



## **Submission by Children Are Unbeatable! to the Joint Committee on Human Rights**

**February 2015**

### **Summary**

Children Are Unbeatable! (CAU!) is a UK alliance of over 700 organisations seeking legal prohibition of all forms of physical punishment through repeal of the “reasonable punishment” defence under section 58 of the 2004 Children Act (or “justifiable assault” under Scottish law) and the promotion of positive non-violent forms of parenting.

We note that the Committee is reviewing progress made by this Government in relation to the Ministerial commitment to give “due consideration”<sup>1</sup> to the UN Convention on the Rights of the Child (UNCRC), to the Children’s Commissioner for England and to specific areas of recent interest (for example children in custody, child trafficking and children with special educational needs).

We urge the Committee to address in its review the failure of this and preceding Governments to implement the recommendation made three times to the UK by the Committee on the Rights of the Child (CRC Committee) to “Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences.”<sup>2</sup>

The UK Government’s response to this recommendation in its current fifth report to the CRC Committee is:

“The UK Government does not condone any violence towards children and has clear laws to deal with it. Our view is that a mild smack does not constitute violence and that parents should not be criminalised for giving a mild smack.”<sup>3</sup>

### **Why the issue should be included in the Committee’s current review**

The Committee considered at length the right of children to be protected from corporal punishment in its 19<sup>th</sup> Report in 2003-4, when it examined clause 49 of the Children Bill introducing the defence of “reasonable punishment” for common assaults on children (now section 58). The Committee concluded, by a majority vote, that the clause was incompatible with children’s human rights under various treaties

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<sup>1</sup> Which, while welcome, is surely a lesser commitment than the Government’s obligation under international law to implement the Convention, not just consider it.

<sup>2</sup> Committee on the Rights of the Child on the UK’s third and fourth report, 2008, CRC/C/GBR/CO/4, paragraph 42

<sup>3</sup> The UK Government’s fifth report to the Committee on the Rights of the Child, May 2014, paragraph 11.

and recommended that it be replaced by a drafted provision to remove the defence and give children the same protection from battery as the rest of the population.<sup>4</sup>

We submit that this issue should be included in your current review because:

1. The UK's failure to protect children from physical assaults by parents and others is a fundamental, continuing and widespread breach of children's human rights, recognised by all key human rights treaty bodies.
2. UK Governments have not acted to combat physical punishment since the "reasonable punishment" defence was introduced in 2004. A review of the legality of physical punishment in madrassas and other part-time forms of education was undertaken in 2009-10 but its (modest and partial) recommendations were not accepted by this Government.<sup>5</sup> Otherwise over the last decade the subject of physical punishment has not been mentioned in any professional guidance, official review or inquiry into child protection, early years development, parent support or related topic, despite the central role it plays in children's lives. The issue appears to be taboo.
3. The statement in the UK's fifth report to the CRC Committee that "a mild smack does not constitute violence" should be challenged by the Committee. The only arguments we can see to support this proposition are either that mild smacks do not physically hurt children or that mild smacks are in some way necessary (as, for example, the pain caused by an inoculation is necessary). We believe the Committee should expose the absurdity of both contentions, and require the Government to provide children with legal protection from common assault in exactly the same terms as women, old people and all other citizens already enjoy.
4. This issue cannot be dismissed as trivial. "Ordinary" physical punishment has been the subject of many carefully designed peer-reviewed research studies. These overwhelmingly find that smacking risks short- and long-term damage to children and has strong associations with violence in later life, including domestic and sexual violence, criminality and mental and physical ill health. Physical punishment is also a central factor in child protection, with "mild" punishment inexorably escalating in certain cases to abusive injuries or even death. The issue is also relevant to other issues being considered by the Committee, such as child trafficking, children in custody and children with disabilities.

This submission does not summarise the substantial evidence showing section 58 is an unsafe and counter-productive measure nor the equally extensive research evidence supporting the case for full prohibition. The Children Are Unbeatable! England website at <http://www.childrenareunbeatable.org.uk/> covers these matters (primarily in the section entitled "the case for reform") and the Global Initiative to End Corporal Punishment (<http://www.childrenareunbeatable.org.uk/>) has more relevant material.

As regards the Government's comment to the CRC Committee that "parents should not be criminalised for giving a mild smack" we do not see this as an issue for the

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<sup>4</sup> Joint Committee on Human Rights, Children Bill, Nineteen Report on Session 2003-4, HL Paper 161 HC 537, paragraph 177.

<sup>5</sup> Sir Roger Singleton *Physical punishment: improving consistency and protection* (2010)

Committee. Although under a ban parents who smack would be committing a criminal offence, the thresholds for civil and criminal interventions would remain exactly as they are now; indeed, parents would probably be even less likely to be prosecuted for a smack than if they mildly struck another adult because the prosecution authorities must take into account the interests of the child victim, in addition to the public interest and the *de minimis* principle. But in any event parents' preferences should not be allowed to trump children's rights. No doubt in previous eras men who "mildly" smacked their wives did not wish to be criminalised.

Because the Committee is focused on the UK's human rights obligations we address in detail only two areas. First, the unanimity within the international human rights world that physical punishment, however mild, constitutes a breach of children's rights. Second, the proposition that mild smacks are "not violence" or that they are "necessary", since it could be argued that these propositions might permit the UK to avoid its obligation to remove existing defences.

### **International treaty bodies recognise children's human right to protection from all forms of physical punishment**

Article 19 of the UNCRC obliges ratifying states to protect children from "all forms of physical or mental violence" while in the care of parents or others. The Committee on the Rights of the Child has now recommended three times that the UK outlaw all forms of physical punishment, however mild.<sup>6</sup> In 2006 the CRC Committee adopted General Comment No.8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, *inter alia*).<sup>7</sup> Unambiguous and comprehensive legal prohibition is always necessary:

"The Committee emphasizes that the Convention requires the removal of any provisions (in statute or common - case law) that allow some degree of violence against children (e.g. "reasonable" or "moderate" chastisement or correction), in their homes/families or in any other setting."<sup>8</sup>

The Committee on Elimination of Discrimination against Women in its concluding observations on the UK in 2008 noted with concern "that corporal punishment is lawful in the home and constitutes a form of violence against children, including the girl child." It recommended "that the State party include in its legislation the prohibition of corporal punishment of children in the home".<sup>9</sup> The recommendation was repeated in 2013.<sup>10</sup>

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<sup>6</sup> See note 2, and Committee on the Rights of the Child, concluding observations on the UK's initial report, 5 February 1995, CRC/C/15/Add.34 and concluding observations on the UK's second report, 9 October 2002, CRC/C/15/Add.188.

<sup>7</sup> 21 August 2006, CRC/C/GC/8, Committee on the Rights of the Child, General Comment No. 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, *inter alia*).

<sup>8</sup> Para. 31

<sup>9</sup> 10 July 2008, CEDAW/C/UK/CO/6, paras. 280 and 281

<sup>10</sup> 30 July 2013 CEDAW/C/GBR/CO/7 paras. 34 and 35

Other human rights treaty bodies, including the Committee on Economic, Social and Cultural Rights (twice)<sup>11</sup> and the Committee Against Torture,<sup>12</sup> have called for all corporal punishment of children to be outlawed. The Human Rights Committee's recently submitted list of issues prior to examination of the UK includes the request: "Please also report on measures taken to explicitly prohibit corporal punishment of children in all settings, including in the home and alternative care settings, and repeal all relevant legal defences across the State party's jurisdiction."<sup>13</sup> In the first and second cycles of the Universal Periodic Review at the Human Rights Council states have repeated recommendations that the UK prohibit all physical punishment.<sup>14</sup> The 2006 report of the UN Secretary-General's Study on Violence against Children calls on all countries to prohibit all violence against children, explicitly including all corporal punishment, as a matter of priority.<sup>15</sup>

Within Europe, the European Committee of Social Rights reviewing compliance with the European Social Charter has twice found that the UK was in breach for its failure to prohibit all corporal punishment in the family.<sup>16</sup> In 2008, the Council of Europe launched a Europe-wide campaign for prohibition of all physical punishment and the promotion of positive non-violent parenting in its 47 member states, seeking to achieve "a continent free of corporal punishment".<sup>17</sup> This had been the recommendation of the Parliamentary Assembly of the Council of Europe in 2004: "The Assembly considers that any corporal punishment of children is in breach of their fundamental rights to human dignity and physical integrity."<sup>18</sup>

Worldwide, 44 countries have now outlawed all forms of physical punishment of children and a further 45 have expressed their commitment to doing so. Within the European Union, 19 of the 28 member states have achieved a total ban and another four are committed to enacting such a measure soon. The UK is now just one of five EU states which are not explicitly committed to prohibiting this form of assault and of these five, ministers in Belgium and France have indicated in recent months that they will now consider explicit prohibition.

### **Answering arguments that a mild smack is "not violence" or is "necessary"**

Article 19 requires the UK to take legal measures to protect children from all forms of physical harm. The CRC Committee defines physical punishment as "any punishment

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<sup>11</sup> Committee on Economic, Social and Cultural Rights, concluding observations on the UK's fourth report, 5 June 2002, E/C.12/1/Add.79; also see, E/C.12/GBR/CO/5, 22 May 2009

<sup>12</sup> Committee Against Torture, Concluding observations on the UK's fifth report, adopted by the committee at its fiftieth session, 6-31 May 2013, 31 May 2013

<sup>13</sup> Human Rights Committee, List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland 20 November 2014, Paragraph 19

<sup>14</sup> 23 May 2008, A/HRC/8/25, Report of the working group, paras. 56(2), 56(3), 56(4) and 56(5)); 6 July 2012, A/HRC/21/9, Report of the working group, paras. 110(78), 10(79) and 110(80))

<sup>15</sup> Report of the Independent Expert for the United Nations Study on Violence against Children, Paulo Sérgio Pinheiro, A/61/299, paras. 97 and 116; see [www.unsvac.org](http://www.unsvac.org)

<sup>16</sup> 1 January 2001, Conclusions XV-2 vol. 2; July 2005, Conclusions XVII-2; January 2012, Conclusions XIX-4

<sup>17</sup> Council of Europe *Eliminating corporal punishment: a human rights imperative for Europe's children* 2008

<sup>18</sup> Recommendation 1666/2004 Parliamentary Assembly of the Council of Europe.

in which physical force is used and intended to cause some degree of pain or discomfort, however light.”<sup>19</sup>

Simply as a matter of semantics, the Government’s contention that a common assault perpetrated on a child by a parent or someone *in loco parentis* is “not violence” strains credibility. Common assault is violence when committed by any other member of the population, including children who hit each other in the school playground or parents who hit someone other than their own child. The Crown Prosecution Charging Standard states, “the only factors that distinguish common assault from assault occasioning actual bodily harm... are the degree of injury that results and the sentence available to the sentencing court.”<sup>20</sup> Where children and other vulnerable people are concerned, the Standard defines a common assault injury as “transient and trifling”, but nonetheless it recognises that an injury has occurred.

It is possible that the Government believes that transient and trifling smacks don’t hurt. If so, this is a self-deceiving illusion. Smacking hurts. It is meant to hurt – the smacked child who says “that didn’t hurt” is smacked again, only harder. Those who uphold the right of parents to physically punish children are keen to assert that it must hurt, otherwise there is no point in doing it.<sup>21</sup> Smacking may be called ‘mild’ or ‘trivial,’ but young children from the age-group that is smacked the most (four to seven year olds) are eloquent about how much it hurts:

“It feels like someone banged you with a hammer” (five year old girl)  
 “Like someone’s punched you or kicked you or something.” (six year old boy)  
 “It’s sore, very sore,” (four year old girl)<sup>22</sup>  
 “It burns your bottom” (five year old boy)  
 “It feels like you’re going to cry ’cause it hurts you that much” (seven year old boy)<sup>23</sup>

No child in these surveys said smacking did not hurt. The assertion that smacking is not violence is particularly bizarre given UK policy on domestic violence. Would any Government spokesperson suggest that men who gave women a painful smack were not being violent? The principle of zero tolerance of all forms of violence, including the threat of violence, is central to the UK’s strategy for combating domestic violence.

The other possible argument is that smacking is not “violence” because it is necessary, in the way that striking someone who is choking is necessary.

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<sup>19</sup> General Comment No. 8 (2006) *The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*, CRC/C/GC/8

<sup>20</sup> Crown Prosecution Service, *Offences against the person, incorporating the Charging Standard*, guidance October 2009

<sup>21</sup> For example Gary and Anne Marie Ezzo, popular child care ‘experts’ among US Christian fundamentalists, recommend parents hit their children with a plastic spatula which will ‘inflict pain but not break bones or damage skin tissue’ (*Sunday Telegraph*, September 12 1999); in this country, Lynette Burrows, author of *Good Children*, is happy to demonstrate on television how smacks should be made to sting.

<sup>22</sup> Horgan G, *It’s a HIT, not a ‘smack’: a booklet about what children think about being hit or smacked by adults*, Save the Children 2002

<sup>23</sup> Cutting C, *It doesn’t sort anything: a report on the views of children and young people about the use of physical punishment*, Save the Children Scotland, 2001

It is true that the law takes a common sense approach to the definition of common assault or battery, as explained by the Law Commission in its current examination of offences against the person:

“The external elements of battery consist of the infliction of unlawful violence. “Violence” here can include any unwanted touching. “Unlawful” means that it is not consented to, that there is no lawful excuse and that it is not one of the contacts inevitably experienced in normal life, such as jostling in queues and crowds.”<sup>24</sup>

Thus parents do not commit common assaults when, for example, they carry an unwilling child to bed or force a toddler to wear a jacket. Physical punishment, however, is not something which is “inevitably experienced in normal life.” No UK Government has supported the use of physical punishment since the 1990s, no reputable parenting guides or educators recommend it and many parents successfully raise children without giving them “loving taps”. Mild smacking is against the law in 44 countries and there is no evidence that any problems have arisen as a result. (Quite the reverse: where smacking is banned, levels of more severe violence to children also fall.<sup>25</sup> On the other hand comparisons between European countries show the decline in the use of physical punishment is minimal in countries without a legal ban compared to those countries which have banned: ministerial hopes that smacking will soon disappear of its own accord are unfounded<sup>26</sup>).

We therefore urge the Committee to recommend that the government immediately remedy this violation of rights and prohibit all forms of physical punishment of children.

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<sup>24</sup> Law Commission, *Reform of Offences against the Person A Scoping Consultation Paper*, 2014

<sup>25</sup> See particularly Modig, C. (2009), *Never Violence – Thirty Years on from Sweden’s Abolition of Corporal Punishment*, Save the Children Sweden and Swedish Ministry of Health and Social Affairs

<sup>26</sup> Bussmann, K. D. (2009), *The Effect of Banning Corporal Punishment in Europe: A Five-Nation Comparison*, Halle-Wittenberg: Martin-Luther-Universität; <sup>26</sup> Gracia, E. & Herrero, J. (2008), “Is It Considered Violence? The Acceptability of Physical Punishment of Children in Europe”, *Journal of Marriage and Family*, 70: 210–217