



Global Initiative to
**End All Corporal Punishment
of Children**

UNITED KINGDOM

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 1st session, 2007

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Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.

The Global Initiative to End All Corporal Punishment of Children has been regularly briefing the Committee on the Rights of the Child on this issue since 2002, and since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee. There is growing progress now across all regions in challenging this very common form of violence against children. But we are concerned that many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope that the UPR Process will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies, on this and other key issues.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment, setting a goal of 2009.

This briefing describes the gaps in prohibition in the United Kingdom, its Overseas Territories (OTs) and Crown Dependencies (CDs). It notes the particular resistance in the UK to prohibiting corporal punishment in the home setting, despite repeated recommendations to do so by international and regional human rights mechanisms.

We hope the Review will highlight with concern the UK’s record of ignoring treaty body recommendations and strongly recommend that the UK introduce legislation as a matter of urgency to prohibit corporal punishment of children in all settings, including in the home, and ensure that its OTs and CDs take similar measures.

I: Legality of corporal punishment in the UK and its OTs and CDs

The home

Corporal punishment is lawful in the **home** in the UK, in all of the Overseas Territories (with the possible exception of the Pitcairn Islands) and in the Crown Dependencies. Amendments to legislation in England and Wales, Scotland and Northern Ireland have not removed the defence of “reasonable chastisement” but have restricted it: in Scotland by introducing the concept of “justifiable assault” of children and defining blows to the head, shaking and use of implements as unjustifiable (Criminal Justice (Scotland) Act 2003, s51); in England, Wales and Northern Ireland by allowing use of the defence of “reasonable punishment” by parents and some other carers charged with common assault but not by those charged with more serious assaults on children (Children Act 2004, s58; Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006, s2). (In England and Wales, when section 58 was implemented, the Charging Standard giving guidance to prosecutors was also revised to suggest that where an assault is by an adult on a child, it may be reasonable to substitute a charge of actual bodily harm for common assault, in which case the “reasonable punishment” defence is not available. But it must be emphasised that this is guidance, not law, and children do not have equal protection under the law on assault.)

Continued resistance to complete prohibition

The UK Government continues to resist strong pressure for complete removal of these defences to give children equal protection under the law on assault. This pressure comes from the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the European Committee of Social Rights (**see below for detail**), as well as from the Council of Europe Committee of Ministers, supervising the UK’s execution of the landmark judgment of the European Court of Human Rights, *A v UK*, 1998. In its sixth report to the Human Rights Committee, the UK Government states explicitly that it “is committed not to impose a blanket ban on smacking” (CCPR/C/GBR/6, para. 364).

Government resistance persists despite strong calls for complete removal of the defences by the UK’s four Children’s Commissioners. The largest alliance ever formed to campaign on an issue for children in the UK, the Children Are Unbeatable! Alliance, includes more than 400 NGOs arguing for equal protection (for full list see www.childrenareunbeatable.org.uk).

Review of the defence of “reasonable punishment” by the UK, 2007

In the summer of 2007, the UK Government consulted on the impact of section 58 of the 2004 Children Act in England and Wales, which allows for the defence of “reasonable punishment” to be used in charges of common assault of a child by a parent or other adult *in loco parentis*. The summary of the Government’s analysis of the 1,405 responses to the consultation document clearly indicates dissatisfaction with the law as it stands. The summary states, for example:¹ “Respondents generally felt that section 58 of the Children Act 2004 had made little positive impact on children, families and those working with them”; “Respondents considered that there has been no change in practice as a result of section 58 by those working with children and families in considering incidents involving an alleged assault by a parent upon a child”; “The general opinion of respondents was that changes to the law have not deterred parents from using unacceptable levels of physical punishment in bringing up their children”; “An overwhelming majority called for children to enjoy the same rights to protection as adults.”

¹ Dept for Children, Schools and Families (2007), *Section 58 of the Children Act 2004 Review (consultation): Analysis of responses to the consultation document*, Overview, p. 3

Qualitative research with children aged 4-16 was undertaken, as part of the review, to ascertain their views on physical punishment. The majority of children had experienced being hit (“smacked”) at some point in their lives, particularly when aged below 9-10 years. The research report states:² “Discussions with children suggested that the term ‘smacking’ was emotionally charged for many and that it was often associated with feelings of fear, shame and anger. In some instances it was not only associated with parental disapproval and disappointment, but also with parents losing control and their temper. No other punishment discussed with children in this study appeared to carry such strong negative emotions.” The final report of the review states:³ “Many children accepted that discipline and punishment were an important part of growing up and whilst it was often unpleasant it was necessary. However, most felt that smacking was out of place in modern childhood, and that other punishments were more effective in bringing about reflection, changing behaviour and supporting good and close relationships with parents. Whilst smacking was the most feared form of punishment, it was the emotional distress and humiliation that can be caused by smacking, rather than any physical pain, which children feared.”

The review also involved research into the views of parents on physical punishment of children, based on responses from 1,800 parents. The research found evidence of a shift in attitudes towards smacking: around half (52%) believed it is sometimes necessary to smack a naughty child, compared with 88% in previous research in 1998.⁴

In the face of these findings of the review of section 58, the Government announced in October 2007 its decision not to remove the “reasonable punishment” defence from legislation. The final review report states bewilderingly that it is “neither correct nor incorrect to say that ‘smacking is legal’”.⁵

Schools and other settings

Corporal punishment is prohibited in **schools** in the UK. Of the OTs and CDs, it is lawful in schools in Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Jersey, Montserrat and Turks and Caicos Islands. In Guernsey and the Isle of Man, it is prohibited by law in state schools, but only by policy in the private schools. It is prohibited in all schools in the Falkland Islands, the Pitcairn Islands and Saint Helena.

In **penal systems**, corporal punishment is prohibited as a sentence for crime in the UK and in all OTs and CDs, although as at May 2006 it remained on the statute book in Guernsey. It is prohibited as a disciplinary measure in penal institutions in the UK except in the “secure training centres”, where children aged between 12 and 15 are held, and in penal institutions in all OTs and CDs apart from Gibraltar, Montserrat and the Isle of Man.

In **alternative care settings** in the UK, corporal punishment is explicitly prohibited in foster care arranged by local authorities and voluntary organisations (but not in private foster-care) and in daycare (except in Northern Ireland where there is guidance against its use but no prohibition). There is no explicit prohibition of corporal punishment applicable to all alternative care settings in any of the OTs or CDs, with the possible exception of the Pitcairn Islands.

² 2007, *A Study into Children’s Views on Physical Discipline and Punishment*, prepared by Sherbert Research for the Dept for Children, Schools and Families and the Central Office of Information, p.28

³ Dept for Children, Schools and Families (2007), *Review of Section 58 of the Children Act 2004*, London: The Stationery Office, para. 35

⁴ Ipsos MORI (2007), *A study into the views of parents on the physical punishment of children for the Department for Children, Schools and Families (DCSF) October 2007*

⁵ Dept for Children, Schools and Families (2007), *Review of Section 58 of the Children Act 2004*, para. 42

II: Recommendations by human rights treaty monitoring bodies

The **Committee on the Rights of the Child** first expressed concern at the “reasonable chastisement” provisions in UK law in 1995, following examination of the state party’s initial report (CRC/C/15/Add.34, paras. 16 and 31). In 2002, following examination of the second periodic report, the Committee stated (CRC/C/15/Add.188, paras. 36, 37 and 38):

“In light of its previous recommendation (ibid., para. 31), the Committee deeply regrets that the State party persists in retaining the defence of ‘reasonable chastisement’ and has taken no significant action towards prohibiting all corporal punishment of children in the family.

“The Committee is of the opinion that the Government’s proposals to limit rather than to remove the ‘reasonable chastisement’ defence do not comply with the principles and provisions of the Convention and the aforementioned recommendations, particularly since they constitute a serious violation of the dignity of the child (see similar observations of the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.79, para. 36). Moreover, they suggest that some forms of corporal punishment are acceptable, thereby undermining educational measures to promote positive and non-violent discipline.

“The Committee recommends that the State party:

- a) with urgency adopt legislation throughout the State party to remove the ‘reasonable chastisement’ defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation;
- b) promote positive, participatory and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, involving children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment.”

In relation to the OTs, the Committee addressed the obligation to prohibit all corporal punishment, including in the home, in its concluding observations on the initial report concerning the OTs in 2000. It stated (CRC/C/15/Add.135, paras. 35 and 36):

“The Committee expresses grave concern that corporal punishment is still widely practised in many of the Overseas Territories and that domestic legislation generally does not prohibit and eliminate its use in schools, care institutions and homes....

“The Committee recommends that all appropriate measures, including of a legislative nature, be taken to prohibit and eliminate all forms of corporal punishment within the school, juvenile justice and alternative care systems and in the home. The Committee further suggests that awareness raising and education campaigns be conducted to change public attitudes and ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially articles 19 and 28.2.”

In 2002, the **Committee on Economic, Social and Cultural Rights** stated in its concluding observations on the fourth report of the UK, the CDs and the OTs (E/C.12/1/Add.79, para.36):

“Given the principle of the dignity of the individual, which provides the foundation for international human rights law (see paragraph 41 of the Committee’s General Comment No.13) and in the light of article 10.1 and 10.3 of the Covenant, the Committee recommends that the physical punishment of children in families be prohibited, in line with the recommendation of the Committee on the Rights of the Child (see paragraph 31 of the 1995 concluding observations of that Committee (CRC/C/15/Add.34)).”

In 2005, the **European Committee of Social Rights** – building on concerns expressed in 2001 (Conclusions XV-2 vol. 2) – found the situation in the UK to be not in conformity with Article 17 of the European Social Charter “on the grounds that ... corporal punishment in the home is not prohibited ...” (July 2005, Conclusions XVII-2), stating:

“The Committee notes that corporal punishment within the family is not prohibited. It further notes from the abovementioned source that the defence of ‘reasonable chastisement’ still exists and the State has taken no significant action towards prohibiting all corporal punishment of children in the family. Therefore, it considers that since there is no prohibition in legislation of all corporal punishment in the home, the situation is not in conformity with Article 17 of the Charter.”

In 1998, the **European Court of Human Rights** issued its landmark judgment on the case of *A v UK* concerning parental corporal punishment, finding a breach of the rights of “A”, a young English boy, to protection from degrading punishment. The judgment requires the UK to reform its law to provide adequate protection, including effective deterrence. Nine years later, the execution by the UK of this judgment is still being supervised by the Council of Europe Committee of Ministers.