

Committee on the Rights of the Child

Day of General Discussion

Friday, 28 September 2001 – OHCHR (Palais Wilson, Geneva)

Violence Against Children within the Family and in Schools

Submission by “Children are unbeatable!” Alliance

**Submission to the Committee on the Rights of the Child
General Discussion on Violence against Children within the Family and in Schools,
September 28 2001, Geneva**

From the “Children are unbeatable!” Alliance (www.childrenareunbeatable.org.uk)

“Children are unbeatable!” is a UK Alliance of more than 300 organisations and many prominent individuals seeking law reform to give children equal protection under the law on assault and promoting positive, non-violent discipline.

We are making this submission to the Committee on the occasion of its General Discussion Day to underline the crucial importance to children of the Committee’s clear interpretation of human rights standards in relation to corporal punishment of children. We urge the Committee rigorously to follow up the recommendations it has made to the UK and to many other States Parties to prohibit all corporal punishment, however light, and to implement public education campaigns. Other Treaty Bodies and UN and UN-related agencies should be urged to assert children’s equal human right to respect for their human dignity and physical integrity and to equal protection under the law.

Thanks to the Convention and the Committee’s work, there is now accelerating progress across the world to challenge and abolish corporal punishment and other humiliating forms of discipline. Last-ditch attempts by the UK and some other governments to seek to define “acceptable” forms of corporal punishment must be greeted with outrage. It is a disgraceful exercise, deeply disrespectful to children. It is unimaginable that governments would attempt to define “acceptable” violence to women or any other population group.

We need to be impatient on behalf of children. How can anyone expect children to take human rights seriously, to take on the task of building a culture of human rights which only they can do for the future, while adults not only persist in smacking and beating them, but actually defend doing so as being ‘for their own good’? Smacking children is not just a lesson in bad behaviour; it is a potent demonstration of contempt for the human rights of smaller, weaker people.

Successful challenge to school corporal punishment

Recommendations from four human rights Treaty Bodies and successive judgments of the European Court of Human Rights have been instrumental in requiring the UK government to abolish school corporal punishment. Legislation extending abolition to cover all private schools was finally enacted for England and Wales in 1998 and for Scotland in 2000 (similar legislation is promised in Northern Ireland). The UK was thus the last country in Europe, east and west, to end corporal punishment in its schools. Regrettably, school corporal punishment remains lawful in a number of the UK’s dependent territories. Corporal punishment of juvenile offenders is still used in at least one territory (British Virgin Islands).

Corporal punishment in the home

In the family home in the UK, corporal punishment remains common. Government-commissioned research in the 1990s found three quarters of a large sample of mothers had smacked their baby before the age of one. In families where both parents were interviewed, over 90 per cent reported physically punishing their children at some time, and over 80 per cent had done so in the last year. A quarter of mothers and fathers reported using physical

punishment at least weekly or more often. One fifth of all children in the survey had been hit with an implement and over one third of the children (35 per cent) had experienced “severe” punishment - defined as punishment “intended to, had the potential to or actually did cause physical and/or psychological injury or harm to the child”. (“A Community Study of Physical Violence to Children in the Home and Associated Variables”, Marjorie A Smith, Thomas Coram Research Unit, London; “Physical Punishment of Children in Two-parent Families”, Gavin Nobes and Marjorie Smith, *Clinical Child Psychology and Psychiatry*, 1997, pages 271 – 281).

Thus the fundamental rights to respect for human dignity and physical integrity of millions of UK babies and young children are being breached on a daily basis. This research suggests, furthermore, that a third of children are being subjected to punishment and humiliation which would be judged to amount to “inhuman or degrading punishment” by the European Court of Human Rights.

Between one and two children die every week from child abuse or neglect in the UK (there is no systematic requirement for child death inquiries and the true figure is likely to be higher).

The law – condoning violence to children

The common law defence of “reasonable chastisement” was set out by the Chief Justice of England in 1860:

“By the law of England, a parent may for the purposes of correcting what is evil in the child, inflict moderate and reasonable corporal punishment, always, however, with this condition, that it is moderate and reasonable”.

It is left to courts to determine what is “reasonable”. Over the last decade, parents who have admitted beating their children with sticks, belts, an electric flex and shoes have used the defence and been acquitted.

The Committee’s condemnation of “reasonable chastisement”

When the Committee on the Rights of the Child examined the UK’s Initial Report in 1995, it expressed concern at

“reports it has received on the physical and sexual abuse of children. In this connection, the Committee is worried about the national legal provisions dealing with reasonable chastisement within the family. The imprecise nature of the expression of reasonable chastisement as contained in these legal provisions may pave the way for it to be interpreted in a subjective and arbitrary manner. Thus, the Committee is concerned that legislative and other measures relating to the physical integrity of children do not appear to be compatible with the provisions and principles of the Convention, including those of its articles 3, 19 and 37...”

The Committee went on to recommend

“that physical punishment of children in families be prohibited in the light of the provisions set out in articles 3 and 19 of the Convention. In connection with the child’s right to physical integrity, as recognized by the Convention, namely in its articles 19, 28, 29 and 37, and in the light of the best interests of the child, the Committee suggests that the State party consider the possibility of undertaking additional education campaigns. Such measures would help to change societal attitudes towards the use of physical punishment in the family and foster the acceptance of the legal prohibition of the physical punishment of children.”

Following the Committee's examination, when asked in Parliament what action the UK Government intended to take as a result of this recommendation, the responsible Minister responded: "None" (*Hansard*, col. 370, 9 February 1995).

European Human Rights Court upholds child's right to protection

In 1998, the European Court of Human Rights in Strasbourg found that the beating of a young English boy by his stepfather amounted to "inhuman or degrading treatment" in breach of the European Human Rights Convention, and that UK domestic law failed to provide protection, including "effective deterrence". The boy's stepfather had been prosecuted for assault in an English court, but used the defence of "reasonable chastisement" and was acquitted. The UK Government was ordered to pay the boy (known as "A" to preserve his anonymity) £10,000 damages and his legal costs ("A v UK", 23 September 1998).

The UK Government's response – carry on smacking

As a result of the judgment, the UK Government stated that it would consult on how to change the law to give children better protection. Within the first week of the new millennium, in January 2000 the Department of Health published a consultation paper, *Protecting Children, Supporting Parents*. This paper deeply shocked many commentators. It does not mention the Convention on the Rights of the Child, nor the Committee's recommendation. It rules out banning physical punishment: "The Government's view is that it would be quite unacceptable to outlaw all physical punishment of a child by a parent".

The Government consulted on its proposal to "set out the defence of reasonable chastisement on a statutory basis", and to give courts a checklist of factors to consider when deciding whether punishment was "reasonable". In fact the jury in the domestic court trying the boy A's stepfather considered all such factors, and still found repeated beating causing injuries to be "reasonable". The consultation paper sets out some additional options, asking, for example, whether punishment "which causes, or is likely to cause, injury to the head (including injuries to the brain, eyes and ears)" can ever be defended as reasonable. This question, posed by the Department of "Health", shows how far the Government is from understanding and respecting the fundamental human rights of the UK's 13 million children.

In October 2000 the Human Rights Act 1998 came fully into effect, incorporating the European Human Rights Convention into UK law and requiring courts and other bodies to take account of judgments of the European Court. The Government may now argue that because of this incorporation, it needs to take no further action as a result of the "A v UK" case. But the European Human Rights Convention was drafted in 1950 and does not fully reflect the standards and principles of the Convention on the Rights of the Child.

In any case there have been further cases, since the Human Rights Act became part of UK law, in which parents and others who have admitted serious assaults on children have been acquitted, still using the defence of "reasonable chastisement". For example:

An eight year-old girl was slapped across the face and her nine year-old half-brother was struck across the upper thighs; in both cases bruising was still visible a week later. The perpetrators – the children's foster-parents – were acquitted of assault in October 2000.

A man who bruised his 10 year-old stepson's cheek by twice slapping him across the face was acquitted by a Magistrates' Court in England, also in October 2000.

In Scotland in 2001 a father was acquitted of assault after he had struck his 12 year-old daughter's face so that she had difficulty moving and opening her swollen jaw. The father stated that it was his religious duty to hit his daughter; the court Sheriff found the punishment "wholly justifiable".

During 2000 the Government also consulted on draft National Standards for the Regulation of Daycare. These proposed that standards for all forms of daycare except childminding should not allow physical punishments. But they proposed that childminders should be permitted to smack (and smoke in the presence of) young children with parent's written permission. The National ChildMinding Association and all organisations concerned with daycare condemned the proposal, seeking prohibition of physical punishment in all forms of daycare.

But in December the Department for Education and Employment announced that it would implement its proposal on the grounds that a specially-commissioned poll of 1000 parents had indicated that a majority believed parents, rather than the government, should decide on methods of discipline. On the day following this announcement the Secretary of State for Education, David Blunkett (now Home Secretary) was quoted on the front page of a Sunday newspaper: "I smacked my children – and it worked". The National Standards are now in force.

Young children's view: "It hurts you inside"

A unique research report published in 1998 by the National Children's Bureau and Save the Children UK, *It hurts you inside*, reports the views of five to seven year-old children on smacking. It makes upsetting reading. These children defined smacking as hitting; most of them described a smack as a hard or very hard hit. Children said smacking hurts. The vast majority thought smacking was wrong. The children said children respond negatively to being smacked, and that adults regret smacking.

Children are unbeatable!

June 29 2001

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