

## Chapter Four

# Civil rights and freedoms

## Corporal punishment

Jill Taylor – ‘Sdim Curo Plant!/Children are Unbeatable

### Civil rights and freedoms

#### Corporal punishment

CONCLUDING OBSERVATION para.36. 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, engaging with 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.

**Relevant Articles of UNCRC:** Article 19 of specific relevance.

### Commentary on progress

- 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.**

#### Legislation

The power to remove the ‘reasonable chastisement’ defence lies with the UK Parliament in Westminster not with the National Assembly for Wales. Where the Assembly has power it has demonstrated its strong commitment to ending the corporal punishment of children, for example, it was the first administration in the UK to ban corporal punishment in child minding and day care settings.<sup>1</sup>

To the Welsh Assembly Government’s credit in October 2002 (in response to the UN Committee’s Concluding Observations) they issued a Cabinet Statement indicating that it was intent on making representation to the UK Government to change the law to remove the defence of reasonable chastisement:

*“The recent observations of the UN Committee on the Rights of the Child concluded that current legislation in the UK does not comply with the principles of the UN Convention. It recommended that corporal punishment in families and all other contexts should be prohibited in law, concluding that action should be taken to promote non-violent forms of discipline, respect for children’s rights to human dignity, including through public education programmes. I shall write to John Denham expressing the support of the Welsh Assembly Government for these views.”<sup>2</sup>*

The UK Government refused to re-consider the case for legal reform. Then in 2004, a vigorous and high profile campaign took place, co-ordinated by the Children are Unbeatable! Alliance, to add a new clause to the Children Bill. This clause would remove the common law defence of ‘reasonable chastisement’ and give children ‘equal protection’. The UK Government rejected this opportunity to legislate on the matter from the outset and consistently briefed against the campaign, emphasising parents’ right to discipline their children and raising the spectre of parents being criminalised and brought before the courts.

At the final vote in the House of Commons on November 2nd 2004 the Government refused to allow its own MPs a 'free vote' i.e. to vote according to their personal conscience, as is traditional in the UK in such matters. The proposed new clause (Clause 12) was defeated by 423 votes to 75. The Government instead threw its weight behind another clause (Clause 56), which was presented as a compromise but which in fact endorsed the corporal punishment of children and introduced a new statutory defence of 'reasonable punishment'. Clause 56 was strenuously opposed by the campaign but was approved by 284 votes to 208. It was enacted as Section 58 of the *Children Act 2004*) and came into force in England and Wales on January 15th 2005.

Sir William Utting, spokesperson for the Children are Unbeatable! Alliance, said:

*"Section 58 of the Children Act perpetuates the archaic defence that allows children to be legally hit and hurt. It is unjust and does not satisfy our human rights obligations to children under UN and European agreements."*<sup>3</sup>

In the concluding debate on the Children Bill the UK Government Minister for Children gave an undertaking to review the operation of Section 58 after 2 years.

Welsh Members of the House of Lords and Welsh MPs made a notable contribution to the 2004 campaign providing the lead sponsor for the 'equal protection' clause in the House of Lords (Baroness Finlay)<sup>4</sup> and two of the four sponsors in the House of Commons (Julie Morgan and Hywel Williams).<sup>5</sup> Six other Welsh Parliamentarians spoke in favour of the 'equal protection' clause and over a quarter of the 40 MPs in Wales voted for it.<sup>6</sup>

Although the campaign for legal change did not succeed there is a general acknowledgement that it raised awareness of the issue of physical punishment and generated some high quality debate and media coverage. This has helped shift the consensus further towards reform. A number of key agencies notably the Association of Chief Police Officers (ACPO) and the Association of Directors of Social Services (ADSS) made public both their opposition to Section 58 and their belief that 'equal protection' would not lead to the criminalising of parents.

In contrast to the UK Government, in October 2002 the Welsh Assembly Government with the Cross Party support of a majority of the National Assembly's 60 Members, became the first government in the UK to take a principled stand against the physical punishment of children.<sup>7</sup> Since then it has consistently urged the UK Government to act to remove the 'reasonable chastisement' defence. In January 2004 during a debate on the Children's Green Paper, over two thirds of the National Assembly for Wales voted to signal its regret that the UK Government had failed to take action:

*"The National Assembly regrets that the UK Government continues to retain the defence of reasonable chastisement and has taken no significant action towards prohibiting the physical punishment of children in the family"* (In favour 41, Abstain 3, Against 9)<sup>8</sup>

In May 2004 during a debate on the Children Bill in the National Assembly for Wales, the Minister stated:

*"...I am pleased that Members have ... raised the issue of the opportunity that we hope this forthcoming legislation will offer the Government to take a stand, as the Welsh Assembly Government has taken a stand, in favour of children's rights by removing the defence of reasonable chastisement . . . . This is not about criminalising parents; this is about ensuring that children have the same rights as adults regarding physical punishment and ensuring that this opportunity is used. I hope that the Government will support an amendment to the Bill and that there will be a free vote to take this forward."*<sup>9</sup>

**b) Promote positive, participatory and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, engaging with 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.**

The Welsh Assembly Government stance against physical punishment was expressed within the context of providing support to parents as well as a child's right to be protected. In the Cabinet Statement of October 2002 the Minister said:

*"Whatever the legal position, I believe that our approach needs to be based on support for positive parenting. The key is to support parents and others who care for children and to promote positive relationships in families. We must seek to change social attitudes so that physical punishment of children is no longer considered acceptable, no matter what context"*<sup>10</sup>

Since January 2004 the Welsh Assembly Government has funded 'Sdim Curo Plant!/Children are Unbeatable! in Wales'<sup>11</sup> to provide them with advice and guidance on what forward measures can be taken using the powers of the Assembly to act, primarily in the fields of health, child protection, domestic abuse, parenting support and community regeneration.

The Welsh Assembly Government has so far published four key documents<sup>12</sup>, which expressly underline its commitment:

**CHILDREN AND YOUNG PEOPLE: RIGHTS TO ACTION (FEBRUARY 2004)**

*"The Assembly Government believes that the current legal defence of 'reasonable chastisement' should be ended. We wish to encourage respect for children's rights to human dignity and nonviolent forms of discipline, including through public education programmes. We have made representations to the UK Government about this.*

*We do not accept that smacking teaches children how to behave as they grow up. Children who are smacked are more likely to believe that the strong get their own way and that violence is an acceptable manner of expressing a view or dealing with anger or frustration.*

*We believe that we must respect what children themselves have told us: that a smack serves to create distrust, fear and dislike, but is not the best way to instill respect for the adult or acceptance of their values.*

*The Assembly Government has banned smacking in every form of public and regulated care in Wales. We want to make sure that parents and carers have the information and advice they need on effective ways of dealing with children's behaviour, including alternatives to physical discipline. We are funding a public education programme including the production of information leaflets and the provision of advice."*

**NATIONAL SERVICE FRAMEWORK FOR CHILDREN, YOUNG PEOPLE AND MATERNITY SERVICES (SEPTEMBER 2005)**

*"Children and Young People's Framework Partnership Plans [to] include joint working arrangements to promote and deliver parenting education that includes: ....Suggesting appropriate methods for managing children's behaviour that supports the Welsh Assembly government's views that physical punishment of children is unacceptable"*

**PARENTING ACTION PLAN (MARCH 2005 PUBLISHED FOR CONSULTATION)**

*"The Welsh Assembly Government believes that smacking children is wrong. We do not think it encourages adults, children and young people to respect each other. We believe that there are better ways of dealing with difficult behaviour and teaching children right and wrong. We know that many parents would like advice on how to get this right. We think that one of the booklets given out to parents should include tips on how to bring children up without using smacking."*

The final Parenting Action Plan will be published in autumn 2005 and the booklet about 'Alternatives to Smacking' is likely to be distributed through the universal Health Visitor service from 2006 onwards.

#### TACKLING DOMESTIC ABUSE: THE ALL WALES NATIONAL STRATEGY (MARCH 2005)

*"This strategy aims to increase the safety of women and children/young people by recognising the need for...Encouraging policies that oppose the smacking of children and seeking to promote alternatives to physical discipline.."*

Wales is the only part of the UK where physical punishment of children is accepted as being part of the spectrum of domestic abuse.

In January 2004 a group of Assembly Members and Welsh MPs went on an official fact finding visit to Sweden organised by 'Sdim Curo Plant!/Children are Unbeatable! and Radda Barnen (Save the Children, Sweden). This proved to be extremely valuable in informing politicians about how legal change can be introduced and public education undertaken.

'Sdim Curo Plant!/Children are Unbeatable! has regular meetings with the Minister for Children and the Welsh Assembly Government's Cabinet sub Committee for Children and Young People is due to review progress in October 2005. The Alliance continues to press for a properly funded campaign of public education supported by an increased level of parenting support.

'Sdim Curo Plant!/Children are Unbeatable! has also met civil servants in the Welsh Assembly Government to discuss ways to translate ideas into operational planning and delivery at a local level. 'Sdim Curo Plant!/Children are Unbeatable! is currently working to develop public awareness initiatives at a community level in partnership with NGOs, local authorities and health agencies in order to demonstrate what can be achieved. These can then be adapted or replicated by others. We are seeking funding to evaluate these initiatives so that we can show what works best to change public attitudes and parental behaviour for the benefit of Welsh children and young people. All relevant information will be submitted to the review of section 58 of the *Children Act 2004* in the autumn of 2006.

## Conclusion

Wales is acknowledged to be leading the way on the issue of physical punishment within the UK. However the mixed messages coming from the two Governments (UK and the Welsh Assembly) are confusing for parents, public and young people. Whilst the political commitment from the Welsh Assembly Government is genuine, there is a lack of resources to fund both public education and an adequate level of support for parents and this, combined with the continued existence of the legal justification for hitting children, remains a serious difficulty in making further progress.

## Key recommendations

The Welsh Assembly Government should:

- Continue to press the UK Government for legal reform to give children equal protection.
- Establish a campaign of public education supported by an increased level of parenting support.

## Endnotes

---

- <sup>1</sup> National Assembly for Wales. Child Minding and Day Care Regulations (Wales) 2002.
- <sup>2</sup> Jane Hutt, Minister for Children (NAfW Record of Proceedings/Cofnod for October 23rd 2002).
- <sup>3</sup> Children are Unbeatable! Alliance press release (November 2004) *Unjust law fails children* at [www.childrenareunbeatable.org.uk](http://www.childrenareunbeatable.org.uk)
- <sup>4</sup> Hansard, March 30, May 20, July 5 2004.
- <sup>5</sup> Hansard September 13 2004.
- <sup>6</sup> Hansard November 2 2004.
- <sup>7</sup> Jane Hutt, Minister for Children (NAfW Record of Proceedings/Cofnod for October 23rd 2002).
- <sup>8</sup> NAfW Record of Proceedings/Cofnod for January 14th 2004.
- <sup>9</sup> Jane Hutt, Minister for Children (NAfW Record of Proceedings/Cofnod for May 4th 2004).
- <sup>10</sup> NAfW Record of Proceedings/Cofnod for October 23rd 2002.
- <sup>11</sup> Sdim Curo Plant!/Children are Unbeatable! was set up in September 2000. It works in alliance with sister groups in England, Northern Ireland and Scotland. Its work is directed by a Strategy Group comprising Barnardos Cymru, Children's Commissioner's Office, Children in Wales, Cymdeithas Tai Hafan, NCH Cymru, National Childminding Association Cymru, National Family & Parenting Institute, NSPCC Cymru, Royal College of Paediatrics & Child Health, Save the Children/Achub y Plant.
- <sup>12</sup> All these documents are downloadable from the National Assembly website: [www.wales.gov.uk](http://www.wales.gov.uk)