

KENYA

SPARE THE CHILD: Corporal Punishment in Kenyan Schools

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I. SUMMARY

Introduction: Corporal Punishment in Kenyan Schools

On September 23, 1998, thirteen-year-old Anastacia Katunge was severely caned by the headteacher at her school, Masewani Primary, along with the rest of her class. Human Rights Watch interviewed Katunge and her parents, and examined the court file resulting from the assault. Katunge reported, "The teacher came to class. He asked for the list of the noise makers. When he was given the list, he punished the noise makers. Then he called me, and I went in front of the class. Then he started beating me. He told me to lie down and remove my cardigan. He caned me on the back—I was beaten with a cane the thickness of a gum tree stick, more than five times but not more than ten times. He did it in front of my classmates." At this point, she fainted: "When I woke up, I went to sit down on my chair, and I waited for the others to go home. When I went home, I was bleeding from the neck and had a bruise. There were bruises on my back that were bleeding, and on the hand. . . I reported what had happened to my father, and then I went with my father to the police station."

When Anastacia Katunge returned to school three days later, the headteacher told her to go home: "He said he would cane me again. He said that it would be the last day that I set foot in that school." Her parents—her mother was a teacher in the same—school faced similar threats. When her father, Willy Katunge, went to complain, the headteacher threatened to beat him too.

Anastacia Katunge's case was extraordinary, in part because of her parents' courage and initiative. The local educational authority shifted her, and her mother's teaching job, to a new school. The headteacher was ultimately charged with assault, although the case was still pending in Kiambu District Court at the time of this writing. But children who are injured at the hands of their teachers, generally can make no formal complaint at all without dire consequences. Those who protest ill-treatment are often forced to leave school altogether—effectively losing their chance for an education.

The Practice of Corporal Punishment

For most Kenyan children, violence is a regular part of the school experience. Teachers use caning, slapping, and whipping to maintain classroom discipline and to punish children for poor academic performance. The infliction of corporal punishment is routine, arbitrary, and often brutal. Bruises and cuts are regular by-products of school punishments, and more severe injuries (broken bones, knocked-out teeth, internal bleeding) are not infrequent. At times, beatings by teachers leave children permanently disfigured, disabled or dead.

Such routine and severe corporal punishment violates both Kenyan law and international human rights standards. According to the U.N. Committee on the Rights of the Child, school corporal punishment is incompatible with the Convention on the Rights of the Child, the world's most widely-ratified human rights treaty. Other human rights bodies have also found some forms of school-based corporal punishment to be cruel, inhuman or degrading treatment or punishment, and a practice that interferes with a child's right to receive an education and to be protected from violence.

Kenyan law restricts the use of school-based corporal punishment. According to the Education (School Discipline) Regulations, corporal punishment may only be administered for certain behavior, after a full inquiry, and in the presence of a witness, but not in the presence of other pupils. Only the headteacher is permitted to administer corporal punishment, and he or she must use a cane or strap of regulation size, hitting boys on the buttocks and girls on the palm of the hand. The headteacher may give no more than six strokes as punishment, and must keep a written record of all the proceedings. In 1996 the Director of Education reportedly issued a statement banning the imposition of corporal punishment, although no ban has ever been enforced, and the Education (School Discipline) Regulations continue to authorize the punishment.

Illegal and severe forms of corporal punishment remain widespread, according to over two hundred Kenyan children interviewed by Human Rights Watch. Of the twenty primary and secondary schools visited by Human Rights

Watch, only one school—reportedly the best secondary school in Kenya—administered corporal punishment in accordance with the guidelines of the Education (School Discipline) Regulations. In the twenty schools we visited, we found the use and abuse of corporal punishment were uniform: corporal punishment appeared to be equally widespread at urban schools and rural schools, at schools catering to the middle and upper middle classes and schools catering to the poor, and at schools in different regions, or with different ethnic and religious populations.

In Kenya, the most common method of corporal punishment involves teachers striking students with a “cane”: generally an uneven wooden stick of two to three feet in length, with a diameter of approximately three-fourths of an inch. Some teachers also punish students by flogging them with whips made of rubber (from strips of old car tires), with heavier canes, or simply by slapping, kicking, or pinching. For the most part, boys are hit on the backside, while girls are hit on the palm of the hand. At times, however, children are beaten on other parts of the body: on the back, the arms, the legs, the soles of the feet, and sometimes even the face and head. Children are generally forced to kneel down (occasionally to lie down) in the front of the classroom before being caned or beaten in front of other students. At other times, teachers simply cane children on the spot, as they sit in their chairs.

Depending on the nature of the misbehavior of the child and the harshness of the teacher and school, a student might receive anywhere from two to twenty or more cane strokes at one time. At some schools, children told Human Rights Watch that they would witness incidents of caning only once or twice a week, and that students were generally given only two or three strokes at one time. Other children reported that they or others were caned on and off throughout the day, nearly every day, routinely receiving five or more strokes each time. We also heard scattered reports of children being beaten for inability to pay their school assessments, although we spoke with only one student who said that he personally had been punished for this reason.

Corporal punishment is used against students for a wide range of disciplinary infractions. Children may receive corporal punishment for coming to school late, missing school without permission (even for unanticipated illnesses), having a dirty or torn school uniform, rudeness, graffiti, fighting, stealing, drug use, and any form of disruptive classroom behavior (writing notes to other students, fidgeting, talking to another student, “noise making,” and so on).

In addition, corporal punishment is widely used to punish unsatisfactory academic performance: in mathematics classes, for instance, it is not uncommon for teachers to strike children for giving the wrong answer to a problem (sometimes conceptualized by teachers as a disciplinary issue, on the theory that only children who have not paid attention give incorrect answers). In some classes and schools, teachers set target marks that students are supposed to achieve, and students who fail to reach the target are caned. The fact that a student’s poverty and home life might contribute to his or her inability to comply with a teacher’s wishes is generally not seen as grounds for excusing the child’s behavior. Many teachers punish students who fail to complete their homework or learn their lessons, regardless of whether the children had the necessary books or materials, or opportunities to complete their homework.

Group punishments were widely reported: if a school did not perform well on national exams, for instance, an entire class might be caned regardless of the individual performance of each student. Similarly, if graffiti was found in a classroom, the whole class might be caned if the culprit could not be identified. If many children made noise, a large group of students might be caned simultaneously (with a different teacher caning each child), or many students might be caned in turn by one teacher.

Children also may be caned by numerous teachers at once. At several schools we visited, we were told by students that the usual punishment for “noise making” in class was for the culprit to be brought to the staff room and made to kneel or lie down and be caned or whipped by three to six teachers at the same time.

Minor injuries like bruising and swelling are the “normal” and routine result of corporal punishment. More serious injuries (large cuts; sprains; broken fingers) are less common, but many children we interviewed had either experienced such injuries or knew of other students who had. (Sprains and broken fingers can easily occur if a child reaches out his

or her hand to ward off a cane, or moves a hand as the cane comes down). Extremely serious injuries (temporary or permanent hearing loss; teeth knocked out; broken wrists or collar bones; internal injuries requiring surgery) were rarer, but do occur; we interviewed several children who had either received such injuries or knew of others who had.

Children occasionally die as a result of corporal punishment, and several such deaths have been reported in the Kenyan press over the past two years. It was impossible, however, to get accurate statistics on such serious incidents: many severe beatings are never reported to government authorities or journalists, as children and parents fear retaliation from teachers and headteachers. Similarly, poor police and court record-keeping make it difficult to track down cases that are reported, as police records may simply describe a severe incident of corporal punishment as an assault or murder, without noting that it occurred in school.

Response and Redress

Human Rights Watch investigated several cases of serious injuries and deaths reported in the press and to nongovernmental organizations (NGOs), and confirmed the details of some of these cases. In the few cases we found that led to prosecutions, teachers tended to be acquitted or let off with minor fines. In almost all of the documented cases in which students died after being beaten, the teachers were acquitted because they had not known that the child suffered from a preexisting medical condition which made the child particularly vulnerable to injury.

The Ministry of Education appears to have done little to enforce the provisions of the Education (School Discipline) Regulations, which limit how corporal punishment may be imposed. Some senior level Ministry of Education officials told Human Rights Watch that the ministry discourages corporal punishment, even though the regulations allow it, and that Director of Education Elias Njoka issued a statement in 1996 banning the practice. Whether or not such a statement was issued—Human Rights Watch was unable to find any official record of it—a ban has certainly not been enforced and the practice appears to continue unabated. Still, senior officials within the ministry told us that the statement banning corporal punishment has not been withdrawn. In short, confusion exists at a high level in the Ministry of Education regarding its policy on corporal punishment.

Awareness-raising campaigns and training for practicing teachers on discipline and alternatives to corporal punishment in schools are virtually nonexistent. Instructors are rarely disciplined by headteachers or by the Ministry of Education, even for inflicting serious injuries on the children under their care. Headteachers who tolerate constant and severe corporal punishment inflicted by teachers are rarely censured, if ever. According to several instructors and parents interviewed by Human Rights Watch, corruption is rampant in the Kenyan educational bureaucracy, and teachers at times receive sought-after placements if they are willing to pay bribes. Similarly, abuses are hushed up by the payment of bribes.

The Kenyan Teachers' Services Commission has the power to suspend, transfer, or fire teachers. Its investigatory branch is lethargic when it comes to looking into abuses related to corporal punishment. Although the Kenyan press has given extensive coverage to incidents of serious injury caused by corporal punishment in the last few years, the deputy director of the Teacher's Services Commission told Human Rights Watch that the Commission receives a complaint about excessive caning only once every few years, and virtually never disciplines teachers for caning. He insisted that "most of the caning is per the regulations."

The judicial system is generally not a practical alternative for redress for school corporal punishment. Since most families cannot afford attorneys, they have little access to the courts, or prospects prevailing in legal action if they do. Furthermore, the judicial system is not strong, with judicial processes slow, and judgments difficult to enforce.

Perhaps most disturbing, Human Rights Watch received numerous reports, from children and parents, of serious retaliation against people who challenged severe corporal punishment. According to many interviewees, complaining about excessive punishments might lead to more severe punishments in the future, with punishments being inflicted on

siblings or cousins of the child whose parents complained, as well as on the child himself. Some parents reported that they themselves were threatened with violence when they protested mistreatment of their children.

Some children told of being forced to change schools to escape from vengeful teachers, and several headteachers told Human Rights Watch that when parents came in to complain that their children had been caned, they told the parents to remove their children from the school if they were unhappy about the caning. In effect, as several headteachers acknowledged, children raising complaints about corporal punishment faced giving up school altogether, as transferring to another school after departure for “disciplinary reasons”—refusing to accept the imposition of corporal punishment— can be close to impossible.

Corporal Punishment as Cruel, Inhuman or Degrading Treatment or Punishment

School corporal punishment can be a form of cruel, inhuman or degrading treatment or punishment, and it is akin to the use of beatings to punish detainees in prisons or police stations. In each case, state agents make use of violence to discipline and punish people under their supervision and control, and the violence is inflicted with the intention of causing physical pain and humiliation. In schools, the state agents are teachers rather than prison guards or police officers, and the victims are schoolchildren, rather than detainees. Many children are at risk of being physically hurt or psychologically damaged by the use of violent punishments. Since children are both physically weaker and psychologically more vulnerable than adult detainees, they may be at even greater risk. But while today it is widely accepted that corporal punishment of prisoners constitutes a human rights violation, many still hold to the belief that corporal punishment of children has an educative and instructive purpose, without which a child will not be able to learn.

Many international human rights instruments prohibit the use of cruel, inhuman or degrading treatment or punishment. These documents include the U.N. Convention on the Rights of the Child (CRC), the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

The fact that many teachers and parents (and, indeed, some students) believe that corporal punishment serves a genuine pedagogical function does not diminish the ways in which it can be cruel and degrading. In Kenya, Human Rights Watch encountered many dedicated teachers who spoke of their sincere belief in the necessity of corporal punishment as an educational tool. Many parents with whom we spoke supported the teachers' actions. Nonetheless, Human Rights Watch is categorically opposed to the use of corporal punishment against children in schools, however that violence is rationalized. The organization calls for the abolition of the practice and the repeals of laws and regulations that authorize it.

Not only can school corporal punishment be a form of cruel, inhuman or degrading treatment of children, it can also impair the child's enjoyment of the right to education, and may undermine the purpose of education as enshrined in the Convention on the Rights of the Child. The convention is the most widely ratified international human rights treaty; Kenya ratified it in 1990. The Committee on the Rights of the Child, which is responsible for making authoritative interpretations of the rights contained within the convention, and for reviewing the compliance of states parties, has stated categorically that all forms of corporal punishment are incompatible with the protections given to children under the convention.

While teachers and parents may feel it is necessary for a child to experience pain in order to learn, a significant amount of research has shown to the contrary—that the use of corporal punishment may hinder learning, encourage or lead children to drop out of school, and generally undermine the purposes of education as articulated in article 29 of the convention. Article 29 states that education shall be directed towards the development of the child's mental and physical abilities to their fullest potential; the development of respect for human rights and fundamental freedoms; and preparation of the child for responsible life in a free society, in the spirit of understanding, peace and tolerance. The use

of corporal punishment against children by their teachers, and the lesson taught to children through the use of violence, may undermine the very purpose of education as articulated in the convention.

The Committee on the Rights of the Child has criticized governments for permitting corporal punishment in schools (both public and private), and the committee and its members have stated repeatedly that corporal punishment violates the fundamental principles of the Convention on the Rights of the Child. In its official report of its seventh session in November 1994, the committee stated that “[i]n the framework of its mandate, the Committee has paid particular attention to the child's right to physical integrity. In the same spirit, it has stressed that *corporal punishment of children is incompatible with the Convention* and has often proposed the revision of existing legislation, as well as the development of awareness and education campaigns, to prevent . . . the physical punishment of children.”

Furthermore, the committee members have argued that the difficulties in drawing sharp lines between acceptable and unacceptable forms of corporal punishment require a total ban on the practice, since even ostensibly mild forms of corporal punishment in practice often become severely abusive. In a concluding statement to the general discussion on “Children's Rights in the Family” in October 1994, committee member Thomas Hammarberg of Sweden noted that “[c]ertain States have tried to distinguish between the correction of children and excessive violence. In reality the dividing line between the two is artificial. It is very easy to pass from one stage to another.”

Other Forms of Cruel, Inhuman or Degrading Treatment in Kenyan Schools

Cruel, inhuman or degrading practices in Kenyan schools are not restricted to corporal punishment. Human Rights Watch encountered several reports of other forms of punishments that are arguably forms of cruel, inhuman or degrading treatment. For example, in many schools teachers force students to kneel for long periods at the front of the classroom as a form of punishment. This is intended to shame students, and does so; one headteacher told us that he discouraged the practice in his school because kneeling for long periods on uneven concrete or dirt floors sometimes also leads to swollen, bruised, or cut knees and legs.

Similarly, many schools and teachers make students engage in physical labor as a punishment, distinct from ordinary classroom chores which all students might be called on to perform: digging trenches, “slashing” grass, or uprooting tree stumps are all commonly cited punishments. Some teachers assign other forms of physical activity as a punishment, forcing students to run around the school compound repeatedly, for instance. Still other teachers require students to clean the school toilets as punishment.

These assignments are not necessarily cruel, inhuman or degrading. In practice, however, they can and often do amount to cruel, inhuman or degrading treatment. If such assignments are given out irresponsibly as punishments, they can be excessively humiliating or damaging: for instance, several hours of heavy manual labor or compulsory running in the equatorial sun can cause children to collapse from heat and exhaustion. Cleaning toilets often means scrubbing filthy pit latrines with no detergents, no protective gloves, and no running water with which to wash. All of these punishments pose health risks, and are also experienced by students as humiliating. If sufficiently severe, they constitute cruel, inhuman or degrading treatment.

Historical and Cultural Context

Various forms of corporal punishment (and other punishments like manual labor) have a long pedigree in Kenya. Many Kenyans told Human Rights Watch that physical chastisement has long been accepted in Kenyan homes. The Kenyan government school system arose in the days of British colonial government, and adopted nineteenth-century British traditions of school discipline, including the widespread use of the cane.

Most adult Kenyans were caned frequently when they were children, and many Kenyans believe firmly in the validity of the Biblical precept, “Spare the rod and spoil the child.” A high level of domestic violence against women and children is a constant concern for Kenyan rights groups, and school corporal punishment occurs in this context.

One primary school headteacher told Human Rights Watch firmly that violence is “what the African child understands, and women too. They have to be beaten.”

Although most Kenyans we met told Human Rights Watch that corporal punishment should never be so severe as to cause lasting injury to a child, few of those interviewed perceived corporal punishment as a human rights issue, or even as a major cause for concern. This is changing, as several Kenyan rights groups have added corporal punishment to their advocacy agendas, and as newspapers like the Daily Nation have begun a concerted effort to investigate and report on cases of severe beatings in schools. Likewise, top officials in the Kenyan Ministry of Education, including the minister himself, have begun to focus increased attention on children's rights issues, singling out corporal punishment as an area of particular concern.

Nonetheless, awareness of the problems associated with corporal punishment is low, and children, parents, or teachers who complain about corporal punishment still run a serious risk of facing ridicule or retaliation. This causes most to remain silent except in the face of particularly appalling abuses.

School corporal punishment in Kenya has a high degree of cultural acceptance, even approval. Although some teachers inflict severe forms of corporal punishment on students out of deliberate cruelty, probably the great majority of teachers genuinely intend to “educate” children by caning or whipping them. To the extent that children are seriously injured, many Kenyans are willing to write such incidents off as tragic exceptions in a generally acceptable system, the result of the occasional sadistic teacher or of unfortunate but unavoidable accidents. Some teachers dismissed abuses by noting that serious injuries usually occurred only if a student disobediently thrust out an arm to ward off the cane, and thus ended up with a broken wrist or similar injury. This was viewed as the equivalent of a self-inflicted injury. Others said that authorities should not hold teachers responsible for injuring or killing children who had preexisting medical conditions that made them particularly susceptible to physical punishment, because other students could have withstood the abuse.

Poverty helps to create the conditions which lead to the imposition of school corporal punishment. Parents and communities pay for uniforms, textbooks, building fees (repair, maintenance and construction of school buildings), and activities fees under cost-sharing arrangements between the Kenyan government and local communities. Many poor families struggle to keep their children in school. Their children may face harassment from teachers for wearing torn and dirty uniforms. Instructors may punish students who fail to complete their homework or learn their lessons, yet the children may not have necessary books or school materials, sufficient nutrition, or opportunities or facilities to complete their homework after they leave school. Schools themselves may be crowded, with at times more than fifty students per teacher in a small classroom. These conditions do not facilitate learning or classroom management. While they may explain why teachers feel it is necessary to impose corporal punishment, they do not excuse such actions.

Methodology

The research for this report was conducted in Kenya from May 2-15, 1999, by a five-person team of Human Rights Watch staff and consultants. This is Human Rights Watch's second report on children in Kenya, following our 1997 report, *Juvenile Injustice: Police Abuse and Detention of Street Children in Kenya*. For this report, Human Rights Watch visited twenty different government schools spread throughout six different provinces: Nairobi, Central Province, Eastern Province, Rift Valley Province, Nyanza Province, and the Coast Province. We visited no private schools, but did visit several schools “sponsored” by religious institutions, which meant, in practice, that there was a strong religious component to the curriculum, although all of the teachers were provided by the government and followed the standard national curriculum. Some enrolled mostly children from Christian families; others were largely Muslim. We visited a cross-section of Kenyan schools: some were urban, others extremely rural; some were academically poor, others among the top-performing schools in the nation. Some catered to wealthy students, while others were in impoverished communities.

We received the permission of the Minister of Education to visit schools of our choosing. Ministry and local education office officials accompanied us to five of the twenty schools we visited. We went to the remainder of the schools on our own. Seventeen of the schools visited by Human Rights Watch were primary schools and three were secondary schools. Most of the two hundred children we interviewed were between the ages of ten and eighteen. All children were interviewed outside of the presence of teachers and other government officials, and some were interviewed outside of the school setting completely. Children were interviewed individually, and also in small groups, in English or with the use of our local translators. For the most part, the children's stories were quite consistent from region to region, and from school to school. Children interviewed individually and children interviewed in groups also gave us consistent information. To protect their identities, the names of most children cited in this report have been changed.

At every school we visited, we also interviewed teachers and headteachers or deputy headteachers. When possible, we conducted interviews with parents of schoolchildren and with local government officials (education officers, magistrates, prosecutors, and police). In addition to these field interviews, we spent several days in Nairobi, conducting background interviews with education specialists, representatives of local human rights and children's advocacy groups, teacher's union representatives, and officials at the Ministry of Education, including the Minister of Education.

II. RECOMMENDATIONS

To the Government of Kenya, generally:

- Amend the Education Act of 1968 and the Education (School Discipline) Regulations to abolish the use of corporal punishment in all Kenyan schools, public and private.
- The Attorney General should introduce the long-awaited redrafted Children's Bill to parliament for debate and ratification. The bill should abolish corporal punishment of children in all institutions, including regular schools and correctional schools.
- Ratify the African Charter on the Rights and Welfare of the Child, which Kenya has signed, and implement its provisions.
- Support programs that educate parents, teachers, and society at large about the harm of corporal punishment and the existence of effective alternatives.

To the Ministry of Education, generally:

- Clarify its position on the use of corporal punishment. The Ministry of Education should adopt and disseminate widely a policy prohibiting the use of corporal punishment in schools.
- Until new regulations are adopted, conduct awareness-raising campaigns regarding the existing regulations and the ministry's reported policy against the use of corporal punishment.
- Sponsor workshops to train teachers on methods of disciplining students that are not physically abusive. Provide additional instruction to headteachers and deputy headteachers regarding the harms of corporal punishment and the alternatives to corporal punishment.
- Until new regulations are adopted, educate parents and students about their rights under the existing regulations. Conduct special meetings at which these rights are explained to parents and pupils, and disseminate widely copies of the regulations.
- Establish an independent complaints board charged with investigating individual complaints and press and other reports of corporal punishment. Create an ombudsperson to facilitate the lodging of such claims by parents and children.
- Support the capacity of school guidance and counseling programs to learn about children's family situations, and to work with children's parents to resolve poor behavior or poor performance. Ensure that those conducting guidance and counseling programs for students receive professional training and oversight.

- Establish a counseling program for teachers, staffed by professionally-trained persons, which is independent of and separate from the local school. This service should provide guidance and support to teachers at risk of inflicting their personal frustrations upon their pupils.

To the Teachers' Service Commission:

- Investigate thoroughly every incident of corporal punishment reported in the Kenyan media and by parents and teachers. Publish the results of investigations, transcripts of disciplinary hearings, and statements of the penalties assessed.
- Take appropriate and immediate disciplinary action against accused teachers found to have violated the regulations, including counseling, probation, suspension, and termination. Hold headteachers accountable for teachers' actions in their schools.
- Require teachers to pledge that they will use only nonviolent means of disciplining students.
- Review teachers' records for incidents of corporal punishment before appointment, assignment, promotion, and transfer.

To Teachers' Training Colleges:

- Increase instruction of future teachers on classroom management techniques, including lessons on the harms of corporal punishment and the alternatives to corporal punishment. Make instruction on alternatives to physical means of discipline a mandatory and significant part of the curriculum.
- Develop in-session programs for experienced teachers to encourage them not to use physical punishments. Offer these workshops throughout the country. Appoint a faculty member to coordinate training and research efforts.

To Headteachers, Deputy Headteachers, and Teachers:

- Refrain from disciplining students corporally.
- Adopt classroom management techniques that do not rely on the use of physical punishment, such as positive reinforcement.
- Educate and support other teachers to refrain from using physical discipline.
- Do not prevent students who complain about corporal punishment from attending classes, and do not harass or threaten those students in other ways.
- Report cases of corporal punishment to the Ministry of Education and the Teachers' Service Commission. Headteachers should include incidents of corporal punishment in the Annual Confidential Report that they must submit for each teacher in their school.

To the Kenyan National Union of Teachers:

- Sponsor in-session workshops to train current teachers on non-physically abusive methods of disciplining students. Support the efforts of teachers' training colleges in developing alternatives to corporal punishment.
- Create support centers for teachers to provide counseling regarding professional and personal matters.

To the Kenyan Media:

- Investigate and report incidences of corporal punishment of students.
- Educate teachers, parents, and children about the harms of corporal punishment.
- Use its editorial voice to call for an end to corporal punishment in Kenyan schools.

To the United Nations:

- The U.N. Committee on the Rights of the Child should continue to inquire into corporal punishment in schools and to make its best efforts to encourage Kenya and other countries to abolish corporal punishment in all contexts.
- The U.N. Special Rapporteur on Torture should investigate corporal punishment of children in schools, to determine where school corporal punishment does constitute cruel, inhuman or degrading treatment.
- The U.N. Special Rapporteur on the Right to Education should investigate the use of corporal punishment in schools and its impact on children and on the right to education.

- U.N. agencies including UNICEF and UNESCO should fund and conduct workshops to train teachers in non-physically abusive methods of classroom management, should tie contributions to attendance and participation in these workshops, and should support the creation and distribution of materials to instruct teachers in these methods. These agencies should also sponsor school-based human rights programs which teach students about their human rights, including the right to be free from cruel, inhuman, or degrading treatment or punishment and the rights enshrined in the Convention on the Rights of the Child.

To the International Donor Community:

- Fund workshops to train Kenyan teachers in non-physically abusive methods of classroom management, tie contributions to attendance and participation in these workshops, and support the creation and distribution of materials to instruct teachers in these methods.
- Sponsor school-based human rights programs in Kenya which teach students about their human rights, including the right to be free from cruel, inhuman, or degrading treatment or punishment and the rights enshrined in the Convention on the Rights of the Child.
- Support programs that educate teachers, parents, and society at large about the harm of corporal punishment to children and the existence of effective alternatives.

III. BACKGROUND

Legal Background

Most corporal punishment in Kenyan schools violates both Kenyan law and international standards. Kenyan law permits limited school corporal punishment, but only in certain highly restricted circumstances. 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 generally, viewing it to be a form of cruel, inhuman or degrading treatment. Many nations around the world have either severely restricted corporal punishment or have banned it outright.

Kenyan Law

¹ According to the U.N. Convention on the Rights of the Child, a child is “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” U.N. Convention on the Rights of the Child, G.A. Res. 44/254, Human Rights Watch, art. 1. For the purpose of this report the term children refers to persons under 18 years of age. September 1999, Vol. 11, No. 6 (A)

Regulations promulgated in 1972 under the Kenyan Education Act of 1968 govern the administration of corporal punishment in schools.² The 1972 Education (School Discipline) Regulations state that corporal punishment may only be “inflicted in cases of continued or grave neglect of work, lying, bullying, gross insubordination, indecency, truancy or the like”;³ and that it may only be imposed by or in the presence of the school’s headteacher or principal.⁴ Further, it “may be inflicted only after a full inquiry, and not in the presence of other pupils;”⁵ records must be kept of all cases of corporal punishment;⁶ and only a cane “or smooth light switch” to the buttocks or a strap “not less than 1 ½ inches in breadth” to the palm of the hand may be used.⁷ The regulations stipulate further that punishments “must not mistreat or humiliate the student,” should “relate to the offense” and should be adapted “to fit the individual” child, and that teachers should “confer with parents and students where necessary.”⁸

Although the regulations permit the imposition of corporal punishment, there is some confusion in the Ministry of Education with regards to whether the ministry allows teachers to cane. Minister of Education Stephen Kalonzo Musyoka, M.P. and Permanent Secretary of Education Wilfred Kimalat told Human Rights Watch that the ministry discourages use of the cane, although the regulations allow it.⁹ However, then-Director of Education Elias Njoka reportedly issued a statement in 1996 banning corporal punishment in schools,¹⁰ stating at the time that “the practice of corporal punishment must end.”¹¹ Senior Deputy Director for Education Elaine Makuru told us that THE DIRECTOR OF EDUCATION’S REPORTED BAN ON CANING “WAS NOT WITHDRAWN, AND NEITHER DID THE LAW CHANGE. . . . WE NEED TO REEYAMINE THE EDUCATION ACT TO MAKE IT IN HARMONY WITH MODERN TIMES.”¹² Thus the regulations continue to allow the use of corporal punishment, despite the reported ban.

International Human Rights Law and Standards

Many international human rights bodies have taken a strong stand against corporal punishment in the schools on the grounds that it may rise to the level of torture or cruel, inhuman, or degrading treatment or punishment; it violates a child’s right to be free from violence; it debases the dignity and physical integrity of children; it interferes in the development of children’s physical and mental health; and it infringes upon a child’s right to education.

The U.N. Convention on the Rights of the Child

The U.N. Convention on the Rights of the Child (CRC) is the international human rights instrument that most authoritatively prohibits the practice of corporal punishment in schools. The convention has been ratified by almost

² The Education (School Discipline) Regulations, *The Laws of Kenya*, chapter 21.

³ *Ibid.*, art. 11.

⁴ *Ibid.*, art. 12(1).

⁵ *Ibid.*, art. 12(2).

⁶ *Ibid.*, art. 14.

⁷ *Ibid.*, art. 13. See also George S. Eshiwani, *Education in Kenya Since Independence* (Nairobi : East African Educational Publishers, 1993), pp. 107-08. It should be noted that the 1972 regulations are closely modeled on earlier colonial period rules on school discipline, dating from 1932.

⁸ Kenya Ministry of Education, *A Manual for Heads of Secondary Schools* (Nairobi: Kenya Ministry of Education, 1987), pp. 31-32.

⁹ Human Rights Watch interview with Stephen Kalonzo Musyoka, M.P., Minister of Education, and Wilfred Kimalat, Permanent Secretary for Education, Nairobi, May 5, 1999.

¹⁰ Human Rights Watch interview with Elaine Makuru, senior deputy director of education, Nairobi, May, 15, 1999. See also “Girl Dies After School Caning,” *Daily Telegraph (London)*, September 24, 1996 (“A second Kenyan schoolgirl has died after caning, despite a ban on corporal punishment in schools imposed after a death in July.”); “No Cane Do,” *Daily Sport (London)*, August 4, 1996 (“Caning has been banned in schools after a 16-year-old girl died after being given 15 strokes for laughing at a teacher.”). Human Rights Watch requested a copy of the 1996 statement from the Ministry of Education, and was informed that a written record may not exist.

¹¹ “No More Caning in Schools—Njoka,” *Daily Nation (Nairobi)*, August 29, 1996.

¹² Human Rights Watch interview with Elaine Makuru, Senior Deputy Director of Education, Nairobi, May 15, 1999.

every nation in the world including Kenya (the sole exceptions are the United States and Somalia).¹³ The Committee on the Rights of the Child is responsible for making authoritative interpretations of the rights contained within the convention, and for reviewing the compliance of states parties. The committee has stated categorically that all forms of corporal punishment are incompatible with the protections given to children under the convention.

Multiple articles in the convention are relevant to the issue of corporal punishment.

- Article 19(1) requires states parties to take “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents(s), legal guardian(s) or any other person who has the care of the child.”
- Article 28(2) states that “[s]tate parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.”

¹³ Kenya ratified the CRC on July 30, 1990. *Multilateral Treaties Deposited with the Secretary General*, Human Rights Watch, https://www.hrw.org/docs/Treaty/final/ts2/newfiles/part_booviv14booviv_11.html. September 1999, Vol.11, No. 6 (A)

- Article 37 states that children have a right to protection from torture and other cruel, inhuman or degrading treatment or punishment.¹⁴
- Article 28 enshrines children's right to receive a primary education,¹⁵ and article 29 sets forth to what purpose the education of the child shall be directed.¹⁶

The Committee on the Rights of the Child has criticized governments for permitting corporal punishment in schools (both public and private),¹⁷ and the committee and its members have stated repeatedly that corporal punishment violates the fundamental principles of the Convention on the Rights of the Child. In its official report of its seventh session in November 1994, the committee stated that “[i]n the framework of its mandate, the committee has paid particular attention to the child's right to physical integrity. In the same spirit, it has stressed that *corporal punishment of children is incompatible with the Convention* and has often proposed the revision of existing legislation, as well as the development of awareness and education campaigns, to prevent . . . the physical punishment of children” (italics added).¹⁸

¹⁴ “States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” CRC, art. 37. Marta Santos Pais, a former rapporteur for and member of the Committee on the Rights of the Child, has stated that “‘torture may cover a wide degree of situations,’ even those which cause ‘unperceivable mental suffering’ or those involving ‘a disciplinary measure which may be degrading or inhuman.’” Susan H. Bitensky, “Spare the Rod, Embrace Our Humanity: Toward a New Legal Regime Prohibiting Corporal Punishment of Children,” *University of Michigan Journal of Legal Reform*, vol. 31 (Winter 1998): 353, 396-97. Santos Pais participated in the committee's formulation of its policy toward corporal punishment. While not authoritative, her views give insight into the committee's position in a manner similar to legislative history.

¹⁵ “States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; . . . (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.” CRC, art. 28(1).

¹⁶ Article 29 provides that education of the child shall be directed to: “(a) the development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) the development of respect for the natural environment.” CRC, art. 29.

¹⁷ The committee's reporting guidelines require countries to explain how they are combating corporal punishment. The committee's *Guidelines for Periodic Reports*, adopted in October 1996, asks states “whether [their] legislation (criminal and/or family law) includes a prohibition of all forms of physical and mental violence, *including corporal punishment*, deliberate humiliation, injury, abuse, neglect or exploitation, inter alia within the family, in foster and other forms of care, and *in public or private institutions, such as penal institutions and schools*.” U.N. Committee on the Rights of the Child, U.N. Doc. CRC/C/58, at 88 (italics added). The reporting requirements reaffirm the fact that the committee is concerned about corporal punishment and that the committee expects countries to minimize or abolish the practice.

¹⁸ U.N. Committee on the Rights of the Child, Report on the Seventh Session, U.N. Doc. CRC/C/34, Annex IV, at 63 (italics added).

Committee members have argued that the difficulties in drawing sharp lines between acceptable and unacceptable forms of corporal punishment require a total ban on the practice, since even mild forms of corporal punishment often in practice becomes severely abusive. In a concluding statement to the general discussion on “Children's Rights in the Family” in October 1994, committee member Thomas Hammarberg of Sweden noted that “[c]ertain States have tried to distinguish between the correction of children and excessive violence. In reality the dividing line between the two is artificial. It is very easy to pass from one stage to another.”¹⁹ On another occasion, Hammarberg observed that “difficulties [arise] whenever a ‘reasonable’ level of corporal punishment [is] permitted under a State's internal law. To draw an analogy, no one would argue that a ‘reasonable’ level of wife-beating should be permitted. . . . The notion of a permissible level of corporal punishment [is] thus best avoided.”²⁰ Marta Santos Pais of Portugal, the committee's rapporteur, agreed that “it was in any case well-nigh impossible to assess objectively what constituted moderate corporal punishment.”²¹ For these reasons, the committee and its members have determined that all forms of corporal punishment are incompatible with the Convention on the Rights of the Child.

The use of corporal punishment also intersects with other rights protected under the Convention. For example, corporal punishment is used to discipline children for speaking local languages in the classroom. Corporal punishment may also discourage children from attending classes at all. Thus, the use of corporal punishment interferes with the rights of the child to use his or her own language, to receive an education aimed at developing respect for his or her own cultural identity and language, and to receive a free primary education.²²

The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment places limits on forms of discipline and punishment, and these limitations apply to corporal punishment as much as they do to any other form of correction.²³ The convention prohibits torture, which is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person,”²⁴ and “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture. . . .”²⁵

¹⁹ CRC/C/SR.176, October 10, 1994, para. 46.

²⁰ CRC/C/SR.205, para. 63.

²¹ Ibid., para. 72.

²² CRC, arts. 28-30.

²³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

²⁴ “For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” Ibid., art. 1(1).

The Committee against Torture has indicated that corporal punishment is incompatible with the provisions of the Convention against Torture. For example, in the discussion of human rights practices in Tanzania in its 1993 Annual Report, the committee stated that “[t]he view was expressed [by individual committee members] that it was degrading treatment to apply corporal punishment in schools and other institutions. Children should be treated with respect for their integrity and teachers should be able to maintain authority without resorting to such primitive measures.”²⁶ The committee stated that one of its principal areas of concern was the “the continued use of corporal punishment, the application of which the Committee considers to be degrading and inhuman treatment.”²⁷ On other occasions, the Committee has criticized the use of judicial and administrative corporal punishment.²⁸

The U.N. special rapporteur on torture has taken the position that judicial corporal punishment is inconsistent with the Convention against Torture and other international human rights norms. In his 1997 report to the Human Rights Commission, special rapporteur Nigel Rodley wrote:

[C]orporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²⁹

The Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights

The principles in the Convention on the Rights of the Child and the Convention against Torture that relate to corporal punishment are based on more general human rights principles articulated in the Universal Declaration of Human Rights (UDHR) and the International Covenant of Civil and Political Rights (ICCPR). The Universal Declaration states that “[e]veryone has the right to life, liberty and security of person,”³⁰ and “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”³¹ The ICCPR (ratified by Kenya in 1976) also states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”³² These are only a few of the relevant provisions and principles which help to inform a discussion of the legality of corporal punishment in the schools.

The Human Rights Committee (the U.N. body charged with monitoring states parties' compliance with the ICCPR) has held that corporal punishment is a form of cruel, inhuman, or degrading treatment. In 1982, the committee explained that “the scope of the protection (of article 7) [prohibiting torture or cruel, inhuman or degrading treatment or punishment] goes beyond torture as normally understood. . . . In the view of the Committee the prohibition must extend to corporal punishment, *including excessive chastisement as an educational or disciplinary measure.*”³³ In its 1992

²⁶ Report of the Committee against Torture, U.N. GAOR, 48th Sess., Supp. No. 40, para. 173, U.N. Doc. A/48/40 (1993).

²⁷ *Ibid.*, para. 185.

²⁸ See, for example, Report of the Committee against Torture, U.N. GAOR, 50th Sess., Supp. No. 44, para. 169, U.N. Doc. A/50/44 (1995) (“The Committee expresses concern about the continued application of the death penalty [in Jordan], as well as of corporal punishment, which could in itself constitute a violation of the terms of the Convention.”); Report of the Committee against Torture, U.N. GAOR, 52nd Sess., Supp. No. 44, para. 250, U.N. Doc. A/52/44 (1997) (“The Committee recommends the prompt abolition of corporal punishment [in Namibia] insofar as it is legally still possible under the Prisons Act of 1959 and the Criminal Procedure Act of 1977.”)

²⁹ Report of the Special Rapporteur, Nigel S. Rodley, U.N. Doc. E/CN.4/1997/7 (submitted pursuant to Commission on Human Rights resolution 1995/37 B).

³⁰ Universal Declaration of Human Rights, G.A. Res. 217A, (III), U.N. GAOR, 3rd Sess., pt. 1, U.N. Doc. A/810, art. 3 (1948).

³¹ *Ibid.*, art. 5.

³² International Covenant on Civil and Political Rights, opened for signature December 19, 1966, art. 7, 999 U.N.T.S. 171 (entered into force March 23, 1967).

³³ General Comments by the U.N. Human Rights Committee, UN Doc. A/37/40, annex V., paras. 1-3 (1982) (emphasis

General Comment on article 7, the committee reaffirmed its view that the prohibition “*must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.* It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.”³⁴

Other International Human Rights Instruments

Numerous other international human rights instruments contain provisions which either prohibit corporal punishment outright or which severely constrain the practice. These fall largely within the context the treatment of children within the context of correctional settings, including detention centers, prisons, and reform schools:

- The U.N. Standard Minimum Rules for the Administration of Juvenile Justice (known as the Beijing Rules) state categorically that “[j]uveniles shall not be subject to corporal punishment.”³⁵
- The U.N. Rules for the Protection of Juveniles Deprived of their Liberty state that “[a]ll disciplinary measures constituting cruel, inhumane or degrading treatment shall be strictly prohibited, including corporal punishment”³⁶
- The U.N. Guidelines for the Prevention of Juvenile Delinquency (known as the Riyadh Guidelines) state that educational systems should avoid “harsh disciplinary measures, particularly corporal punishment”³⁷ and that “[n]o child or young person should be subjected to harsh or degrading correction or punishment measures . . . in schools”³⁸

International law and the international community recognize the need to protect children in correctional institutional settings from the harmful effects of corporal punishment.³⁹ From a human rights perspective, it follows logically that children in regular schools should enjoy the same protection.

Regional Restraints on Corporal Punishment

African Human Rights Instruments

The African Charter on Human and Peoples' Rights contains a number of provisions which speak broadly to the issues raised by corporal punishment in schools. The charter prohibits torture and cruel, inhuman and degrading treatment,⁴⁰ affirms the dignity⁴¹ and integrity⁴² of the person, supports claims for personal security⁴³ and physical and mental health,⁴⁴ prohibits discrimination, and affirms equal protection of the laws.⁴⁵ Most importantly, states parties affirm that “every individual shall have the right to education”⁴⁶ and “[t]he State shall . . . ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.”⁴⁷

³⁵ G.A. Res. 40/33, November 29, 1985, rule 17.3.

³⁶ G.A. Res. 45/113, April 2, 1991, rule 67.

³⁷ G.A. Res. 45/112, March 28, 1991, para. 21(h).

³⁸ *Ibid.*, para. 54.

³⁹ It should be noted that, in contravention of international juvenile justice standards, Kenyan law (article 27(9) of the Penal Code, article 27 of the Children and Young Persons Act, article 33 of the Borstal Institutions Act, and rule 53 of the Borstal Institutions Rules) continues to authorize corporal punishment of juvenile offenders, by judicial authorities and within correctional institutions for children.

⁴⁰ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, art. 5.

⁴¹ *Ibid.*

⁴² *Ibid.*, art. 4.

⁴³ *Ibid.*, art. 6.

⁴⁴ *Ibid.*, art. 16.

⁴⁵ *Ibid.*, arts. 2 and 3.

⁴⁶ *Ibid.*, art. 17.

The African Charter on the Rights and Welfare of the Child, though it has not yet entered into force, provides similar protections, specially tailored for children. The charter prohibits harmful social and cultural practices affecting the welfare, dignity, normal growth, and development of the child. The article on education specifically mentions the need for disciplinary measures to accord with the inherent dignity of the child.⁴⁸

Regional African bodies have not yet applied these principles specifically to cases regarding corporal punishment. Nonetheless, the protections in the African Charter track those in the international and other regional human rights instruments.

The European Convention for the Protection of Human Rights and Fundamental Freedoms

The Convention for the Protection of Human Rights and Fundamental Freedoms also contains a provision relevant to the issue of corporal punishment. It states that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.”⁴⁹

The European Court of Human Rights and the European Commission of Human Rights have examined the issue of corporal punishment in great detail. The court and commission have determined, in particular cases, that judicial authorities, parents, or teachers have inflicted inappropriate amounts of violence against children as punishment. In the *Tyrer Case*,⁵⁰ the court held that three strokes of the birch against the bare bottom of a fifteen-year-old from local police (executing a juvenile court sentence) was degrading treatment in violation of the European Convention.⁵¹ In the *Case of A vs. the United Kingdom*,⁵² the court held that a stepfather who beat his child with a garden cane with considerable force on more than one occasion had violated article 3, which prohibits torture and inhuman or degrading treatment or punishment. In *App. No. 10592/83 v. United Kingdom*, the commission stated that an actionable article 8 claim arose when school administrators struck one student on each palm and another student on the buttocks with a leather strap.⁵³

The European Court has analyzed corporal punishment on a case-by-case basis. In *Tyrer*, the court stated that it must examine the particular facts of the case in order to determine whether the punishment violates the protections of the convention. Given this interpretive posture, the court has been reluctant to hold that the convention bans all forms of corporal punishment, per se.

⁴⁸ The charter was adopted by the Twenty-sixth Ordinary Session of the Assembly of Heads of State and Government at the Organization of African Unity, Addis Ababa, July 1990.

⁴⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos. 3, 5, and 8 which entered into force on September 21, 1970, art. 3.

⁵⁰ *Tyrer v. United Kingdom*, 26 Eur. Ct. H.R. (Ser. A.) (1978).

⁵¹ *Ibid.*, para. 30.

⁵² *A vs. United Kingdom*, App. No. 25599/94, decided September 23, 1998.

⁵³ *A vs. United Kingdom*, 9 Eur. H.R. Rep. 277 (1987) (Eur. Comm. H.R.) 1999, Vol.11, No. 6 (A)

Thus, in the *Case of Costello-Roberts*,⁵⁴ the European Court held by five votes to four that three whacks of a slipper by a headmaster against a seven-year-old's bottom did not rise to the requisite level of severity to constitute a violation of human rights norms.⁵⁵ The four dissenters, however, stated that "the official and formalised nature of the punishment meted out, without adequate consent of the mother, was degrading to the applicant and violated Article 3."⁵⁶

Although it has hesitated to declare all forms of corporal punishment violations of the European Convention, the court has noted with approval the general trend toward the abolition of corporal punishment.⁵⁷ Even in *Costello-Roberts*, the court took pains to note that it was not endorsing corporal punishment, stating explicitly that it did not "[wish] to be taken to approve in any way the retention of corporal punishment as part of the disciplinary regime of a school."⁵⁸

The American Convention on Human Rights

Like most other international instruments, the American Convention on Human Rights does not mention school corporal punishment explicitly but does contain provisions regulating the administration of discipline or punishment. Article 5 states that "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment" and that "[e]very person has the right to have his physical, mental, and moral integrity respected."⁵⁹ Article 11 states that "[e]veryone has the right to have . . . his dignity respected."⁶⁰

Other National Laws and Regulations

Many nations are now taking steps to prohibit or limit corporal punishment. Some of these restrictions take the form of statutes or national court decisions banning corporal punishment in schools or in the home. Others amount to a rescinding of common law immunity for parents or educators who administer corporal punishment, such that corporal punishment is now considered similar to other forms of assault and battery. At present, every European state⁶¹ (including the states of Eastern Europe), all but three industrialized nations and numerous other countries around the world prohibit corporal punishment in schools.⁶² Nine nations (Sweden, Finland, Denmark, Norway, Austria, Cyprus, Italy, Croatia, and Latvia) now prohibit corporal punishment in *all* contexts, in school or elsewhere.⁶³

⁵⁴ *Costello-Roberts v. United Kingdom*, 1993 Y.B. Eur. Conv. on H.R. (Eur. Ct. of H.R.).

⁵⁵ *Ibid.*

⁵⁶ *Ibid.* Similarly, in the case of *Campbell & Cosans v. United Kingdom*, 1982 Y.B. Eur. Conv. on H.R. 3, 4 (Eur. Ct. of H.R.), the court held that the mere threat of a whipping does not rise to the level of torture or inhumane treatment. (Since the case involved the mere threat of a whipping rather than an actual whipping, the court did not rule on the issue of whether whipping would be degrading or humiliating treatment.)

⁵⁷ In *Tyrer*, the court stated that "recent developments and commonly accepted standards in the penal policy of member states of the Council of Europe influence the Court's interpretation . . ." The court looked to these developments and not to the general cultural conditions on the Isle of Man when deciding that the caning violated the European Convention. The court held that it was irrelevant that a majority of the population on the Isle supported corporal punishment or that corporal punishment may deter criminal activity. *Tyrer*, para. 31.

⁵⁸ *Costello-Roberts*, para. 36.

⁵⁹ American Convention on Human Rights, November 22, 1969, 1144 U.N.T.S. 123 (entered into force July 18, 1978) (hereinafter American Convention), art. 5.

⁶⁰ *Ibid.*, art. 11.

⁶¹ Most European nations have dealt with the issue of corporal punishment in schools by enacting statutes banning the practice. An exception is Italy, which has dealt with the issue judicially; in the *Cambria* case, decided in 1996, the Supreme Court of Cassation (Italy's highest court) found that corporal punishment violated the Italian constitution and was also contrary to international law. *Cambria*, Cass., sez. VI, 18 marzo 1996 (Supreme Court of Cassation, 6th Penal Section, March 18, 1996), Foro It. 1996, 407 (Italy).

⁶² The three countries are the United States, Canada, and one state in Australia. National Coalition to Abolish Corporal Punishment in Schools, Facts About Corporal Punishment, http://www.stophitting.com/facts_about_corporal_punishment.htm; Peter Newell, EPOCH-Worldwide, *Corporal Punishment of Children: Breaching Children's Fundamental Rights to Human Dignity and Equality Under the Law*, draft of paper for Commission on Human Rights, 1999. In *Ingraham v. Wright*, 430 U.S. 651 (1977), the U.S. Supreme Court held that corporal punishment in the schools does not constitute cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. The court stated, "The openness of the public school and its supervision by the community afford significant safeguards against the kinds of abuses from which the Eighth Amendment protects the prisoner."

In virtually every community where corporal punishment is permitted in the schools, these safeguards are reinforced by the legal constraints of the common law. Public school teachers and administrators are privileged at common law to inflict only such corporal punishment as is reasonably necessary for the proper education and discipline of the child; any punishment going beyond the privilege may result in both civil and criminal liability." 430 U.S. at 671.

Several African states—Burkina Faso, Ethiopia, Namibia, and South Africa—prohibit corporal punishment in schools. Namibia, South Africa, and Zimbabwe have also in recent years prohibited corporal punishment for juvenile offenders, a previously accepted practice.⁶⁴ Bans on corporal punishment in Namibia, South Africa, and Zimbabwe have all resulted from court decisions declaring the practice unconstitutional. A 1991 Namibian decision, *In re Corporal Punishment By Organs of State*, outlawed corporal punishment by all government actors, in both the criminal justice and public school contexts.⁶⁵ The court based its decision on the prohibition against cruel, inhuman or degrading treatment in the Namibian Constitution.

In 1995, relying in part on the Namibian case, South Africa's Constitutional Court declared corporal punishment for juvenile offenders unconstitutional. In *South Africa v. Williams*, the Constitutional Court determined that corporal punishment constituted “cruel, inhuman, and degrading” treatment, prohibited by Section 11(2) of the South African Constitution.⁶⁶ The court went on to say, however, that “it is [the Court's] view that at this time, so close to the dawn of the 21st century, juvenile whipping is cruel, it is inhuman and it is degrading.”

Kenyan law, in contrast, continues to authorize corporal punishment of juvenile offenders, by judicial authorities and within correctional institutions for children, as it does for students.⁶⁷

Economic and Political Background

Over twenty years of government repression, mismanagement, and corruption have led to severe economic woes and a looming political crisis in Kenya. The situation is further compounded by the fact that Kenya has one of the highest population growth rates in the world, with over half its population under the age of fifteen, and has been badly affected by the onset of the AIDS epidemic. All these factors have created immense pressures and challenges for the Kenyan educational system.

⁶⁴ Ibid.

⁶⁵ *In re Corporal Punishment By Organs of State*, 1991 (3) SA 76 (NmSC).

⁶⁶ *South Africa v. Williams*, 1995 (7) BCLR 861 (CC). In making this determination, the court concluded that in order to find corporal punishment to be unconstitutional, it would be sufficient to determine that corporal punishment was *either* cruel, inhuman, or degrading—thus separating the individual words from the concept as a whole.

⁶⁷ See note 39. For a detailed account on the use of corporal punishment within the Kenyan juvenile justice system, see Human Rights Watch, *Juvenile Injustice: Police Abuse and Detention of Street Children in Kenya* (New York: Human Rights Watch, 1999).

Since 1992, when President Daniel arap Moi was forced to allow a multiparty system, the government has sought to undermine any reform that would end the absolute executive power wielded by the president and his ruling party.⁶⁸ Education has remained a low priority. The president has responded to calls for reform with a combination of recalcitrance and brutality, all the while making promises to bring about change. Multiparty elections have been characterized by violence. Constant delays have characterized the constitutional reform process, and state-sponsored violence against ethnic groups perceived to support the opposition has resulted in the displacement of an estimated 400,000 people since 1992.⁶⁹ The political opposition and the international community have been calling for reforms in the political system, in particular fair elections and a new constitution. At the same time, both the International Monetary Fund (IMF) and the World Bank have suspended loan agreements as a means of pushing the government to fight corruption and to institute economic reform. These loan withdrawals, coupled with the political insecurity, have caused capital flight and a high rate of inflation. Under the current constitutional system, this is President Moi's final term in office. The next elections are expected by January 2003 and the ruling party is now almost wholly preoccupied with succession concerns. The political turmoil has diminished the prospects of any concerted government commitment to meaningful reform in the educational system in the foreseeable future.

Since the 1980s, Kenya has faced an almost continual economic decline.⁷⁰ Kenya is classified by the World Bank as a severely-indebted, low-income country.⁷¹ This economic situation places immense pressures on the school system, as total government expenditures on education have declined.⁷² Teachers nationwide are organized into the Kenya National Union of Teachers (KNUT). In recent years, the union has been in sharp conflict with the government over poor salaries and proposed retrenchment plans. Teacher salaries are among the lowest for any Kenyan civil servants, and the social prestige of teachers has also declined in recent years, according to many Human Rights Watch interviewees. In 1997, monthly salaries for teachers ranged from KSh1,880 to KSh19,115 (approximately U.S.\$32-325]. Before the 1997 election, in order to garner their vote, President Moi promised to raise teacher salaries to KSh5,640 to KSh42,000 per month (approximately U.S.\$96-714), but reneged on the promise shortly after his reelection, offering as justification the deepening economic crisis. In July and October of 1998, teachers conducted

⁶⁸ Human Rights Watch, *World Report 1999* (New York: Human Rights Watch, December 1998), pp.46-49; Human Rights Watch, *World Report 1998* (New York: Human Rights Watch, December 1997), pp. 40-45; Human Rights Watch/Africa, *Failing the Internally Displaced: The UNDP Displaced Persons Program in Kenya* (New York: Human Rights Watch, June 1997); Human Rights Watch/Africa, *Divide and Rule: State Sponsored Ethnic Violence in Kenya* (New York: Human Rights Watch, November 1993); Human Rights Watch/Africa, "Multipartyism Betrayed in Kenya: Continuing Rural Violence and Restrictions on Freedom of Speech and Assembly," *A Human Rights Watch Short Report*, vol. 6, no. 5, July 1994; Human Rights Watch, *Playing the "Communal Card": Communal Violence and Human Rights* (New York: Human Rights Watch, April 1995), pp. 97-112; and Human Rights Watch/Africa, "Old Habits Die Hard: Rights Abuses Follow Renewed Foreign Aid Commitments," *A Human Rights Watch Short Report*, vol. 7, no. 6, July 1995.

⁶⁹ The main issues on the constitutional reform agenda involve the rights and privileges of the ruling party, the presidential term, and a new bill of rights. The most immediate source of gridlock is the dispute over the composition of the Constitutional Reform Commission. Earlier in the constitutional reform process, Moi had indicated that church and civic groups would have a role in the reforms. Since then, Moi has mandated that parliament alone should reform the constitution. Riots have ensued over this contentious issue, and the fate of the reform process remains uncertain.

⁷⁰ Most commentators attribute the slump to a combination of political insecurity and mismanagement, drought, and the suspension of international aid pending political and economic reforms. Department of Development Co-ordination, *National Poverty Eradication Plan 1999-2015* (Nairobi: Department of Development Co-ordination, February 1999), p. 23.

⁷¹ In 1992, the Kenyan government instituted a series of structural reforms which increased the gross domestic product growth rate from an all-time low of 0.2 percent in 1993 to 4.8 percent in 1996, increasing economic growth slightly for a short time. However, growth has declined again since 1996. These structural reforms include price decontrol, removal of import licensing and foreign exchange controls, investment reforms, public enterprise guidelines, and financial reform. *Ibid.*, p. 4.

⁷² According to the Government's National Poverty Eradication Plan, "Government faces a difficult set of policy and planning choices both at the meso level of sectoral resource allocation and at the micro level of school programme performances. Total government expenditures continue to decline as the share of government expenditure in GDP continues to be reduced. So, there will be downward pressure on resources allocated to education." *Ibid.*, p. 39.

nation-wide strikes to protest the government's failure to implement the promised salary increase.⁷³ Following the strike, the government again promised to implement the salary increases, but in March of this year, KNUT threatened to strike again if salaries were not raised soon.⁷⁴ At the time of writing, it was unclear when salary raises would occur.

⁷³ Jeff Otieno and J. Sekoh-Ochieng, "KNUT Calls Off Teachers Strike," *Daily Nation (Nairobi)*, October 21, 1998.

⁷⁴ Human Rights Watch, "Kenya: KNUT Followed Strike Threat," *Daily Nation (Nairobi)*, March 29, 1999. September 1999, Vol.11, No. 6 (A)

Poor working conditions have a dramatic effect on the climate in Kenyan schools. Even for committed teachers, the ability to retain control over the classroom is diminished in the face of large classes with sometimes more than fifty students. Classrooms are often overcrowded, without even basic supplies. Low salaries further reduce teacher morale, and also lead some teachers to put more energy into supplemental income-producing schemes than into teaching. To make ends meet, many of the lowest-paid teachers are forced to find housing in slum areas;⁷⁵ many other teachers run small businesses or subsistence farms on the side, or offer extra tutoring outside of regular school hours to students who can pay. A common complaint from parents and students, was that teachers often compel students to participate in such "voluntary" extra tutoring classes, administering corporal punishment to students who failed to pay for the "extra help."⁷⁶ Similarly, some Human Rights Watch interviewees told of teachers who punished students by forcing them to work to maintain the teachers' personal gardens and farms, effectively using coerced children as unpaid farm or household labor.⁷⁷ An even more common complaint concerned teacher absenteeism: according to many interviewees, teachers often abandon their classes for hours at a time, in order to pursue more lucrative business opportunities elsewhere. On Human Rights Watch visits to some schools, we found quite a few classrooms in which children had been left on their own, with no supervising teacher, for lengthy periods of time.

At the household level, poverty is endemic in Kenya. According to Government statistics, the incidence of poverty in Kenya is 47 percent in rural areas and 29 percent in urban areas.⁷⁸ Extreme household poverty affects the educational system on many fronts: household incomes are insufficient to pay school fees, children face pressures to join the labor force, poverty leads to poor health, and pupils suffer from a generally poor quality of life. Many children in Kenya do not have enough to eat, may travel a long distance to school, or work inside or outside the home outside of school hours. These external factors affect their abilities to concentrate and the amount of time and energy they can devote to school.⁷⁹

The economic crisis in Kenya is compounded by one of the highest population growth rates in the world and the onset of the AIDS epidemic. The number of persons living in Kenya with AIDS is expected to reach 1.7 million by the year 2000.⁸⁰ According to Crispin Wilson, UNICEF's country representative to Kenya, "[i]t is undeniable that the entire education system of this country is under threat of HIV/AIDS."⁸¹ The problems include the health of pupils, teacher deaths, and orphaned children. Further, the high population growth has produced a high dependency ratio, as almost 50 percent of the population is less than fifteen years old. This demographic structure places high demands on social services such as primary education and depresses per capita gross domestic product.

Education represents both one of the most prominent challenges and one of the most hopeful prospects for future growth. Yet, although recognition of the importance of education plays a prominent role in the government's stated policy plan—Kenya's National Development Plan and its National Poverty Eradication Plan—the government has not committed the necessary political will nor allocated sufficient resources to create a national educational system with optimal working conditions for teachers and students alike.⁸² While resource constraints are a problem, the deficit of

⁷⁵ "Teachers Demand 200 Percent Pay Increase," *Daily Telegraph*, July 16, 1998.

⁷⁶ Human Rights Watch interview with Deborah D., age fifteen, at a rural primary school in Coast Province, May 11, 1999.

⁷⁷ HUMAN RIGHTS WATCH INTERVIEW WITH DAVID T., JACOB W., AND BERNICE G., ALL AGE FIFTEEN, AT AN IMPOVERISHED RURAL SCHOOL IN THE RIFT VALLEY PROVINCE, MAY 11, 1999. HUMAN RIGHTS WATCH INTERVIEW WITH ANDREW K., AGE SEVENTEEN, NYANTIA PROVINCE, MAY 10, 1999.

⁷⁸ In Kenya, the poverty line is set at 980 Kenyan shillings per capita per month in rural areas and 1,490 Kenyan shillings per month in urban areas. This poverty line is well below the international standard. Department of Development Co-ordination, *National Poverty Eradication Plan*, p. 3.

⁷⁹ Human Rights Watch interview with Deputy Headteacher Ben Oгатemo, Ng'ate Primary School, Central Province, May 6, 1999.

⁸⁰ Department of Development Co-ordination, *National Poverty Eradication Plan*, p. 51.

⁸¹ "Aids Poses Threat to School Life in Kenya," Xinhua News Agency, December 8, 1998.

⁸² The government notes, "Since independence, the expansion of education facilities has been the single most important challenge on the human resources development front." Ministry for Planning and National Development, *The Eighth National Development Plan 1997-2001*, p. 133.

trained personnel, the lack of basic learning materials, low teacher morale and salaries, and overcrowded classrooms are symptomatic of the lack of a genuine commitment on the part of the government to make education a real priority.

The Kenyan Educational System

The Structure of the Kenyan School System

The Kenyan educational system is an "8+4+4 system," which consists of an eight-year primary course (Standards One through Eight) followed by a four-year secondary course (Forms One through Four) and a four-year university course. At the end of eight years of primary education, pupils sit for the Kenya Certificate for Primary Education exam. Those who successfully pass the exam and who can afford to pay school fees advance to secondary education.

Many Kenyans have little access to basic education, and a high dropout rate has also plagued the educational system in recent years.⁸³ In the late 1980's the Kenyan education system had achieved a number of notable successes, particularly in primary school enrollment, which rose to 95 percent in 1989,⁸⁴ and in the education of girls, whose enrollment increased from 34 percent of primary school students in 1963 to 49 percent by 1988.⁸⁵ However, in the course of the economic downturn of the 1990s educational advances have undergone a series of setbacks.

Primary school enrollment relative to the school-age population has dropped substantially. Between 1989 to 1996, the primary school enrollment rate dropped from 95 percent to 77.5 percent.⁸⁶ Enrollment is also highly variable by region; in 1995, the Central Province had an 89.7 percent primary school enrollment rate, while the North Eastern Province enrolled less than 20 percent.⁸⁷ In addition, the school system suffers from a high attrition rate. Only 43 percent of pupils who entered Standard One in 1988 reached Standard Eight by 1995. The completion rate is lower for girls than for boys; the primary school completion rate for girls is only about 35 percent, compared to 55 percent for boys.⁸⁸

Many Kenyan classrooms have high student to teacher ratios. Ministry of Education officials reported to Human Rights Watch that the target ratio for primary schools is thirty to one, and for secondary schools sixteen to one.⁸⁹ During visits by Human Rights Watch to schools, we found classes with as many as seventy-five students to one teacher, with an average of approximately forty to fifty pupils per instructor. High student to teacher ratios can make it difficult for instructors to address the educational and personal needs of each pupil, and can make it challenging for teachers to maintain control of their classrooms. With such high ratios, students may not receive the attention and encouragement that they need to advance through the educational system.

Poverty is also a major cause of the low enrollment and high dropout rates. Children drop out to assist parents in earning a living or because they are unable to finance their educations. Although under the 8+4+4 system primary education is theoretically free and open to all (although not compulsory), in reality a large portion of the financial burden of education falls on parents and communities. The Kenyan government allocates 7 percent of its gross domestic product to education, a sum that is higher than most other sub-Saharan countries; however, these expenditures only cover 69 percent of the cost of primary education.⁹⁰ The government pays for educational personnel (teachers' salaries), curriculum development, and the management of examinations. The remainder of the financial burden falls on parents and communities, in what is popularly called the "cost-sharing" plan.

⁸³ UNICEF, *Situation Analysis of Children and Women in Kenya: 1998* (Nairobi, UNICEF: 1998), pp. 69-97; Department of Development Co-ordination, *National Poverty Eradication Plan*, pp. 39-45; *National Development Plan*, pp. 133-140.

⁸⁴ Wainainah Kiganya, "Enrolment on a Downward Trend," *Daily Nation (Nairobi)*, December 14, 1998.

⁸⁵ Sorobebe Nyachio Bogonko, *A History of Modern Education in Kenya* (1992), pp. 112-13.

⁸⁶ UNICEF, *Situation Analysis*, p. 74; Kiganya, "Enrolment on a Downward Trend."

⁸⁷ *Ibid.*

⁸⁸ Njonjo Kuhuria, "Unicef Suggests Way To Improve Children's Access to Schooling," *Daily Nation (Nairobi)*, June 13, 1998.

⁸⁹ Human Rights Watch interview with Permanent Secretary for Education Wilfred Kimalat, Nairobi, May 5, 1999.

⁹⁰ Human Rights Watch raises Kenya's Education Budget," *Xinhua News Agency*, Apr. 1 September 1999, Vol.11, No. 6 (A)

Parents and communities must pay for uniforms, textbooks, building fees (repair, maintenance, and construction of school buildings), and activities fees. These costs place education beyond the means of many poor families, while many others struggle to keep their children in school. Children may face harassment for wearing torn and dirty uniforms, or children are inadequately prepared because they lack text books and perform poorly. They may be sent home from school and told to return with their parents and the overdue payment; some children simply do not return, fearing further humiliation in school. According to government statistics, 4.2 million primary schoolchildren lack school books and 400,000 secondary school pupils are unable to pay their school fees.⁹¹

In 1988, President Moi abolished the “building fees” that are traditionally imposed by local School Committees and Parents Associations.⁹² Similarly, in 1997, Moi proclaimed that he would abolish the “activity fees” that are levied by local District Education Boards for sports and the arts.⁹³ Nonetheless, these financial obligations persist for most families, as government funding has not in fact been adequate to cover the costs of schools’ physical plants, textbooks, or other equipment. In practice, many schools continue to charge mandatory fees, although since the official abolition of school fees by the government, many schools refer to the costs as “levies” or “assessments” rather than “fees.” Needless to say, this change in name makes little difference to struggling families. According to one official of the Kenya National Union of Teachers (KNUT), “forced activity fees demanded by school headmasters [is] a major contributor to pupils going without education, especially in rural areas.”⁹⁴

Also, despite the official abolition of “school fees” on the primary education level, local communities are still expected to engage in “cost-sharing” to help keep up with the country’s population growth. According to the Ministry of Education, this means that parents are expected to provide in-kind services by helping to “construct physical facilities while the Government supplements the community efforts by providing teachers, teaching/learning materials and supervisory and advisory services.”⁹⁵ In addition to the typical day schools, the government also maintains a number of primary boarding schools which charge varying fees to students.⁹⁶

Secondary education in Kenya is neither free nor universal, but it too has expanded greatly since independence. Primary school students in Standard Eight take the Kenya Certificate of Primary Education exam, and on the basis of their scores they may be admitted to Form One; currently, the secondary schools can accommodate less than half the students taking the examination.⁹⁷ Despite the fact that secondary schools are not free, secondary schools’ enrollment has grown tremendously since independence. Like primary school enrollment, however, secondary enrollment has dropped recently, from 30.7 percent in 1989 to 26.5 percent in 1997.⁹⁸

⁹¹ *Eighth National Development Plan*, p. 136.

⁹² Bogonko, *A History of Modern Education in Kenya*, p. 117.

⁹³ Joe Ombuor and Paul Mutua, “Moi Abolishes Levy on Pupils,” *Daily Nation (Nairobi)*, January 23, 1997.

⁹⁴ “Fees Ban Order Receives Praise,” *Daily Nation (Nairobi)*, January 25, 1997.

⁹⁵ Kenya Ministry of Education, *Education in Kenya: Information Handbook* (Nairobi: Kenya Ministry of Education, 1987), p. 26.

⁹⁶ *Ibid.*, p. 29.

⁹⁷ “Education Ministry Freezes School Registration,” *Daily Nation (Nairobi)*, January 12, 1999.

⁹⁸ Human Rights Watch, “Education on a Downward Trend.”

There are four principal types of secondary schools. The best, and most competitive, schools are government funded or "maintained" schools, for which the government provides teachers and staff. Many of the old missionary schools have been transformed into maintained schools. "Assisted" schools, which account for the largest number of secondary schools, receive some government funding but are also partly funded through *harambee*, or "come together," in the sense of collective self-help.⁹⁹ The government provides teachers but the local communities are responsible for administrative and other costs. Harambee schools receive no government assistance and are organized by local communities; the schools are generally poor and their students do not perform well. The government, however, is steadily converting harambee schools into assisted schools by providing them with teachers. Finally, "private" schools are typically established for profit, and operate largely outside the governmental school system; while government officials set their basic curriculum and inspect them periodically, they are free to hire teachers who have not gone through government training programs.¹⁰⁰

Structure of the Ministry of Education

The Ministry of Education has the primary responsibility for and authority over all of Kenya's public primary and secondary schools. Civil servants in the ministry are appointed by the Public Service Commission, an executive body.¹⁰¹ The minister for education, Stephen Kalonzo Musyoka, M.P., is the country's highest education official. Immediately under the minister are several assistant ministers, and under them is a single permanent secretary for education, currently Wilfred Kimalat. The permanent secretary is the ministry's accounting officer, and is also responsible for formulating and implementing government education policies.¹⁰²

Below these top-level officials the ministry is divided into two major sections: the Directorate of Education, which has responsibility for (among other things) educational policy, school assessment, and school governance; and the Department of Administration, which handles administrative and financial matters.¹⁰³ The Directorate of Education is under the direct supervision of the director of education, Sammy Kyungu, who may issue directives for the school system.

Regional oversight lies with eight provincial education officers under the assistant director of education for field services, under the Directorate of Education. The provinces are further divided into thirty-nine districts, headed by senior education officers or district education officers. In turn, districts are subdivided into 195 educational divisions, mirroring the administrative structure of the province, and provinces are simultaneously organized into a total of 530 educational zones, consisting of approximately thirty schools each.¹⁰⁴

Each district has a District Education Board, which includes in its membership the district education officer, the provincial education officer, representatives from the Kenya National Union of Teachers (KNUT), and other individuals selected under the authority of the minister of education; the District Education Board is chaired by a district commissioner of education.¹⁰⁵ There are also seven cities that govern their own educational matters through appointed municipal or city council education committees.¹⁰⁶

Headteachers of schools, like teachers, are appointed by the Teachers Service Commission, and are typically experienced teachers.¹⁰⁷ School governance, however, is complex, involving officers from the Ministry of Education as

⁹⁹ The word *harambee* literally means "come together" in Kiswahili. In Kenya, the word is also widely used to mean a fund-raising event where donations are solicited.

¹⁰⁰ Kenya Ministry of Education, *Education in Kenya*, pp. 51-53.

¹⁰¹ Eshiwani, *Education in Kenya Since Independence*, p. 9.

¹⁰² *Ibid.*, p. 108.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*, p. 120-21.

¹⁰⁵ *Ibid.*, p. 101.

¹⁰⁶ *Ibid.*, p. 102.

¹⁰⁷ *Ibid.*, p. 124.

well as local bodies. Each school has a School Committee which is comprised of selected parents, the headteacher, a representative of the District Education Board, and sponsors of school, with the exception of certain special schools that operate outside the regional hierarchy and are managed by their own Boards of Governors. President Moi however, has also ordered the creation of local Parents Associations, which play a significant role in school governance in some areas.

The Parents Associations include all parents in the area, as well as a number of school officials. Parents Associations organize the collection of funds for the school and approve proposals put to them by the School Committee. Parents Associations also elect the School Committee's officers. The School Committee acts as the executive committee of the Parents Association, administering the school and submitting proposals for the school's development. The School Committee also has oversight over discipline in the school.¹⁰⁸

The Training of Teachers

The requirements for primary and secondary teachers have changed over the years. Although the government now officially requires that all public school teachers undergo teacher training, a large number of primary and secondary school teachers have historically not had formal training, and have varying educational backgrounds.¹⁰⁹ According to the Ministry of Education, government policy is to "phase out all the untrained teachers from the system as quickly as possible."¹¹⁰ This policy has been achieving results. The numbers of trained primary school teachers have increased dramatically over the past decade; by 1996, only 7 percent of primary school teachers remained untrained.¹¹¹ Untrained teachers comprised 15 percent of the secondary school teachers in 1996.¹¹²

Under the current 8+4+4 system, individuals wishing to be certified to teach primary school enroll in one of the government's primary teachers' training colleges where they undergo a two-year-long course of instruction and training. To enroll, aspiring teachers must have completed primary school themselves. Different levels of primary teacher certification are awarded to those who have completed some amount of secondary education.¹¹³ The government has at times also conducted "in-service" training courses for formally untrained teachers, which is largely a correspondence course. In both the teaching colleges and the in-service program, teachers are expected to study all subjects of primary education.¹¹⁴

At present, the primary teachers' colleges provide little instruction to aspiring teachers in classroom management techniques. Candidates spend only between two to three periods—approximately four hours—during the entire two year program learning about disciplinary methods. During that time, instructors review with aspiring teachers the Ministry of Education's policy to minimize the use of corporal punishment.¹¹⁵ However, at least some of the training materials used by the teachers' colleges affirm excessive disciplinary techniques.¹¹⁶ Instructors also note that new

¹⁰⁸ Ibid., pp. 99-102; Human Rights Watch interview with Deputy Headteacher JAMES KITONYI, KANGUNDO D.E.B. SCHOOL, MACHAKOS DISTRICT, MAY 7, 1999.

¹⁰⁹ Eshiwani, *Education in Kenya Since Independence*, pp. 65, 72.

¹¹⁰ Kenya Ministry of Education, *Education in Kenya*, p. 72.

¹¹¹ Kiganya, "Enrolment on a Downward Trend."

¹¹² Ibid.

¹¹³ Kenya Ministry of Education, *Education in Kenya*, p. 66.

¹¹⁴ Ibid., pp. 68, 70.

¹¹⁵ Human Rights Watch interview with Pancras Otwani, director of professional studies, Tambach Primary Teachers' College, Tambach, May 12, 1999; Human Rights Watch interview with Sophia M. Ngaywa, principal, High Ridge Teacher" College, Nairobi, May 4, 1999.

¹¹⁶ For example, when instructors at Tambach Primary Teachers College have questions about disciplinary techniques, they consult the 1984 edition of the U.K. textbook *Principles and Practice and Education* by J.S. Farrant, first published in 1964. In Chapter 11, entitled "Organisational Skills," the textbook asks aspiring teachers to discuss the appropriateness of the following methods of punishments: formally caning a child, physical labor, informally smacking a child's fingers, publicly drawing attention to the child's misbehavior so that he feels ashamed, and making a child take up an uncomfortable position for a period of time.

teachers may be influenced by more seasoned teachers who favor the use of the cane and other physical punishments for students.¹¹⁷

There are no instructions in the text that any of these forms of punishment are inappropriate.

¹¹⁷ Human Rights Watch interview with Pancras Otwani, May 12, 1999; Human Rights Watch interview with Sophia M. Ngama, Human Rights Watch, 1999.

Secondary teacher education is more specialized, consisting of a three-year diploma course in humanities, science, or technical and business education.¹¹⁸ Applicants must have completed secondary school, with a few additional requirements. Prospective teachers focus on two major teaching subjects, as well as general courses in education and development. Following the second year, student teaching begins, and full teacher certification is only given after a full term of teaching in the secondary schools.¹¹⁹

The Teachers Service Commission

Teachers provided by the government are recruited, assigned, paid, promoted, disciplined, and terminated by the Teachers Service Commission.¹²⁰ The secretary of the commission is responsible for the management of the commission and the execution of its policies and decisions.¹²¹ On the ground, the provincial education officers and the district or municipal education officers are responsible for the discipline and interdiction of teachers.¹²²

The Teachers Service Commission has a Code of Regulations for Teachers that sets forth rules that apply to every teacher in the Kenyan school system. According to this code, any teacher who fails to comply with any part of the regulations is liable for disciplinary action.¹²³ Any agent of the commission can serve a notice of interdiction on a teacher. The commission then investigates and makes a determination in the case. The teacher has recourse to an appeals tribunal.¹²⁴

Under the regulations, the commission has the power to suspend teachers for not being “of good moral character;” for being convicted of certain criminal offenses; for “infamous conduct in any professional respect;” for engaging in activities that are prejudicial to peace, good order, and good government; for physical or mental defects that affect suitability for teaching; and for “desertion of duty.”¹²⁵

The commission also provides legal defense for teachers in criminal and civil proceedings for acts or omissions arising out of their teaching duties. The commission defends teachers who it deems have acted in good faith, when the defense is “in the public interest.” The commission defends these individuals, subject to approval by the Attorney General.¹²⁶

IV. CORPORAL PUNISHMENT IN KENYAN SCHOOLS

*We say, 'Why do you beat us? Why do you not forgive us?'*¹²⁷

— Elizabeth B., twelve

Caning

¹¹⁸ Kenya Ministry of Education, *Education in Kenya*, p. 72.

¹¹⁹ *Ibid.*, pp. 73-74.

¹²⁰ Teachers Service Commission, *Code of Regulations for Teachers* (Nairobi: Teachers Service Commission: 1986); Eshiwani, *Education in Kenya Since Independence*, p. 9.

¹²¹ Teachers Service Commission, *Code of Regulations*, Sec. 3(4)(a).

¹²² *Ibid.*, Sec. 4(1)(b).

¹²³ *Ibid.*, Sec. 5(4).

¹²⁴ *Ibid.*, Sec. 70(6).

¹²⁵ *Ibid.*, Sec. 70(2)(a)-(f).

¹²⁶ *Ibid.*, Secs. 67 and 68.

¹²⁷ Human Rights Watch interview with Elizabeth B., age twelve, an elite primary school in Nairobi, Kenya, May 6, 1999.

Caning is the only form of corporal punishment permitted by the Kenyan Ministry of Education's regulations, and visits to Kenyan schools by Human Rights Watch suggest that caning is by far the most common kind of corporal punishment. As discussed in the earlier background sections of this report, caning is strictly regulated by Kenyan law. Corporal punishment is reserved for the most serious disciplinary infractions; no more than six strokes may be given, and only by or in the presence of the headteacher; a full inquiry must have been conducted before corporal punishment is administered; a written record must be kept; and children can only be hit on the buttocks or the palm, and not in the presence of other children.¹²⁸

As noted, despite the regulations permitting corporal punishment, the Ministry of Education has sent mixed messages as to whether teachers should cane at all. Although the 1972 regulations allow corporal punishment under particular circumstances, the reported Director's statement of 1996 was touted as prohibiting the practice as a matter of policy.

Nonetheless, our research indicates that caning is regularly imposed, and it is often administered in a manner inconsistent with the regulations. In most schools, virtually every classroom teacher has a cane, and uses it. In many schools, teachers routinely carry canes with them, or have them easily accessible in their classrooms; canes lean against the walls in many headteachers' offices, and adorn teachers' desks in some classrooms.

Although the regulations only permit caning in the presence of or by the headteacher, students at nearly every school visited by Human Rights Watch reported that in practice, every classroom teacher had the independent authority to cane students.¹²⁹ Some teachers chose not to cane, however, and some teachers caned more than others.

Most of the headteachers we interviewed appeared to be familiar with the Education (School Discipline) Regulations on corporal punishment, and when pressed as to why caning was administered by classroom teachers independently, many simply shrugged, and told us that the regulations were impractical. As one headteacher told us, "Discipline is supposed to be done by the headmaster but he can't because there are so many students, so he delegates his authority to junior teachers who do it."¹³⁰ Similarly, the Mombasa municipal education officer told us that "we have in our Education Act procedures for how a child is to be punished, but in most cases, because the procedure is a bit long, most of the heads don't follow it."¹³¹

Frequency of Caning

The reported frequency of caning varied considerably from school to school. At some schools, caning was relatively rare, and reserved for serious infractions; students might witness a caning once a week, or even as rarely as once a month. At most other schools, however, schoolchildren reported that students in their class might be caned every day, sometimes more than once per day.

- Lee F., a twelve-year-old student enrolled at an urban primary school in Coast Province, told us that caning was rampant at the primary school he had attended as a small child: "We were being punished all the time. . . . we were caned every day, by all the teachers, as a lesson, so that we would always show respect."¹³²

¹²⁸ The Education (School Discipline) Regulations, *The Laws of Kenya*, chapter 211.

¹²⁹ In one case, students reported that the student prefects also had the authority to cane students as well as administering other punishments. However, this authority was removed from the prefects after other students rioted in protest against what they saw as overly brutal punishments. Human Rights Watch interview with Richard O., age seventeen, at an urban secondary school in Central Province, May 7, 1999.

¹³⁰ Human Rights Watch interview with Deputy Headteacher John M. Mburu, Mirera Primary School, Naivasha District, May 6, 1999. Since caning is part of the daily routine in many classrooms, and is used to punish children for even the most trivial of infractions, it is easy to understand why a headteacher might feel that having sole responsibility for caning might disrupt his day too much.

¹³¹ Human Rights Watch interview with Municipal Education Officer, Mombasa, May 10, 1999.

¹³² Human Rights Watch interview with Lee F., Coast Province, May 10, 1999. September 1999, Vol.11, No. 6 (A)

- Sarah J., a twelve-year-old girl studying at an impoverished rural primary school in Central Province, also reported a very high rate of caning at her school: "If you are a bad child, you can be caned even the whole day. If you are a good child, you may be caned only twice, or thrice, or even not at all."¹³³
- Franz P., a sixteen-year-old who was formerly a student at a Rift Valley primary school, told us, "When you do a mistake every day, you are being beaten every day."¹³⁴

Reasons for Caning

Teachers caned students for a wide range of infractions, some serious, some extraordinarily minor. As reasons for punishment, students, teachers and headteachers frequently cited tardiness, making noise or talking in class, truancy or absenteeism, bullying, fighting, stealing, disobedience or rudeness, and leaving the classroom or school when the teacher is away. Less frequent grounds for punishment include selling or using drugs, smoking cigarettes, jumping on tables, not paying attention or falling asleep in class, and using profanity. A Standard Two boy told us that all the Standard One through Three students had once been caned for "spoiling the toilet."¹³⁵

Failure to complete homework and not being prepared for class were other common reasons for punishment. Other behavior that was sometimes cause for punishment included "wearing an improper uniform,"¹³⁶ having an "unkempt appearance"¹³⁷ or being "dirty,"¹³⁸ and "failure to clean the classroom in the morning."¹³⁹

Missing extra "tuition classes," classes that are given after school and for which students pay extra fees, was also cited as a cause for caning. Such classes are theoretically voluntary, but students reported that they were punished for failing to enroll in the extra classes, as well as for failure to attend, once enrolled.¹⁴⁰

At many schools, children also told us that they are caned for speaking in their native language. Kenyan public schools teach primarily in English (the official language), and at times in Kiswahili (the national language), but most Kenyans speak a local tribal language, such as Kikuyu or Kalenjin, as their first language.¹⁴¹

¹³³ Human Rights Watch interview with Sarah J., Central Province, May 7, 1999.

¹³⁴ Human Rights Watch interview with Franz P., Rift Valley Province, May 6, 1999.

¹³⁵ Human Rights Watch interview with Paul L., age nine, at a primary school in Rift Valley Province, May 6, 1999.

¹³⁶ Human Rights Watch interview with Owen F., age sixteen, at an urban primary school in Coast Province, May 10, 1999;

Human Rights Watch interview with Billy S., age seventeen, at a secondary school located in Nyanza Province, May 10, 1999.

¹³⁷ Human Rights Watch interview with Deputy Headteacher Dan Odour, Kisumu Day Secondary School, Kisumu, May 10, 1999.

¹³⁸ Human Rights Watch interview with Elizabeth B.

¹³⁹ Human Rights Watch interview with upper primary teachers Joyce Muli and Joyce Nekesa, Pandipieri Primary School, Kisumu, May 10, 1999.

¹⁴⁰ Human Rights Watch interview with Deborah D.

¹⁴¹ The Kiswahili, a coastal people, speak Swahili as their native language, but elsewhere in Kenya, Kiswahili is learned as a second or third language. The use of corporal punishment or any other coercive method against children who are found speaking their native language is inconsistent with provisions of the U.N. Convention on the Rights of the Child, that state that children of linguistic minorities or persons of indigenous origin shall not be denied the right to use his or her own language (article 30), and that one of the purposes of education shall be to further the development of respect for the child's own cultural identity and

Caning, sometimes accompanied by hitting, slapping, and other forms of violence, was widely used to punish children for academic problems such as poor exam performance. Margaret M., an eleven-year-old student at an elite primary school in Coast Province, told us, "Sometimes when you answer a question wrong you are beaten . . ." ¹⁴² "In the mathematics class, there's a lot of caning," said Ethel A., a fifteen-year-old pupil at another primary school in Coast Province. ¹⁴³ Elizabeth B. told us "[If] you are given a test and you fall below the average, you may be beaten. ¹⁴⁴ Carol T., a fifteen-year-old enrolled in yet another primary school in Coast Province, said, "When it is time of failing the exams, every teacher of the subject canes you." ¹⁴⁵

CHILDREN ARE BEATEN WHETHER THEIR BEHAVIOR IS UNDER THEIR CONTROL OR NOT. ¹⁴⁶ FOR EXAMPLE, STUDENTS WHO WORK AFTER SCHOOL MAY NOT HAVE TIME TO PREPARE FOR THE NEXT DAY'S CLASSES. THEIR HOMES MAY NOT HAVE ELECTRICITY TO ALLOW THEM TO STUDY IN THE EVENING, AND THE CHILDREN MAY LACK THE BOOKS AND SUPPLIES NECESSARY TO COMPLETE THEIR ASSIGNMENTS. THEY AND THEIR PARENTS MAY NOT HAVE ENOUGH MONEY TO PAY FOR A PROPER UNIFORM OR TO KEEP A CLEAN APPEARANCE AT ALL TIMES. FURTHERMORE, EXHAUSTION MAY OVERCOME THEM DURING SCHOOL HOURS.

WE ALSO HEARD SCATTERED REPORTS OF STUDENTS CANED FOR NOT BEING ABLE TO AFFORD SCHOOL FEES. Andrew K., a seventeen-year old in Nyanza Province, dropped out of school because he could no longer afford school fees; he told us that in his primary school, children who couldn't pay were caned:

If you couldn't pay fees, you would be caned six times, and sent home to bring the money from your parents. You would go home, and there is no money, and then you would go back to school because you still want to learn, and you would be caned again. I kept going back to school and home again. The headmaster would come to class with a list of students who had not paid, and would cane them all, then move on to the next class with the list. You would lie down on the floor, and he would hit you. Hit you on the back, between the shoulders and the buttocks. It would shock the kids... they were fearing the cane. ¹⁴⁷

Andrew K. was the only student we interviewed who said he personally experienced caning as a result of his parents not being able to pay his school fees.

The perception shared by most children was that caning was used almost indiscriminately:

- Elizabeth B. from Coast Province said: "Some of the teachers are beating us very hard here, and they are beating even the very small girls—it's very cruel. You can be beaten for anything: if you are feeling sleepy in class, or you are late, or dirty, or you have not done your homework, or you are given a test and you fall below the average, you may be beaten." ¹⁴⁸
- Richard O., a seventeen-year-old attending an urban secondary school in Central Province, recalled his primary school days: "At primary school, it is very, very bad. It was really bad. The punishment is the cane and nothing else. Every small thing and you are caned and nothing else." ¹⁴⁹

¹⁴² Human Rights Watch interview with Margaret M., Coast Province, May 10, 1999.

¹⁴³ Human Rights Watch interview with Ethel A., Coast Province, May 11, 1999. A commonly held view among Kenyan children is that math teachers cane more frequently than others, linking strokes to exam and homework performance and incorrect answers given to questions in class. Primary student Alex J. told us that "THE MATH TEACHER GIVES YOU TOO MUCH WORK AND WITHOUT GIVING YOU INSTRUCTION ON THE METHOD OF HOW TO DO THE PROBLEMS. THEN WHEN YOU CAN'T DO IT, YOU'RE CANED. THAT IS BAD TEACHING. EVERYDAY, SOMEONE IN MY CLASS IS CANED." HUMAN RIGHTS WATCH INTERVIEW WITH ALEX J., AGE SEVENTEEN, NYANZA PROVINCE, MAY 10, 1999.

¹⁴⁴ Human Rights Watch interview with Elizabeth B.

¹⁴⁵ Human Rights Watch interview with Carol T.

¹⁴⁶ As examples of the former, making noise or talking in class, disobedience or rudeness, leaving the classroom or school when the teacher is away, selling or using drugs, smoking cigarettes, and jumping on tables. And of the latter, a child's problems may arise from poverty or discord in the family.

¹⁴⁷ Human Rights Watch interview with Andrew K.

¹⁴⁸ Human Rights Watch interview with Elizabeth B.

¹⁴⁹ Human Rights Watch interview with Richard O.

Number of Strokes

The severity of punishments also varied greatly, and many children viewed the number of strokes as somewhat arbitrary: while most children agreed that the more serious the infraction, the higher the number of strokes, the most important factor seemed to be the “harshness” of the particular teacher. A gentle teacher might cane rarely, and give only a few light strokes even for relatively serious offenses, while a harsh teacher might routinely administer six or more heavy strokes.

A particularly harsh teacher, some children told us, might even hit harder or administer more strokes to a child who cried when hit. In a way, expressing pain is viewed as an act of further disobedience, an expression of a child's unwillingness to silently accept punishment. Susan S., fifteen, a student at a poor rural primary school in Central Province, told us, “If you are beaten very hard, sometimes you cry, and then they are angry and beat you harder still.”¹⁵⁰ James E., a boy at a suburban Central Province primary school, reported, “There are some that when you cry, they hit you more. There are some that try to make you hurt.”¹⁵¹ Phillip T., his classmate, agreed: “You may cry. They hit you again if you move or if you cry.”¹⁵² Mary F., a ten-year-old attending an elite primary school in Coast Province, told us, “sometimes if the teacher has punished you, you may start crying, and she adds more strokes.”¹⁵³

Students at several schools told us that when they are punished for poor exam results and that the number of strokes they are given depends on their performance on the exam. When the students receive their scores, Janet K., a twelve-year-old student at an elite primary school in Coast Province, told us, “you are told to subtract that number from one hundred,” and then divide by another number to determine the number of strokes, although “ten is the most.”¹⁵⁴ At a rural primary school in Coast Province, fifteen-year-old Rachel D. said that they were caned regularly after taking practice Kenya Certificate of Primary Education exams periodically; they were given six strokes for scores below 300, four strokes for scoring 300-350, two strokes for scoring 350-450, and escaped punishment if they scored above 450.¹⁵⁵

At times, students are given twenty or more strokes with the cane. Fifteen-year-old Deborah D. told us, “One day students were sweeping outside and the duty teacher came and found one of them had no broom.” When the student resisted punishment, other teachers joined the teacher on duty, and all caned the broomless child at once, “some eight, some seven, some ten strokes.”¹⁵⁶ Similarly, students at times receive double punishments: in some cases, children reported being caned by both their teacher and the headteacher.¹⁵⁷ “If it is very serious, you may be caned first by the teacher, then sent to the head to be caned another time,” a twelve-year-old schoolgirl at an impoverished rural primary school in Central Province told us.¹⁵⁸

¹⁵⁰ Human Rights Watch interview with Susan S., Central Province, May 6, 1999.

¹⁵¹ Human Right Watch interview with James E., Central Province, May 5, 1999.

¹⁵² Human Right Watch interview with Phillip T., Central Province, May 5, 1999.

¹⁵³ Human Rights Watch interview with Mary F., Coast Province, May 10, 1999.

¹⁵⁴ Human Rights Watch interview with Janet K., Coast Province, May 10, 1999.

¹⁵⁵ Human Rights Watch interview with Rachel D., Coast Province, May 11, 1999. Students at some schools also reported that they were caned after all regularly administered exams. Theodore A. told us, “We're punished each term, after the end of the examination results.” (Human Rights Watch interview with Theodore A., age sixteen, a rural primary school in Coast Province, May 11, 1999). Several students at a rural primary school in Coast Province explained that a practice exam for the Kenya Certificate of Primary Education was given every few months, and that each time the exam was given, about 80 percent of the students in each class were caned for what their teachers considered inadequate performance. Human Rights Watch interview with Deborah D.; Human Rights Watch interview with Victor C., age thirteen, in Coast Province, May 11, 1999.

¹⁵⁶ Human Rights Watch interview with Deborah D.

¹⁵⁷ Human Rights Watch interview with Gertrude T., Coast Province, May 11, 1999; Human Rights Watch interview with Deborah D.

¹⁵⁸ Human Rights Watch interview with Sarah J., Central Province, May 7, 1999. September 1999, Vol.11, No. 6 (A)

While we were able to see no particular patterns in the incidents of severe caning, many of the cases of high numbers of strokes seemed to occur during incidents of collective punishment, when several students were being punished at once by several teachers. Collective punishments are common, according to the children we interviewed: "For example, if there is noise in the class, then sometimes the whole class is caned—so you will be caned even if you have done nothing wrong," twelve-year-old Lee F. from Coast Province explained.¹⁵⁹

- Elizabeth B. told us, "The worst time I was punished was when some girls wrote bad things in the latrine. I don't even know who. Then the teachers visited the latrines and saw the writings. Then, all the girls from Standards Six to Eight were called outside the staff room, and we were all seriously punished. All the teachers at once were beating us. I think I received about twenty strokes, and it was very painful, for they were beating us not only on the hands, but also on the toes, the legs, the head. . ."¹⁶⁰
- Emily T., sixteen, a student at a primary school in a semi-urban area of Coast Province, explained that "the punishment for noise making is that you are taken to the staff room and all the teachers have canes, and they all give you strokes at the same time,"¹⁶¹ This was corroborated by three of her classmates,¹⁶² one of whom added that in such cases children might be caned by "four or five teachers, each giving you three to five strokes."¹⁶³

Students from several other schools also reported that multiple teachers might cane them at once.

Public Caning

For the most part, children are caned in front of their classmates, although in a few cases children reported that they were typically taken to the staff room to be caned.¹⁶⁴ At some schools, students were caned in front of the entire school, during school assemblies or parades.¹⁶⁵ As Janet K. from Coast Province told us, "if you did a very serious mistake. . . you will be beaten by the headmistress before the whole school."¹⁶⁶ An eighteen-year-old student at an urban secondary school in Central Province said to us, "In Kenya, [corporal punishment] has . . . become conventional law or something. You can find students hit ten, twenty, or thirty times, in the classroom, which means you are very humiliated . . . The humiliation is the worst. In some cases, they use iodine on the cane so that you do not get an infection if the cane breaks the skin."¹⁶⁷

Size of the Cane

¹⁵⁹ Human Rights Watch interview with Lee F. He added, "Caning the whole class is not fair—I would punish only the guilty, if I were the teacher."

¹⁶⁰ Human Rights Watch interview with Elizabeth B.

¹⁶¹ Human Rights Watch interview with Emily T., Coast Province, May 13, 1999.

¹⁶² Human Rights Watch interview with Erik E., Coast Province, May 13, 1999; Human Rights Watch interview with Thomas A., Coast Province, May 13, 1999; Human Rights Watch interview with Anita W., age fourteen, Coast Province, May 13, 1999.

¹⁶³ Human Rights Watch interview with Thomas A.

¹⁶⁴ Human Rights Watch interview with Bertrand S., age sixteen, Coast Province, May 11, 1999; Human Rights Watch interview with Sarah J.; Human Rights Watch interview with Ben G., age fifteen, Coast Province, May 10, 1999.

¹⁶⁵ Human Rights Watch interview with Benson B., Gilbert G., and Timothy K., all age fifteen, Rift Valley Province, May 12, 1999 and Catherine J., age fifteen, at a rural primary school in Coast Province, May 11, 1999.

¹⁶⁶ Human Rights Watch interview with Janet K.

¹⁶⁷ Human Rights Watch interview with Dale L., Central Province, May 7, 1999. September 1999, Vol.11, No. 6 (A)

The size of the cane used in corporal punishment varies significantly.¹⁶⁸ In most cases, children indicated that the canes used were about two to three feet long, and about one half to three quarters of an inch thick. Other descriptions of canes included "a CANE MADE OF WOOD THAT DOESN'T BREAK, SOMETIMES A GUAVA TREE,"¹⁶⁹ "a blackboard ruler" used "until it gets broken,"¹⁷⁰ and a "bamboo stick" that "may have little thorns in it."¹⁷¹ Three students at a secondary school indicated that the cane used there was quite large, describing it as "a broomstick, maybe one inch thick,"¹⁷² "about 1.5 meters long,"¹⁷³ and "four feet long, made of wood."¹⁷⁴

Parts of the Body Hit

The regulations governing corporal punishment also state that children may only be hit on the buttocks, if a cane is used, or on the palm, if a strap is used. In practice, we found that boys were mostly caned on the backside, and girls were mostly caned on the palm or back of the hand. Nonetheless, several teachers and headteachers openly acknowledged that they hit children on parts of the body, as well, and children at schools throughout Kenya reported that at times they are hit on the back, the calf muscles, the soles of the feet, the toes, the shoulders, the front and back of the thighs, the knees, and even on the face and head.

Amos P., fifteen, a pupil at an urban primary school in Coast Province, told us that "they cane just anywhere."¹⁷⁵ Sixteen-year-old Travis B., who attends a rural primary school in Coast Province, told us that students are hit "on the body, every part."¹⁷⁶ Janet K. reported that "sometimes we are given strokes on the hand, sometimes on the buttocks, or on the back, or on the legs... and also the knees."¹⁷⁷ Twelve-year-old Lee F. from Coast Province said "if they are very angry they will beat you just anywhere, on the head and on the back"¹⁷⁸

Other Forms of Corporal Punishment

Although caning is the only form of corporal punishment in Kenya permitted under the Education (School Discipline) Regulations, many children told Human Rights Watch that at times they are slapped, pinched, hit, whipped or kicked by their teachers. Teachers and headteachers also acknowledged that such "unofficial" punishments are used at times.

After caning, slapping was the most commonly reported form of school corporal punishment. Children recalled being slapped on the face, the head, the back, and on "every part" of the body.¹⁷⁹ Slapping was considered by some to be less severe than caning: "sometimes also they slap in the face, but that is a less serious punishment."¹⁸⁰

¹⁶⁸ Article 13 of the Education (School Discipline) Regulations state that "[c]orporal punishment shall be inflicted on the buttocks with a cane or smooth light switch, or on the palm of the hand with a strap not less than 1 ½ inches in breadth."

¹⁶⁹ HUMAN RIGHTS WATCH INTERVIEW WITH ANDREW K.

¹⁷⁰ Human Rights Watch interview with Mary F.

¹⁷¹ Human Rights Watch interview with Lee F.

¹⁷² Human Rights Watch interview with Richard O.

¹⁷³ Human Rights Watch interview with Daniel T., age seventeen, Central Province, May 7, 1999.

¹⁷⁴ Human Rights Watch interview with Richard O.

¹⁷⁵ Human Rights Watch interview with Amos P., Coast Province, May 10, 1999.

¹⁷⁶ Human Rights Watch interview with Travis B., Coast Province, May 11, 1999.

¹⁷⁷ Human Rights Watch interview with Janet K.

¹⁷⁸ Human Rights Watch interview with Lee F.

¹⁷⁹ Human Rights Watch interview with Travis B.

¹⁸⁰ Human Rights Watch interview with Anita W.

Many students also reported that teachers pinched them,¹⁸¹ and one at primary school in Rift Valley Province explained that they were pinched on the cheeks.¹⁸² Fifteen-year-old Carol T. from Coast Province reported being elbowed in the back by her teachers,¹⁸³ and in several cases children said that the teachers “boxed” and “hit” in addition to slapping.¹⁸⁴ One teacher told us that she sometimes punished students by “snatching,” which she described as grabbing the students.¹⁸⁵

Whipping is also not infrequent as a form of corporal punishment. A deputy headteacher at Mirera Primary school in Naivasha told us that “even this morning I had to punish eighty students” by whipping them.¹⁸⁶ He showed a Human Rights Watch researcher the whip, which was made of heavy rubber, cut from a car tire. The whip was about three feet long and three inches wide, and he demonstrated its use by slamming it down on his desk. At an urban secondary school in Central Province, a whip adorned the headteacher’s desk, and several students told us that the headteacher both whipped and caned to punish students.¹⁸⁷ In Nyanza Province, Harold D., eighteen, reported being whipped with a garden hose,¹⁸⁸ and in Coast Province, Maryanne P., fifteen, told us that she had been whipped with a length of rope.¹⁸⁹

Failure to Conduct Inquiries and Keep Records

The Ministry of Education’s regulations stipulate that caning can only be administered after a full inquiry, but a common complaint from children was that teachers caned them without even waiting for an explanation of the perceived misbehavior. Similarly, the Ministry of Education’s regulations require each school to keep a record of every incident of corporal punishment. We were able to review the punishment log book at only a few schools, and found that a few punishments were actually recorded. For the most part, interviews with children made it clear that caning was far more frequent than the log books showed.

At most schools we visited, however, we were unable to inspect the “punishment book”; the book was “unavailable” at the time of our visit. At Kayoi Primary School (Keiyo) and at Kilalani Primary School (Machako), the deputy headteachers told us that the book was locked away and that only the absent headteacher had the key,¹⁹⁰ at Golini Primary School (Kwale), the headteacher told us that the book was “locked in the cupboard” and that the lock was broken (in an office with no apparent locking cabinets);¹⁹¹ and at Pandipieri Primary (Kisumu) and Kangundo District Education Board School (Machakos), the headteachers told us that their absent deputies or disciplinarians had the book.¹⁹²

¹⁸¹ Human Rights Watch interview with Kevin K., age fifteen, at an urban primary school in Coast Province, May 10, 1999; Human Rights Watch interview with Owen F.; Human Rights Watch interview with Muneer A., age eleven, at an urban primary school in Coast Province, May 10, 1999; Human Rights Watch interview with Susan S.; Human Rights Watch interview with Julia R., age twelve, at an urban primary school in Coast Province, May 10, 1999.

¹⁸² Human Rights Watch interview with Simon W., age thirteen, Rift Valley Province, May 6, 1999.

¹⁸³ Human Rights Watch interview with Carol T., Coast Province, May 11, 1999.

¹⁸⁴ Human Rights Watch interview with Richard O.; Human Rights Watch interview with Sarah J.

¹⁸⁵ Human Rights Watch interview with Standard One Teacher Mary Macharia, Munyu Primary School, Naivasha District, May 6, 1999.

¹⁸⁶ Human Rights Watch interview with Deputy Headteacher John M. Mburu, Mirera Primary School, Naivasha District, May 6, 1999.

¹⁸⁷ Human Rights Watch interview with Jason A., age eighteen, Central Province, May 7, 1999; Human Rights Watch interview with Richard O.; Human Rights Watch interview with Jerome C., age eighteen, Central Province, May 7, 1999.

¹⁸⁸ Human Rights Watch interview with Harold D., Nyanza Province, May 10, 1999.

¹⁸⁹ Human Rights Watch interview with Maryann P., Coast Province, May 11, 1999.

¹⁹⁰ Human Rights Watch interview with Deputy Headteacher Philip L. Chetilde, Kayoi Primary School, Keiyo District, May 12, 1999; Human Rights Watch interview with Deputy Headteacher Jimmy W. Kawinzi, Kilalani Primary School, Machakos District, May 7, 1999.

¹⁹¹ Human Rights Watch interview with Headteacher Suleiman Mwalonya, Golini Primary School, Kwale District, 11 May 1999.

¹⁹² Human Rights Watch interview with Headteacher Amos Ochieng, Pandipieri Primary School, Kisumu, May 10, 1999; Human Rights Watch interview with Headteacher Bernard Kivuva, Kangundo District Education Board School, Machakos

At other schools, the headteachers openly acknowledged that not every incident of caning is recorded.¹⁹³ “WE DELEGATE THE AUTHORITY TO TEACHERS TO DO IT. THEY DON'T REPORT BACK TO ME, AND IT'S NOT RECORDED,” admitted one rural primary school headteacher.¹⁹⁴ One student at a rural primary school in Coast Province told us that school does not keep a punishment log at all,¹⁹⁵ and the deputy headteacher at another school acknowledged the same: “We don't write it down. We don't keep a register.”¹⁹⁶ At least one headteacher seemed to think that recording was only necessary for “serious” cases of corporal punishment; in that case, he told us, “then we shall have a record.”¹⁹⁷

Resulting Physical Injuries, Including Deaths

Much corporal punishment in Kenyan schools is inflicted by well-meaning teachers who were taught no other means of maintaining classroom discipline and promoting academic performance. For the most part, there is little reason to doubt that most teachers administer corporal punishment in a manner that seems to them to be fair, reasonable, and pedagogically valuable. Nonetheless, when the use of corporal punishment becomes an acceptable and regular part of the teaching process, severe injuries and abuses inevitably occur.

First, accidents happen: a stroke of the cane aimed at a child's backside may inadvertently strike another part of the body—the head or the kidneys, for instance—causing severe injuries. Similarly, some children have medical conditions that render them vulnerable to serious injuries from strokes of the cane that would not seriously injure another child: a child with a heart or lung condition, for instance, may faint or even die out of a combination of pain and fear.

Second, when corporal punishment is permitted, there is virtually no way to prevent some teachers from inflicting corporal punishment in a fashion that is sadistic, cruel, and intended to cause grievous injury. At virtually every one of the twenty Kenyan schools visited by Human Rights Watch, it was clear from interviews with children that some teachers, at least, inflicted corporal punishment in a disproportionate, arbitrary, and cruel manner.

It is Human Rights Watch's position that all school corporal punishment constitutes cruel, inhuman, or degrading treatment, notwithstanding the benign motives alleged by some of those who inflict it. In some cases, corporal punishment may even rise to the level of torture. School corporal punishment involves violence inflicted by public officials or persons performing a public function against people under their control, and the violence is deliberately calculated to cause physical pain and humiliation. Since children are physically and psychologically undeveloped, relative to adults, they are especially vulnerable to the negative effects of corporal punishment.

Perhaps the most common corporal punishment-related injuries are injuries to the fingers, thumbs, and hands. Janet K. explained that “sometimes you might be beaten and your hand swells . . . you might see a red mark appearing on your hand.”¹⁹⁸ Lee F. explained, “Often children receive injuries that bleed, because the bamboo stick they use may have little thorns in it, and they cut you.”¹⁹⁹ Ronald B., a twelve-year-old at an impoverished rural primary school in Central Province, reported that “I myself have never had a broken bone from beatings, but bleeding—that is something that sometimes happens if you are beaten very hard.”²⁰⁰

¹⁹³ Human Rights Watch interview with Headteacher Amos Ochieng, Pandipieri Primary School, Kisumu, May 10, 1999; Human Rights Watch interview with Headteacher Bernard Kivuva, Kangundo District Education Board School, Machakos District, May 7, 1999.

¹⁹⁴ HUMAN RIGHTS WATCH INTERVIEW WITH HEADTEACHER JOSEPH LAGATH, KABRIRISANG PRIMARY SCHOOL, NANDI DISTRICT, MAY 11, 1999.

¹⁹⁵ Human Rights Watch interview with Catherine J.

¹⁹⁶ Human Rights Watch interview with Deputy Headteacher John M. Mburu, Mirera Primary School, Naivasha District, May 6, 1999.

¹⁹⁷ Human Rights Watch interview with Headteacher Mr. Gunga, Kwale Primary School, Kwale, May 11, 1999.

¹⁹⁸ Human Rights Watch interview with Janet K.

¹⁹⁹ Human Rights Watch interview with Lee F.

²⁰⁰ Human Rights Watch interview with Ronald B., Central Province, May 7, 1999. September 1999, Vol.11, No. 6 (A)

At times, sprains and broken fingers result from canings by teachers with poor aim; at other times, they occur when fearful children hold out their hands to ward off blows. "Sometimes when the student tries to [avoid] the cane, it hits him in the fingers," explained Owen F.²⁰¹ Fifteen-year-old Susan S. told us, "Sometimes small bones break in the hand, if the stick is hitting you the wrong way."²⁰²

Julia R., twelve, a pupil at an urban primary school in Coast Province, told us that teachers are unsympathetic to such injuries, saying that "If a child gets hurt, normally it is not easy to talk to the teacher about this, because if you tell them, they say it is your fault. For an example, if you stretch out your hand to protect yourself and then you break a small bone, they will say it is your own fault."²⁰³ Alan A., a fifteen-year-old attending an urban primary school in Coast Province, told us that a classmate of his had broken his hand after jumping back to avoid the cane, and falling down with his hand behind him.²⁰⁴

Fainting is also a frequent consequence of corporal punishment:

- Julia R. told us, "Our teacher would give ten strokes, for almost any misbehaviours. He was very harsh. In class six we had one girl who had a sickness. I don't know what it was. When she was beaten she would just faint."²⁰⁵
- Ryan G., an eleven-year-old enrolled at an urban primary school in Coast Province, told us that "boys often faint after eleven or twelve strokes," and that he himself had "fainted two times from being beaten."²⁰⁶
- Jennifer D., fifteen, a student at a primary school in a semi-urban area of Coast Province, reported, "I saw a boy here caned until he fainted. I don't know his name. I was walking by, on my way to the toilets, and I walked by the open door of his classroom; it was a Standard Five classroom. I saw him being caned, and he fell down in a faint. That was just this year."²⁰⁷
- Fourteen-year-old Anita W., also a pupil at a primary school in a semi-urban area of Coast Province, recalled an incident where a classmate had been "beaten on the hand" for lateness, but then fell unconscious; "when she fell unconscious the teachers called her parents, and the parents came and gave her first aid."²⁰⁸

Children also suffer a range of other moderate to severe injuries as a result of corporal punishment. Fifteen-year-old Alan A. from Coast Province told us of a classmate who was caned by many teachers at once, and had to be taken to the hospital for injuries to his leg; in the two months since he enrolled at an urban primary school in Coast Province, two students had been sent to the hospital from caning.²⁰⁹ Eleven-year-old Ryan G. from Coast Province recalled that "one boy in Standard Eight got a broken arm last term from being caned... he had it in a sling for some time."²¹⁰ Elizabeth B. described the following incident:

²⁰¹ Human Rights Watch interview with Owen F.

²⁰² Human Rights Watch interview with Susan S.

²⁰³ Human Rights Watch interview with Julia R.

²⁰⁴ Human Rights Watch interview with Alan A., Coast Province, May 10, 1999.

²⁰⁵ Human Rights Watch interview with Julia R..

²⁰⁶ Human Rights Watch interview with Ryan G., Coast Province, May 10, 1999.

²⁰⁷ Human Rights Watch interview with Jennifer D., Coast Province, May 13, 1999.

²⁰⁸ Human Rights Watch interview with Anita W.

²⁰⁹ Human Rights Watch interview with Alan A.

²¹⁰ Human Rights Watch interview with Ryan G.

In one of my classes one girl was slapped so hard that two of her teeth came out. The teacher was very angry because some of the girls failed a test, and so the teacher gave these girls a choice: three slaps from his hand or ten strokes with the cane. This girl chose the three slaps and so he hit her on her face three times, very hard, and her mouth was bloody and her two teeth came out. And the other girls cried out to the teacher, saying, "Look, you have taken out her teeth!" and then the teacher was so angry that he caned everyone again.²¹¹

Particular Children's Stories

Alex J.'s Story

Alex, a seventeen-year-old from Nyanza Province, showed us the scars on his back, and told us the following story:

I was badly beaten about two weeks ago. We did an assessment test in all subjects. They wanted us to reach a mean score of about 500 and above, but many of us didn't perform well. So they decided to cane the whole Standard Eight—four strokes each, lying down on the ground. The headmaster was caning everyone, but he got tired, and so [another teacher] took over the caning. [He] caned me four times as I lay on my stomach.

The headmaster came and grabbed me and made me stand up and started hitting me back and forth from side to side on my head. At the same time he was hitting me he was telling the students something, but I couldn't understand or hear what he was saying as I was in pain. Then he told me to lie down again. As I lay down, he slapped me and I fell down.

He started caning me on my back. I told him to let me go and this made him angry and he started boxing me. I was crying and in pain. Then he stepped on my chest and some of the teachers started to leave. People were afraid. I don't know why he selected me to beat so badly. I think it was because I had missed going to school some days before to watch games at the stadium.

I returned [home]. My back was bleeding, and I was sick. The next day I went to the doctor. The doctor told me it was a very thorough beating, and that if I had come the day earlier, when I was still bleeding, she would have taken pictures.

I stayed home from school for three days. During that time I missed another test. In school I heard they informed the pupils that I had missed the test because I had been caned. I was almost to be punished again for missing the test, but [an adult friend] came with me to school and I was excused. Since then, I've not had problems with the teachers. But they are frightening me because they say if you fail they'll cane me worse. The headmaster told me that if I miss or fail a test again, I'll be beaten even worse than that time. All the students were told they would be beaten if they failed a test again.²¹²

Peter Kimemia Wanganga's Story

On September 16, 1998, Peter Kimemia Wanganga, a thirteen-year-old Standard Seven student at a boarding school in Eldama Ravine, accidentally broke a school window while playing with a ball. He was first instructed to go home and get KSh200 from his mother to replace the window. He did so, and when he returned he was sent to the office of Headteacher Amos K. Changwony, according to Peter Kimemia Wanganga's lawyer.

The headteacher allegedly told him to lie down on the ground and remove his shorts. Peter Kimemia Wanganga was reportedly caned more than 20 times on the buttocks, at which point he lost consciousness. After he recovered consciousness and was allowed to get up, he began to put his shorts back on; the headteacher allegedly continued to hit him as he did so. He was not allowed to go home after the caning.

²¹¹ Human Rights Watch interview with Elizabeth B.

As a reported result of the caning, Peter Kimemia Wanganga's buttocks were swollen, and he had a severe headache, accompanied by chest pain; his right hand was also swollen and painful. His mother took him to the hospital, where a doctor found that his right thumb had been dislocated when he had put out his hand to block the blows. Although criminal charges have been filed against the headteacher, no other disciplinary action has been taken, and the case remains unresolved, according to the family's lawyer.²¹³

Kipkosgei Kimutai's Story

On September 17, 1998, Kipkosgei Kimutai, a student at Kayoi Primary School in the Rift Valley Province, died after allegedly being caned by one of his teachers, Grace Jepkemoi Kipsitet,²¹⁴ who had a reputation among students for caning children using anything within reach.²¹⁵

According to classmates of Kipkosgei Kimutai interviewed by Human Rights Watch, many children were beaten that day. Although his classmates did not witness the beating, they said they saw Kipkosgei Kimutai in the group of children led into an office to be beaten, and later in the day, they reportedly saw his father carrying his son's inert body away from their house, which was very near the school.²¹⁶

After the death, according to the local district education officer, the teacher, Grace Jepkemoi Kipsitet, "went on maternity leave, and then was transferred to another school in Karmarinyi Division, where she has been teaching since she returned from maternity leave."²¹⁷ She was subsequently charged with murder on April 21, 1999, but the charges were withdrawn by the prosecutor on May 10, 1999, pending an inquest. Resident Magistrate M.J. Kiptoo approved the withdrawal and discharged the case pending the inquest.²¹⁸ No further information was available to Human Rights Watch on the status of the inquest. According to the district education officer, Kipkosgei Kimutai was malnourished to begin with, and the post mortem indicated that the cause of death was that "his intestines had enciled abnormally... [so] we're not taking any disciplinary action against the teacher."²¹⁹

Josephine Wambui Mwangi's Story

On July 17, 1996, Josephine Wambui Mwangi, a student at Githunguchu Primary School in Kiambu, reportedly was caned by three teachers, Joseph Njenga Mwani, Samuel Gichina Gitibi, and Tabitha Wangari Mbugua. She was allegedly hit at least eleven times before falling down, unconscious, at which point she was taken to the hospital, where she died.²²⁰

The teachers involved were prosecuted for murder. The case was handled by Senior Principal Magistrate Florence Muchemi, who told Human Rights Watch that the post mortem results showed that Wambui Mwangi had "something with the heart." This "something" was deemed to have been "the cause of death... [so] we found that the evidence was not sufficient to convict the teachers." Despite the fact that her death presumably occurred when the beating aggravated her preexisting heart condition, the case was still dismissed.²²¹

Michael Munyaga's Story

²¹³ Human Rights Watch interview with Susan Wairimu Kiarie, attorney at law, Nairobi, May 5, 1999.

²¹⁴ Human Rights Watch interview with District Education Officer Francis Kiplagat, Tambach, Keiyo District, May 12, 1999.

²¹⁵ Human Rights Watch interview with Valerine H., Rift Valley Province, May 12, 1999.

²¹⁶ Human Rights Watch interviews with Jerry L., Geoff D., and Gary G., Rift Valley Province, May 12, 1999.

²¹⁷ Human Rights Watch interview with District Education Officer Francis Kiplagat, Tambach, Keiyo District, May 12, 1999.

²¹⁸ Court file no. 20/99, Case No. 851/13/99, Senior Principal Magistrate's Court, Eldoret.

²¹⁹ Human Rights Watch interview with District Education Officer Francis Kiplagat, Tambach, Keiyo District, May 12, 1999.

²²⁰ "Court Frees Teachers; 3 Cleared of Kiambu Student's Murder," *Kenya Times*, March 28, 1997; Frank Wainaina and

Sospeter Muigai, "Teachers Acquitted of Murder," *Daily Nation (Kenya)*, March 27, 1997.

²²¹ Human Rights Watch interview with Senior Principal Magistrate Florence Muchemi, Nairobi, May 7, 1999. No. 6 (A)

On October 25, 1996, Michael Munyaga, a twelve-year-old boy at Munyu Primary School in Naivasha, reportedly left school early for lunch, along with several other children.²²² The children had not received permission to leave early. When they returned to school after lunch, all of the children were allegedly caned repeatedly on the hands by two teachers, Frecia Wangui Mutua and Kamau Karanja.

Michael Munyaga's hands reportedly swelled and caused him severe pain, and he could not use his hands. His parents took him to the hospital, where doctors found that in addition to severe bruising, he had suffered serious nerve damage to one of his thumbs.

As of May 1999, over two years after the original incident, Michael Munyaga allegedly still requires medical treatment for his injuries, and his family has moved to Nairobi to receive treatment. Although the teachers involved were charged and convicted of assault, they were only fined Ksh2000 each (the equivalent of U.S.\$35), according to the family's lawyer.²²³ Both teachers are still teaching at Munyu Primary School.²²⁴

Government Response to Injuries or Complaints Arising from Corporal Punishment

Government responses to serious incidents of corporal punishment have been wholly inadequate to combat abuses. The Ministry of Education is doing little to educate its teachers on appropriate methods of discipline and the harms of corporal punishment. When children are injured by corporal punishment, schools—or individual teachers—at times provide or pay for medical assistance for the child, but teachers who injure children are rarely disciplined, let alone dismissed or prosecuted. Some parents press charges against abusers, and there have been a number of well-publicized prosecutions; in almost every case known to Human Rights Watch, however, teachers have either been acquitted, the cases have been dismissed, or teachers have been convicted but handed extremely light penalties—generally just a small fine. Most continue to have children in their care, teaching in the same schools in which they have previously abused children. In practice, children are left with little remedy against corporal punishment, and in many cases, children respond to severe punishments and injuries by transferring from abusive schools, if they are able to, or by dropping out of school altogether.

Judicial Remedies

Headteachers and teacher who cane children may be criminally prosecuted for assault or murder. Susan Wairimu Kiarie, a Nairobi attorney working with the nongovernmental organization ANPPCAN-Kenya,²²⁵ represents several children who have been the victims of severe corporal punishment.²²⁶ According to Kiarie, there are several barriers to effective criminal prosecution for corporal punishment. If a teacher is in fact convicted of assault, the punishment is typically minimal; in the case of Michael Munyaga, described above, the teachers responsible received a small fine, although they could have been liable to several years' imprisonment.

Furthermore, there are evidentiary difficulties; according to Kiarie, Kenya's Evidence Act prohibits anyone from being convicted of a crime based solely on the testimony of a child of "tender years." Kiarie also notes that police and education officials typically try to handle cases administratively and avoid the legal system altogether; in the Munyaga case, the district education officer attempted to settle the case out of court. Similarly, educational officials involved in the Anastacia Katunge case (described at the very beginning of this report) tried to work out a settlement between parents and teachers before charges were filed.

²²² Human Rights Watch interview with Susan Wairimu Kiarie, lawyer for Michael Munyaga, Nairobi, May 5, 1999.

²²³ Ibid.

²²⁴ Human Rights Watch interview with Deputy Headteacher Samuel K. Mungai, Munyu Primary School, Naivasha District, May 6, 1999.

²²⁵ African Network for the Prevention and Protection Against Child Abuse and Neglect.

²²⁶ Human Rights Watch interview with Susan Wairimu Kiarie, attorney at law, Nairobi, September 5, 1999. Vol. 11, No. 6 (A)

The severity of the assault charge depends largely on whether the doctor who examines the victim and fills out the required police medical form, the "P3" form, classifies the injury as "harm" or "grievous harm." According to the P3 form, "[h]arm means any bodily hurt, disease or disorder whether permanent or temporary. . . [g]rievous harm means any harm which amounts to main, or endangers life or seriously or permanently injures health, or which is likely so to impair health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ." Assaults resulting in harm are misdemeanor offenses; those resulting in grievous harm are felonies.²²⁷ For example, in the case of Anastacia Katunge, whose injuries were described as "painful neck and bruises on the posterior aspect of the neck," and "bruises at forearm lateral aspect, bruise at hand on the ulna side," the medical official classified the injuries done as "harm" and thus chargeable only as a misdemeanor.²²⁸

No statistics on criminal prosecutions for crimes related to corporal punishment are available, but attempts to prosecute are increasing in frequency. Kiambu Senior Principal Magistrate Florence Muchemi believes that, when corporal punishment leads to severe injury, "generally you find that the teachers are charged. Cases are going down. Parents and children are more aware of their rights."²²⁹ One experienced police official, the officer-in-charge of the Naivasha Police Station, Patterson Maelo, reports that he's seen about two cases each year involving parents who wish to press charges. However, Maelo says that he's been able to handle most of the cases without involving the courts: "most of them we've been able to handle at the station level."²³⁰ He says they do prosecute in cases where the punishment is clearly excessive.

At least two murder prosecutions have resulted from excessive corporal punishment: the cases of Josephine Mwangi and Kipkosgei Kimutai, discussed above. The former case, however, was dismissed, and in the latter the charge was withdrawn.

In the Mwangi case, according to Senior Principal Magistrate Florence Muchemi, assault charges were supposed to be filed against the teachers after the murder charges were dismissed, but they were never filed and the teachers went free. Muchemi attributed this to the absence of an eyewitness, highlighting another difficulty with prosecuting teachers for corporal punishment: if the victim is dead, it is difficult to find any eyewitness testimony. "If before she died she made a dying statement as to who beat her, then it could have been produced as evidence. Without such a statement, it makes it very difficult to convict."²³¹

Finally, most parents are simply unwilling to engage the legal system in cases of severe corporal punishment. Anne Onginjo, a magistrate in Kisumu, explains that corporal punishment "is an accepted practice in schools. People aren't aware they can complain against a teacher, or fear that if they complain, the child will not get the proper attention in school from teachers, and will do poorly." Therefore, most people would not think to bring charges in the first place.²³²

Human Rights Watch is not aware of any successful civil actions for injuries resulting from school corporal punishment. However, attorney Susan Wairimu Kiarie has initiated a civil suit against the teachers who beat Michael Munyaga, and is also considering filing a suit in the case of Peter Wanganga.²³³

Administrative Remedies

The Teacher Services Commission has the responsibility for hiring, firing, and disciplining government-employed teachers in Kenya. Despite widespread media coverage of injuries resulting from excessive corporal punishment, the

²²⁷ Ibid.

²²⁸ Statement of Navote Comwel, November 18, 1998, Case 41/99, Kiambu District Court.

²²⁹ Human Rights Watch interview with Senior Principal Magistrate Florence Muchemi, Kiambu, May 7, 1999.

²³⁰ Human Rights Watch interview with Officer-in-Charge Patterson Maelo, Naivasha Police Station, Naivasha, May 6, 1999.

²³¹ Human Rights Watch interview with Senior Principal Magistrate Florence Muchemi, Kiambu, May 7, 1999.

²³² HUMAN RIGHTS WATCH INTERVIEW WITH MAGISTRATE ANNE ONGINJO, WINAM DIVISION COURT, KISUMU, MAY 10, 1999.

²³³ Human Rights Watch interview with Susan Wairimu Kiarie, attorney at law, Nairobi, September 5, 1999. Vol. 11, No. 6 (A)

commission does not undertake investigations unless complaints are brought to it, and rarely disciplines teachers over incidents of corporal punishment.

Human Rights Watch interviewed the deputy director of the Teacher Services Commission, Benjamin Kumu, who told us that the commission only occasionally deals with cases of excessive corporal punishment, but that “if a teacher violates, then a teacher is disciplined.” Such cases are “very rare,” according to Kumu: “we receive them once in a while, once every two or three years.” Kumu claims that “most of the caning is as per the regulations,” and explains that the commission rarely investigates or disciplines teachers for incidents of corporal punishment, because “we cannot act on those things that we do not know about.”²³⁴

One parent interviewed had an understandably dismal view of administrative remedies available: “If the head teacher harms the child, you cannot take him anywhere. If you go to the [local education] office, then there is nothing to help you. The head has money, and he goes to the office,”²³⁵ reflecting his belief that a bribe would hush any complaint.

Reprisals and Retaliation

Human Rights Watch has received multiple reports of teacher and school reprisals and retaliation against children who seek remedies against abusive corporal punishment, and against their families. It is no wonder that parents generally fear that their children will be targeted if they complain. As Elizabeth B. from Coast Province explained:

Even if you have been beaten unfairly and your parents are angry at the teacher, it is better for them not to complain, because if they complain, the teacher may then form a grudge against you and then you will suffer more. Just this year a girl, my friend, was beaten very badly, and her whole hand and arm were swelled. But she was afraid to complain to the headmaster, because she might be failed, or be beaten more, and so she did not complain.²³⁶

Lee F. reported that “it is not good for parents to complain, because sometimes then the teacher is just more angry,”²³⁷ Julia R., his classmate, told us that “if the caning was serious and a child has reported badly to the parent, sometimes the teachers will be angry and cane more strokes.”²³⁸

Responses from Headteachers

None of the students, teachers, headteachers, or parents interviewed by Human Rights Watch said they knew of incidents where a headteacher had taken action against a teacher who injured a student through corporal punishment. The school might provide medical assistance to help a student, but would typically try to resolve the matter through negotiations with the parents rather than disciplinary proceedings against the teacher.

²³⁴ Human Rights Watch interview with Deputy Director Benjamin Kumu, Teacher Services Commission, Nairobi, May 6, 1999.

²³⁵ Human Rights Watch interview with Boniface Nthiwa, Kiambu District, May 7, 1999.

²³⁶ Human Rights Watch interview with Elizabeth B.

²³⁷ Human Rights Watch interview with Lee F.

²³⁸ Human Rights Watch interview with Julia R.

At several schools, students reported that if they were injured as a result of corporal punishment, the teacher or the school would pay for their medical expenses and/or take them to the hospital; some, but not all, parents corroborate this. Twelve-year-old Ronald B. from Central Province reported that “Sometimes they give you medicines or bandages... if you have injury like a bone that maybe is broken, the head takes the child to the hospital, and he must pay the medical bills if the injury is because of beating.”²³⁹ Similarly, Alan A. said that “sometimes the students who are caned are injured but they are taken to the hospital.”²⁴⁰ Boniface Nthiwa, a parent in Kiambu, reported that after a “teacher hurt my child,” the teacher “paid for the medication. . . . He paid for what was needed. . . . The teacher apologized.”²⁴¹

The headteacher at a rural Coast Province primary school told us that he collects Ksh5 per child each week to be used for a fund to pay for any injuries suffered at school (including injuries from corporal punishment). He or a teacher would take the child to the hospital and call his or her parents in the event of an injury: “It’s our responsibility.”²⁴² But one of his students, Robert G., fourteen, told us that “sometimes they refuse” to pay;²⁴³ several other children at this school told us that in most cases, school officials refuse to take responsibility or pay for treatment of injuries due to caning.²⁴⁴ At another school, fifteen-year-old Carol T. told us that if a student is injured by caning, “that is your own wound, so you have to decide whether to go to the hospital,” and the student would have to pay for any treatment.²⁴⁵

Negotiation with Parents

In most cases, students, parents and headteachers reported that complaints of excessive corporal punishment were dealt with through quiet negotiation, sometimes including an apology to the parents. One headteacher told us that in cases of injuries where the parents “even threaten to go to the police,” she would simply tell them that it was an accident; she went on to say that generally “parents are very understanding because they also cane their children at home. They are used to this.”²⁴⁶ Another headteacher told us, “if a child goes back home and complains about punishments, the parents are not happy. Sometimes they come in to see me, but if I explain they usually accept it.”²⁴⁷

The headteacher at Kikowani Primary School, Mombasa, a school known for disciplinary problems, told us that he used to have a problem with parents complaining about their children being punished, “but I was able to eradicate that problem.” But now, he says, if a parent complains about the punishment, he tells them they can send their child to another school if they want. “It’s sort of a threat,” he admits. He went on to explain that other schools won’t accept children who come from his school, because “it used to be one of the most undisciplined schools in Mombasa . . . even some teachers were afraid to come here.” In effect, parents and children must choose between accepting the punishment and having the child’s schooling come to an abrupt end.²⁴⁸

²³⁹ Human Rights Watch interview with Ronald B.

²⁴⁰ Human Rights Watch interview with Alan A.

²⁴¹ Human Rights Watch interview with Boniface Nthiwa, Kiambu District, May 7, 1999.

²⁴² Human Rights Watch interview with headteacher at a Coast Province primary school, May 11, 1999.

²⁴³ Human Rights Watch interview with Robert G., Coast Province, May 11, 1999.

²⁴⁴ Human Rights Watch interview with Beatrice S., Jaya S., and Renee K., ages fourteen through fifteen, Coast Province, May 11, 1999.

²⁴⁵ Human Rights Watch interview with Carol T.

²⁴⁶ Human Rights Watch interview with Headteacher Sister Albina W.P. Mwasi, Star of the Sea Primary School, Mombasa, May 10, 1999.

²⁴⁷ Human Rights Watch interview with Headteacher K.A. Manxu, Khadija Primary School, Coast Province, May 13, 1999.

²⁴⁸ Human Rights Watch interview with Headteacher A.G. Magona, Kikowani Primary School, Mombasa, May 10, 1999.

The headteacher at Ronald Ngala Primary, Mombasa also reported using this method when dealing with “protective” parents, saying that they “will sometimes say, ‘If you have to punish, you must punish me, not this child.’ We then say, ‘Okay, you take your child to some other school where he will not have to follow the rules!’ Usually then they go away with the child for a few days—but sometimes the child will come back, he will persuade them that it is all right for him to be punished so.”²⁴⁹

Other Forms of Punishment That May Be Cruel, Inhuman, or Degrading

While corporal punishment is the most obvious violation of fundamental children’s rights in Kenyan schools, it is not the only school practice that threatens the basic rights of children. In addition to inflicting corporal punishment upon children, teachers also give children a wide variety of other punishments, many of which, if sufficiently severe, would violate provisions of the Convention on the Rights of the Child and be cruel, inhuman, or degrading.

These punishments include hard physical labor such as uprooting tree stumps, slashing long grass with a stick, and digging pits, physically exhausting punishments such as running for long distances, humiliating practices such as forcing children who misbehave to kneel in front of the classroom for lengthy periods, and requiring work that can be both demeaning and a health risk, like forcing children to clean pit latrines that are covered with urine and feces, without providing protective gloves, cleaning materials, or running water.

These strenuous, humiliating and unsafe punishments should be distinguished from ordinary chores which students in some schools are called on to perform on a regular basis. A STUDENT’S SHARED RESPONSIBILITY IN THE PERFORMANCE OF LIGHT CHORES DOES NOT PLACE HIM OR HER UNDER THE SAME PHYSICAL OR EMOTIONAL STRAIN, OR HEALTH RISKS, AS THE PUNISHMENTS DESCRIBED BELOW.

Kneeling

MANY CHILDREN AND TEACHERS TOLD US THAT BEING FORCED TO KNEEL IN FRONT OF THE CLASS WAS A ROUTINE PUNISHMENT FOR MINOR INFRACTIONS (KNEELING WAS OFTEN ACCOMPANIED BY CANING, BUT ALSO USED ON ITS OWN). JULIA R. FROM COAST PROVINCE REPORTED THAT “SOMETIMES YOU MUST KNEEL IN CLASS FOR A FULL LESSON AS PUNISHMENT.”²⁵⁰ The headteacher at Khadija Primary School, Coast Province acknowledged that “TEACHERS SOMETIMES FORGET THAT A CHILD HAS BEEN KNEELING FOR A LONG TIME, AND THE CHILD WILL GET BRUISES ON THE KNEES.”²⁵¹

Digging

Digging was a commonly reported punishment, especially at rural primary schools, where many students reported being made to dig ditches or pits.²⁵² In some cases, students reported that digging was, in their opinion, the worst punishment,²⁵³ and others considered it second only to caning.²⁵⁴ Eleanor F., a fifteen-year-old enrolled at a rural primary school in Coast Province, told us that digging the pit can take days,²⁵⁵ and a group of boys and girls at the school said that it was a counterproductive punishment, as it required them to miss class while digging the pit.²⁵⁶

²⁴⁹ Human Rights Watch interview with Headteacher Sammy Chilibasi, Ronald Ngala Primary, Mombasa, May 9, 1999. As discussed earlier in this report, in practice, corporal punishment often leads children to drop out of school, even when they are not technically expelled.

²⁵⁰ Human Rights Watch interview with Julia R.

²⁵¹ HUMAN RIGHTS WATCH INTERVIEW WITH HEADTEACHER K.A. MANU, KHADIJA PRIMARY SCHOOL, COAST PROVINCE, MAY 13, 1999.

²⁵² Human Rights Watch interview with Peter S., age fifteen, at a primary school located in Eastern Province, May 7, 1999; Human Rights Watch interview with Eleanor F., age fifteen, at a rural primary school in Coast Province, May 11, 1999.

²⁵³ Human Rights Watch interview with Eleanor F. and Eve A., ages fifteen and sixteen, Coast Province, May 11, 1999.

²⁵⁴ Human Rights Watch interview with Eunice L. and Patricia A., ages fourteen and fifteen, a rural primary school in Coast Province, May 11, 1999.

²⁵⁵ Human Rights Watch interview with Eleanor F.

²⁵⁶ Human Rights Watch interviews at a rural primary school in Coast Province, May 11, 1999.

Aaron M., a fourteen-year-old studying at a primary school in Rift Valley Province, told us that he had been made to dig a pit three meters long as punishment.²⁵⁷ In some cases, the digging appeared to be purely punitive, not for any productive purpose,²⁵⁸ but in other cases, the digging served other functions. Students uprooted tree stumps to clear fields for planting or building, or were made to dig fields owned by the school or by individual teachers. At an impoverished rural school in Rift Valley Province, the students were punished by “laboring for an hour in the field [behind the school], digging and plowing;” fifteen-year-old Jacob W. complained that they were particularly upset with this punishment, because the corn grown in the field is consumed and sold solely by the teachers.²⁵⁹ Andrew K. from Nyanza Province told us that “SOMETIMES FOR PUNISHMENT YOU WOULD WORK IN THE TEACHERS’ OWN SHAMBAS [FIELDS],” AND THE WORK TYPICALLY CONSISTED OF DIGGING FOR SEVERAL HOURS.²⁶⁰

At some schools, only boys were punished by digging.²⁶¹ A rural primary school headteacher told us that normally only boys are punished with digging, which he considered to be a particularly effective punishment, since students find it particularly degrading: “it looks to be kind of a job, a kind of slavery.”²⁶²

Slashing

“Slashing,” which entails cutting grass or clearing fields by slashing with a long stick, was another form of manual labor commonly given as a punishment.²⁶³ Children generally did not perceive slashing to be as severe a punishment as digging; like digging, some students reported that slashing was predominantly given as a punishment for boys.²⁶⁴

Other Manual Labor

MANY OTHER FORMS OF MANUAL LABOR WERE ASSIGNED TO STUDENTS AS PUNISHMENTS. STUDENTS TOLD US THAT THEY MIGHT BE MADE TO CUT TREES AS A PUNISHMENT,²⁶⁵ TO UPROOT TREES,²⁶⁶ TO PULL OUT WEEDS,²⁶⁷ “TO WORK IN THE TEACHER’S SHAMBA,”²⁶⁸ OR TO PLOW THE SCHOOL’S FIELDS.²⁶⁹ ONE STUDENT IN KISUMU REPORTED THAT HE WAS MADE TO DO OTHER FORMS OF WORK FOR TEACHERS: “I WAS TOLD TO BRING FIREWOOD, OR GRASS FOR THATCHING TEACHERS’ HOUSES. IF YOU DON’T HAVE IT, THEY WOULD ASK YOU TO BRING IT AGAIN.”²⁷⁰

Toilet Cleaning

²⁵⁷ Human Rights Watch interview with Aaron M., Rift Valley Province, May 6, 1999.

²⁵⁸ Ibid.

²⁵⁹ HUMAN RIGHTS WATCH INTERVIEW WITH DAVID T., JACOB W., AND BERNICE G., ALL AGE FIFTEEN, RIFT VALLEY PROVINCE, MAY 11, 1999.

²⁶⁰ HUMAN RIGHTS WATCH INTERVIEW WITH ANDREW K.

²⁶¹ Human Rights Watch interview with Emily T.

²⁶² Human Rights Watch interview with Headteacher Mr. Gunga, Kwale Primary School, Kwale, May 11, 1999.

²⁶³ Human Rights Watch interview with Rowena S., age fifteen, at a rural primary school in Coast Province, May 11, 1999; Human Rights Watch interview with Kevin K.

²⁶⁴ Human Rights Watch interview with Catherine L., at a suburban Central Province primary school, May 6, 1999.

²⁶⁵ HUMAN RIGHTS WATCH INTERVIEW WITH ALICE R., AGE FIFTEEN, RIFT VALLEY PROVINCE, MAY 6, 1999; HUMAN RIGHTS WATCH INTERVIEW WITH PETER S.

²⁶⁶ HUMAN RIGHTS WATCH INTERVIEW WITH ALISON K., AGE FOURTEEN, RIFT VALLEY PROVINCE, MAY 6, 1999.

²⁶⁷ Ibid.

²⁶⁸ HUMAN RIGHTS WATCH INTERVIEW WITH BERNARD P., AGE SIXTEEN, NYANZA PROVINCE, MAY 10, 1999.

²⁶⁹ HUMAN RIGHTS WATCH INTERVIEW WITH DAVID T., JACOB W., AND BERNICE G.

²⁷⁰ HUMAN RIGHTS WATCH INTERVIEW WITH ANDREW K.

Many of the schools visited by Human Rights Watch used toilet cleaning and/or sewer system cleaning as a punishment, which was almost universally despised by the students. Many students told us that toilet cleaning was the worst form of punishment,²⁷¹ some insisting that it was worse than caning. Twelve-year-old Sarah J. from Central Province said "I prefer being caned to washing the latrines. That is not good, I am thinking that you can be getting diseases from it."²⁷² One schoolgirl enrolled at a suburban Central Province primary school told us that girls are made to wash the toilets more often than boys.²⁷³

Public Shaming

At several schools, forms of public embarrassment and shaming were sometimes used as punishments. Seventeen-year-old Billy S. from Nyanza Province told us that in addition to handing out corporal punishment, teachers "CALL YOU OUT IN THE ASSEMBLY SO PEOPLE WILL SEE YOU AND KNOW YOU AND THAT YOU HAVE DONE WRONG. SOMETIMES THEY LAUGH AT YOU."²⁷⁴ Other headteachers also described using this sort of punishment in a school parade; one of them called it "humiliation."²⁷⁵

Potential Rights Violations Caused by These Methods of Punishment

Some of these punishments can be abusive, depending on their severity and context. Hard physical labor can lead to serious injuries; hard labor or forced exertion in the hot equatorial sun can leave children dehydrated, exhausted, and suffering from sunstroke. Similarly, toilet-cleaning can be both degrading and hazardous when imposed as a punishment and when children are forced to come into contact with urine and feces, without protective gear or the opportunity to wash thoroughly afterwards. Digging and cleaning as a punishment can be also exploitative, and publicly shaming a child can be abusive, if the humiliation and ridicule are sufficiently severe.

V. CORPORAL PUNISHMENT'S IMPACT

Educational experts argue that the long-term costs of corporal punishment outweigh any short-term benefit that might be gained by its application. Although the application of corporal punishment may take less than a minute, its effects may last for years, and the family, the local community, and society at large pay the price for teachers' actions.

Beatings and other cruel, inhuman, or degrading treatments affect both the physical well being and the psyche of those who are punished. It makes a lasting impression on the minds of all children who witness corporal punishment in the classroom, and may be a detriment to their relationships with teachers, parents, and other authority figures. This is a message that boys and girls internalize and carry with them throughout their lives.

Psychological Effects on Children

Corporal punishment and other cruel, inhumane, or degrading treatments can have serious psychological effects on students who are victims and witnesses of physical discipline. According to one author on the subject, "experts have found that corporal punishment may produce in children neurotic reactions such as depression, withdrawal, anxiety, tension, and in older children, substance abuse, interference with school work, and precocious sexual behavior."²⁷⁶

²⁷¹ Human Rights Watch interview with Matt S., age twelve, Coast Province, May 10, 1999; Human Rights Watch interview with Julia R.; Human Rights Watch interview with Lee F.; Human Rights Watch interview with Mary F.; Human Rights Watch interview with Margaret M.

²⁷² Human Rights Watch interview with Sarah J.

²⁷³ Human Rights Watch interview with Catherine L., Central Province, May 6, 1999.

²⁷⁴ HUMAN RIGHTS WATCH INTERVIEW WITH BILLY S.

²⁷⁵ Human Rights Watch interview with Deputy Headteacher Philip L. Chetilde, Kayoi Primary School, Keiyo District, May 12, 1999.

²⁷⁶ Susan H. Bitensky, "Spare the Rod . . .", pp. 426-27. See also Philip Greven, *Spare the Child: The Religious Roots of Punishment and the Psychological Impact of Physical Abuse* (New York: Knopf, 1991), p. 129; Irwin A. Hyman, *Reading, Writing, and the Hickory Stick: The Appalling Story of Physical and Psychological Abuse in American Schools* (Lexington, Mass.: Lexington Books, 1990), pp. 94, 99-100; Alice Miller, *The Drama of the Gifted Child* (New York: Basic Books, 1990), p. 43;

Peter Newell, *Children Are People Too: The Case Against Physical Punishment* (London: Bedford Square, 1989), p. 46; Irwin A. Hyman, "Corporal Punishment, Psychological Maltreatment, Violence and Punitiveness in America: Research, Advocacy, and Public Policy," *Applied and Preventative Psychology*, vol. 4 (1995): 114-116; Lawrence S. Wissow and Debra Roter, "Toward Effective Discussion of Discipline and Corporal Punishment During Primary Care Visits: Finding from Studies of Doctor-Patient Interaction," *Pediatrics*, vol. 94 (1994): 587-88. But see James C. Dobson, *The Strong-Willed Child: Birth Through Adolescence* (Wheaton, Ill.: Tyndale House, 1978), pp.34-35 (claiming that corporal punishment administered by loving parents deters children's misbehavior); and Diana Baumrind, "Parenting: The Discipline Controversy Revisited," *Family Relations*, vol. 45 (1996): 405 (arguing that parents who have a warm relationship with their children may use corporal punishment without negative effects).

According to many experts in the field, these psychological conditions arise out of children's inability to cope fully with the emotions they feel when punished in this manner. Children feel humiliated and degraded,²⁷⁷ they become angry and resentful towards those who punish them.²⁷⁸ There is no socially acceptable manner for them to express their feelings. If they act out their frustrations, they will be further punished.²⁷⁹ At home, they may find little consolation or support, if parents support teachers' actions, even when unjust. Psychologist Alice Miller has stated that "[i]f there is absolutely no possibility of reacting appropriately to hurt, humiliation, and coercion, then these experiences cannot be integrated into the personality; the feelings they evoke are repressed, and the need to articulate them remains unsatisfied, without any hope of being fulfilled"²⁸⁰ The forbidden and repressed anger can be manifested as hatred toward self or others.

One manifestation of the repression of this anger described by experts includes bullying others. Some psychological and educational research indicates that children who are punished physically themselves are more likely to bully their peers. "Corporal punishment may cause children to exhibit increased physical aggressiveness. . . . Coupling aggressiveness with lack of empathy creates a propensity to hurt others without compunction."²⁸¹ Hitting children may send the message that hurting others is acceptable behavior.

Some Kenyan educators and children's rights activists agree that the imposition of corporal punishment promotes bullying. Geoffrey W. Griffin, the head of the elite Starehe Boys Centre in Nairobi, told us that excessive corporal punishment leads to more violence: "It's fairly true, one thing leads to another; show me a school that has excessive corporal punishment and I'll show you a school that has bullying."²⁸² Joyce Umbima, chairperson of the Kenya Alliance for the Advancement of the Rights of the Child, said that when children act out what takes place in school, the child "teacher" beats the "pupils." "I observe children playing games like teacher-student, and I wonder what their concept of teaching is," said Ms. Umbima. "They are socialized to think that [hitting] is what a teacher does."²⁸³

The negative effects of corporal punishment reverberate throughout a society. "Such childhood anger is also thought to contribute to adult aggressiveness, authoritarianism, and lack of empathy, conditions in which repressed anger is acted out at the expense of others. Not uncommonly these others are the adult's own children, thereby perpetuating an intergenerational cycle of childhood trauma and adult neurosis or psychosis."²⁸⁴

Kenyan children we interviewed affirmed that they perceive corporal punishment as humiliating, painful, frightening, and anger-inspiring:

²⁷⁷ Newell, *Children Are People Too*, p. 12; William Sears and Martha Sears, *The Discipline Book: Everything You Need To Know To Have a Better-Behaved Child* (Boston: Little, Brown and Co., 1995), p. 152; Bitensky, "Spare the Rod," p. 426.

²⁷⁸ Bitensky, "Spare the Rod . . .", p. 428.

²⁷⁹ *Ibid.*, p. 429.

²⁸⁰ Alice Miller, *For Your Own Good: Hidden Cruelty in Child-Rearing and the Roots of Violence* (New York: Farrar, Straus, Giroux, 1990), p. 7.

²⁸¹ Bitensky, "Spare the Rod," p. 425.

²⁸² Human Rights Watch interview with Geoffrey W. Griffin, Nairobi, May 7, 1999.

²⁸³ Human Rights Watch interview with Joyce Umbima, Nairobi, May 3, 1999.

²⁸⁴ Bitensky, "Spare the Rod," pp. 430-31. See also Greven, *Spare the Child*, p. 128-74, 186-212; Alice Miller, *Breaking Down the Wall of Silence* (New York: Dutton Books 1991) p. 30-38, 61-87, 94-95; Murray A. Straus, *Beating the Devil Out of Them: Corporal Punishment in American Families* (New York: Lexington Books, 1994) pp. 67-146; Wissow and Roter, "Toward

- Harold D., who dropped out of a secondary school located in a Nyanza Province city last year after refusing to accept corporal punishment, told us that “It is more bearable in the lower classes when you are still young and your heart is small. You can just go back to school and agree. You can bear it if it's not too much or too hard. It hurts and causes pain. But when you're older, like me, it does not help. You are already grown up and can understand things—there is no need to cane older students. It didn't make me do right. It just made me to hate the teacher, and the prefect, and feel angry and embarrassed—the other students laugh at you when you are being caned.”²⁸⁵
- Fifteen-year-old Jennifer D. from Coast Province told us, “caning should be stopped, because most of the children do not like it; we are afraid of it, and it hurts.”²⁸⁶
- A schoolboy at an urban secondary school in Central Province said that caning “contributed a lot to students becoming rebellious. That anger makes you rebellious, to want to revenge.”²⁸⁷

Children also told Human Rights Watch that in their view, the imposition of corporal punishment is frequently unjust. Seventeen-year-old Richard O. told us that corporal punishment is “unreasonable,” because “you are caned for many things that are very trivial.”²⁸⁸ Ryan G. told us, “most of my punishments have been unfair, for I was beaten when I was not misbehaving. You are never given time to explain. You are just beaten.”²⁸⁹

Children unhappy about corporal punishment find themselves at odds with both teachers and parents, who insist that corporal punishment is for their own good, and necessary to maintain “proper discipline” in schools. Headteachers and teachers often believe strongly in the value of corporal punishment: “Without caning the school would not run smoothly,” a rural primary school headteacher told us, and added that “to use other forms of discipline would require more time, and time is not enough.”²⁹⁰ A similar sentiment was voiced by a secondary school headteacher, who claimed that “Corporal punishment is very needed, as a deterrent. I'm old school. If we didn't have it, the students would shoot us!”²⁹¹

Some school officials readily endorsed the idea that fear is what makes corporal punishment effective. A Naivasha primary school teacher told us that “if children are not punished they won't fear the teacher and won't be serious about being in school. Discipline helps them learn.”²⁹² “Children don't like to come to school,” John M. Mburu, deputy head master at Mirera Primary School, explained to Human Rights Watch. “You need to put fear into them to discipline them to learn. [Using alternatives to corporal punishment] would only make children happy, and they wouldn't learn from that.”²⁹³

²⁸⁵ Human Rights Watch interview with Harold D.

²⁸⁶ Human Rights Watch interview with Jennifer D.

²⁸⁷ Human Rights Watch interview Samuel S., Central Province, May 7, 1999.

²⁸⁸ Human Rights Watch interview with Richard O.

²⁸⁹ Human Rights Watch interview with Ryan G.

²⁹⁰ Human Rights Watch interview with Headteacher Joseph Lagatt, Kabrirsang Primary School, Nandi District, May 11, 1999.

²⁹¹ Human Rights Watch interview with Headteacher Paolo Okoth Odega, Kisumu Day Secondary School, Kisumu, May 10, 1999.

²⁹² Human Rights Watch interview with Standard One Teacher Mary Macharia, Munyu Primary School, Naivasha District, May 6, 1999.

²⁹³ Human Rights Watch interview with John M. Mburu, Naivasha, May 6, 1999. September 1999, Vol.11, No. 6 (A)

Many children told us that their parents generally share such attitudes. A fifteen-year-old Standard Eight pupil at a rural primary school in Coast Province said that she and her classmates tell their parents when the teacher is being unfair, but that the parents will not do anything about it. "The parents will say just to persevere, that maybe you've made an error that you don't realize, and that the teacher is right," said one of her thirteen-year-old male classmates.²⁹⁴

Children said that they have no redress if their parents do not investigate their grievances. "You can not complain," said a Standard Eight pupil at a suburban Central Province primary school. "You tell your mom and if she does not come, then there is nothing you can do. So, you keep quiet."²⁹⁵ Jonas K., a twelve-year-old studying at an economically-disadvantaged rural school in Central Province, agreed: "If I tell my parents, they say nothing, because they think it is okay. Even if I am badly hurt, they say, 'You must have needed the beating.'"²⁹⁶ Anita W. told us, "Your parents will not say anything [about corporal punishment], except that you should not have made the mistake."²⁹⁷

Parents interviewed by Human Rights Watch generally supported the use of corporal punishment. One parent commented, "I appreciate the punishment they give to our children. A teacher who is feared by the pupils, they [the pupils] do better. . . . they do want to do their homework."²⁹⁸ Another parent began by quoting the Bible, saying:

There is a verse which says spare the rod and spoil the child. We have given teachers the authority to discipline [our children] without fear. . . . In 1963, in my primary school, I thought I shall try to find a means of getting back. I said I shall come back to beat them. That was boyish thinking. I am now able to see the results. I am grateful for what they did to me. Now I see it as their duty [to cane students].

[If a child is injured,] we count it as an accident. Accidents can happen anywhere. Your intent was not to hurt. If the parent also gets hot tempered [about the injury], you get some [other] parent and cool the temper. . . . If it happens once, it is an accident. . . . You tell the parent that "you are becoming a hothead, you are going to lose, you are not going to make your child what you want him to become." You cool them down.

If there was no cane, the children would not hear. It is like that with my wife. Sometimes I must box her a few times before she listens to me. . . . When he is a boy, cane him and he will be a good man.²⁹⁹

There was a clear divergence in attitudes of Kenyan children, teachers and parents toward corporal punishment. Kenyan children told us that they feel that corporal punishment is degrading, humiliating, and unfair. But most of the teachers and parents with whom we spoke are not sympathetic to their concerns.

Effect on Classroom Discipline and Instruction

Despite teacher and parent claims that corporal punishment makes it easier for instructors to manage their classrooms, there is little evidence that canings, whippings and other cruel, inhuman, or degrading treatment are as effective as many Kenyans believe. According to experts in the field, "there is considerable data indicating that corporal punishment does not, in any consistent way, deter misbehavior or encourage good behavior on the part of children. Most experts agree that corporal punishment does nothing to fulfill the disciplinary goal of developing a child's conscience so as to enable him or her to behave well"³⁰⁰

²⁹⁴ Human Rights Watch interview with Michael F., Coast Province, May 11, 1999.

²⁹⁵ Human Rights Watch interview with Casey S., at a suburban Central Province primary school, May 6, 1999.

²⁹⁶ Human Rights Watch interview with Jonas K., Central Province, May 6, 1999.

²⁹⁷ Human Rights Watch interview with Anita W.

²⁹⁸ Human Rights Watch interview with Kangundo D.E.B. school parent Janice Mutua, Machakos District, May 7, 1999.

²⁹⁹ Human Rights Watch interview with Kangundo D.E.B. school parent Joshua Muoka, Machakos District, May 7, 1999.

³⁰⁰ Bitensky, "Spare the Child," p. 426. See also Newell, *Children Are People Too*, p. 19; Nancy Samalin, *Loving Your Child* (New York: Basic Books, 1987) p. 73; Straus, *Corporal Punishment*, p. 100, N446 (A).

Students told us that the imposition of the cane or other cruel, inhuman, or degrading treatment does not help them focus on their studies. Ryan G. from Coast Province told us, "If you tell your parents [that you have been caned], often they just say, 'It is good to be punished, and to be caned, for that is how you learn.' But I myself, I do not agree with this. Teachers do not need to cane to teach discipline. If you cane a child, he will talk to you like a child, he will continue to behave like a child. If you instead explain to him his misbehavior and then forgive him, then instead he will behave like a man."³⁰¹ At another Coast Province school, Anthony C. said, "I think there's no need for teachers to punish the dull kids . . . [caning] does not help them learn."³⁰²

Several students told us that the most effective instructors are those who do not rely on the cane. A teacher "who doesn't cane is better understood [by the students]," said a sixteen-year-old male student at a rural primary school in Coast Province.³⁰³ A group of Standard Eight students at another Coast Province primary school told us that the "class without caning" is the one in which they learn the most.³⁰⁴

Some students said that, regardless of how effective corporal punishment is, discipline would not suffer if it were not used. One secondary school student in a Nyanza Province city gave this analysis: "If it [caning] were banned, students would still be under control. I was absent without permission. I was not caned. I was made to sweep the classroom in the evening. Since then I have not been absent without permission. So caning is not necessary to control students."³⁰⁵ Another student at an urban secondary school, in Central Province, explained that caning cannot be necessary for good discipline, because "at Starehe Boys' Centre there is no punishment at all—but it has the best discipline."³⁰⁶

School Dropouts

Many children told us that corporal punishment was a significant factor leading students to drop out of school, or in some case to transfer to another school. Fourteen-year-old Aaron M. reported, "Some run away from school because of the punishment."³⁰⁷ Benson B., fifteen, a student in a primary school in the Rift Valley Province, told us that being beaten is "better than being expelled. We're given a choice. To accept the punishment or leave the school, so we accept it."³⁰⁸

Harold D. dropped out because he would not accept what he considered to be an unfair caning:

The deputy headteacher told me I had disobeyed the school rules—that I was talking, but I was sure that I was not talking and was really concentrating. He called me to his office and told me I would be caned, but I refused. Then he chased me home to call my parents. Two days later I went with my mother to the headteacher's office. The deputy headteacher was also there. I tried to explain I had not been talking, just concentrating. The headteacher said if I don't agree to the punishment he'd chase me out of school. I refused again to be caned and then left the school. I've never been back.³⁰⁹

³⁰¹ Human Rights Watch interview with Ryan G.

³⁰² Human Rights Watch interview with Anthony C., age sixteen, Coast Province, May 11, 1999.

³⁰³ Human Rights Watch interview with Marc L., Coast Province, May 11, 1999.

³⁰⁴ Human Rights Watch interviews, Coast Province, May 11, 1999.

³⁰⁵ Human Rights Watch interview with Billy S.

³⁰⁶ Human Rights Watch interview with Eliot H., age eighteen, Central Province, May 7, 1999.

³⁰⁷ Human Rights Watch interview with Aaron M.

³⁰⁸ Human Rights Watch interview with Benson B.

While no primary school headteacher listed corporal punishment among the reasons that students at their school dropped out, one urban secondary school headteacher did: "There have been three cases this year where boys refused to be caned and left school. They must accept the punishment and agree. It's an offense to refuse to accept the punishment. If he refuses the punishment then he leaves the school on his own. He walks out on his own. We don't force them to leave."³¹⁰

Other Kenyan educators agreed with children's perceptions that excessive corporal punishment leads to some students ending their formal studies. Joyce Muli and Joyce Wekesa, teachers at Pandipieri Primary School told us that if teachers impose physical punishment "too much, the child can become immune, or will come to fear school and will drop out."³¹¹ Geoffrey W. Griffin, the head of the elite Starehe Boys Centre in Nairobi, said that most of the drop out problem in Kenyan schools generally is "due to teacher brutality."³¹²

VI. ALTERNATIVES TO CORPORAL PUNISHMENT

Teachers and administrators impose corporal punishment on students for a variety of reasons. They beat pupils who perform poorly on exams, who talk in class, or who misbehave in countless other ways. Many teachers, administrators, and parents believe that these violent punishments are necessary to teach children a lesson and to discourage them from similar practices in the future. Other teachers say that they prefer not to use physical means of disciplining students; however, they say that they must resort to these methods because they may be responsible for seventy-five or more students per class, and that they have no other way to maintain control of such a large group of young persons.

However, educators and psychologists argue that teachers can oversee classrooms and develop their pupils' knowledge, skill, and aptitudes through means other than corporal punishment. For example, they claim that praising pupils' good behavior, imposing non-physical punishments, and involving children in making the school rules significantly reduces disciplinary problems. These educators and psychologists argue that alternative methods of discipline are more beneficial and less detrimental to a child's development than corporal punishment. These alternatives do not necessarily require the investment of significant amounts of additional funds, according to advocates of these means.

Kenyans involved in training teachers told us that they encourage instructors to use methods of discipline other than physical sanctions. "We stress that teachers should try to avoid caning," said Pancras Otwani, the director of professional studies at Tambach Primary Teachers College. "It used to be thought that corporal punishment brightened the head, but we know now that it does not. It reduces the child's status. We suggest a variety of other punishments—like denying the child what the child wants, rebuke, or parading the child, or sending the child home to collect the parents."³¹³

Apollo K. Owuor, director of the School Improvement Program (SIP) in Kisumu, told us that his programs "try to challenge teachers to come up with innovative ways of teaching children, so that the child is the center of learning, to make learning interactive. The approach that teachers are using is not conducive to learning. If children don't understand what they're being taught, then that becomes a discipline problem. . . . We tell teachers to think about ways of involving children in small groups to participate in learning. We've even shown them films on the subject, so they can see how teachers teach in other countries. Children should be brave enough to challenge and question the teacher in the classroom. This is what we want."³¹⁴

Positive Reinforcement

³¹⁰ Human Rights Watch interview with Headteacher Paulo Okoth Odega, Kisumu Day Secondary School, Kisumu, May 10, 1999.

³¹¹ Human Rights Watch interviews with Joyce Muli and Joyce Wekesa, Kisumu, May 10, 1999.

³¹² Human Rights Watch interview with Geoffrey W. Griffin, Nairobi, May 7, 1999.

³¹³ Human Rights Watch interview with Pancras Otwani, May 12, 1999.

³¹⁴ Human Rights Watch interview with Apollo K. Owuor, Kisumu, May 11, 1999. September 1999, Vol.11, No. 6 (A)

According to educational experts who oppose the use of corporal punishment, use of positive reinforcement techniques reduces the frequency and extent of student misbehavior. Teachers can reward students in a variety of simple ways. An instructor can praise a pupil in front of the student's classmates or other instructors, award special certificates to children who perform well or are particularly caring, or list their names on notice boards. A teacher can write positive comments in a child's exercise book. Teachers can hold school-wide competitions and give material rewards like exercise books or pens to those who do well.³¹⁵ If a teacher rewards students by giving them positive attention, the teacher can punish a particular pupil by ignoring that pupil's attempts to be disruptive. A student may break the rules because he or she wants the teacher's attention. If the teacher is not ruffled or angered by the pupil's misdeed, then the student is less likely to perform the act in the future. Denial of what the child has come to value is a form of punishment, according to educators and psychologists opposed to physical punishment of children.³¹⁶

When asked about alternatives to corporal punishment, Kenyan pupils said that their teachers should reward them more often for their good behavior. "I think there could be alternatives to caning," said seventeen-year-old Richard O. "I don't know: if we had outings and rewards, I think we would be happier and behave well because we would be happier. We are unhappy here, and so we misbehave."³¹⁷ Eleven-year-old Margaret M. from Coast Province attributed students' good behavior to the school's reward system. "When you perform well, at the end of the year we are given prizes," she told us.³¹⁸ Most students we interviewed indicated that their teachers did not regularly praise them for good behavior or academic achievement, and expressed their desire for this.

Guidance and Counseling

Some students may not conform to their teachers' requirements due to reasons outside of their control. They may not have enough to eat, they may travel a long distance to school, their parents may expect them to work when they are not at school, they may need to take care of their younger siblings, or their parents may quarrel often. These external factors affect their abilities to concentrate and the amount of time and energy they can devote to school.³¹⁹

Under these circumstances, beating a child is unlikely to be a productive punishment, according to educators and psychologists who oppose corporal punishment. A teacher is more likely to elicit appropriate behavior if the teacher can understand the situation that the child faces and offer guidance and counseling to the student and the student's family. According to a Namibian Ministry of Education text, "[t]alking and listening to a learner can frequently lead to a change in behavior for the better. If the learner knows that there is someone who cares about his or her problems, the problems become easier to carry, even if there is no way to change them."³²⁰

³¹⁵ Michael Kimaryo et al., *Discipline Without Beating: A Challenge for Educators* (Isamilo, Mwanza, Tanzania: Kulena Center for Children's Rights, 1998).

³¹⁶ Ministry of Education and Culture, Republic of Namibia, *Discipline With Care: Alternatives to Corporal Punishment* (Namibia: Ministry of Education and Culture, 1993).

³¹⁷ Human Rights Watch interview with Richard O.

³¹⁸ Human Rights Watch interview with Margaret M. See also Human Rights Watch interview with Franz P. (stating that student are given rewards of exercise books if they perform well, and they may be exempted from paying school assessments, which are KSh2000 annually).

³¹⁹ Human Rights Watch interview with Ben Oгатemo, Deputy Head teacher, Ng'ate Primary School, Central Province, May 6, 1999.

³²⁰ Ministry of Education and Culture, *Discipline With Care*.

Kenyan Ministry of Education officials state that they encourage their teachers to practice “guiding and counseling” as a first step in the disciplinary process. “We are increasingly strengthening our guiding and counseling in the schools,” said one Ministry official. “Now we have a guidance counselor at every [secondary] school.” He went on to explain that the ministry and the schools also use the religious organizations to identify guidance and counseling for the various primary schools.³²¹

Many of teachers with whom we spoke stated that they attempt to guide and counsel the students before they impose physical punishment. “You ask a pupil why he didn't do the work,” said a Standard Seven instructor at Ng'ate Primary School in Central Province. “You wonder whether to discipline or understand the child. Problems concerning discipline problems arise from home. Parents say it is the work of the teacher. We [the teachers] try to give them guidance and counseling; we came from the same environment.”³²²

Some teachers told us that they have decreased their reliance on corporal punishment and increased their emphasis on guiding and counseling programs. “As far as our punishment in the school, over the years caning was the most common punishment that was given to children in the schools,” said Suleiman Mwalonya, headteacher at Golini Primary School. “Over the years that has changed . . . we normally use a lot of guiding and counseling. . . . We have been enlightened by the Ministry [of Education] to gauge the type of punishment we give to the boys.”³²³ Teachers also noted that guiding and counseling programs are more effective with older students, especially those enrolled in Standard Six and above.³²⁴

However, teachers and educators state that they need more training in order for them to effectively implement guidance and counseling programs.³²⁵ According to Pancras Otwani, director of professional studies at Tambach Primary Teachers College, aspiring teachers spend no more than a total of four or five hours out of their two year training program learning methods of classroom management and discipline.³²⁶

Once the new teachers leave college, they have very few opportunities for “in-service” training in alternative disciplinary methods, according to instructors and educational officials we interviewed. Although some districts have regular supplemental training programs, many teachers with whom we spoke told us that there are few professional development classes in discipline, and that teachers are expected to locate the sessions on their own and to find the funds to pay for them.

³²¹ Human Rights Watch interview with Dr. Obonyo, Nairobi, May 5, 1999.

³²² Human Rights Watch interview with Standard Seven instructor, Ng'ate Primary School, Central Province, May 6, 1999. See also Human Rights Watch interview with Headteacher K.A. Manxu, Khadija Primary, north of Mombasa, May 13, 1999 (“If a child fights in the school, we summon the parents, and ask them to come and sit with us. We counsel them, we warn them, we tell them it is not good. For instance, there are times when the big boys and girls fight. When this happens sometimes it is something at home that is causing it, so we speak to the parents. You don't punish a child for the sake of punishing, but so that they will reform. Sometimes maybe you find that a child is falling asleep in class. And maybe it is because the child had not taken tea at home that morning, so he is falling asleep. And maybe if you beat him it just makes him frustrated. So you must try to understand.”); Human Rights Watch interview with District Education Officer Francis Kiplagat, Tambach, May 12, 1999 (“Discipline is the most important aspect in bringing up an individual. There's self discipline and there's enforced discipline. Correction can be done in several ways. We try to encourage guidance and counseling. If they are able to take it without the cane, we are happy.”).

³²³ Human Rights Watch interview with Suleiman Mwalonya, Kwale District, May 11, 1999 (adding that “[w]e are fearing that we may be taken to court when we cane a child... this time the public is aware of its rights...”).

³²⁴ Human Rights Watch interview with Samuel K. Mungai, Munyu Primary School, Naivasha, May 6, 1999.

³²⁵ Human Rights Watch interview with John H. Omimo, municipal education officer, Kisumu Municipality, May 11, 1999 (stating that teachers need much more training in guiding and counseling programs and that not all teachers have the right skills to do it); Human Rights Watch interview with Standard One Teacher Mary Macharia, Munyu Primary School, May 6, 1999 (“No one likes to cane children. We don't have alternatives now, but I would like to learn about other ways of disciplining of children. We do not like to cane, and it is also risky.”).

³²⁶ Human Rights Watch interview with Pancras Otwani, Tambach, May 12, 1999. September 1999, Vol.11, No. 6 (A)

For example, the head teacher at Kangundo D.E.B. School told us that he located a guiding and counseling program at Daystar University in Nairobi, and that he paid for the enrollment of one of his teachers out of the school's discretionary accounts. The government did not provide him assistance in finding the course or funding his teacher's participation. Other teachers told us that those instructors selected to participate in these programs do not always share the knowledge they have gained with their fellow teachers.³²⁷

Alternative Punishments

Educators and psychologists who oppose the use of corporal punishment state that teachers should impose non-physical disciplinary measures as an alternative to beatings. Advocates propose that teachers require students to write a statement describing the negative effects of their behavior, or to apologize for the mistake in front of their classmates. Instructors can require the misbehaving child to sit on a chair or a mat at the back of the room and to think about their mistake and of ways to improve their behavior. Teachers can ask the child to perform additional academic work. They can require the student to bring the student's parents to school to talk about the student's behavior.³²⁸

Many opponents of corporal punishment argue that instructors may also discipline a child by assigning non-abusive physical tasks. They state that teachers can ask students to perform light chores, to water or weed a school shamba, or to fix what they have broken: "Learners who build chairs are not apt to break them. Learners who wash walls are not apt to make them dirty on purpose. If learners are reinforced for keeping their schoolyard neat and clean, they are less likely to throw trash on it," according to the Namibian Ministry of Education and Culture.³²⁹ Advocates state that these punishments should be administered in a thoughtfully and not in an excessive or exploitative manner.

Setting Rules and Expectations

Disciplinary measures will be more effective if the teacher makes clear his or her expectations at the beginning of the term, according to educators and psychologists opposed to corporal punishment. If the students know the rules in advance, then there are no surprises when the instructor penalizes those who break them. Students are more likely to perceive the punishment as just, to maintain their respect for the teacher, and to obey the guidelines if the regulations are made explicit than if not.³³⁰

Furthermore, student acceptance of the rules will increase if pupils participate in setting guidelines for the classroom. The process of establishing guidelines will give them a greater understanding of the reasons for the regulations, and they will see themselves as having a stake in their enforcement.³³¹

³²⁷ Human Rights Watch interview with teacher Joyce Wekesa, Kisumu, May 10, 1999.

³²⁸ Kimaryo et al., *Discipline Without Beating*.

³²⁹ Namibia Ministry of Education and Culture, *Discipline With Care*, pp. 9-10.

³³⁰ Kimaryo et al., *Discipline Without Beating*, p. 24; Namibia Ministry of Education and Culture, *Discipline With Care*, pp. 8, 11.

³³¹ Kimaryo et al., *Discipline Without Beating*, p. 25 ("As much as possible, let the students participate in the process of formulating school procedures and rules rather than just depending on what their teachers have decided for them. This will also help the students understand and follow the rules they have set themselves.").

VII. CONCLUSION

*Corporal punishment is the worst, even in the world. No one likes it. It must be banned so that children will not worry.*³³²

— Alex J., seventeen

*In your report, if you are talking to the ministry, I would like you to write about the punishments—the caning must be reduced, because it is too harsh for the children.*³³³

— Anita W., fourteen

School corporal punishment is perhaps the best example of the acceptance and promotion of violence against children as serving a supposed educative and social purpose—that hitting a child will teach a child, and contribute to his or her learning and development. Corporal punishment has far-reaching consequences for both children and adults. Research has identified this as a significant factor in the development of violent attitudes and actions, in childhood and later life. And for adults, it sends the message that violence is an effective and legitimate means of controlling and correcting children's behavior. Just as challenging routine domestic violence against women has been a vital part of the advancement of women's rights, challenging physical assaults on children disguised as corrective discipline is vital to improving children's status.

The purpose of children's education, as enshrined in the Convention on the Rights of the Child, should be the development of respect for human rights and fundamental freedoms, and preparation for responsible life in a free society, in the spirit of understanding, peace, and tolerance.³³⁴ In Kenya, however, school children are taught lessons about violence, as the witnesses and victims of corporal punishment that is arbitrary, routine, and often brutal. In the process of learning these lessons, many children are left with physical and psychological scars. The psychological scars are less visible, but they are the fruit of an educational system that maintains discipline by humiliating and hurting small children. And for some children, physical scars and disabilities remain a life-long reminder of the system's brutality.

Many nations throughout the world have recognized that school corporal punishment violates the provisions of the U.N. Convention on the Rights of the Child, and constitutes a cruel, inhuman, or degrading practice. Recognizing this, many nations have ended the practice of school corporal punishment, and aggressively sought to train teachers in alternative means of maintaining discipline and motivating children.

Kenya's children are its future, and there is no excuse for permitting another generation of children to be subjected to violence in the name of education. The Kenyan government and the Kenyan educational community should take immediate and strong action to eliminate corporal punishment and other forms of cruel, inhuman or degrading treatment in schools.

³³² Human Rights Watch interview with Alex J.

³³³ Human Rights Watch interview with Anita W.

VIII. ACKNOWLEDGMENTS

This report is based on research conducted in Kenya in May 1999 by Rosa Ehrenreich, Amy Marx, Marco Simons, Mark Templeton, and Yodon Thonden. (Rosa Ehrenreich was the Acting Director of the Orville H. Schell, Jr. Center for International Human Rights at Yale Law School and the faculty instructor of the Lowenstein International Human Rights Clinic. Amy Marx is a member of the Yale Law School Class of 2000, Marco Simons of the Class of 2001, and Mark Templeton of the Class of 1999. Yodon Thonden is counsel to Human Rights Watch Children's Rights Division) The report was written by Rosa Ehrenreich, Amy Marx, Marco Simons, and Mark Templeton, and edited by Yodon Thonden. Binaifer Nowrojee of Human Rights Watch Africa Division provided additional helpful comments on the manuscript. Shalu Rozario, associate for Human Rights Watch Children's Rights Division, provided production assistance.

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Human Rights Watch Children's Rights Division

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Its Children's Rights Division was established in 1994 to monitor and promote the human rights of children around the world. Lois Whitman is the director; Yodon Thonden and Mike Bochenek are counsel; Jo Becker is advocacy director. Vikram Parekh is research associate; and Shalu Rozario is associate. Jane Green Schaller is chair of the advisory committee.

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