

**Equal protection from assault  
is every child's human right**



REPORT BY THE **Children Are Unbeatable! Alliance**  
on the human rights imperative for law reform to give children equal protection from assault

June 2006

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BROAD ALLIANCE SUPPORTED BY  
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# FOREWORD by Sir William Utting

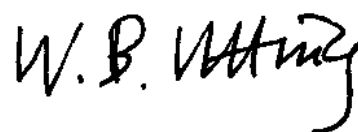
It is no longer a question of whether the UK should abolish all legal defences that allow children to be hit and thus give children equal protection under the law on assault. It is a question of how soon the UK will respond to its human rights obligations.

Law reform to abolish all corporal punishment of children is now seen as an obligation under international law by both European and United Nations human rights monitoring bodies. This has been confirmed by the UK parliamentary Joint Committee on Human Rights.

Hitting people breaches their fundamental rights to respect for their physical integrity and human dignity. The existence of a special legal defence for parents who hit their children – formerly “reasonable chastisement” but now known as “reasonable punishment” in England and Wales under the Children Act 2004 – breaches children’s right to equal protection under the law.

The pressure for equal protection reform from human rights treaty bodies is overwhelming and there is a growing consensus for change in Europe. A third of European countries now give children equal protection from assault in the family and more will do so soon.

The Children Are Unbeatable! Alliance aims to ensure that the UK joins the growing movement for equal protection sooner rather than later. We should do the right thing, right now.



SIR WILLIAM UTTING  
Children Are Unbeatable! Alliance  
2006

# HUMAN RIGHTS PRESSURE FOR EQUAL PROTECTION – SUMMARY

**2006** UN Committee on the Rights of the Child issues a “General Comment” on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”. The authoritative Committee “emphasizes that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation” for states which have ratified the Convention on the Rights of the Child. Corporal punishment “directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence”.

**2005** Committee of Social Rights, the Council of Europe body monitoring conformity with the European Social Charter, finds the UK in breach of its human rights obligations. The influential committee “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.”

A landmark ruling by the European Committee of Social Rights finds Belgium, Greece and Ireland in breach of human rights obligations under the European Social Charter for not prohibiting all corporal punishment of children, including in the family.

Committee of Ministers, the executive authority of the 46 member state Council of Europe, agrees with the Parliamentary Assembly on the need to begin in all member states “a coordinated and concerted campaign for the abolition of all violence against children”.

**2004** Parliamentary Assembly of the Council of Europe adopts recommendation calling for a corporal punishment free zone and states: “...any corporal punishment of children is in breach of their fundamental right to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. Striking a human being is prohibited in European society and children are human beings. The social and legal acceptance of corporal punishment of children must be ended.”

**2002** UN Committee on Economic, Social and Cultural Rights recommends UK should prohibit corporal punishment in the family “given the principle of the dignity of the individual that provides the foundation for international human rights law”.

UN Committee on the Rights of the Child, after examining the UK’s second report under the Convention on the Rights of the Child, “deeply regrets that the UK persists in retaining the defence of ‘reasonable chastisement’ and has taken no significant action towards prohibiting all corporal punishment of children in the family”.

**2001** European Committee of Social Rights tells Council of Europe member states, including the UK, that the European Social Charter requires prohibition of all corporal punishment.

**1998** European Court of Human Rights finds that the beating of a young English boy by his stepfather breaches the boy’s right to protection from degrading punishment.

**1995** UN Committee on the Rights of the Child, after examining the UK’s first report under the UN Convention on the Rights of the Child, recommends prohibition of all corporal punishment in the family.



# The human rights imperative for equal protection

**R**ights to respect for human dignity and physical integrity and to equal protection under the law are upheld for everyone – including children – in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The United Nations Convention on the Rights of the Child (CRC) re-emphasises that children, too, are holders of human rights. The Convention, ratified by the UK in 1991, also requires states to protect children from “all forms of physical or mental violence” while in the care of parents or others (article 19).

The Committee on the Rights of the Child – the monitoring treaty body for the CRC – consistently interprets the Convention as requiring prohibition of all corporal punishment, including in the family, linked to awareness-raising and public education. This interpretation is supported by other human rights treaty bodies, both international and regional, and by high-level court judgments in a growing number of states.

States’ human rights obligations to end all currently legalised violence against children are clear and immediate; there can be no justification for delay. Humanity and logic suggest that children should be the first, not the last, members of human societies to be effectively protected from assault and deliberate humiliation.

The case against corporal punishment does not have to be proved. We do not look for evidence of harm to justify prohibition and other measures to end domestic violence against women or older people. The issue is one of fundamental rights. But in any case there is overwhelming research evidence to support the human rights imperative for eliminating corporal punishment. Hitting babies and children is dangerous. Harsh and humiliating forms of discipline are associated with the development of violent and anti-social attitudes and actions in childhood and later life and also with psychological difficulties for the victims.

Hitting children is a lesson in bad behaviour; it teaches them that adults who demand their respect believe that violence is a legitimate way to sort out conflicts or impose authority. Some adults like to suggest that corporal punishment and child “abuse” are two quite separate phenomena. In fact, more or less

**“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child...”**

UN Convention on the Rights of the Child, article 19

all physical “abuse” is administered in a context of punishment or control – it is corporal punishment. There are different degrees of severity, but all corporal punishment breaches children’s right to respect for their human dignity and physical integrity. We do not try to draw lines and justify any level of violence against women or elderly people – so why children? Zero tolerance is generally accepted as a target for ending domestic violence between adults in the home – so why not for children?

Defenders of corporal punishment suggest that children are different. But their differences – their dependence, developmental state and fragility – certainly do not reduce their human rights or justify less protection from violence. Parents and other carers need to use physical actions to protect and restrain children, especially babies and young children. But such actions are clearly distinguishable from causing pain or humiliation as a form of discipline or control.

## WHAT THEY SAY ABOUT CHILDREN’S HUMAN RIGHT TO EQUAL PROTECTION

“It is sad and ironic that children, the most vulnerable of people, should have had to wait until last for this basic protection. There is nothing ‘reasonable’ about hitting children and it cannot remain lawful. We cannot draw lines and try and define acceptable ways of hitting children. There can be no compromise, any more than we compromise in challenging all violence against women.”

**Professor Paulo Pinheiro, Independent Expert leading the UN Secretary-General’s Study on Violence against Children, 2005**

“Many citizens and politicians regularly express their concern about increasing violence in their societies. The credibility of this concern is questionable as long as they are not willing to seriously address the use of violence against children. And don’t suggest that a little bit of violence is acceptable. It is not! That applies equally for adults and children.”

**Jaap E. Doek, Chairperson, UN Committee on the Rights of the Child, 2004**

“The recourse to physical punishment by adults reflects a denial of the recognition, by the Convention on the Rights of the Child, of the child as a subject of human rights. If we want to remain faithful to the spirit of the Convention, strongly based on the dignity of the child as a full-fledged bearer of rights, then any act of violence against him or her must be banned...”

**Mary Robinson, former UN High Commissioner for Human Rights, 2001**

“For the Council of Europe, children are not mini-persons with mini-rights, mini-feelings and mini-human dignity. They are vulnerable human beings with full rights which require more, not less protection. It is therefore absolutely unacceptable that when it comes to the protection of their physical and psychological integrity, they should be worse off than adults.”

**Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, 2005**

“As spokespeople for the children of Europe, we believe that eliminating violent and humiliating forms of discipline is a vital strategy for improving children’s status as people, and reducing child abuse and all other forms of violence in European societies. This is a long overdue reform, with huge potential for improving the quality of lives and family relationships. Hitting children is disrespectful and dangerous. Children deserve at least the same protection from violence that we as adults take for granted for ourselves.”

**European Network of Ombudspersons for Children, 1999**

“A failure to criminalise violence against children in the family breaches children’s fundamental rights to respect for their physical integrity and human dignity. Affording children equal protection from assault is an inevitable consequence of our human rights obligations. We should embrace the higher standards now - not put them off to a later day. Our aim should be to make Europe a corporal punishment free zone and the UK should take the lead.”

**Baroness Helena Kennedy QC, 2005**

# Human rights standards and the UK

## THE COUNCIL OF EUROPE

In Europe it is the human rights mechanisms of the Council of Europe in Strasbourg, enforcing the binding standards of the European Convention on Human Rights and the European Social Charter, which are actively pursuing the UK. Many other reforms in UK law have been made to comply with these standards – including prohibition of school corporal punishment.

The Council of Europe, founded in 1949 to defend human rights, democracy and the rule of law, now has 46 member states. Its Committee of Ministers first proposed law reform to end corporal punishment of children in a 1985 recommendation; this and other more recent recommendations, condemning all corporal punishment, were supported by the UK. In a Strasbourg seminar on corporal punishment in the family held in November 2002, the Deputy Secretary General of the Council challenged the governments of member states “to stop defending – or disguising as discipline – deliberate violence against children and to accept that children, like adults, have the fundamental human right not to be assaulted. In the face of such a fundamental right states cannot remain indifferent – it is their duty to interfere: hitting children is no more acceptable than hitting anyone else. There can be no divide in the respect of human rights”. In 2003, speaking at a meeting of European Children’s Ministers, the Deputy Secretary General noted that the Council of Europe had succeeded in eliminating the death penalty throughout the continent: “I hope we can soon declare Europe free of corporal punishment.”

A third of the member states of the Council of Europe now give children equal protection. Fourteen have abolished all corporal punishment: Austria (1989), Bulgaria (2000), Croatia (1999), Cyprus (1994), Denmark (1997), Finland (1983), Germany (2000), Hungary (2004), Iceland (2003), Latvia (1998), Norway (1987), Romania (2004), Sweden (1979) and Ukraine (2004). In addition, in Italy in 1996 the Supreme Court of Cassation in Rome declared that all corporal punishment was unlawful. This decision has not been confirmed explicitly in legislation, but in 2005 the European Committee of Social Rights decided it did meet the requirements of the European Social Charter.

**“In the face of such a fundamental right states cannot remain indifferent – it is their duty to interfere: hitting children is no more acceptable than hitting anyone else. There can be no divide in the respect of human rights”.**

**A third of the member states of the Council of Europe now give children equal protection.**

There are commitments to proceed with prohibition in Greece, Lithuania, Luxembourg, the Netherlands and the Slovak Republic.

## **Follow-up to 1998 A v UK judgment of the European Court**

The Committee of Ministers of the Council of Europe, responsible for ensuring that governments “execute” European Court of Human Rights judgments, has had a succession of discussions on “A v UK”, which was issued seven years ago in September 1998. The Court found unanimously that UK law – the “reasonable chastisement” defence – failed to give children adequate protection including effective deterrence. It found that the beating of a young English boy by his stepfather amounted to inhuman or degrading punishment. During consideration of the case in 2004 and 2005, delegations from other European states expressed serious concern at the UK’s lack of action in response to the judgment. In particular, the deputies were concerned that the UK Government had given an undertaking to the Court that it would reform the law allowing “reasonable chastisement”.

## **The European Committee of Social Rights, monitoring conformity with the European Social Charter**

In 2001, the European Committee of Social Rights issued an interpretative “General Observation” on corporal punishment, concluding that compliance with article 17 of the Social Charter, and the Revised Social Charter which will replace it, requires abolition of all corporal punishment: “...the Committee considers that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It furthermore considers that any other form of degrading punishment or treatment of children must be prohibited in legislation and combined with adequate sanctions in penal or civil law.”

The Committee states in its Observation that it has been influenced by the European Court judgment in “A v UK”, by the consistent recommendations from the United Nations Committee on the Rights of the Child, and by developing law reform across Council of Europe states. The Committee’s position, like that of the Committee on the Rights of the Child, does not allow for any compromises: there must be explicit and effective prohibition of all corporal punishment: “The Committee does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence.”

Since 2003, the Committee has found that a number of states are not in conformity with the Social Charters because corporal punishment in the family was not prohibited. These include France, Slovak Republic, Romania, Hungary, Poland, Slovenia, Turkey, Spain and Malta. In 2004, Romania and Hungary complied with explicit prohibition in legislation.

**In July 2005, the Committee of Social Rights issued its conclusion on the latest UK report** (submitted in June 2004) and found UK law in breach of human rights obligations. It “recalls that Article 17 of the Charter requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere”.

Furthermore, the Committee “considers that this prohibition must be combined with adequate sanctions in penal or civil law...” and “...since there is no prohibition in legislation of all corporal punishment in the home, the situation [in the UK] is not in conformity with Article 17 of the Charter”.

The Committee’s conclusion goes to a Governmental Committee and then to the Committee of Ministers. If the UK does not remedy the situation, the Committee of Ministers is likely to issue a resolution, setting out the action required to comply.

There is also a procedure allowing for “collective complaints” to be made against states alleging that they are not complying with the Social Charters. Thirteen member states have so far accepted this procedure by ratifying an Additional Protocol to the Charter – not including the UK. In 2003, collective complaints were registered against five of these countries – Belgium, Greece, Ireland, Italy and Portugal – on the grounds that they have not effectively prohibited all corporal punishment and other humiliating treatment of children.

In June 2005, in a landmark ruling, the Committee of Social Rights concluded that Belgium, Greece and Ireland are in breach of their human rights obligations under the European Social Charter because they have not prohibited all corporal punishment. It further concluded that the law in Italy and Portugal, as interpreted by Supreme Court decisions (1996 and 1994 respectively), does prohibit all corporal punishment, including in the family, and therefore conforms with the requirements of article 17. In response to the Committee’s decisions, Greece has announced that it will prohibit all corporal punishment and Belgium and Ireland are expected to act soon.

**“The Committee does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence.”**

**“...since there is no prohibition in legislation of all corporal punishment in the home, the situation [in the UK] is not in conformity with Article 17 of the Charter”.**

## **Parliamentary Assembly of the Council of Europe calls for “corporal punishment free zone”**

The Parliamentary Assembly of the Council of Europe adopted a detailed recommendation on 24 June 2004, with overwhelming support, calling for a “coordinated and concerted campaign in all the member states for the total abolition of corporal punishment of children” (Recommendation 1666/2004). The recommendation “notes the success of the Council of Europe in abolishing the death penalty and the Assembly now calls on it to make Europe, as soon as possible, a corporal punishment free zone for children”.

The Parliamentary Assembly notes the established human rights standards in the Convention on the Rights of the Child and the European Social Charter which require prohibition of all corporal punishment: “The Assembly considers that any corporal punishment of children is in breach of their fundamental rights to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. Striking a human being is prohibited in European society and children are human beings. The social and legal acceptance of corporal punishment of children must be ended.”

**“Striking a human being is prohibited in European society and children are human beings. The social and legal acceptance of corporal punishment of children must be ended.”**

## **Committee of Ministers responds to Parliamentary Assembly – calls for a co-ordinated and concerted campaign**

In April 2005, the Committee of Ministers, decision-making body for the Council of Europe, responded to the Parliamentary Assembly recommendation (see above), stating that it agrees with the Assembly on the need to begin “in all member states, a coordinated and concerted campaign for the abolition of all violence against children”. The Committee notes that it has made recommendations promoting law reform and generally condemning corporal punishment, dating back to 1985, and goes on to “underline the importance of appropriate legislation in this field...”.

The Committee accepts the need for a “comprehensive strategy” to coordinate the efforts of all key actors and to mobilise resources. It underlines that both the UN Convention on the Rights of the Child and the European Social Charter aim to protect children against all forms of violence.

The Committee announced a new three-year programme of action entitled “Building a Europe for a with Children”. One priority field of the programme will be effective legal protection of children against all forms of violence. “The programme will, as requested in the Assembly’s recommendation, heighten the awareness of children, those who live and work with them and the general public on the need to protect children from all forms of violence. It will also ensure general awareness of children’s fundamental rights, in particular their right to human dignity and physical integrity”.

The Committee also agreed with the Assembly that “children and young people should be given the opportunity to express their views and be involved in planning and implementing activities to eradicate violence against children...”.

## **Thomas Hammarberg**

### **Council of Europe Commissioner for Human Rights**

**Extracts from Issues Paper entitled “The right not to be hit, also a children’s right”, June 2006**

...The invention of disreputable legal concepts such as ‘reasonable chastisement’ and ‘lawful correction’ arises from the perception of children as the property of their parents. This is the modern equivalent of laws in force a century or two ago allowing masters to beat their slaves or servants, and husbands to beat their wives. Such ‘rights’ are based on the power of the stronger over the weaker and are upheld by means of violence and humiliation...

Parenting and caring for children, especially young children, demands frequent physical actions and interventions to protect them. These situations should be distinguished from the deliberate and punitive use of force to cause some degree of pain, discomfort or humiliation. As adults, we know for ourselves the difference between a protective action and a punitive assault; it is no more difficult to make a distinction in relation to actions involving children. The law in all States, explicitly or implicitly, allows for the use of non-punitive and necessary force to protect people...

The purpose of criminalizing all corporal punishment is not, of course, to prosecute and punish more parents. It satisfies human rights by giving children equal protection of their physical integrity and human dignity. It gives a clear message that hitting children is wrong – at least as wrong as hitting anyone else. Thus it provides a consistent basis for child protection and for public education promoting positive forms of discipline. As attitudes change, so the need for prosecution and for formal interventions into families to protect children will diminish...

Sadly, the issue of corporal punishment has tended to fall off political and other adult agendas, even the agendas of strong human rights advocates. Its low priority is probably because of the very personal nature of the problem – most adults, all over the world, were hit as children and may have hit their own children. Politicians find it an unpopular issue; it is easier to focus only on extreme forms of violence to children and on violence by children, against which there is already a popular consensus. Also, many politicians are particularly wary of interference in the traditionally ‘private’ arena of the family...

# UNITED NATIONS HUMAN RIGHTS MONITORING BODIES

The UK is under international as well as European human rights pressure to give children equal protection. The UN Committee on the Rights of the Child and another UN human rights monitoring body, the Committee on Economic, Social and Cultural Rights, have formally recommended that corporal punishment in the family must be prohibited in the UK. The Committee on the Rights of the Child monitors states' compliance with the UN Convention on the Rights of the Child, ratified by the UK in 1991 and by 192 other states worldwide (all eligible states apart from the US and Somalia).

In 2002, the Committee on the Rights of the Child told the UK it “deeply regrets that the UK persists in retaining the defence of ‘reasonable chastisement’ and has taken no significant action towards prohibiting all corporal punishment of children in the family”. It had already urged law reform in its 1995 report.

The Committee went on to recommend that the UK “with urgency adopts legislation throughout the State party to remove the ‘reasonable chastisement’ defence and prohibit all corporal punishment in the family...”. It emphasised: “The Committee is of the opinion that governmental proposals to limit rather than to remove the ‘reasonable chastisement’ defence do not comply with the principles and provisions of the Convention..., particularly since they constitute a serious violation of the dignity of the child. Moreover, they suggest that some forms of corporal punishment are acceptable and therefore undermine educational measures to promote positive and non-violent discipline.”

The Committee on Economic, Social and Cultural Rights, after examining the UK’s fourth periodic report under the International Covenant on Economic, Social and Cultural Rights also concluded in 2002: “Given the principle of the dignity of the individual that provides the foundation for international human rights law...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.”

The UN Secretary-General has launched a Study on Violence against Children, which is led by former Brazilian human rights minister Paulo Pinheiro. Nine regional consultations have taken place, including in Europe, at which law reform to end all corporal punishment has been a consistent recommendation.

**“The Committee is of the opinion that governmental proposals to limit rather than to remove the ‘reasonable chastisement’ defence do not comply with the principles and provisions of the Convention..., particularly since they constitute a serious violation of the dignity of the child. Moreover, they suggest that some forms of corporal punishment are acceptable and therefore undermine educational measures to promote positive and non-violent discipline.”**

# **United Nations Committee on the Rights of the Child**

## **Extracts from June 2006 General Comment, “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”**

**...The Committee is issuing this General Comment to highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take...**

**Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies...**

**In rejecting any justification of violence and humiliation as forms of punishment for children, the Committee is not in any sense rejecting the positive concept of discipline. The healthy development of children relies on parents and other adults for necessary guidance and direction, in line with children’s evolving capacities, to assist their growth towards responsible life in society...**

**Before the adoption of the Convention on the Rights of the Child, the International Bill of Human Rights – the Universal Declaration and the two International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights – upheld “everyone’s” right to respect for his/her human dignity and physical integrity and to equal protection under the law. In asserting States’ obligation to prohibit and eliminate all corporal punishment and all other degrading forms of punishment, the Committee notes that the Convention on the Rights of the Child builds on this foundation. The dignity of each and every individual is the fundamental guiding principle of international human rights law...**

**Once visible, it is clear that the practice [of corporal punishment] directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence...**

**The Committee emphasizes that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties...**

# **Professor Paulo Pinheiro**

## **Independent Expert leading the UN Secretary-General's Study on Violence against Children**

**Extract from speech in London, December 2005**

...My study is human rights based, and it would be strange if I should contradict the Committee on the Rights of the Child, which has been telling states consistently for more than a decade that the Convention requires prohibition of all corporal punishment. I understand it has told the UK twice, in 1995 and again in 2002.

If I was conducting a study on violence against animals, would I be expected to defend smacking puppies and kittens? The fact is, I could not look those many children I have met around the world in the eyes and say that I had decided they were worthy of less legal protection from assault than myself or other adults. Really, it is absurd.

I have been particularly puzzled by this concept of “reasonable” chastisement or punishment, which I understand has its origins in ancient English law, but has found its way into the legislation of at least 70 countries worldwide. There is nothing reasonable about hitting children – full stop, as the NSPCC’s admirable campaign states.

Children have the same right to respect for their human dignity and physical integrity as the rest of us, and that respect must be reflected in the law. My friend Maud De Boer-Buquicchio, the Deputy Secretary General of the Council of Europe, in a recent speech to a Berlin conference organized by the German Government, stated: “For the Council of Europe, children are not mini-persons with mini-rights, mini-feelings and mini-human dignity. They are vulnerable human beings with full rights which require more, not less protection. It is therefore absolutely unacceptable that when it comes to the protection of their physical and psychological integrity, they should be worse off than adults”.

She also quoted from the UK report which summarised research with young children on smacking, ‘It hurts you inside’. “A smack”, said a seven-year-old, “is when parents try to hit you, but instead of calling it a hit, they call it a smack”. Maud concluded: “These words are, in my view, a very apt description of what corporal punishment really is – a violent hypocrisy, which humiliates and hurts.”

It is sad and ironic that children, the most vulnerable of people, should have had to wait until last for this basic protection. We cannot draw lines and try and define acceptable ways of hitting children. There can be no compromise, any more than we compromise in challenging all violence against women.

# THE PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

The UK parliamentary Joint Committee on Human Rights has, in various inquiries, endorsed the Committee on the Rights of the Child recommendations and urged equal protection to comply with human rights standards:

**JCHR September 2004** “We do not think that the very clearly expressed views of the Committee on the Rights of the Child can be ignored. As the only body charged with monitoring compliance with the obligations undertaken by States in the Convention on the Rights of the Child, its interpretations of the nature and extent of those obligations are authoritative. In our view, the Committee has consistently made clear that corporal punishment of children is a serious violation of the child's right to dignity and physical integrity, and that states must both introduce a legislative prohibition of such punishment at the same time as measures for educating the public about the negative consequences of corporal punishment. In the light of this, we do not consider that there is any room for discretion as to the means of implementing Article 19 of the Convention on the Rights of the Child as interpreted by the Committee on the Rights of the Child: it requires the reasonable chastisement defence to be abolished altogether.”

**JCHR November 2003** “It is anomalous that while the Green Paper's stated goal is to “keep children safe”, the Government does not acknowledge, in the context of the law on assault, that children should have the same right as adults to respect for their human dignity and physical integrity and to equal protection under the law. The Government struggles to support the reasonable chastisement defence, which continues to be incompatible with its obligations under the Convention on the Rights of the Child.”

**JCHR June 2003** “We conclude that the time has come for the Government to act upon the recommendations of the UN Committee on the Rights of the Child concerning the corporal punishment of children and the incompatibility of the defence of reasonable chastisement with its obligations under the Convention. We do not accept that the decision of the Government not to repeal or replace the defence of reasonable chastisement is compatible with its obligations under the Convention on the Rights of the Child.”

**“We do not think that the very clearly expressed views of the Committee on the Rights of the Child can be ignored. As the only body charged with monitoring compliance with the obligations undertaken by States in the Convention on the Rights of the Child, its interpretations of the nature and extent of those obligations are authoritative.”**

**Note: The House of Commons Health Select Committee has also recommended equal protection, as has the National Assembly for Wales.**

# STATEMENT BY THE UK COMMISSIONERS FOR CHILDREN

22 January 2006

**C**hildren are the only people in the UK who can still be hit without consequence. The current and previous governments have made welcome progress by prohibiting all corporal punishment of children in schools, other institutions and forms of alternative care. In relation to parental corporal punishment, in England, Wales and Scotland the ancient common law defence of "reasonable chastisement" has been limited, but not removed completely; and in Northern Ireland the Government has indicated that it plans to bring the law into line with that in England and Wales.

Children have the same right as adults to respect for their human dignity and physical integrity and to equal protection under the law, in the home and everywhere else. There is no room for compromise, for attempting to define "acceptable" smacking. This has been confirmed by United Nations and Council of Europe human rights monitoring mechanisms, and by the Westminster Parliamentary Joint Committee on Human Rights. The UK has been told repeatedly since 1995 that to comply with its human rights obligations, the reasonable punishment defence must be removed completely in all four countries of the UK.

This long overdue reform for children is becoming inevitable, and we urge the government and the Scottish Executive to promote consistent legislation throughout the UK to give all children full protection under the law on assault. It can count on our vocal support and also that of the strongest and broadest alliance of professional and other organisations ever formed around an issue for children.

Central to our task as Children's Commissioners is promoting respect for children as people. We are very concerned that parents should get help and advice to promote positive approaches to discipline, and how to set and enforce appropriate boundaries for children's behaviour without using physical punishment.

We believe that condoning smacking gets in the way of progress. It confuses parents, inhibits child protection and undermines the promotion of positive forms of discipline. It conflicts with our Governments' aspirations for children and our society. Research with young children across the four countries has shown how upsetting they find smacking and adult approval of it.

The European Network of Ombudspersons for Children adopted a position statement in 1999, urging all governments in Europe without delay to introduce legislation prohibiting all corporal punishment, and initiate or support education programmes on positive, non-violent forms of discipline. More than one third of Council of Europe member states have explicitly prohibited all corporal punishment, and others are committed to doing so in the near future. We know from colleagues across Europe that once governments grasp the nettle, reform their law and link reform with public education, attitudes quickly begin to change.

We call upon Government and the Scottish Executive to allow further debate and votes in the relevant parliaments to introduce legislation that will ban the defence of reasonable chastisement/punishment throughout the UK. This should be supported with policy and resources to promote positive parenting.

**“We call upon Government and the Scottish Executive to allow further debate and votes in the relevant parliaments to introduce legislation that will ban the defence of reasonable chastisement/punishment throughout the UK.”**

# 10

## reasons to give children equal protection from assault

### **Human rights obligations**

The UN Committee on the Rights of the Child has twice recommended law reform; the European Social Charter requires abolition of all corporal punishment, and the European Court of Human Rights has ruled that UK law does not provide adequate protection.

### **Children are being legally hit right now**

Research commissioned by the Department of Health shows that most UK children are hit and around a third are hit severely (Smith and Nobes, 1997).

### **Support child protection professionals**

All those involved in protecting children from abuse, from the NSPCC to Social Services Directors, want the law changed to provide a clear basis for child protection.

### **Promote positive parenting**

The law as it stands undermines the work of health visitors, midwives, early years carers and many others who try to promote positive, non-violent discipline.

### **Cultural change**

The law sets standards in every sphere of society, including family relationships. How can we expect parents to stop hitting their children if the law says it's acceptable?

### **Reform works**

Children are afforded equal protection from assault in Germany, Sweden, Denmark, Austria and many other countries, changing attitudes and behaviour for the better.

### **The law is archaic**

The law allowing children to be legally hit dates back to the 19th century and is out of step with the values of a modern society.

### **Ordinary people do not oppose change**

In fact, when asked in a non-sensationalist way, the majority of people support changing the law to give children equal protection (MORI Social Affairs Institute, 2004).

### **It's the right thing to do**

Many countries have changed their laws without having public opinion firmly on their side. They did it because it is the right thing to do for children, children's rights and child protection, and public attitudes have changed as a result.

### **Hitting children is wrong & the law should say so**