

## **Children Are Unbeatable! Alliance**

### **Submission to the Home Office Consultation on ending violence against women and girls, April 2009**

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#### **Summary**

**1 The Children Are Unbeatable! Alliance is an alliance of organisations and individuals which campaigns for the UK to satisfy its human rights obligations by modernising the law on assault to afford children the same protection as adults. The more than 400 organisations supporting the Alliance include Refuge, Relate, Victim Support, Women's Aid Federation for England and Welsh Women's Aid (see [www.childreanareunbeatable.org.uk](http://www.childreanareunbeatable.org.uk)).**

**2 We note that the consultation includes violence against girls in its definition of violence against women. Currently, the zero tolerance approach to violence against women in the home is not mirrored by a zero tolerance approach to violence against girls in the home. This submission focuses on the way efforts to address violence against women and girls are undermined by a legal framework which allows punitive violence towards girls (and boys) in the guise of parental discipline (section 58 of the Children Act 2004). It focuses on the need for removal of the "reasonable punishment" defence to ensure that children have the same legal protection from assault as adults. It also calls for inclusion of direct violence against children in the definition of "domestic violence".**

**3 Children, as people, have the same right to respect for their physical integrity and human dignity and to equal protection under the law as adults. There have been welcome advances in legal protection for adults from domestic violence, but the Government has regrettably not yet given children the same protection from assault in the home. The harmful effect on children of *witnessing* assault between adults in the home is now recognised in legislation. It is a serious anomaly that the law does not protect them fully from *direct* assault in the domestic setting.**

**4 Section 58 of the Children Act sends out a dangerous message that a certain degree of violence against girls and boys is acceptable. This undermines the work of child protection and other professionals involved in safeguarding children and conflicts with the zero tolerance approach to violence that is necessary in educating children about healthy relationships.**

**5 Perpetrators of domestic violence commonly seek to justify their actions with reference to victims' behaviour. A legal framework which allows parents a defence of "reasonable punishment" when physically assaulting their children obviously legitimises the concept of punitive violence in the minds of children. The unequal protection from assault given to girls and boys while they are growing up seriously diminishes the capacity of the legal protection they gain in adulthood to ensure equality and zero tolerance of violence in adult relationships. The proportion of young people which research tells us believe it acceptable for men to hit female partners in certain circumstances is alarmingly high.**

**6 In terms of sexual violence, unequal protection from assault for children is a potent symbol of their low status compared with adults. It provides a legal basis for the perception of girls (and boys) as objects, which underpins sexual and other exploitation by adults.**

**7 The Committee on the Elimination of Discrimination Against Women has called for legal reform in the UK to prohibit all corporal punishment of children within the home, and has ruled that articles 2, 5, 11, 12 and 16 of the Convention on the Elimination of all Forms of Discrimination Against Women "require the States parties to act to protect women against violence of any kind occurring within the family" (General Recommendation No. 12, 1989). The**

Committee on the Rights of the Child and other international treaty monitoring bodies have also repeatedly recommended that the UK completely remove the defence of “reasonable chastisement/punishment”, as have key institutions within the UK.

## **Ending legalised violence against girls – an essential foundation for addressing domestic and sexual violence against women**

Note: Perhaps as a result of the social and legal acceptance of parents hitting girls and boys as a way of “disciplining” them, there is no question in the consultation which specifically addresses this issue. We have therefore submitted responses under the most relevant of the consultation questions.

### **I: Domestic violence**

***Relevant questions: Are we doing enough to protect and support children affected by adult violence? Who’s looking out for them and what do they need? Where are the main gaps in the current provision? What kinds of services should you expect to receive from the health service and/or social services if you were a victim of violence? How could services improve their response to victims of violence against women?***

Currently, the law fails to protect *all* persons in the home from violence. Legislative provisions on assault clearly mean that violence inflicted on a woman is unacceptable. But section 58 of the Children Act 2004 allows physical violence to be inflicted on girls (and boys) by their parents in the guise of discipline. Physical punishment of children *is* domestic violence – a home where children are allowed to be hit by adults can never be violence-free.

The Government has recently claimed that the degree of physical punishment permitted by law is not “violence”,<sup>1</sup> but this makes no sense when precisely the same action inflicted on an adult amounts to common assault. The difference between hitting an adult and hitting a child does not lie in the former behaviour being violent and the latter somehow not violent, but in the deep-rooted acceptability of using pain to control weaker people. For too long, this acceptance was extended to hitting women as well as children. Society no longer accepts any form of violence towards women, and the law for the most part reflects this. Giving children equal legal protection is long overdue.

As the Family and Parenting Institute stated in its response to the 2007 Department for Children Schools and Families consultation on section 58 of the Children Act:

*In this country it is illegal to hit another adult, even to punish them for a crime or misdemeanour. The FPI believes that giving people who are smaller and weaker fewer rights to protection in this regard is unacceptable. The argument that parents have a “right” in their own home to discipline their children as they choose, in other words that parents have proprietorial rights over children and a consequent right to hit them, recalls arguments that were once used in relation to husbands and wives.*

Section 58 sends out a dangerous message about the acceptability of violence against children. It also sends a confusing message to children – the adults in the home must not hit each other but they may hit the children. Women can flee to refuges to escape being hit by their partners, but within those refuges they can lawfully continue to hit their children in the name of discipline, compromising the efforts of refuge workers to create violence-free environments by insisting on no physical punishment of children. This is exemplified in the response to the consultation on section 58 from the Greater London Domestic Violence Project:

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<sup>1</sup> Government comments on Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom, 5-8 February and 31 March-2 April 2008, CommDH(2008)28, Strasbourg, 9 October 2008

*... it is impossible for professionals to reinforce positive messages about promoting positive discipline, for instance children's workers in refuges, as parents will use this law to say it is still "legal to smack children".*

*As a refuge worker, I was told by children that they were being smacked in their bedrooms and told not to tell staff. In a refuge situation, women and children are there because they are escaping a violent situation. It is very confusing for the child if they are leaving everything they know behind to escape violence, and yet are still being hit themselves. It is very frustrating for refuge workers to promote non-violence in domestic relationships whilst the law says it is acceptable for adults to hit children.*

This situation undermines messages in initiatives to end domestic violence that all violence is unacceptable, because it re-affirms parents' "right" to assault their children. It presents confusion rather than clarity for those working to prevent domestic violence and to deal with women and children who have escaped it.

Just as the Government doesn't need to provide evidence to show that hitting women is wrong, it shouldn't have to look for this in the case of children. The issue is fundamentally one of human rights to respect for human dignity, physical integrity and equal protection.

However, in addition there is overwhelming evidence of the negative impact of physical punishment of children. A meta-analysis of 88 research studies addressing parental corporal punishment and associated child behaviours, found 93% overall agreement on the negative effects of corporal punishment, including aggression, delinquent and antisocial behaviour, poor parent-child relationships, and mental ill-health. In later life, the effects are seen as aggression, criminal and antisocial behaviour, poor mental health and abusive behaviour.<sup>2</sup> A synthesis of even more studies concluded that there is substantial evidence that such punishment puts children at risk for negative outcomes, including increased aggression, antisocial behaviour, mental health problems and physical injury.<sup>3</sup>

In the national domestic violence delivery plan for 2009-2010 the Government intends to review the definition of domestic violence.<sup>4</sup> It is crucial that any definition fully encompasses all violence against children in the home. This requires first and foremost that children be given the same protection from assault in the home as adults through the complete removal of the defence of "reasonable punishment". It also requires that *all* potential victims of violence in the home – including children – be included in the definition of domestic violence. In Wales, the National Assembly has adopted a definition of domestic violence which includes direct violence inflicted on children. The National Assembly also supports complete removal of the "reasonable punishment" defence to give children equal protection.

### *Ending and preventing the acceptance of violence*

***Relevant questions: How do social attitudes towards girls and women affect the problem of violence against women? How can we best challenge the perceptions that allow people to stay silent on violence against women and for it to be accepted in various sectors of society? How could we help women and girls to achieve greater confidence in their lives? How can we encourage peer-to-peer support to challenge violence against women and girls? How should schools encourage young men to treat women and girls with respect, and not to resort to violent behaviour? What more could be done to help young women and young men to challenge negative perceptions or behaviours among their peers? How do we prevent violence against women and girls from happening in the first place – including changing the way that men, particularly young men, view what is acceptable?***

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<sup>2</sup> Gershoff, E. T. (2002), "Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review", *Psychological Bulletin*, vol. 128, no. 4, pp. 539-579

<sup>3</sup> Gershoff, E. T. (2008), *Report on Physical Punishment in the United States: What Research Tells Us About Its Effects on Children*, Columbus, OH: Center for Effective Discipline

<sup>4</sup> Parliamentary Question, 2 March 2009,

[www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90302w0001.htm#09030220000212](http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90302w0001.htm#09030220000212)

It is clear that a key issue in ending violence against women and girls is to make it culturally and socially unacceptable in the minds of adults and children. This will not happen while hitting children remains legally acceptable. The acceptability of a certain degree of violence against girls and boys, at the hands of parents/carers, conflicts with the zero tolerance approach to violence that is necessary in educating children about healthy relationships. The fact that children can lawfully be hit in certain circumstances and by certain people precludes the development of an uncompromising rejection of violence, whether inflicted upon them or by them. Psychologically, this makes it less easy for victims of violence in the home to speak up and more easy for perpetrators of domestic violence to convince themselves that what they are doing is not unreasonable – “it’s just a slap”, “she was asking for a smacking”.

Perpetrators of domestic violence commonly seek to justify their actions with reference to victims’ behaviour. A legal framework which allows parents a defence of “reasonable punishment” when physically assaulting their children obviously legitimises the concept of punitive violence in the minds of children.

The consultation refers to Government research in which around two in ten adults believe it is sometimes acceptable for a man to hit or slap his wife or girlfriend because of what she is wearing.<sup>5</sup> A survey of young people, aged 14-21, found acceptance of male violence towards women even higher. Of more than 2,000 respondents, nearly half of the young men and a third of the young women could envisage circumstances when they believed it would be acceptable for a man to hit a female partner. One in eight of the young men thought that “nagging” was a justification for violence.<sup>6</sup>

These views do not appear from nowhere – the acceptability of physical punishment has been internalised from an early age and is deeply rooted in our society. The unequal protection from assault given to children while they are growing up seriously diminishes the capacity of the legal protection they gain in adulthood to ensure equality and zero tolerance of violence in adult relationships.

## **II: Sexual violence**

***Relevant questions: How should schools encourage young men to treat women and girls with respect, and not to resort to violent behaviour? How do social attitudes towards girls and women affect the problem of violence against women? How can we best challenge the perceptions that allow people to stay silent on violence against women and for it to be accepted in various sectors of society? How could we help women and girls to achieve greater confidence in their lives? Are we doing enough to protect and support children affected by adult violence? Who’s looking out for them and what do they need? Where are the main gaps in current provision? How can we all better pick up on, and respond to, early signs of violence?***

Physical punishment – and its legality – contributes to children’s vulnerability to sexual violence and to the conditions in which it occurs in many ways. For example, physically hurting girls and boys in the name of punishment/discipline violates their physical integrity and human dignity, and makes other physical and sexual invasion “easier” and more likely.

Children often experience both physical punishment and sexual violence/abuse in the family. A home environment where a certain degree or kind of violence against children is condoned is an environment where boundaries are blurred and children are vulnerable. Some physical punishment *is* sexual (e.g. spanking on bare buttocks), and much child pornography depicts scenes of physical punishment of children.

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<sup>5</sup> Opinion poll in England and Wales commissioned by the Home Office, February 2009

<sup>6</sup> Research findings published in Humphreys & Mullender (1999), *Children and domestic violence: a research overview of the impact on children*. Cited by the Department for Children, Schools and Families, Ev 397, and the House of Commons Home Affairs Committee report on *Domestic Violence, Forced Marriage and “Honour”-Based Violence* (sixth report of session 2007-08), vol. 1

Physical punishment, and the threat of it, may be used to coerce children into sexual relationships within or outside the family and into other forms of sexual exploitation. And in addition to the negative effects of physical punishment discussed above, which in themselves increase vulnerability to violence and abuse, research has shown that the more physical punishment a child experiences, the more likely he or she is to have coercive sex, and to engage in risky sex and masochistic sex.<sup>7</sup>

The legality of physical punishment of children reflects and reinforces their low status as less than human, as objects and possessions – the very status that underpins the commodification of children who are sexually exploited.

Giving children equal protection under the criminal law from assault, wherever they are and whoever the perpetrator is, provides fundamental protection from all forms of assault, and asserts children's right to full respect for their physical integrity and human dignity. It ends the legal reinforcement of the idea that children deserve less protection from violence than adults. Law reform to this end should be an essential element of the strategy to eliminate sexual violence against women and girls.

### **III: Implementing equal protection**

***Relevant questions: How best can we keep track of the most serious offenders, and reduce the risks those individuals pose? What interventions would help perpetrators of all forms of violence against women to change their behaviour? Not all perpetrators come to the attention of the criminal justice system – are there other services that should be developing work with perpetrators to change their behaviour? How can we improve women's confidence that the criminal justice system is working to protect them?***

We recognise that dealing with perpetrators of domestic violence against women and dealing with adults who hit girls (and boys) in the name of discipline in the home require different responses. This is not because of any fundamental difference between violating a child's human dignity and physical integrity and violating an adult woman's, but in recognition of children's developmental and dependent status.

If the "reasonable punishment" defence is removed completely from legislation, children will have the same protection as adults from being hit or "smacked". This means that assaults on children will be criminalised in the same way and to the same extent as assaults on adults. But the primary purpose of law reform is preventive, not punitive. It is about sending a clear, unequivocal message that *all* violence is unacceptable and unlawful. It is about supporting the promotion of positive, non-violent approaches to childrearing and education initiatives aimed at ensuring children grow up to respect their own and others' right to respect for their human dignity and physical and mental integrity.

Implementation of equal protection for children should reflect this educative purpose of the law and take account of children's particular developmental and dependent status in the family. Under the Domestic Violence, Crime and Victims Act 2004, common assault is an arrestable offence in England and Wales. In arguing that children should have equal protection from assault, we are not suggesting that parents should be arrested when it is suspected that physical punishment has been used.

All reports of violence against children should be investigated to ensure that the child is not suffering or at risk of suffering "significant harm" (the threshold for formal investigation under section 47 of the Children Act 1989), but arrest and prosecution of parents for minor assaults would be in the best interests of children only in the most exceptional circumstances. Rather, a range of responses should be developed to ensure that physical punishment is not used by parents, with prosecution and other formal interventions reserved for cases in which they appear to be necessary to protect a child from significant harm *and* to be in the best interests of the child. Guidance accompanying equal protection

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<sup>7</sup> Straus, M. A. (2008), "Corporal punishment of children and sexual behaviour problems: Results from four studies", presented at the American Psychological Association Summit Conference on Violence and Abuse in Interpersonal Relationships, Bethesda, Maryland, 28 February 2008

could emphasise how the law should be implemented in an educative way, supportive to parents and in the best interests of children.

#### **IV: The human rights obligation to ensure equal protection for children**

***Relevant questions: Are we doing enough to protect and support children affected by adult violence? Where are the main gaps in current provision? What are your views on the role of schools in helping children and young people to develop the values and skills that they need as they grow into adulthood, including mutual respect, rights and responsibilities, gender equality, and the ability to manage their feelings and emotions?***

We welcome the seriousness with which the Government takes its obligations under the Convention on the Elimination of All Forms of Discrimination against Women. In the context of monitoring the UK's implementation of the Convention as regards violence against women, the UN Committee on the Elimination of Discrimination Against Women has clearly recommended that the UK prohibit all corporal punishment of children in the home. In its 2008 concluding observations on the UK's report, the Committee states that corporal punishment "constitutes a form of violence against children, including the girl child", and recommends its prohibition in law.<sup>8</sup> The Committee has ruled that articles 2, 5, 11, 12 and 16 of the Convention "require the States parties to act to protect women against violence of any kind occurring within the family".<sup>9</sup>

The UN Committee on the Rights of the Child, monitoring the UK's compliance with the Convention on the Rights of the Child, has three times recommended equal protection to the UK, in 1995, 2002 and 2008. In its 2008 report on the UK, the Committee stated: "The Committee, while noting amendments to legislation in England, Wales, Scotland and Northern Ireland which restrict the application of the defence of 'reasonable chastisement', is concerned that this defence has not been removed.... the existence of any defence in cases of corporal punishment of children does not comply with the principles and provisions of the Convention."<sup>10</sup> The UN Committee on Economic, Social and Cultural Rights also recommended that the UK prohibit physical punishment of children in families.<sup>11</sup>

In July 2006, the Committee on the Rights of the Child issued a General Comment on the right to protection from all corporal punishment. This reminded states which have ratified the Convention, including the UK, that equal protection for children is "an immediate and unqualified obligation". The Committee emphasised that addressing and eliminating the widespread acceptance of corporal punishment in all settings is "a key strategy for reducing and preventing all forms of violence in societies".<sup>12</sup>

In 2005, the European Committee of Social Rights found UK law to be in breach of human rights obligations under the European Social Charter because all corporal punishment in the home is not prohibited.<sup>13</sup> And in 2008, the Commissioner for Human Rights of the Council of Europe, following his visits to the UK in February and March/April 2008, stated: "The Commissioner is very concerned about section 58 of the Children Act 2004 in England and Wales, which reflects the availability of the 'reasonable punishment' defence for parents charged with common assault, removing use of the defence from those charged with more serious assaults (actual and grievous bodily harm, wounding, etc)... The Commissioner emphasises that laws allowing ... 'reasonable punishments' on children are not compliant with international human rights standards. That children, uniquely, should have *less*

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<sup>8</sup> 18 July 2008, Part of A/63/38, Concluding observations on fifth/sixth report, paras. 280 and 281

<sup>9</sup> General Recommendation No. 12 (1989)

<sup>10</sup> 20 October 2008, CRC/C/GBR/CO/4, Concluding observations on third/fourth report, para. 40

<sup>11</sup> E/C.12/1/Add.79, concluding observations on the fourth report of the UK, the Crown Dependencies and the Overseas Territories, para. 36

<sup>12</sup> Committee on the Rights of the Child 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)". Full text at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.GC.8.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.GC.8.En?OpenDocument)

<sup>13</sup> July 2005, *Conclusions XVII-2*

protection under the criminal law from assault is additionally discriminatory and unimaginable, given children's obvious special vulnerability."<sup>14</sup>

The report of the UN Secretary-General's Study on Violence against Children calls on all countries to prohibit all violence against children, including all corporal punishment, including in the home, by the year 2009.<sup>15</sup> Nineteen European countries have enacted legislation which gives children equal protection from assault and at least nine others have made public commitments to full prohibition.<sup>16</sup>

Within the UK, removal of the defence of "reasonable chastisement/punishment" has been recommended by all four Children's Commissioners (2006), the Commission on the Family and Wellbeing of Children (2005), the National Assembly for Wales (2004), the UK Parliamentary Joint Committee on Human Rights (2003) and the House of Commons Health Select Committee (2003).

**It would be unthinkable for the Government to address violence against adult women solely by advising men not to hit them and by issuing statements that it does not condone violence against them. In the same way, it is not sufficient for the Government to state that it does not condone physical punishment of children by parents. It now needs to act to ensure a consistent legal framework, compatible with its human rights obligations.**

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<sup>14</sup> Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom, 5-8 February and 31 March-2 April 2008, CommDH(2008)28, Strasbourg, 9 October 2008

<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> For details see [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)