 104(22)

- 1.3 Prohibiting and eliminating all corporal punishment of children in all settings – through law reform and other measures – is a key obligation under the Convention on the Rights of the Child and other human rights instruments, though it is one frequently evaded by Governments. Since the review, the Child Care, Protection and Justice Act 2010 has been enacted in Malawi – but it does not include prohibition of corporal punishment. In reporting to the Human Rights Committee in 2014, the Government stated that article 19 of the Constitution prohibits corporal punishment, including in the home and alternative care settings.⁵ However, this provision specifically prohibits corporal punishment “in connection with any judicial proceedings or any other proceedings before any organ of the state”: it is difficult to see how this could be interpreted as prohibiting all corporal punishment by parents in childrearing and in other private/non-Government forms of care. Our research suggests there has been no change in the legality of corporal punishment since the review in 2010: it is prohibited in some settings under the Constitution 1994 but it remains lawful in the home and in some forms of alternative care and day care (see section 2, below).
- 1.4 In 2011 the Constitution was under review, and as at July 2014 a Marriage, Divorce and Family Relation Bill was under discussion. These reforms provide immediate opportunities for ensuring children are legally protected from corporal punishment in all settings, including the home. **We hope members of the Working Group will urge Malawi to fulfil its obligations under international human rights law by using the opportunities presented by the Constitutional review and the enactment of the Marriage Divorce and Family Relation Bill to prohibit all forms of corporal punishment in the home and in all forms of alternative care and day care.**

2 Legality and practice of corporal punishment in Malawi

- 2.1 **Summary:** Corporal punishment of children in Malawi is unlawful in schools, the penal system and in state provided alternative care settings and day care, but it is not prohibited in the home and in other alternative care and day care settings.
- 2.2 **Home (lawful):** Provisions against violence and abuse in the Constitution 1994 and the Penal Code are not interpreted as prohibiting corporal punishment in childrearing. The Child Care, Protection and Justice Act 2010 states that parents have the responsibility to “protect the child from neglect, discrimination, violence, abuse, exploitation, oppression and exposure to physical, mental, social and moral hazards” and to “provide proper guidance, care, assistance and maintenance for the child to ensure his or her survival and development” (art. 3), but it does not prohibit corporal punishment. Article 80 of the Act states that “no person shall subject a child to a social or customary practice that is harmful to the health or general development of the child” but this is not interpreted as prohibiting all corporal punishment in childrearing.
- 2.3 **Alternative care settings (partially prohibited):** Corporal punishment is unlawful in state institutions under article 19 of the Constitution 1994 (see para. 1.3, above), but there is no explicit prohibition in other legislation and corporal punishment would appear to be lawful in private institutions and in non-institutional forms of care. The Child Care, Protection and Justice Act 2010 does not prohibit corporal punishment. Rather, article 179(1) states: “A person to whose care a child is committed under this Act shall, whilst the order is in force, have the like control over the child as if he were the parent of the child responsible for the maintenance of the child....”
- 2.4 A study of the 104 childcare institutions (orphanages, special needs centres, church homes, transit care centres and reformatory centres) in Malawi, which involved interviews with staff in the

⁵ 26 June 2014, CCPR/C/MWI/Q/1/Add.2, Reply to list of issues, paras. 45 and 46

institutions and focus group discussions with children, documented the use of corporal punishment, including children being whipped, forced to kneel and forced to do hard work.⁶

2.5 **Day care (*partially prohibited*)**: Corporal punishment is unlawful in state-run day care under article 19 of the Constitution 1994 (see para. 1.3, above), but there is no explicit prohibition in other legislation and corporal punishment would appear to be lawful in privately arranged early childhood care and day care for older children. There is no explicit prohibition of corporal punishment in the Child Care, Protection and Justice Act 2010, where article 179(1) provides for persons to have the same control over the child “as if he were the parent of the child responsible for the maintenance of the child”.

2.6 **Schools (*unlawful*)**: Corporal punishment is unlawful in schools under article 19 of the Constitution (see para. 1.3, above). It is unclear whether the prohibition applies to private schools. Following a review of the Education Act 1962 in 2009, the Government recommended that the revised Act include explicit prohibition of corporal punishment. The Compulsory Education Bill was passed by the House in 2013:⁷ we are seeking to establish if it is now law and if it prohibits corporal punishment.

2.7 Despite the Constitutional prohibition, in a study in 40 schools, involving interviews with 800 students and 288 teachers, 68.5% of students reported having experienced whipping/caning (20.5% in the home, 48% in school); 70.6% said they had experienced beating/fighting.⁸

2.8 **Penal institutions (*unlawful*)**: Corporal punishment is unlawful under article 19 of the Constitution. There is no provision for it in the Child Care, Protection and Justice Act 2010, though it is not explicitly prohibited. The Act, applicable to children under 16, provides for the manager of a reformatory centre or safety home to “make rules not repugnant to, or inconsistent with, this Act for the maintenance of discipline at the centre or home” (art. 176).

2.9 **Sentence for crime (*unlawful*)**: Corporal punishment is unlawful under article 19 of the Constitution.

3 Recommendations by human rights treaty monitoring bodies

3.1 **CRC**: 3.1 The **Committee on the Rights of the Child** has twice recommended that legislation be enacted in Malawi to explicitly prohibit corporal punishment in all settings, including the family – in its concluding observations on the state party’s initial report in 2002⁹ and on the second report in 2009.¹⁰

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, 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, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

⁶ UNICEF Malawi & Ministry of Gender, Children and Community Development (2011), *All Children Count: A Baseline Study of Children in Institutional Care in Malawi*, Lilongwe: UNICEF

⁷ Reported in *The Nation*, 1 November 2013

⁸ DevTech Systems, Inc. and Centre for Educational Research and Training (2007), *The Safe Schools program: Students and teacher baseline report on school-related gender-based violence in Machinga district, Malawi*, USAID

⁹ 1 February 2002, CRC/C/15/Add.174, Concluding observations on initial report, paras. 33 and 34

¹⁰ 27 March 2009, CRC/C/MWI/CO/2, Concluding observations on second report, paras. 38 and 39