

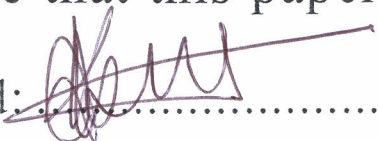
TOPIC: The use of Corporal punishment as a corrective tool in the learning process and the effects of banning it from use.

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Dissertation Submitted In Part
Fulfilment For The Degree Of
Bachelor Of Laws (LLb) of The
University Of Nairobi.

2001

I declare that this paper is my original works.

Signed: 

Date 27th August, 2001

DEDICATED TO:

MY BROTHERS, SISTERS
MY COUSINS,
AND MY FELLOW TEACHERS
AT ST. JOHN'S KIANJUKI GIRLS
SECONDARY SCHOOL.

Though ye may be poor do not say:

I am poor (and penniless)

I will not seek knowledge instead,

bend thine back to all discipline

purify thine heart and,

in the abundance of your intellectual potential,

seek out the mystery of existence.

- Dead Sea Scrolls.

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I am grateful to my Supervisor Mr. W. Musyoka. I am equally indebted to my Father and Mother and Mrs. Kaburu Sally, without whom I would have attempted little and achieved even less.

"For my most remarkable achievements, have been prompted not by reason, but by instinct, by God, I would say."

- Mahatma Gandhi.

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1.1 Traditional African Education and the use of corporal punishment

In discussing the issue of Education systems and corporal punishment, 'many people tend to assume that there was no Education system in the African traditional setting. Yet infact there existed an elaborate education system that served the purpose of inculcating moral values and passing on of cultural ethics, of the different ethnic communities that existed then. These systems were aimed at preparing the African child for amicable co-existence with other community members. It also aimed at passing some economic skills for use in whatever trade a child intended to ply, such included hunting, iron smith, mongering, herbal medicine.² The graduants of these systems were honoured at "Graduation ceremonies which were referred to as initiation ceremonies," that marked acceptance into the Society.³

What steps did Society take to ensure that individuals were brought up well and in the knowledge of how they should live peacefully with their fellow men? How did they ensure that offenders were appropriately dealt with within the learning system? In traditional African Society there were no inflexible codes of law, decisions about social order were based on customary norm . In the "School" setting there were elders whose duty was to:-⁴ Reconcile persons, settle quarrels, impose sanctions on wrong doers. Sanctions on behaviour took many forms, but all had one goal, and that was to control the learners' conduct. From the stories told in African folklore one gathers the detail of what such sanctions involved. In some instances it involved inflicting of pain through whipping or pinching of a painful part of the body like the ears. This was quite rare and when it had to be done it was by an elder.

The purpose of having Elders oversee the training of the youth was to ensure that the youth grew up to be responsible members of Society and, that they respected their elders.

There were rules and regulations that regulated inter personal relations and behaviour. These rules and regulations coincided with expectations of Society from each member, they differed depending on the status that one held in Society, each member was taught the relevant duties and responsibilities and how to fulfil them within the frame work of rules and norms of culture, and, there were consequences for wrong doing or breaking such norms.⁵ This kind of education took place mainly in levels during the rites of passage, in one's life, overseen by elders.

1 The term corporal punishment is defined by the Oxford Dictionary as a punishment inflicted on the human body by the means of whipping or beating. For the purpose of this paper reference to this term shall include chastisement, beating, or manual labour given as punishment with the aim of causing bodily pain so as to act as a way of controlling the behaviour of a person.

2 Johnstone Kamau: Facing Mount Kenya. Page 102.

3 Mzee Munya Mbogo a resident of Kevote in Embu District. Most African Culture was stored informally through oral narratives, there are no written primary sources of information if we want to study the African practices we have to collect material ourselves by observing ceremonies and listening to folkstories. Wemainly have to rely on personal interviews with persons of older generation, and medicine men, widely known for their great knowledge of traditional beliefs and ceremonies.

4 Mbiti John S.: African Religion and Philosophy, London Ibadan Heinemann Publishers. 1969

5 Ibid

Even in this kind of education system, there existed the teacher to student relation. The elder was the teacher and the youth were students. The teachers in this setting had mechanisms that enabled them to control the students. Punishment was used as a tool of instilling discipline among students, the punishments varied in form and intensity and it was upon the elders to choose the most appropriate.⁶ Among the Maasai, the learners “*Olbarnoti*” were meant to conduct themselves in respect towards their comrades “*ilchorueti*”, while in the Emanyatta, failure to do so attracted the wrath of the elders.*

Such punishment included caning of the deviant students by the elders in public and chastisement by the elders. Other forms of punishment included curses. In some communities, where it was difficult to prove the innocence or guilt of suspects, a special ritual was carried out led by senior members of Society, (in a case where a boy denied having made a girl pregnant, he would be made to pass between the legs of the girl and if he was guilty of the offence, misfortune would befall him.) This kind of punishment was meant to instill fear in the youth and to inculcate the moral of honesty.⁷

It becomes clear that the use of punishment was an intergral part of the education process in African setting as a tool of instilling order among students. Infact it was accepted that if a child showed unbecoming conduct, any grown up member in Society would chastise them or cane them, and thereafter inform the child’s parent. This was in line with the norm that a child belonged to the community as a whole and the adult members of the community had a duty to ensure that all children were of good conduct.⁸

1.2 Missionary schools and corporal punishment.

In 1876, the Methodist Missionary Society opened a School at Ribe, followed by another school, on the Tana River, in 1885. The Christian Industrial Mission, later known as the Church of Scotland Mission, entered the field of education in 1891; the Roman Catholic Mission followed in 1892; and in 1895 the Africa Inland Mission started a School near Machakos.⁹

With the building of the railway line, the Christian Missions spread throughout the Highlands of Kenya and carried to the Africans the beginnings of education and of medical services. This period can be said to be one of much success to the Christian Missions in Kenya.¹⁰

6 Supra Note Four

7 Wrong Margaret: The Land and Life of Africa: New York Friendship Press, 1936.

8 Supra Note Four

9 Ginn Charles J. : A Brief History of the Church in Africa. Page 10-12.

10 Hill M. Dual Policy in Kenya. Kenya Weekly News, 1944. Page 65.

* Han’s - Egil Hauge: Maasai religion and folklore city printing works (K) Ltd. Tom Mboya street.

The object of all missionaries was to bring Africans into the membership of the churches to which they themselves belonged. They at last began to be outstandingly successful in doing so in this period. The main means used by all the Christian missions in evangelism was to found networks of village schools in which children of all ages could be given a very simple education in reading, writing and arithmetic alongside the religious instruction leading to baptism and church membership.¹¹

The early schools grew out of the desire to win converts, train African catechists and workers and create an African middle class. The objective of creating this class stemmed from the belief that this was the best way of introducing European civilisation. It was, however, recognised that this particular group would be small and that many generations would pass before anything approaching a sizeable middle class could be created.¹² Therefore, the main goal, first and foremost, was for the Christian missionaries to win African souls for Christ. This was to be done through educating the native catechist who was to be responsible for the spreading of the gospel, particularly since he was a man who spoke the local language and was one of the people himself. The spread of Christianity, especially among the Protestant denominations, had to rely heavily on a person's ability to read and understand the Bible.¹³

Although this in itself did not necessitate Schools, the setting in which the missionaries worked, characterised by heathen superstitions and savage customs, dictated the need for establishing institutions to ensure the success of their work. The education provided by both Protestant and Catholic missionaries was restricted, especially during the early years, to the basics which would enable students to carry out evangelistic-catechismal functions. It included mainly singing, scripture, prayers, reading, arithmetic and religion.¹⁴

Also considering the prevailing image of the African as being a lazy scoundrel wallowing in heathen superstition, it was not surprising that Christian missionary groups took up the educational forms and contents currently in practice in England for the working class, a group considered to be afflicted by similar weaknesses. This education emphasized the spiritual value of hardwork and the tenets of evangelical Christianity. Although the role of religion was paramount, there was some room in the curriculum for secular subjects.¹⁵

11 D. N. Sifuna and J. E. Otiende: *An Introductory History of Education*. Page 102.

12 Ibid

13 Supra Note Ten

14 Sir Michael Saddler: "Christian Education in Africa and the East Africa". London Student Christian Movement, 1924. Page 117.

15 Oldham H. J. : Church and Race Relationship "Christianity and the Race Problem". London SCM, 1924. Page 280.

This kind of consideration emanated from the fact that 19th century missionaries were victims of their own propaganda: they came to believe that the Africans' degeneracy was rooted in their culture and traditional belief systems. Africans were said to be redeemable, but first evils within their social systems had to be destroyed. Only then could the process of civilisation commence.¹⁶ Implicit in this was the replacement of traditional culture with something higher, new and European.

Post-primary education was not encouraged and it was in fact considered not useful by some who feared that those who achieved it would be unable to communicate with the masses. This lack of emphasis on secondary-level education was very much applauded by administrators who often argued that more attention should be paid to manual labour than to training as pointed out by the 1847 memorandum on education of the Privy Council.¹⁷ This emphasis on manual labour for African development became an article of faith for most missionaries by the end of the 19th century. There was the general agreement that Africans were lazy; manual labour was advocated as the panacea for this kind of malaise.¹⁸ (Consequently manual labour was used punitively as a means of correcting the lazy nature of the African child even in the missionary schools).

Having acknowledged that the education Curriculum was biased towards religion, the teaching methods also leaned towards religious practice. The use of guidance and counselling was employed for cases that merited such a method. Even today in those schools that are church sponsored, a priest or pastor is retained within the Schools access to offer guidance and counselling to those students and even teachers who are in need of the service. But even the pastors and the priests agree that some cases of indiscipline require a more effective method of correction.¹⁹ (One such method is corporal punishment which was used even in the earliest times of the pioneering of the missionary Schools).

In keeping with Christian teaching, (the bible is quoted as teaching parents that to spare the rod is to spoil the child.)²⁰ This kind of corporal punishment though, was quite rare and was only administered by those authorised by the School administration. It is also important to note that the teachers at the time were people held in high esteem and the students they had, respected them.

16 Supra Note Fourteen

17 This article is to be found among the colonial articles in the Kenya Archives.

18 Kenya Education Department Triennial Survey 1958 - 60. Nairobi Govt. Printers.

19 Rev. Njagi John: African Inland Church Kavutiri Parish Sermon on the 6/5/2001

20 New World Bible Translation Committee : Proverbs 13:1 and 24.

As such, the teachers established control over their students, and had authority in schools, so once the teacher issued a warning against certain conduct amongst the students, the latter would, for fear of retribution desist from such conduct.²¹ But compared to today, teachers are held in very low esteem and their students hardly respect them hence the need for a more effective way by which the teacher can demonstrate his / her seriousness to the few hard headed students.

In fact, the attitude of the teachers of that time can be deduced from the sentiments which received strong reinforcement from pseudo-scientific racism which came into practice in Europe in the middle of the 19th century. The central thesis advanced was that there were fundamental physiological differences between Negroes and Caucasians. The increased attention given to the measurement of cranial capacity in reputable 'scientific' circles reinforced a growing belief in African inferiority. All the studies were said to have indicated that the capacity of the Negroid skull was less than that of a Caucasian skull.²² Obviously most of the teachers of that time were Caucasians and they made sure that this fact was clear in the minds of the students. They even chastised their students on their low intelligence. Consider these sentiments from one famous teacher of the time, Carey Francis. "I wonder whether there is anyone, or at least anyone who knows Africans, who is not a hardened criminal.

1.3 Colonialism and its attitude towards Education and use of Corporal Punishment

The construction of the railway led to the arrival of what became Kenya's largest immigrant community. Thousands of labourers were imported from India to work on the railway. They established themselves at several key points between Mombasa and Kisumu. The British administration began considering white settlement a reality. European settlers had been arriving in the country since 1896 but through active encouragement of the Protectorate Commissioner, Charles Eliot, settlers began to arrive in large numbers in 1903 mainly from South Africa. They were soon followed by other immigrants from Britain, Australia, New Zealand and Canada. The decision to encourage European settlement was the British Government's insistence that its colonies pay for themselves.²³

21 L. H. Greaves, Carey Francis of Kenya

22 A. R. Paterson: Education of the backward Peoples, Nairobi Govt. Printers.

23 Supra Note Fourteen

White settlements meant land alienation. The 1900 Land Ordinance sparked off land alienation for European settlements. Land alienation to create what was also referred to as a White man's country, affected a number of ethnic communities who lost their traditional lands. In addition to the problem of land alienation was that of labour. European settlers who felt superior were unlikely to agree to do manual work in their farms in a country inhabited largely by Africans. To prosper, they needed cheap labour and to secure this labour force they had to strengthen their hold over the African population. They forced Africans to work for wages in order to pay hut tax, which had been imposed on all areas under the colonial administration since 1901.²⁴

1.4 Government Education Policy

An important aspect in the development of education was missionary-government cooperation. This started at the turn of the century when the government started urging missions to give technical education a central place in their schools. Early commissioners like Charles Eliot and Hayes-Sadler were in favour of working through Christian missionaries in the provision of educational facilities. The general government education policy can, however, be deduced from the words of Sir Charles Eliot. "In other words the interior of the protectorate is a whiteman's country. This being so, it is mere hypocrisy not to admit that the whiteman's interest must be paramount and, that the main objective of our policy and registration should be to found a white colony."²⁵

The formation of the Missionary Board of Education coincided with the Fraser Education Commission of 1909. Following the Giroud's Commission, which envisaged a racial approach in the development of the Protectorate, Professor J. Nelson Fraser of Bombay was commissioned to recommend a structure of education in the East African Protectorate. Among his terms of reference was "not to put forward plans for literacy education of the natives, but to consider the possibilities of developing industries among them".²⁶

Henry Scott and Nelson Fraser appeared to share the same ideas on education. They saw the problem of African education in terms of reducing the rate at which Western influences were corroding the traditional fabric of the African society.

The answer to the problem was seen to lie in religious teaching, a training in strict obedience to authority and practical education of a technical nature. They also agreed

24 Opeit

25 Committee on Educational expenditure - European and Asian Report, Nairobi Govt. Printers 1948.

26 Anderson John E. "The Struggle for The School, Interaction of Missionaries, Colonial Govt. and Nationalism in the development of formal education in Kenya", Longmann London 1970 Page 171 to 173.

that the government should assist mission schools. Fraser also discussed with the Missionary Board of Education and agreed on the need for government-missionary co-operation in education.²⁷

In the boarding schools, very often regular classwork was strongly weighed by manual labour and missionaries appeared to use their students as servants. It is perhaps no exaggeration to say that the boarders did more physical work than classwork. In the missions, the pupils were under the strict supervision of a white man and discipline was generally rigidly maintained. Pupils were largely used as labourers. This led African parents to demand payment in return for the work they did on mission stations.²⁸ Even with pressure on the local communities, either by coming to agreements with elders or chiefs or through government officials, there was a strong tendency to send the dull or difficult children, for this limited the actual loss to the family economy. This led to discipline problem in the Schools.

But out of all these, one gathers that the colonial education had the vision that to produce a good individual discipline was essential in any system of education. In the first place, one also realises that indiscipline in Kenyan Schools is not an alien invasion in the system, it was there even during the earliest of times. In his memoirs, Edward Carey Francis who is a reputable founder of one of the earliest Schools in Kenya (Alliance High School) confesses "One morning I woke up to find that spoons had been stolen from the Dining Hall and I quickly traced it to a Kikuyu gang in form two." Later on, one of the boys confesses, and says "He was right about the gang, it was us, but he was wrong about the motive, we actually stole the spoons and threw them into the pit latrine just to tease him."²⁹

If one was in Carey Francis' shoes, how would one handle such a case of indiscipline. Carey Francis was a disciplinarian who from the records in Alliance High School, used corporal punishment as effectively as it was used in the Army where he was trained, that is what made him one of the most remarkable teachers in Kenyan Educational history. In his report, Fraser recommended (to the Government) an industrial apprenticeship scheme through indentures. He reasoned that missions and government might, through such a scheme, begin a fruitful co-operation in replacing the relatively expensive Indian artisans by Africans. In proposing an industrial formula, Fraser also felt that he was making an assault on those undesirable qualities, like self-conceit and insolence, that were assumed to follow from giving Africans literary education.³⁰

27 Fraser Commission Report 1909. The report was used by the colonial government as a beacon on the implementation of the racial dual policy in the education sector.

28 Kenya colony and protectorate: sub-committee on social welfare, "information and mass education", Nairobi, 1946. (Kenya Archives)

29 Supra Note Twenty One.

30 Supra Note Twenty Seven

On government-missionary co-operation, Fraser took a stand that it was desirable that education facilities for Africans should be provided by mission societies on the grounds that education of any kind, industrial or technical, was mischievous without morality and should, therefore, be accompanied by definite Christian instruction, which would emphasise on meekness and humility if not total submission to the master.³¹

The records of the time speak of small schools in the interior. Because people failed to appreciate the advantage of the education and many of them in their hostility to Christianity refuse to allow their children to attend schools. Parents wanted their children to continue contributing labour to the family compound rather than waste time in the classroom. Parents and the clan alike were eager to preserve customs and traditions in the future. Children were under great pressure to submit to these wishes lest they jeopardise the well-being of their entire lineage and clan. Among many African communities, elders were believed to possess magical powers for evil; so for the youth to go against the elders' wishes could prove foolish and fatal. An inquisitive youngster was also risking his inheritance and even his family identity by opposing the wishes of the elders.³²

Children who were seen as having keen interest in the missionary education were often regarded as traitors of their own community. In fact, they would be chastised and isolated. Hence parents were quite harsh. Christianity and Education affected only a marginal proportion of the people; with converts being mainly orphans, strangers or persons escaping punishment or a forced marriage. Africans on the whole perceived missionaries as an integral part of the European groups and agents of colonisation and oppression.³³ With this in mind, it would be noteworthy that most students from the missionary schools were thus a feared figure in Society as they were seen as agents of the colonial oppressors.

The demands placed upon boarders at the mission schools were far too great to ensure continued living in the schools. They had to balance between class work and manual work. A slight mistake was gladly met by a severe dose of corporal punishment in the form of manual labour and at times canes.

31 Op cit

32 Education Department: Annual Summary, Nairobi Govt Printers.

33 Supra Note Twenty One.

Strikes were there as early as 1940, the only difference is that the educators then knew how to handle them, and there was no media to over play the strikes out of proportion. Given that these teachers were seen as semi gods, they could do as they wished with the students and the latter also obeyed any instructions that were given. In one instance, Carey Francis wrote that after instructing the students to grow cabbages for sale so as to make donations to the war fund in 1940's, some boys rebelled. As punishment to the boys, he stopped the issuance of sugar and the school struck. Carey Francis issued an order that the only way back to School was through his Office, and corporal punishment in form of caning was meted to each boy who was involved in the strike.³⁴

In real sense, one finds indiscipline in school did not begin in the recent past but that it has been a part of Kenyan education since it's very inception. What differs is that the teachers of the past had more confidence in their ability to handle students, one of Carey Francis' Student's had this to say about the great disciplinarian. "We saw Carey in a splendid way, training people to act responsibly but within a set up, an authority that was unacceptable to us. He prepared us for a good life by the highest standards".³⁵ This kind of sentiments illustrate that most students appreciate their teachers stern action and punishment when they grow up as this one does.

The period of the mau mau emergency was one of political uncertainty and there was no serious attempt to formulate any educational policies. There was also the problem of lack of funds and ambivalence of the European controlled legislative Council towards Africans development. The general policy of the government were summed up by Sir Edward Northey "I believe there is a great future for this country, but only if a steady flow of natives out of reserves working, willing for a good wage, well housed and fed under European supervision can be properly organised."

36

"During recent years, a number of so-called "independent" African schools, particularly in Kikuyuland, which have neither received financial assistance from the Government nor been subject to effective supervision have presented a serious problem.

For some time, it was held that these schools should not be discouraged as they were regarded as an instance of self-help by Africans, and as a contribution towards the African's demand for education, which was very difficult for the Government to fully meet.

34 Op Cit

35 Sir Edward Northey: One of the Governors in the colonial Kenya Govt. in 1940's

36 Supra Note Twenty five

In 1950, there were changes in the central control of the Kikuyu Independent Schools Association, and it gradually became evident that some of these schools were centres of subversive activity, and some were suspected of connections with Mau Mau,³⁷

Following the declaration of a State of Emergency on 20th October, 1952, it became necessary to close down a large number of African “independent” schools which declined to come within the control of the District Education Board. Commenting on these one educationist of the time had this to say:-

*The people of whom I speak are not politicians, not ‘anti-white’; they are ordinary folk from many walks of life, usually Christian, who believe in truth and who fear that present tendencies are turning the present conflict into one of White vs. Black instead of Good vs. Evil.”*³⁸

This statement is testimony that the closing of the schools was an action motivated by racial considerations rather than moral justice. The effects of the violence that surrounded the school environment were far reaching. There was a violence meted by the police force against those who were suspected of being Mau Mau sympathisers. There was also violence upon those who were seen as traitors of the freedom cause by the Mau Mau. Those who suffered most were the school going children of the time. In his memoir, Carey Francis was of the idea that Mau Mau had come much closer to the school, and he writes :- “Until towards the end of March (1953) we were at peace. Then there was the massacre of perhaps 150 Africans at Lari, fifteen miles or so away, and we were in the area of hostilities. I went with the boys to a Sunday School at the end of March and found that, during the night, the doors had been torn down and a blackboard put in the doorway warning the teachers of the day-school that if anyone taught after that day he would be killed by order of Dedan Kimathi. With these Africans out in the reserve, if they are attacked, they stand almost no chance.”³⁹

Generally this period was one of much violence within and without the school and corporal punishment came to be a normal and accepted form of punishment. It was especially administered by the administrative forces upon innocent students and brutally so. Consider these extracts from Carey Francis Diary:- Boys came to school for the new term on Thursday, 14th May, 1953. Incidents occurred on two trains on that day.

37 Nganga D. Mukaru : “13 Years before Mau mau”: This article is to be found in the Kenya Archives.

38 Supra Note Twenty one

39 Op.cit.

On the train from Kisumu: a European policeman and two African askaris entered the compartment specially provided by the Railway for our boys. The Officer drew his revolver and waved it, demanded their passes, slapped one boy and banged another on the head.

On the train from Nanyuki: a European policeman went through the coaches, asked where the boys were going, and looked at their papers. Three were slapped for answering in English.

Commenting on this kind of punishment he noted:

I believe that these incidents do grave harm. These are boys with dignity and education from one of the chief schools of the Colony. Their treatment was clearly determined by the colour of their skins. What would have happened if an African police Officer had treated Prince of Wales' boys similarly

Infact it was at this time that corporal punishment entrenched itself firmly in our system of training and there it still remains upto now, in such a crude and brutal form.

In one way, one may consider the above actions as corporal violence rather than punishments. Of course it was not always administered this violently. But due to the fact that most educational officers and Education policy formulators were whites, there was a general tendency to condone violent punishments as a way of maintaining disciplinary control over students.

In the colonial government legislation, there was no provision for corporal punishment and how it was to be administered. It was administered upon students as the teacher deemed fit. There is no legal evidence of any ordinance backing the use of the cane in schools. In fact the use of the cane was legally introduced in schools by a legal notice in 1972. At this time, the minister of education was Taita towett.⁴⁰

It would appear that the reason that the colonial officers took this kind of stand towards corporal punishment is because, back in their country England, corporal punishment had come to be accepted as a part of the teaching process. We can gather this from novels written by writers of the late 19th century and early 20th century, such as Charles Dickens. Dickens is one of the most respected writers of the time and though in a comical way, he wrote about the life in schools.⁴¹ In his book "Great expectations" he brought out how they had a very harsh teacher and how "pirrip" and his colleagues, were flogged by the teacher.

40 Legal notice 40 - 1972 Government press

41 John Forster, The life of Charles Dickens, volume two, Aldine press lechworth 1927

These writings give a very honest depiction of the use of corporal punishment in school's in England at the time. It was therefore acceptable that the colonial officers took the same school mentality they had and transplanted upon their newly founded colony.

Besides, the general public at the time had a godly fear for teachers such that incidences of such violence within the School were hardly reported in the media or to the authorities. This has led many to the errant conclusion that the teachers of that time were a more amicable lot, less willing to administer corporal punishment. There is also the belief that teachers of today are a frustrated lot waiting to let it out upon innocent, humble students. It is the writers view that infact, today's teacher is a more amicable professional who has gone through thorough training in Colleges which most early mission teachers did not go through.

Further the writer proposes that the contemporary teachers' effort to perform his duties as best as he can are frustrated by the public which is largely made up of parents who went through the violent punishment of 1950's. These parent's who have scars and grudges against their former teachers want to let it out on the contemporary teacher, by making the loudest noise about the slightest mistake by a teacher. The situation is infact made worse by a media that tends to sensationalise stories to suit their readers desire . It is the writers hope that these will come out more clearly in the later chapters.

2.1 CRIMINAL ACTIVITIES IN SCHOOLS

In the recent past, there has developed a hue and cry as schools are reportedly caught in waves of unrest. The major concern stems from the fact that these are not simply ordinary teenage related problems. What has manifested itself is quite un-nerving, and that is that of criminal conduct in the schools is on the increase. In the media, reports have been regular of riotous students engaged in malicious destruction of property. Apart from the riots being based on flimsy grounds, much blame has been apportioned to increased drug abuse and “devil worship”. Student unrest has grown from simple protest to destruction of property and killing of prefects as happened in Nyeri High School in 1999.¹ If this is allowed to go on, then the provision of Section 78 and 79 of the penal code will be flouted. This section provides that:

78. (1) *When three or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.*

(2) *It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.*

(3) *When an unlawful assembly has begun to execute the purpose for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled.*

79. *Any person who takes part in an unlawful assembly is guilty of a misdemeanour and is liable to imprisonment for one year.*

What begun with riots at St. Kizito ended up in a rape orgy. Apart from a riot being destructive to physical property, students have turned to other students to vent their anger. In a much recent case students of Kyanguli High School in Machakos after being suspended from School, bought petrol and torched dormitories at night, the consequence was a horror that has set its own precedence, with over 200 students perishing in flames.²

¹ Report on causes effects and remedies of indiscipline in schools in Central Province, prepared by provincial education board.

² The Blackboard, Daily Nation July 30th 2001.

These are characteristics of extreme lack of discipline, which cannot be allowed to continue. Under section 235 (*Any person who unlawfully, and with intent to do any harm to another, puts any explosive substance in any place whatever, is guilty of a felony and is liable to imprisonment for fourteen years.*) the merits of the above facts may not be discussed as the case under is subjudice, but it would be important to point out that section 202 provides:-

202. (1) *Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.*

(2) *An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.*

and section 203 (*Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.*)

About ten years ago it was reported that form one students were being harassed by the senior students, many parents reacted by transferring their children to other schools, but no one bothered to get to the root cause of the problem, and that is that these were the early cracks in the discipline motto that holds the "School structure" together. The result is that students have now turned into crazy blood thirsty killers who will kill their comrades at the slightest provocation and destroy property. Here again, the law enforcers have taken to watching as the penal code is flouted, section 86 provides that: *Any persons who, being riotously assembled together unlawfully damage any of the things in section 85 mentioned, are guilty of a felony and each of them is liable to imprisonment for seven years.*

This violence and harassment has also been directed to teachers. In one current case, students of Kericho High School were brought before Nakuru Chief Magistrate Lady Gladys Nduda, charged with raping their teacher. The 21 students were on rampage following a students riot.³ Teachers have borne the brunt of the criminal imagination of the students but above all, such an act underlines the utter lack of respect that the students have for teachers and the indiscipline that exists currently. Besides, this is an offence against morality under section 139 which states "*Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of the felony termed rape.*" the punishment laid out in section 140 is "*Any person who commits the offence of rape is liable to be punished with imprisonment with hard labour for life, with or without corporal punishment.*"

³ East African Standard Wednesday May 23 2001 pg 5 "Students rape teacher".

In the modern School, it is common to see students arrive in School with flashy cars and expensive jewellery. Not that it is an offence to have a flashy car or expensive wears, but upon introspection one realises that the students are born of parents of a moderate economic background, who themselves are struggling to meet their family needs.* So where does the money to finance this life style come from. Drug trafficking! Drug lords have come to the realisation that the anti Narcotics department will hardly suspect a young boy of carrying any drugs in their School bags.

Besides, the young boys will not demand as much trafficking fee as the adult trafficker. In fact, the modern student has been incorporated into organised drug networks as either traffickers or consumers of drugs to such an extent that the Schools form a vital link in the business web that spans over many countries and spins billions of dollars. What we should be addressing ourselves to is the question of who loses in this web, and the answer prompts itself as:- The student is the ultimate loser! Besides, alcohol is beginning to wreak havoc in the lives of youth in school. So many students take to alcohol at a tender age, may be copying their parents, or senior members in Society.

It may be asked whether students are capable of being sued for the crimes they commit in schools. Given the fact that most of these acts are committed in secondary schools, the issue of capacity brought under penal action is dealt with by section 14 which states:-

14. (1) A person under the age of eight years is not criminally responsible for any act or omission.

(2) A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

(3) A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

The issue of defence of intoxication is handled by section 13 which renders the students culpable as they are above 14 years.

The discussion of criminal activity in Schools would be incomplete without a mention of the criminal activities of teachers in the School. It is true that even among teachers, professional indiscipline has been rife and sometimes it has stretched to outrightly criminal conduct.^a The teacher is guided by the service code of conduct in his service.

* Maximila Munizwa: East African Standard :All never get involved in the fight against drugs."July 30th 2001

^a This position is drawn from an interview Mr. John Gitari who is the Knut Executive Secretary Embu District on 12/6/2001.

This code lays out what the teacher ought to do and what they should avoid and, the consequence of breaking rules laid out in the code of conduct. But this notwithstanding, teachers have fragrantly broken these rules and at times get away with it due to inefficiency in the discipline procedure or sometimes due to their political connections.⁴ For a good measure, some of the criminal activities that are committed by teachers never get to be heard of, as principal's and Head teachers collude with teachers to cover up the evil works. Sometimes it may be that the students are threatened with severe punishments if they as much as utter a word on such an act, besides most such cases reek of scandalous consequence, that a wise headteacher would be best advised to resolve the matter internally, than expose the teacher at the detriment of wrecking the "good name" of the school.⁵

In one recent case, a teacher was charged and convicted in a court of law with sexually defiling minors in a certain primary school, not once, but severally. Such cases have become very common in the media. Considering the special fiduciary relationship that exists between the teacher and the pupil, then one begins to pity the minors who put their total trust on their teacher only to get misused.⁶ Section 145 states:

(1) Any person who unlawfully and carnally knows any girl under the age of fourteen years is guilty of a felony and is liable to imprisonment with hard labour for fourteen years together with corporal punishment.

(2) Any person who attempts to have unlawful carnal knowledge of a girl under the age of fourteen years is guilty of a felony and is liable to imprisonment with hard labour for five years, with or without corporal punishment provided that it shall be a sufficient defence to any charge under this section if it is made to appear to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of fourteen years or was his wife.

This is especially the case with teachers in primary schools where girls are presumed to be under the age of 14 and where a girl is taken as legally lacking the capacity to give consent for such an act. This means consequently that such teachers are prima facie guilty of misusing the minor under his / her charge.

Teachers have also been accused of battering and assaulting students. We have heard heart-rending reports of children being beaten senseless as a result of misguided enthusiasm by a teacher. Some still use objects such as metal bars and employ undue force to hit such parts of the body as the head and chest.

4 "Spotlight on school management" Blackboard Daily Nation July 30th There are some teachers who are untouchable because they have god fathers

5 Supra note 2.

6 Ibid

A person of this cruelty has no place in a school, for a school's duty is to guide gently, resorting to the rod only when absolutely necessary, but doing so judiciously and humanely. So when the cases begin to spiral out of control then it ceases to be an academic matter but a criminal issue.⁷

At times the administration of punishment in the schools has resulted in death of students and the result is that the teachers are charged with murder. In one case in Central Province, a teacher was alleged to have caned a student to death.

This kind of occurrences have also been on the increase and it is becoming an issue of Public concern to most Kenyan Citizens, "some of our teachers are sadistic and have been merciless in applying the cane, this has to be curbed"⁸ This act contravenes section 220 which provides that:-

Any person who:-

- (a) *attempts unlawfully to cause the death of another; or*
- (b) *with intent unlawfully to cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life, is guilty of a felony and is liable to imprisonment for life.*

Apart from the above instances of crime in schools, there are what one would term as miscellaneous crimes in the School. Not that the crimes in this category are of lesser gravity, but rather, they have been reported on isolated cases. These include students being held as accomplices in robbery cases.⁹ Students, especially from poor economic background have been reported as being involved in the furtherance of robbery activities. Sometimes it will be reported on the media that a bunch of drunkard students on their way to a discotheque hijacked a motorist, and robbed him/her of a car and other valuable items.

The claims of increased tendency to irresponsible behaviour by students and teachers are vindicated by the ministry of health data, which reflect an ever increasing number of Aids cases in our Schools, so much is reported on this matter that one begins to ask how it can be that the academic lot would be the most impervious to the loud and clear warnings against reckless sexual behaviour.⁹

7 Daily Nation editorial Saturday May 26th 2001. "Remove such brutes from school system.

8 Saturday Nation August 18th 2001 "Teacher is arrested over assault on pupil" A primary school headmaster was yesterday arrested in Migori for allegedly assaulting a Standard Eight pupil. Police said yesterday the 16 year old girl collapsed while being caned by the teacher, and was admitted to hospital.

9 The information was obtained from Ministry of Health Statistics Department. The statistics show that the rate of aid cases within the school is increasing (in one school in Nakuru St. Columbus mixed Secondary School the data shows that over 50 % are HIV positive.

a This information was obtained from the occurrence book in Langata Police Post, where it was reported on the 28th June 2000 that some students on their way to Carnivore disco hijacked a motor vehicle.

Taking the School as the production or formative stage for Kenya's future citizen, then we begin to see that the Kenyan Community of the future will be one of irresponsible parents. If it will not have already been wiped out of the earth's face. "For the people who will be managing this country and its institutions in 30 years time are not sitting in this room". They could be entering the universities now but several are in secondary schools".¹⁰

According to the Provincial Education Board Central Province, indiscipline was rampant and was manifest in 122 cases of student riots that occurred between 1999 and 2000. Leading the pack was Nyeri where 26 cases of student disturbances were recorded. Next in line was Nyandarua with 21. The District with the least strikes was Thika with 6 according to the report.¹¹

In all these cases, incidences of arsonry are rife. During riots, students will be reported as having attempted to burn down the school dormitory, store or laboratory which is a criminal act as per the penal code. Under section 332,

Any person who wilfully and unlawfully sets fire to-

- (a) any building or structure whatever, whether completed or not; or*
- (b) any vessel, whether completed or not; or*
- (c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or*
- (d) a mine, or the workings, fittings or appliances of a mine,*

is guilty of a felony and is liable to imprisonment for life.

The punishment set out is as under section 333.

Having discussed the fact that crime exists in school before talking about how best to handle it, the writer wishes to discuss the causes of such an increased level of criminal conduct in Schools, today. A new report alleges that devil Worship, homosexuality and drug abuse is rampant in Central Province. Homosexuality is particularly common in Kiambu and Thika Districts, a fact attributed to their proximity to Nairobi, a city going through Social, Cultural turbulence.¹²

2.2 THE POLICE: Should they be involved in school discipline?

"This problem cannot be solved by calling in the police and charging students in court".* The actions cited in this chapter are a direct contravention of the penal code and the commission of each has a respective punishment set aside for each. In legal perspective, it would be important for us to engage our penological discussion on whether we should allow the students and teachers to face the legal consequences under the civil or criminal correctional institutions in society.

10 Prof Raphael Munavu. M. V. C. Moi University "School discipline in education management at crossroads" During Kenya Secondary Schools, Heads Association 2001 Annual Assembly at Moi University.

11 Supra Note 2

12 Ibid

* Thomas a student at Jamhuri High School" an interview on Monday 30th July, 2001

It infact appears that caning by the teacher for a student who has committed arsonary is a very mild punishment compared to imprisonment for 14 years and corporal punishment as under the penal code. Besides, it would be unwise to call the police into the school institutions, because here were are still training the students to be law abiding citizens, so it is not yet time to put them under the law enforcers.

While it may be argued that the teachers are misusing the cane and corporal punishment against the background of increasing crime in society at large, we can see that society is dealing with criminals who have nurtured such tendencies throughout school life and by the time they mature into secular society they are hardened crooks. What the educationists should come up with is more effective methods of curbing crimes in school, and not softer measures like banning the use of the cane. One minister of state had this opinion, that the ban on caning in schools should be lifted to control indiscipline in schools.

He said school children had become uncontrollable and looked down on their teachers, occasional caning does help to put these children on the right track. Indicipline is brought by lack of caning^a

2.3 CAUSES OF CRIMINAL TENDENCIES IN SCHOOLS

Drug abuse is to blame for the prevalent school strikes which have evolved from simple protests to destruction of property and killing of prefects, schools have lost millions of shillings in property and lives in incidences caused by students high on drugs. In the first place, we gets concerned not with the availability of the drugs, but why the students desire to use them. Drugs have always been available throughout civilised human existence.

The academic structure in Kenya is such that students enter class at 8.00 a.m. for formal education, this doesn't mean that the students enter class at that time, In true sense most students wake up at 5.30 a.m. to do their own private study and homework they left over the previous night.¹³

The timetable runs well into the evening with just an hour of games as break, then back for prep upto 9.00 p.m. This leaves very little time for students to engage in recreational activity. Students and teachers will adopt different ways of fitting into an educational system and even though the education Ministry has warned against this kind of rigid, strenuous system, schools

a "Major Marsden Madoka speaking at a fund raising ceremony in Aid of Utawala Academy in Nairobi on 13th August 2001.

b Sunday Nation May 27th Pg 18 " curb drugs in schools.

13 This information was availed by the headmistress of Kianjuki Girls Secondary School, in Embu District.

have continuously violated such warnings in their bid to achieve the high goals set by the mean grade ranking system.¹⁴ The result is that students are overburdened with so much book work and little care is given to physical relaxation. Every human being has their way of releasing tension, since playing is one such way, for children, once they are denied this means, they seek other activities which are less physical, and here begins the drug problem in schools. Even the physical destruction that students engage in, and the drunken stupor is a means of releasing this tension.¹⁵ This will enable them to understand democracy and also increase their involvement in the management of their own affairs and consequently reduce student militarism and the need to resort to corporal punishment.¹⁶

Besides the fact that the students desire to use drugs, the Schools need to address the issue of providing pressure or tension vents in their schedule. Similarly the issue of the free availability of drugs within the School premises needs to be addressed. One student from a School in Embu Districts had this to say “*hii Boza huwa mob, karibu kila mtu huwa amejiwekea kwa sanduku, ikifika weekend kila msee anawahi msokoto yake ndiyo akae poa*”.¹⁷ “(This Marijuana is in plenty and every one has a little of it in their boxes, come weekend every one takes a roll to stay high”) Sure enough, at one point in time the anti-narcotics Department were called into the school and, by the time they left they had confiscated kilos of Marijuana. In boarding schools it is the day school students who supply it, where these day scholars are not available, the sub-ordinate staff serve as the vital link. Some students even carry enough stock for themselves to last a whole term.¹⁸

Heads of institutions have a primary role of responsibility to plan and manage the learning process, resources and environment in their institutions.¹⁹ This includes the management and control of the conduct and activities of students, teachers and the general staff within their jurisdiction.²⁰

As things stand in our schools, the management teams are forever being caught flat footed. Students raise issues to the administration, who promptly advise them to go back to class and await action as they continue reading. The process of taking action has often taken a long period that in most cases the students get impatient. In the waiting interval, tension mounts,

14 The education for all (EFA) in Kenya. A National handbook for 2000 and beyond.

15 Supra Note 2

16 Mr. Mwangi Njumo: Executive Director of KIM

17 A student St. Pauls at a school in Embu District identity withheld.

18 Ibid

19 Supra Note 16

20 Students discipline and control. TAP Education consultancy, for total actualization of potency. Nairobi.

mainly because students feel that they are being neglected by their Managers. "This tension is what finally erupts in form of strikes and unruly conduct. Complaints of resource mismanagement and finance misappropriation are not a very uncommon issue in our schools. Cases have been cited where students' unrest has resulted when a headteacher with poor track record was posted or imposed on an institution.²¹

Corporal punishment is common and elicits antagonism between teachers and students. In Giakanja Secondary School in Nyeri District, where more than 500 students burnt a dining hall, broke chairs and windows, and even invaded surrounding farms destroying crops and stealing property. These students were protesting harsh punishment by a teacher on internship.²²

At Githungu Mixed Secondary School in Nyandarua District, students pelted their teachers with stones accusing them of unjustified punishment. Stiff punishments often imposed on culprits in itself contributes to drug use. Some forms of punishment like making students uproot tree stumps, take the better part of the term. Ironically, some students have to take a few puffs of bhang to perform such a task.²³

This kind of situation lends itself to penological study, because it seems that the punishments meted out are not serving their purpose. Furthermore, it is essential that students are made to understand that punishments are not being used victimizingly and that they are meant to correct deviancy.

Currently students think or feel that teachers use punishments antagonisingly and not as a corrective measure.

This feeling of antagonism between students and teachers is what is largely to blame for the students unruly conduct towards teachers. In one local daily, it was reported in 1999 that Kangema High School Students burnt down the administration block causing damage estimated at three million shillings. Upon investigation as to the cause of the unrest it was discovered that the students were incensed by the harsh rules and frequent suspension.

a Okwach Abagi An education and gender specialist based in Nairobi.

21 Mr. David Siele: Rift Valley Provincial Director of education

22 Supra Note 2

23 Sunday Nation May 27th 2000, letter to the Editor: Curb drug abuse in schools.

From this case, one gathers that the students felt that the rules were laid down by antagonistic teachers who were out to make their lives difficult. It then becomes clear that the teachers must begin from a point of reconciling students to the fact that rules are made to make lives easier and not difficult.²⁴

But a question of penological concern brings itself to focus, and that is this, where did students get this attitude that any tool of behavioural control is oppressive? Further to this issue how can we improve the administration of rules and correctional devices to suit better the change in the students perception. To answer the questions above, we have to go back to the society, because the school is a portion of a larger entity and that is society.

2.4 THE SCHOOL AND THE CHANGES IN SOCIETY

We shall find out the attitude of society towards law and order, the writers' opinion is that as per data availed in the local media, one finds that crime has been on the increase, indicating that people in society are developing an attitude of lawlessness that is affecting the "entering behaviour" of students in schools, thus criminal tendency is beginning to creep into the school, as a result of the changes in society's view of crime.²⁵

The last one decade has seen the world transform very quickly into what is being called the "global village". Much of this change is owed to technology and especially the computer age. But this is a change that has been gradually gaining momentum since the turn of the century in the year 1900. This change has taken Africa by storm, this can be evidenced by the rapid industrialization and mechanization in most sectors of Africa's economic development. Within the last century, Africa has had to adjust to what Europe took a thousand years to achieve. Among those countries that have embraced this wind of change with zeal is Kenya.

This change has brought with it, the belief that formal education is the most competent mode of preparing the young in society for their responsibilities in adult age.

Kenya has been voracious in its efforts to ensure that the infrastructure that goes with such training is provided either privately or by the government itself. To ensure that the training that goes on in these structures of education is upto standards, the government has a Ministry of Education, that in conjunction with other organs in society is charged with the responsibility of coming up with education syllabus and advising the government on the best education systems to implement.²⁶

24 Supra Note 20

25 Blackboard team July 30th 2001. "Poor socialization to blame for deviant behaviour among students"

26 Supra Note 14

The economic system has a lot of bearing on the kind of education policies pursued by any government, this is mainly because as earlier mentioned, education serves as a training ground for those who will drive the current economy in the future. Needless to say, in Kenya, the economy itself has been subjected to ever varying policies and experimental plan's, these variances in economic strategy have reflected themselves in the educational sector through the changes in educational systems pursued; from 8-4-4 to 7-6-3 and back to 8-4-4 and may be in the near future back to 7-6-3.

Due to all this dynamism surrounding the Kenyan Society, the Kenyan citizen has learnt to view issues with matched variance in perception. But above all, the politics of the Society have always centred on criticism and proposals for change, currently as the writer writes, there is the issue of constitutional changes, which will bring with it , another wave of economic and educational changes.²⁷

With this kind of background, we may then perceive the view of a Kenyan parent of the educational system and what the society expects their children to learn in schools and how they expect it to be taught. Furthermore, it must be appreciated that the problem of Kenyan education is peculiar because the circumstances of a nation with over 42 tribes with different cultural values are different from those of a homogenous and relatively static modern community.

In such a community, the Primary function of education is to maintain a continuity of culture by transmitting to successive generations, not only accumulated knowledge but acquired standards of conduct and values. In Kenya, education is and must be on top of all these, an instrument of change.*

The Kenyan child must walk into a new world of thoughts and ideas of conduct and achievements far beyond the range of his parents' experience. However much the educationists may wish to respect native traditions, he must face the fact that all over Africa, nature, traditions, customs and systems are disintegrating. Consequently, a radical break up in the Kenyan child's way of life is inevitable.²⁸

27 Supra Note 16

* Hill M. Dual policy in Kenya Kenya weekly news 1944

28 Ibid

The Kenyan parent has gone through a great deal of metamorphosis with time. Traditionally parents were in constant contact with their children, either during meals or at daytime during the performance of family chores. They had lots of time to watch their children grow. Even though a father had less contact with the polygamous nature of families, the mother spent a lot of time with the children in their early stages of growth. Fathers concentrated their efforts on the male children while mothers had their daughters to mind about. This was possible due to the fact that the economic system was subsistent and communal.²⁹

With the change to the current capitalistic economy, the contemporary parent has, to say the least, abdicated their parental role in favour of monetary pursuit. Women are slowly converting from housewives to professional career women. This kind of transition is commendable as it enhances gender equality, but since everything has a price, it is the family unit that is paying the price. Earlier on, family units were tight and especially the extended families were close, this was mainly due to the fact that women had time to spend with their families and time to nurture children. With the coming of professionalism, many women have left the tending of families to “Ayah’s”

The result has been the break-up of the traditional family. Going back to the issue of marriage, there are more family cases today, most revolve around divorce and the division of marital property.

How does this relate to the issue of education? To begin with, most parents are taking their children to pre-nursery Kindergarten and so many of these infant day time care centres have sprouted all over the country .

After nursery school, the children are taken to boarding school for primary school education, the same happens to secondary education. The result of sending the children to boarding schools is that the child has little time to learn from the parent and the parent has little time to pay attention to the finer details of how their child grows up.

The children are sent into a communal, “mass learning” too early in life. All this is because parents, both of whom are working, have the money to pay for boarding, their aim being to create more time for themselves in their pursuit of money or career advancement. It is a positive factor that children are taught together and they learn to socialize at an early age, but it is

note worth that children at such tender ages have a tendency to pick habits and make such habits a part of their character. These habits could be positive or negative but their influence quite far reaching. When children are put together, it is not always that the teacher has a direct control over their interaction, and so, it is possible that vices could be easily passed from one child to another like a contagious flu.³⁰

The end product of such a system of teaching children will always come with a by-product. Thus there will be children who pass through such training with their character intact, the by-product will include those children who despite being academically successful will have picked undesirable character, albeit hidden.

Both the product will pass on to secondary school and during the age of adolescence those traits will emerge and that is where problems for the secondary teacher begin. The teacher will have to contend with correcting a deviant adolescent who has within him a habit acquired from an early age. This is obviously, no mean task.

The Head teachers can afford to summon parents to sort out problems associated with their children. But it is difficult to involve parents in boarding schools because of logistics.³¹

For the teacher the change to more emphasis on boarding school education has resulted in a complication of the teachers role as a professional. The abdication of parental duty by the family, means the teacher is also meant to act as a, or take over the role of parenting the children. "Since it is not against the law for parents to use the cane on their children why should the same powers be taken away from the teachers?"³²

The parents of today are an enlightened lot both politically and legally. Despite their having no time for their children, they know the rights that appertain to children. Sometimes this knowledge may be used well or sometimes it may be misused. We have seen that the teacher already has the complex duty of acting as both trainer and parent of children. Once in a while, the teacher would like to get a point across to the children quickly, it takes a lot of patience to train but sometimes as part of the human nature it is not easy to remain patient, especially when the students decide to act hard headed, in such times, a teacher resorts to the cane. In the course of doing so, an injury may occur. All along the teacher's motive was to get a point across in good faith.³³

30 Dr. J. Griffins: Director Starehe Boys Centre

31 Ibid

32 Professor Nyasani: A lawyer and lecturer of philosophy at Nairobi University.

33 Op cit

When such students, who are injured in such a circumstance, report home to their parents, they will definitely want to show how mean the teacher was, and how unfair the teacher has always been. Commonly, parents have reacted with rage and many times they don't even counter-check such reports.^a The normal reaction has been to take the child to a doctor and get a p3 form filled. The next step is that the teacher is charged with assault and grievous bodily harm to a minor.

Many teachers will tell any interested person, that no teacher in his right senses would cause an injury by calculated actions, most injuries occur accidentally. One teacher had this to say "We are also human, we have feelings, an injury may occur in the cause of administering a punishment, but our good intentions to correct an indiscipline are never looked at, the only thing discussed is the injury, we feel that this points to us as demons.....It is very unfair, after all who doesn't make mistakes in their work, it is like sacking a waiter for breaking a glass."³⁴ In the course of these events, the teacher is caught off-guard, and in most cases it is hard to demonstrate good faith when every one already presumes the teacher was acting "*malafides*". It is a case in which the teacher is guilty until proved innocent.

In the background of all these, there happens to be the media who have come to be dreaded by many school administrations, "they swim around the community in search of any interesting piece of news, the way a shark seeks out it's prey, as soon they get any such news, they take it and print a sensational story that keeps readers on their edges." The effect of such sensationalism is to tear the parties involved to pieces, woe unto any teacher who's misfortune is the fortune of the press.³⁵

The parents today have more resources, unlike the parents of the past who had little finance to put into a legal suit. The parent of the 60's and 70's had no money besides they would not hear of any stories from their children about their teachers. One parent had this to say about his own father "if I was ever sent home by the teacher, before I even explain what had transpired, I would be whipped and later on taken back to school where the teacher's word was heard first, I think that is what kept us disciplined."³⁶

a According to Mr. Humphrey Kariuki, Headteacher Njoro Boys, due to over-protection by parents, some students feel they can do anything at school and get away with it.. This information relates to an interview conducted on July 30th 2001.

34 Mr Mureithi Kabagua, Kianjuki girls Secondary School.

35 Ibid

36 Mr. Guantai St Paul's High School Kivote . Interview on July 24th, 2001.

This is not the case today, parents will storm the school compound in company of their beloved children and insult a teacher and issue threats in full view of the students. Consequently the embarrassed teacher loses dignity and the respect of the students. This is one of the reasons why teachers are losing control of schools. The students don't fear the teacher's they know if the teacher takes any harsh measure, one single report to their parents and the teachers will face "music." Teachers are gradually coming to terms with this bare fact and most are slowly withdrawing in fear any time there's conflict with students.

Social changes have had both positive and negative impact on the Kenyan lifestyle and perception. One of the most negative aspects of social change is the feeling that the way things are done in the west or in America is the best. People have taken to borrowing everything and every way as is done in the west. In the course of doing this they have borrowed negatives. We all have witnessed the decline of morality in the western culture (in the eyes of an average African perception).^a

The fact that in the west people kiss in front of their parents and children and on the streets does not make it moral here, in Kenya, we are yet to come at ease with this. We have seen that the adoption of "*laissez faire*" attitude in western schools has led to degradation of academic performance and standards. Students carry guns to school, and shoot at their teachers when they are reprimanded, shall we ape this as well?

Recently, in the United States of America, a student walked into class and found a teacher in class, he demanded to see his girl-friend from the physics teacher, upon being told to wait for the lesson to end he casually drew out a gun and shot dead the helpless teacher.* Is this where Kenyan schools should be driven to? No!

Yet the way things are going, we shall soon have such cases in Kenya. Parents in the west will not hesitate to sue a teacher, the result has been to scare the teachers, such that they will peacefully watch boys and girls engage in illegal conduct.

The effect of outlawing corporal punishment in schools is leading us to a similar situation. But we have a chance to reverse this if we resume the use of the cane but at a controlled level. Kenyan parents will read of such heroic stories in the media of parents in the west who sue teachers and think, "that's cool", as fashion they copy, without weighing the long term consequences of their actions. But the sure result has been the rise in School indiscipline.

^a Japheth Kiptoon, Permanent Secretary, Ministry of Education, Former VC Egerton University: Social changes are responsible for unrest in schools.

* The student involved in the case was later imprisoned for 27 years as reported in the CNN News on 29th July 2001

The media has also had its share of spoils in contributing to the decline in school discipline. The media are important tools for enhancing access to quality education, journalists are invisible teachers, they are powerful and can change people's lives.³⁷ Many are the times that the media has used their immense powers to harass rather than teach the masses.

In the recent past, journalists have rushed to report that certain cases of unrest were caused by the teaching staff's professional negligence, later they learn that they have misreported and they will apologise, by the time they apologise the damage is already done.³⁸ In one case, the local media reported that the caning of a schoolgirl by a teacher had caused her death, later they learnt that an autopsy had shown otherwise, of course they apologised, albeit in a small caption on the papers, but the damage to the teacher's reputation had already been done. The student had died due to a concussion that she got from an earlier injury.³⁹ It would have been advisable to be a little prudent and wait for the autopsy before reporting such an outrageous report that would put the concerned teacher's reputation at stake.

Besides, the report stirred feelings of animosity in the community against the teacher, such feelings in the community from which the school draws its students do not help the students to respect the teachers. Infact it is one of the reasons why the relationship between teachers and students is deteriorating, with students feeling that teachers punish them because they hate them. Section 195 provides that:- *Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by injury to his reputation; and it is immaterial whether at the time of the publication of the defamatory matter the person concerning whom the matter is published is living or dead:*

The media again has carried stories which tend to uphold violence as a positive force of liberation. In the television, the children are exposed to violent programmes and they are shown that violence is a tool by which people can achieve victory from their oppressors. It may be true, but such truth only destroys the moral fabric of the youth. This kind of violence is portrayed against a background in which the society is in the process of seeking political liberation, but the youth, who are still politically naive, may misconstrue this.⁴⁰

37 Dr. Bagayoko Mamadou: Head of Education and child protection unit. UNICEF Kenya Office.

38 Henry Kosgey Minister of Education on school unrest : Interview on July, 30th 2001.

39 Sunday Nation May 27 2001 "Autopsy report proves teacher innocent" The case which is being heard by the High Court is yet to be concluded. The report was made available by the Central Province Pathologist Moses Njue.

40 Saturday magazine 7th July 2001 :Violence in the media and its effect on youth.

When the same youth go back to the school they carry with them this philosophy of violence in their brains, in which the teacher is the oppressor, and they are the one's seeking liberty, while violence is the means, through which they seek liberation.

To begin with, journalists need to be aware that some truth is better not reported as it's effect is to cause more harm than good. If it has to be reported it has to be with due regard to the feelings it arouses in the readers. Many times truth has been used as a sword to fight certain sections of the public sector.³⁷ One such sector is teaching. The media have gone ahead and portrayed teachers as goons bent on senseless violence. The result has been to stir feelings of hatred in the society against the teaching profession in contravention of section 66 (1) which states:- *Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace is guilty of a misdemeanour.*

The journalists need to develop critical skills and appreciate issues affecting education. They need to understand the teaching environment better so as to be able to articulate the issues that arise therefrom accurately, objectively and effectively.³⁸

3.0 LEGALITY OF CORPORAL PUNISHMENT IN SCHOOLS.

Currently, students feel that teachers use punishment antogonisingly and not as a corrective measure. This is not as a novel occurrence, consider this excerpt of a student in the 1960's.

“I did not know what it meant to be thrashed by Anyang Achieda, until one evening I found myself on the line. The whole week my body was on fire I wouldn't sleep on my back, I slept on my belly, in class I sat on the edge of my buttocks. Many years since that incidence, I can still say that, that was not punishing a child to correct his ways. It was unleashing violence on a defenceless minor. It was destructive, not corrective”.¹

3.1 LEGISLATIVE PROVISIONS IN LN 40 / 1972

With this feeling in consideration, what does the Education Act provide in relation to punishment of errant students. It is provided for under the title ‘Education School Discipline Regulations’.

The Act states that a pupil may be suspended from attendance at a school by the head teacher of the school if his language or behaviour is habitually as to endanger the maintenance of proper moral and social conduct in the school.²

This sections deals with the seriously errant student, and the method of suspension as a corrective measure, it is clear that such a method is not to be used on a regular basis by the teacher, it only comes in at very advanced stages of indiscipline. Besides, even if the teacher was intent on applying such a method the procedure laid down in the Act is too long, as it involves the calling of a meeting by Board of Governors (B.O.G.) to recommend such a measure.

Suspension is not directed at correcting the demeanor of a student, rather it directs to removing the student from the midst of other students so as to prevent the spread of a certain habit within the school. Furthermore, it's not the teachers aim to suspend every student who commits an error, emphasis is on correcting the error and in this manner suspension is not effective, as it removes the student from the teacher's control. Infact it amounts to a teacher accepting that the student is beyond correction and should be sent to a more specialised person for correctional purposes which is abdication of the teacher's fundamental role; for it is the teacher who is trained in the profession of dealing with errant behaviour in school and not the parent.

1 Dr. Okwach Abagi: is a specialist in education and gender issues. The excerpt is from an article entitled “FOCUS ON SCHOOL MANAGEMENT”

2 Education ACT CAP 211 Legal Notice No. 40 1972. Government printers

In this way suspension may not be a very useful instrument of correction, yet in the most trying cases, a teacher will be called upon to use it, to prevent the spread of anarchy in the school.

In cases of mass indiscipline involving the whole or part of the student body, the head teacher may declare the school closed and students suspended. This measure is summarily an application of suspension 'en mass' and though effective in curbing the spread of anarchy, it does not help much in correction of individual student demeanor. Hence the need for a more effective measure at a personal level. Furthermore, mass suspension does not pay attention to the unique, personal differences in each and every student, it simply metes out blanket treatment to all students alike, which may at times be very unfair to some students who may never have been involved in indiscipline practices.

The Director of education may order the expulsion of students from school. This provision is reinforced by section 9, which states '*inter alia*' that if after consideration of the students age and progress, the Director of Education is of the opinion that it is not in the interest of that pupil to remain in school.

The use of this kind of measure by any professional teacher is tantamount to conceding that, the teacher has been unable to control a student, and that he has used all professional means possible to no avail. Infact, this measure denies students a chance to further their academic endeavours, which creates even more criminal tendencies in the expelled students. This leaves the teachers with one more means of punishing errant students and that is corporal punishment, which as at the moment has become an anathema.

The measures of suspension and expulsion of students have one major setback, and that is that they require that a teacher follows a very long procedure, considering that the head teacher must sermon a B.O.G. meeting, which usually must be done in accordance to protocol, because the members have to be given a notice, then it becomes apparent that the measure will not be implemented in less than two weeks. Again the Provincial Education Officer's (P.E.O) office must be consulted which again takes time. It is this Bureaucracies that make this measure so complex and, of little help to a teacher, who want's an instantaneous means of correcting errant students, to expedite the learning process.³

3 According to one education consultancy agency; for total actualization of potency; punishment should be instant upon commission of a mistake so that it can have effect. If it takes too long to be given then the learner may not be able to co-relate it's purpose.

Corporal punishment in schools as addressed legally by L.w. 40 / 1972. Section eleven, preceding this section is section 10 which gives the board of governors of a school the authority to make administrative rules appertaining to the discipline of students and to prescribe appropriate punishment(s) for breach of the rules. The passing of this notice in 1972 was as a result of the prevailing attitude at the time. It was seen that there was a need to enforce control on students' conduct while in school. With this in mind, the education ministry felt that it was necessary to allocate to teachers quite an effective means by which to enforce order in schools.

In the background of this order there was the Ominde report of 1964 which sought to have an educational system that expressed the aspirations and cultural values of an independent African Country. Within this expression arose the issue of discipline among the youth and the use of effective disciplinary measures. At the time, the use of the cane as discussed in chapter one was not legally recognised yet it was actually in use, so legal notice No. 40 came in to legalise a practice that was actually in progress.

In 1965 came sessional paper No. 10 which addressed itself 'inter alia' to the issue of control over education and the vigorous enforcement of such control over schools so as to ensure uniform standards in schools. This paper sought to incorporate African culture into the Kenya Education System so as to give it an African Identity and with it, African teaching methodology was to be used to inculcate discipline within the school. With this kind of background, corporal punishment found its legality through the notice.

The section lays down that corporal punishment will be inflicted only in cases of continued neglect of work, lying, bullying and gross insubordination, or indecency and truancy. As mentioned in the section, the use of corporal punishment is not meant to be regular, it will only be used in cases where the teacher observes that a certain student is constantly falling into serious crimes. Indeed the section gives the teacher a discretionary power to observe the cases that merit such a punishment. It is this discretion that is sometimes misused by teachers. When the use of corporal punishment becomes too regular, and when even petty mistakes get such a serious treatment, then it becomes an issue with students who begin to claim antagonism.

“Corporal punishment may be inflicted only by the head teacher of the school or by a teacher in the presence of the head teacher or in the case of a boarding school, by a housemaster whose authority for administration of corporal punishment has been delegated by the head teacher in respect of pupils resident in his house”.

Clearly the section gives the power to give such a punishment to the head teacher alone, and any other teachers who feels the same should be administered must seek the head teachers authority to do so. But contrary to this provision, most of those who have been caught administering the punishment, and ruthlessly, are the junior staff, few head teachers administer the punishment ruthlessly. From press reports, it comes out clearly that most teachers who have severely injured students do so because they are very angered and they vent it all on the student. All along, such a teacher will have had no authority from the head teacher. Infact it is wrong for a teacher to punish while in anger, and if the teacher is to punish he should not react to misbehaviour personally. The use of threats is discouraged, the teacher should maintain his composure regardless of the situation. But this has not been the case, teachers have acted against the above ethical code of profession and many will argue with students, insult them and work themselves to a frenzy before finally caning the students mercilessly. Such an act, even under the penal code is a crime to the person or student concerned as it amounts to battery. Besides teachers who are meant to be role models for the students fail to be, when they show their lack of emotional self control.⁴

Apart from the teachers having no authority from the head teacher, it is an issue of concern that head teachers who are Agents of the Teacher's Service Commission (whose role is to enforce the code of conduct) do not enforce this regulation.

Most head teachers will condone teachers who haphazardly administer the punishment and without authority. Rarely will teachers report such a misconduct to the employer for action. That is why the teachers have gone all the way in misusing corporal punishment. In short the provision of section 12 are not taken seriously by most teachers.

Corporal punishment may be inflicted only after full inquiry and not in the presence of other pupils. Even though there is a lack of statistics on how many cases of corporal punishment arise and whether they are well investigated, it can be extrapolated from circumstances surrounding, that what lacks in schools is a systematic approach to administration of punishments. It can be deduced that, infact, teachers will carry out little investigation on cases reported. The teachers may ask whether they are expected to sleuth around for information, and whether this is not too demanding?

In actual sense, the makers of the law must have recognised that corporal punishment is a severe punishment and that its administration requires that the teacher be sure of the culpability of the student, they must have reckoned that such a punishment may have psychological consequences, no wonder it has to be done away from the other students. Yet teachers have gone ahead and over-looked this fundamental observation. Most teachers will quickly give corporal punishment, so as to get rid of the task of having to administer and supervise other modes of punishment such as detention or manual labour which ends up consuming the teacher's time.

Corporal punishment shall be inflicted on the buttocks, with a smooth cane, or on the palm of the hand with a strap not less than 1½ inches in breadth. In this section, the specifications on the object to be used to inflict pain upon the students are clear. The spirit of this section is that pain may be inflicted upon the student. The drift of this provision is to regulate the amount of pain to be inflicted and to minimize the chances of injury. Here again, there is no specification on the amount of force to be used in inflicting the pain. This is another part in which the teacher is given discretion to exercise professional judgement. Once again, teachers have misused this trust in them and some will hit the student so hard that injuries result.

The specification on the kind of cane to be used bars teachers from using big sticks and even metal bars, and it seems that though silently, the intention is that the cane shall be used on boys. Boys may be caned on the buttocks but it seems that for girls it would not be fair to cane them on the buttocks for reasons best known to the female members of the society. The section thus provides that the stubborn girls be caned on the palm. The specification "not less 1½ inches wide", is to prevent the use of very thin straps which would cut the flesh and cause bleeding or more serious injuries.

This section lays very clear instructions on how corporal punishment is to be given and with what it would appear that the maker of the law had in mind that sometimes in the learning process, pain is an effective means of teaching. According to the psychoanalysts, education there are rewards given to the learner to reinforce a certain behaviour. It has been observed that when a learner is given a reward every time they do a certain thing as instructed, the learner tends to develop the desire to do it as instructed and this quickens the teaching process. At this point it would be of use to bear in mind the "Pavlovian dog" experiment.⁵

These rewards are divided into, good rewards and bad rewards, which are technically called positive reinforcement and negative reinforcement respectively. Both the rewards seek to reinforce a certain desired result in the learning process. To discourage a certain behaviour negative reinforcements are given every time a certain behaviour occurs in the learner, and the result desired is to discourage the repeat of the same. One such reward is pain, which in fact has been observed to be the most effective, if applied in controlled amounts that do not injure the learner.⁶ This under legal notice number 40 of 1972 it is quite commendable that the makers of this law recognised this fact and that they sought to assist the teacher on the safest way to use it, by creating a protective legal device. The flipside of this is that those teachers who misuse the cane, are breaking the law and they should be prosecuted under the disciplinary provisions of teaching code.

The requirement that the students be caned on the buttocks and or the palm, means to control the hitting of sensitive parts of the body like the head or the ribcage which may cause grievous body harm. It must have been observed that the buttocks are flesh and the bone is well covered hence the chances of injury to vital organs or the bone is remote, the same applies to the palm. But despite the wisdom of this provision some teachers will hit the student, haphazardly, the result being injury.

The Act provides that, “A record of every case of corporal punishments shall be kept by the head teacher, and shall contain the child’s name and age, the offence, the number of strokes inflicted and the name of the person by who administered it. This was to make it possible for the interested parties who may want to cross check on any detail pertaining to the punishment to be able to do so. It was also meant to act as a warning to the teacher that should anything arise out of the punishment he shall be traced by the record. In actual sense the recording of such a punishment by the teacher is an indication of “*uberimae fidei*”. No teacher who has administered a punishment “*malafide*” would record it, especially if it has resulted in injury. So the recording indicates a sense of responsibility for any consequent developments by the teacher.

Besides the subsidiary bye-laws in the Heads manual at chapter 5 part C section 2 subsection (g) provide that “corporal punishment, which a pupil must agree to receive, may be given only to boys and it must not exceed six strokes. And it must be administered on the buttocks and NOT on the hand or any other part of the body.”⁷

6 Ibid

7 A manual for head teachers of secondary schools in Kenya Ministry of Education. Government printers, Nairobi 1987

The requirement that the student must agree to receive the canes means that the student must indicate agreement by signing on the school diary. The strokes should not be more than six, this ensures that it's not done severally in one go, as to cause injury. All along it would appear that the act appreciates the possibility of injury and seeks to minimise chances of it's occurring. From that vantage point of observation, it seems that the act in fact has provided adequately for the administration of corporal punishment. But all these was undone in the ministerial directive that resulted in the amendment of these sections.

3.2 THE AMENDMENTS

Section 2 part b is amended by inserting the word "other than corporal punishment" after the word punishment. The effect being that corporal punishment has been banned, or should not be recognised any more in the Act.

In actual essence the elimination of sections 11,12,13, and 14, have actually removed the legal provisions on how to administer the punishment. It has effectively removed the protection that teachers had in the law, and now they have been left to bear the consequence of their actions under the penal code.*

The amendments may not be an effective bar on the administration of corporal punishment. Infact it may create a state of confusion because it has not given alternative measures to the teacher apart from guidance and counselling. In issuing the directive that led to the amendments, the minister may have looked at the legal aspects of corporal punishment and ignored the educational aspects. Besides if legally corporal punishment is still used under the penal code, as a corrective tool and it is done humanely. It would have been more prudent to find out how the same can be done in schools.

Indeed many teachers are of the opinion that a blanket decision was made, their feeling is that the mistakes of a few teachers are being blamed on all teachers. :The fact that one teacher fails to exercise professional judgement does not mean that all teachers have failed". Say one of them, "it would have been advisable to get those blamed of such misconduct and deal with them as individuals."⁸

* Hon. S. K. Musyoka: Minister of Education. The Education (school discipline) amendment regulations 2001

8 Mr. Gitari: Embu District Knut Secretary. This was said during the KNUT seminar held at Minni in Embu town for KNUT school representative on 15th - 19th July, 2001

If the ministries directive was to be probed further, one would realise that there were under currents, and enormous pressure from child rights organisations. The banning was to enforce a united nations convention. This conventions were adopted from the developed countries, where, if you spank your child, they reach for the phone and call child line, moments later you are locked up for child abuse. It has been more than a decade now since Kenya ratified the United Nations convention on human rights (CRC), this has seen affiliate bodies like ANPCAN pressurising the government to rid the system of practices like corporal punishments. There are also other Non-governmental bodies which have joined in the call for recognition of child rights. The question then will be asked whether the minister was justified in giving in to this pressure and whether he considered the consequences of such a directive.

Perhaps the most important omission, is that teachers were not involved in the formulation of this amendments. It may seem like the amendments were slight but the truth is that the it's consequences are mighty and infact we may see school unrest escalate, in the vacuum created by the current confusion of what disciplinary measures to take. According to one writer in the local media, the problem with the directive is the public manner in which it was issued which may have sent the wrong signal to some students.⁹

CHAPTER 4

To cane or not to cane is not really the issue, the issue is deciding which is the most effective and humane way of maintaining discipline in schools. There may be many ways of disciplining except that they may never be as effective and humane as those ideal ones that some teachers and administrators may have in mind. Even though it has been argued that caning is sadistic and dehumanising but does it really mean that every teacher who canes is a sadist. The teacher who metes out corporal punishment is, in the main, one who wants to effect a corrective act beneficial to the victim and the school at large. He or she is not out to exploit the situation for some personal gain of some psychological gratification. Infact there is no society in the world which has never used any form of punishment, including caning, the debate therefore should revolve around the excessive and irrational nature of corporal punishment.¹

In censuring corporal punishment, it is imperative to take into account the good to be achieved both for the school and the victim alike. It would be imperative that we also consider the incorrigible nature of some pupils who demand other methods of correction. For the majority of ordinary conventional pupils, caning can have phenomenal success as it has had on some of the older generation students, who, today, are in positions of leadership. The alternative being suggested is counselling, but before any teacher of professional substance takes to caning in the majority of cases he must have pursued counselling to no avail.² Besides this method was provided for in the act as before amendment.

There is indeed a veritable dilemma facing all civilised societies of the world as far as this matter is concerned. It has been argued in some informal circles that corporal punishment may be used exceptionally in the context of exercising quasi domestic authority, if the purpose is to promote the child's welfare and provided reasonable force is used.³

Thus in the same way a public officer has the duty and indeed is justified to use reasonable force against the person of another when acting pursuant to a valid law, so also the parent of a minor or one acting in the capacity of a "Loco parent" is justified in using reasonable force upon the person of the child for the sole purpose of promoting his welfare. This is not only a duty but, perhaps, a right also which extends to teachers who have the inevitable duty to promote the child's welfare and furthering the child's educational goals as well as discipline.

1 Dr. Situma: A Lecturer at the Nairobi Law Campus

2 Professor Joseph Nyasani. A Lawyer and Lecturer of Philosophy at the Nairobi University

3 *ibid*

Blaming the current state of unrest in schools on the cane is downplaying the other serious problems, that exist in the school and which are the true causes of all this chaos in schools. Infact if the banning of corporal punishment is expected to bring tranquillity in schools, then the opposite shall happen because the true problems have been left unsolved.⁴

Young people need to be encouraged to obtain their own answers and not just parrot those of others. They need to (be given time) to practice what they have read. The schools should give them forums to develop their ideas.^a

Curbing drug abuse in schools is a futile task if the same is not done in the community around at large, for schools are a minute sub-set of the entire society, so the police should work hand in hand with the school in trying to eradicate drugs.

A head teacher alone cannot manage to eradicate this problem. No matter how well prepared, gifted or committed he or she may be. The principle of complementarity operates in this case more than all others. What we do together will have more impact than what we do individually. The war will not be won on the school compound alone, it must be fought on all society fronts.⁵

The teachers also have the task of showing their students that they (teachers) are not monsters who are posted to schools to harass students, but rather, that teachers are a social breed with the duty of guiding students or young people to achieve their dreams of success in life. That way, the students will be more willing to follow teachers' instructions.

That drug abuse is to blame for the prevalent school strikes is not an issue to be debated, but again, the management of schools brings itself to question. How are our schools being managed, and who is in charge in our schools?

Some common causes cited for the strikes include poor parenting, irregular appointment and deployment of head teachers and weak supervision system and financial difficulties. One glaring loophole in the school, that is exposed by the claims of drug abuse is school management. Some education managers are quick to point at drugs, yet they fail to identify the particular students who take the drugs and how they access it. Subconsciously they are pointing an accusing figure to their own failure. Most head teachers are inadequate managers because they lack the managerial training required to run a school.

a Mr. Mwangi Jumo Executive Director Kenya Institute Management speech delivered at Moi University or on / during the Kenya Secondary Schools heads Association Assembly.

4 According to Minister of Education Hon. Henry Koskey.

5 Mr. Peter Macharia Central Province Director of Education. During a teachers seminar in Nyeri. July 2001

The genesis of this is the appointment criteria for head teacher. The general practice is to pick a performing class teacher and appoint him or her a head teacher without being taken through an induction course.⁶

Yet like companies, a school requires a manager who knows all the pieces of legislation on education, including the T.S.C. Act. The effect of the legal ignorance in the current crop of head teachers has led to the misapplication of well intentioned legislations like legal notice number forty. To begin with the amendments made will themselves fail if the head teachers fail to implement them, just like they failed to enforce the provisions of the earlier act. Infact if the head teachers had been vigilant in ensuring that caning was done in accordance with the earlier act no cases of injury would have been reported and if any, such cases would not have been outrageous as to result in death of students.

The amendments, that seek to ban caning will be hopeless if the head teachers don't ensure that no caning is done in schools. May be the Ministry of education should start training teachers on the different role of the legislation as a tool for regulation of school administration. Further to this the head teachers should be made to face the consequences of not running schools in line with the law, this should be made a crime as under chapter 10 of the penal code. Section 99. Head teachers should face the justice of sections 127 and 128.

Section 127: Any person employed in the public service who, in the discharge of the duties of his office, commits any breach of trust affecting the public is guilty of a misdemeanor.

Section 128: Every person employed in public service who wilfully neglects to perform any duty which he is bound to perform is guilty of a misdemeanor.

The reason being that the head teacher is placed in the position and entrusted to manage the school as best as he can, and should one find that he can't meet the required performance, he should resign and let someone else take up the position, rather than ruin the life of innocent students. One writer proposes that the Teachers Service Commission has to develop a criteria for identifying potential heads and in conjunction with the Kenya Staff Institute (KESI), organise management course to prepare them for their roles.

But another issue that is fast creeping in is political interference in the education management. There are head teachers who are untouchable because they are backed by powerful godfathers. Some will flout the code of regulations and will not be penalised. The issue of political godfathers should be stemmed and head teachers should be appointed on professional merit. This would ensure that the persons who hold such positions enforce the code of conduct.⁷

The passing of the amendments had a major defect and that is that teachers were never consulted on the intended changes. The result is that the bill lacks the goodwill of the very people who must implement it. As soon as the Act was amended the media was ablaze with protests from teachers and even parents. But these protests have been met, with a steadfast directive that the ban will remain as it is. The minister stated again that, "The ban is here to stay. There will be no going back as far as it is concerned. School strikes have been there even before the ban was issued and so it would be parochial to link the ban with the rising indiscipline. The ban was necessary because we are bound by the Rights of child and other conventions".⁸ The conventions of the human rights on the rights of the child adopted by the United Nations General Assembly on 20th November 1989 defines the child as a person under the age of 18. In articles 2 & 3, it state that: a child has a right against all forms of discrimination or punishment and further that in all actions concerning children, the best interests of the child shall be a primary consideration. Four of the rights of the child enumerated in this convention, which have direct relevance to education are:-

- Education on the basis of equal opportunity.
- The highest standards of health facilities and rehabilitation of health.
- Absence of torture or other cruel, inhuman, degrading treatment or punishment
- Access to information and materials aimed at the promotion of social, spiritual and moral well being.

-Protection from sexual exploitation and abuse. This may be a clear admission that the ban is not motivated by internal situation but by external factors. Besides treaties do not have to be enforced even when it's clear that they are causing more harm than good. Before ratification the minister should have allowed debate by the stakeholders on the consequences of such a bill. But in this case it seems issues are being rushed without consideration of after effects, so as to satisfy some foreign pressure.

7 David adude "Blackboard commentary Daily Nation July 30th 2001.

8. Hon. Minister Henry Koskeyin ana interview on the banning of caning.

One counter reaction that may follow the current protest by teachers is that teachers may decide not to adhere to the ban, would it be worth anything if rules are passed only to be ignored by those who should implement them. Unless the minister drags the police into the school to enforce the ban, it will be very difficult to force teachers into adherence. The better option will be, for the minister to convene a stakeholders representative meeting, to strike a balance on how best corporal punishment can be refined to fit in with the child rights treaty.

BIBLIOGRAPHY

- A. A. R. Paterson: Education of the backward Peoples, Nairobi Govt. Printers.
- B. Anderson John E. "The Struggle for The School, Interaction of Missioneries, Colonial Govt. and Nationalism in the development of formal education in Kenya". Longmann London 1970 Page 171 to 173.
- C. Committee on Educational expenditure - European and Asian Report. Nairobi Govt. Printers 1948.
- D. D. N. Sifuna and J. E. Otiende: An Introductory History of Education. Page 102.
- E. Education Department: Annual Summary, Nairobi Govt Printers.
- F. Fraser Commission Report 1909. The report was used by the colonial government as a beacon on the implementation of the racial dual policy in the education sector.
- G. Ginn Charles J. : A Brief History of the Church in Africa. Page 10-12.
- H. Han's - Egil Hauge: Maasai religion and folklore city printing works (K) Ltd. Tom Mboya street
- I. Hill M. Dual Policy in Kenya, Kenya Weekly News, 1944. Page 65.
- J. John Forster, The life of Charles Dickens, volume two, Aldine press letchworth 1927
- K. Johnstone Kamau: Facing Mount Kenya. Page 102.
- L. Kenya colony and protectorate: sub-committee on social welfare, "information and mass education", Nairobi, 1946. (Kenya Archives).
- M. Kenya Education Department Triennial Survey 1958 - 60. Nairobi Govt. Printers.
- N. L. H. Greaves. Carey Francis of Kenya
- O. Legal notice 40 - 1972 Government press
- P. Mbiti John S.: African Religion and Philosophy, London Ibadan Heinemann Publishers. 1969
- Q. New World Bible Translation Committee : Proverbs 13:1 and 24.
- R. Nganga D. Mukaru : "13 Years before Mau mau": This article is to be found in the Kenya Archives.
- S. Oldham H. J. : Church and Race Relationship "Christianity and the Race Problem". London SCM, 1924. Page 280.
- T. Sir Edward Northey: One of the Governors in the colonial Kenya Govt. in 1940's
- U. Sir Michael Saddler: "Christian Education in Africa and the East Africa". London Student Christian Movement, 1924. Page 117.
- V. Wrong Margaret: The Land and Life of Africa: New York Friendship Press, 1936.

STATUTES

- The penal code chapter 63.
- The Education act chapter 211.
- The Headteachers' manual, by laws

REPORTS

- Report of the Kenya Education Commission (The Ominde Report)

The European and asian Report of 1948

Fraser Commission Report of 1909

Sessional paper number 10 of 1965

Report of the National Committee on Educational Objectives and Policies. (The Gachathi Report).

The Commission of Inquiry into the Education System of Kenya (The Davie Koech Report).