



The East African Centre for Human Rights
Enhancing the Realisation of Economic, Social and Cultural Rights in East Africa

EACHRIGHTS STATEMENT ON THE HUMAN RIGHTS PERSPECTIVE ON RE-INTRODUCTION OF CORPORAL PUNISHMENT IN SCHOOLS

The East African Centre for Human Rights (EACHRights) has noted the continued trend in corporal punishment in select learning institutions in Kenya since its ban in 2001.

We have noticed with concern that there is a rise in the number of incidents where students have burnt school facilities and assaulted their teachers on the one hand, and on the other, cases in which children have been injured because of having been 'punished' by their teachers are also rife, and in some serious cases, death has resulted.

Such a case was highlighted by **Citizen TV** to have occurred in Githiga Primary School in Murangá County, in which a class six died, allegedly from head injury sustained when her teacher caned her.

We further took note of an incident in which the parents of a child who was expelled from school due to gross misconduct even sued the school to have the child readmitted, as witnessed in Civil Suit Number 391 of 2012 as published in *Kenya Law*.

These occurrences have left teachers and school administrators feeling helpless, culminating into a debate on whether the abolition of corporal punishment in Kenya is contributing factor to the high levels of unrest and indiscipline. Consequently, mixed reactions have since been witnessed in the context of how to address indiscipline among pupils and students.

Some parents and teachers who are overwhelmed with the indiscipline among children have called for the re-introduction of corporal punishment in schools. It is against this background that the CS for Education, Prof. Magoha weighed in on bringing back the 'good' old cane, adding that the police should book students who damage school facilities.

These conversations point towards and touch on rights of children, and that is our entry point as the EAST AFRICAN CENTRE FOR HUMAN RIGHTS (EACHRights), a regional NGO based in Nairobi, and the home to Economic, Social and Cultural (ECOSOC) rights. EACHRights applies a human rights-based approach in all its interventions and holds that corporal punishment in schools violates both Kenyan law and international standards.

The Constitution of Kenya in Article 29 outlaws torture, corporal punishment as well as cruel, inhuman and degrading treatment. The style and shape that corporal punishment

has taken in Kenya is sometimes extreme, where a child suffers not only physical but also psychological injuries. In few cases, disability and even death has been the outcome of corporal punishment, and mainly because there is not standardized form of corporal punishment.

It is our position therefore that it is better to err on the side of caution and continue to outlaw this form of punishment, replacing it with other modes of punishment that don't contravene the rights of children.

Section 13 and 18 of Children's Act provides that a child shall be entitled to protection from physical and humiliating abuse by any person and shall not be subjected to torture, cruel treatment or punishment.

At the same time, numerous international and regional human rights institutions have declared that some or all forms of school corporal punishment violate the human rights of children.¹ The U.N. Committee on the Rights of the Child, the U.N. Special Rapporteur on Torture, and the European Court of Human Rights have all spoken out against corporal punishment. Their stance is that it is cruel, inhuman and degrading.

Many nations have either severely restricted corporal punishment or have banned it. In keeping with the international trends of recognizing the rights of the child, and since Kenya is a signatory to the United Nations Charter on Human Rights; Kenya banned corporal punishment in 2001.

As the leading organization in evidence-based advocacy, we take cognizance of the foregoing and posit that corporal punishment should remain outlawed because firstly, it is a form of child abuse that occasions physical pain and suffering.

Psychologically, it causes children to feel scared, intimidated or threatened. Corporal punishment also breeds a culture of violence, as it sends out the message that violence is socially acceptable which is an entirely wrong message to be giving out to children.

Thirdly, there is no evidence that corporal punishment yields the highest attainable level of discipline or any discipline at all.

Fourthly, Corporal punishment is mostly administered unfairly since there is no way of regulating/controlling the force and approach used which in certain cases has resulted to death.

Further, the 'Positive' effects of corporal punishment do not last, they are short-lived. Additionally, this form of punishment generates a cycle of abuse, as victims take up the violence and begin to abuse or physically inflict pain on their friends and/or siblings. They may grow up to be physically abusive parents, spouses and even bosses. In sum, corporal punishment violates human dignity. Some forms of corporal punishment

amount to torture yielding devastating effects on their psychological, emotional and psychosocial development and should not be reinstated.

EACHRights recommends positive reinforcement of decent behaviour to deal with cases of indiscipline and unrest among students. Secondly, professional guidance and counselling will go a long way to make children aware that bad choices have negative consequences. This means that parents should lay a strong foundation and foster good behaviour. Finally, the imposition of non-physical disciplinary measures as an alternative to beatings should be encouraged.

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