

## **Committee on the Elimination of Discrimination against Women - Submission from Children are unbeatable! Alliance Scotland On UK Report**

### **Overview**

The Children are Unbeatable! Alliance (CAU) Scotland is pleased to make a submission on the application of the Convention on the Elimination of All Forms of Discrimination against Women, in Scotland. CAU is an alliance of individuals and organisations opposing the use of corporal punishment in the home and is delivering a sustained campaign to ensure that children enjoy equal protection from assault, under the law, as adults.

The UK Hearing on CEDAW is a timely opportunity for the Committee to specifically remind the UK and the Scottish Government of the need to take effective legislative, administrative, judicial and other measures to prevent acts of violence against women and girls. CAU Scotland is disappointed that the Scottish Government fails to acknowledge that corporal punishment is a form of violence against girls that must be prohibited. By failing to ensure a consistent approach to the eradication of all forms of violence in Scottish society, the Scottish Government is undermining its broader efforts to address domestic and other forms of violence against women and girls.

CAU notes that legislative reform will enable compliance with CEDAW in terms of respecting girl's right to human dignity, physical integrity and to protection from all forms of violence. CEDAW focuses on the action of adults in respecting the rights of girls:

- *Article 16 (d) - that States should ensure "The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount".* It is not in the best interests of children to be hit as a punishment by any parent.
- *Article 5 (b) - that States "To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases."* Parents would benefit from a high profile, sustained public information campaign on the benefits of non-violent discipline.

We request that the Committee, again, makes a clear recommendation to the Scottish Government that it is very important to be consistent and outlaw violence in the home, absolutely. The law in Scotland needs to send out a clear message that hitting a girl or hitting a woman is wrong, regardless of the age. The adult defence of justifiable assault if s/he hits a child (under 16 years) should be removed, immediately, by an amendment to the Children and Young People Bill that is currently being considered at the Scottish Parliament.

## Context

The UK Parliament devolved certain political powers to the Scottish Parliament in 1999. Those powers include criminal justice, children's rights, family law and certain matters to achieve equality. The law on hitting children in Scotland is different from the rest of the UK. It is ten years since Scotland passed the Criminal Justice (Scotland) Act 2003 which introduced a defence for adults of 'justifiable' assault<sup>1</sup> when they hit children as a punishment, and sought to prohibit the use of implements, blows to the head and shaking.<sup>2</sup>

Such a law is out of step with a modern democracy. Such a law undermines the Scottish Government's ambition for '**Scotland to be the best place in the world for children to grow up**'. That ambition is unrealistic as long as the law justifies the assault of children and they are treated differently in law and in practice from adults. Simple legal reform will send a clear message that hitting children is as unacceptable and unlawful as hitting anyone else.

The existence of the law for ten years exposes the contradictory policies of the Scottish Government. Although it supports 'tough action to punish those who break the law and invests in work to tackle the causes of violence'<sup>3</sup> it refuses to change the law on hitting children.

In a 2009 report, the GB Equality and Human Rights Commission (EHRC) listed 'everyday situations' in which human rights can apply which include 'not being sufficiently protected from domestic violence'<sup>4</sup>. The Scottish Government estimates that the cost of domestic abuse to the public purse is £2.3 billion and the cost of violence against women is estimated to be £4 billion.<sup>5</sup>

In this submission we focus first on institutional problems that make it more difficult for human rights issues to be addressed in Scotland and then move on to specific questions of concern about the lack of legal protection for female children in Scotland.

## 1. Incorporation

**Ask:** Please urge the Committee to recommend the full incorporation of CEDAW into Scots law as a matter of urgency and to understand the positive impact in Scotland of incorporating all ratified UN Treaties.

The UK has chosen a distinctive tradition to pass domestic, equality legislation before it passed human rights law. Arguably, the effect is that there is less awareness about human rights obligations. Whilst the most recent Equality Act

---

<sup>1</sup> S51 (1) of the Criminal Justice (Scotland) Act 2003 <http://www.legislation.gov.uk/asp/2003/7/section/51>

<sup>2</sup> Ibid S 51 (2)

<sup>3</sup> <http://www.scotland.gov.uk/Topics/Justice/public-safety/17141/violence>

<sup>4</sup> 'Human Rights Inquiry Executive Summary' pub by EHRC June 2009.

<sup>5</sup> 'Safer Lives: Changed Lives A Shared Approach to Tackling Violence Against Women in Scotland' pub by Scottish Government (2009) para 4.4

2010 works in conjunction with the Human Rights Act 1998, there is still a need to incorporate UN treaties that have been ratified including the UN Convention on the Rights of the Child (UNCRC) and CEDAW.

The Scottish Government has ignored responses to a recent consultation and has now published the Children and Young People (Scotland) Bill which fails to incorporate the UNCRC, despite its ratification in the UK in 1991. Full incorporation would send a clear signal about how we as a society value children. Incorporation is an opportunity for the Scottish Government to reaffirm its faith in fundamental human rights, in the dignity, and worth of the human person, in the equal rights of men and women.

## **2. Failure to understand human rights obligations**

**Ask:** Why has the Scottish Parliament resisted the call to establish a Human Rights Committee?

Unlike the UK Parliament, the Scottish Parliament has no human rights committee to provide an in depth and informed appraisal of proposed legislation. This creates a gap in understanding of whether what is proposed complies with international human rights obligations, any omissions and how human rights may be positively complied with. For example the UK Joint Committee on Human Rights will publish its Third Report of the 2013–14 Parliamentary Session “Legislative Scrutiny: Children and Families Bill; Energy Bill” on Thursday 28 June <sup>6</sup> but there is no separate report on the human rights implications of the Scottish Parliament’s Children and Young People Bill.

In May 2010 the Human Rights Consortium Scotland, a network of over 50 civil society organisations and individuals, emailed each elected Member of the Scottish Parliament a few days after the elections to the Parliament had taken place, calling on them to support the establishment of a new Human Rights Committee. Despite the Scottish Government having a majority in the Parliament, there was little support for this proposal or indeed that each existing Committee should appoint a human rights rapporteur to enable an informed input to all Committee business. The result is that politicians fail to understand that giving children the same protection from assault as adults is a human rights matter and that the UN Treaty review Committees require elected politicians to instigate and pass legal reform in Scotland.

## **3. Immediate Opportunity to Reform the Law in Scotland**

**Ask:** Will the Scottish Government use the opportunity of the current Children and Young People (Scotland) Bill<sup>7</sup> to give children equal protection from assault?

---

<sup>6</sup> House of Lords Paper 29 and House of Commons Paper 452

<sup>7</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62233.aspx>

The Committee should urge the Scottish Government to table an amendment to the Bill removing the defence of “justifiable assault” in S51 of the Criminal Justice (Scotland) Act 2003. Such an amendment is consistent with the purpose of the Bill. The policy objective of the Bill reflects the aspiration of the Scottish Government that Scotland is the best place to grow up in. So the Bill’s objective “is to make real this ambition by putting children and young people at the heart of planning and delivery of services and ensuring their rights are respected across the public sector.”<sup>8</sup> Specifically, the Bill includes the aim to “Ensure that children’s rights properly influence the design and delivery of policies and services by placing new duties on the Scottish Ministers and the public sector ,,, and improve the way services support children and families by promoting cooperation between services, with the child at the centre”.

#### **4. Statistical Data - Evidence of Harm**

**Ask:** Do you record how many adults are charged with assaulting children and if yes, what are they? Do you record the numbers that use the defence in S51 of the Criminal Justice (Scotland) Act 2003, and if yes what are they? What official statistics record the incidence and impact of physical punishment on the lives of children eg in health and children’s hearings system? Has there been any change in the last ten years eg does the use of the S51 defence affect girls disproportionately?

NHS Health Scotland produced health and wellbeing profiles for children and young people by Community Health Partnership area (CHPs) in 2010. The overview for Scotland counted hospital admissions per 100,000 population of 0 - 24 year olds as a result of assault, as an indicator of violence in children and young people's lives. The latest statistics are for 2008 - they do not publish these profiles anymore - and show that the average in Scotland was just over 100. 16 of the 38 CHP areas had above average rates of admission, with the rates of over 150 per 100,000 population in East Ayrshire, Kirkcaldy and Levenmouth, Glasgow South, North Ayrshire and Glasgow North East with the last two having rates of well over 200 per 100,000 population.

In 2011/12, the Reporter to the Children’s Hearing system in Scotland received 52,527 referrals of which 39,737 were for care and protection grounds<sup>9</sup>. The police made 79.9% of care and protection referrals. 2,485 children under age 1 were referred on care and protection grounds.

An analysis of counselling sessions provided by ChildLine UK, the free 24-hour helpline for children and young people provides a unique indication of the nature and levels of concerns among children. ChildLine held 315,111 counselling sessions in 2011/12 and physical abuse accounted for 6% (17,452 contacts),

---

<sup>8</sup> Scottish Government Policy Memorandum on the Bill, published 17<sup>th</sup> April 2013, para 2  
[http://www.scottish.parliament.uk/S4\\_Bills/Children%20and%20Young%20People%20\(Scotland\)%20Bill/b27s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20(Scotland)%20Bill/b27s4-introd-pm.pdf)

<sup>9</sup> Reasons are set out in S52(2) of the Children (Scotland) Act 1995

sexual abuse 5 % (15,993), emotional abuse 1% (2,729) and neglect 1 % (1,646).<sup>10</sup>

Research undertaken by the NSPCC “How Safe are our Children?”<sup>11</sup> monitored the extent of child abuse and neglect in the UK to enable judgement on whether efforts to prevent maltreatment and to protect children are working. The report shows that one in five children today have experienced serious physical abuse, sexual abuse or severe physical or emotional neglect at some point in their lifetime.

## **5. Parenting Strategy**

**Ask:** Will the Scottish Government complement information on legislative reform with a high profile public information campaign on the benefits of non-violent discipline in the home and practical strategies for parents/carers to use.

The Scottish Government published a National Parenting Strategy in October 2012 to ensure parents and carers have access to up to date information and advice on parenting. CHILDREN 1<sup>ST</sup>, a Scottish charity, was commissioned by the Scottish Government to undertake a mapping exercise as the first step to taking forward commitments in the Strategy. The report, completed in May 2013, examined and assessed the availability across Scotland of information resources by looking at who provides what to which parents and carers and on what issues, identifying gaps and how information providers make resources available and reach parents and carers.

The Scottish Government has committed to updating its own resources for parents and carers on positive parenting. A leaflet last produced in 2003, which includes information on appropriate discipline and outlines physical punishment and the law, will be updated and/or re-released as part of the National Parenting Strategy eg to develop practical advice on different approaches to assist parents in managing their child’s behaviour. CHILDREN 1ST has offered to support the Scottish Government to produce this resource and this offer has been accepted.

## **6. Scottish Government Ignoring Calls for Legal Reform**

**Ask:** Why is the Scottish Government ignoring domestic calls for legal reform and repeated recommendations from UN Treaty Bodies to give children the same protection from assault?

The UN has repeatedly recommended that the UK and Scotland change its laws:

- In October 2008, the United Nations Committee on the Rights of the Child stated in its concluding observations on the UK: “*The Committee is concerned at the failure of State party to explicitly prohibit all corporal punishment in the home and emphasises its view that the existence of any*

---

<sup>10</sup> [http://www.nspcc.org.uk/Inform/research/findings/how-safe/indicator07\\_wdf95545.pdf](http://www.nspcc.org.uk/Inform/research/findings/how-safe/indicator07_wdf95545.pdf)

<sup>11</sup> [http://www.nspcc.org.uk/Inform/research/findings/how-safe/how-safe-2013\\_wda95178.html](http://www.nspcc.org.uk/Inform/research/findings/how-safe/how-safe-2013_wda95178.html)

*defence in cases of corporal punishment of children does not comply with the principles and provisions of the Convention, since it would suggest that some forms of corporal punishment are acceptable.”* In June 2006, the United Nations Committee on the Rights of the Child said that giving children equal protection from assault is “*an immediate and unqualified obligation*” under the Convention on the Rights of the Child (UNCRC).<sup>12</sup>

- In May 2009, when assessing UK compliance with the UN Convention on Economic, Social and Cultural Rights ‘*The Committee reiterated its recommendation that physical punishment of children in the home be prohibited by law*’.<sup>13</sup>
- In May 2012 the UK’s human rights record was examined by the UN Human Rights Council and Sweden, Finland, Norway and Hungary recommended that the UK must ensure the freedom of children from corporal punishment, in accordance with the UNCRC<sup>14</sup>. This process is known as the ‘Universal Periodic Review’.<sup>15</sup>
- In May 2013, the UN Committee Against Torture examined the UK’s, including Scotland’s, compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In its Concluding Observations, published on 31<sup>st</sup> May 2013, the Committee urged prohibition of physical punishment of children by adults:  
“The Committee takes note of amendments to legislation in England, Wales, Scotland and Northern Ireland, which limit the application of the defence of “reasonable punishment” (or “justifiable assault” in Scotland), but remains concerned that some forms of corporal punishment are still legally permissible in the home for parents and those in *loco parentis*. In addition, it expresses concern that corporal punishment is lawful in the home, schools and alternative care settings in almost all overseas territories and crown dependencies.

**The Committee recommends that the State party prohibits corporal punishment of children in all settings in Metropolitan territory, Crown Dependencies and Overseas Territories, repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.**<sup>16</sup>

The GB Equality and Human Rights Commission (EHRC)<sup>17</sup> and the Scottish Human Rights Commission (SHRC) are accredited by the UN as National

---

<sup>12</sup> Children are unbeatable! Website <http://www.childrenareunbeatable.org.uk/pages/info.html#UN>

<sup>13</sup> UN Committee on Economic, Social and Cultural Rights ‘Concluding Observations’ 12 June 2009 Para 24

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/429/21/PDF/G0942921.pdf?OpenElement>

<sup>14</sup> ‘Report of the Working Group on the Universal Periodic Review United Kingdom of Great Britain and Northern Ireland’ pub 6<sup>th</sup> July 2012 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/150/31/PDF/G1215031.pdf?OpenElement>

<sup>15</sup> <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx>

<sup>16</sup> Para 29, <http://www2.ohchr.org/english/bodies/cat/cats50.htm>

<sup>17</sup> [www.equalityhumanrights.com/scotland/](http://www.equalityhumanrights.com/scotland/)

Human Rights Institutions (NHRIs). They have been rated 'A' by the UN due to their range of powers and degree of independence of Government.<sup>18</sup> Both the EHRC and SHRC have articulated the need for a change in the law:

### **SHRC**

The continuing legality of corporal punishment of children at home has continually been highlighted as a human rights concern in the UK.<sup>i</sup> Section 51 of the Criminal Justice (Scotland) Act 2003 provides a defence of 'justifiable assault' for parents. This section also sets out certain types of assault that are unjustifiable. There is evidence of the negative effect on children's mental and physical wellbeing in Scotland.<sup>ii</sup> While the Scottish Government has taken some initiatives to promote positive parenting, they fall short of the public education campaign recommended by the UN Committee on the Rights of the Child.<sup>iii</sup>

#### **Recommendation: 13**

**That the UK and Scottish Government prohibit corporal punishment of children in all settings, repealing of all legal defences currently in place, and further promote positive non-violent forms of discipline as an alternative to corporal punishment.**<sup>19</sup>

### **EHRC**

In its submission to the UN Committee Against Torture<sup>20</sup>, the EHRC urged the Committee to ask the UK Government a question on physical punishment:

"Does the government accept the criticisms of the JCHR<sup>21</sup> and the DCSF<sup>22</sup> review that the current law on reasonable punishment<sup>23</sup> is difficult for parents to understand? Why does the UK continue to ignore calls from the UN treaty bodies to abolish the defence of reasonable punishment?"

### **SCCYP**

SCCYP is not an accredited NHRI but is acknowledged by the UN Committee on the Rights of the Child as an independent children's commissioner. As recently as May 2013, the current Commissioner, Tam Baillie, stated:

"Scotland's Commissioner for Children and Young People, jointly with the other UK Children's Commissioners, has consistently called on the UK Government and devolved administrations to provide children with equal protection from assault as adults and ensure that children are not subjected to physical punishment. Each jurisdiction in the UK has continued to permit the physical punishment of children where it is deemed 'reasonable' or 'justifiable', thus failing

---

<sup>18</sup> <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>

<sup>19</sup> SHRC submission to the Committee Against Torture, April 2013, Para 31

<sup>20</sup> EHRC submission to CAT on list of issues on the UK 5th periodic report, August 2012

<sup>21</sup> UK Parliament Joint Committee on Human Rights

<sup>22</sup> English Department for Children, Schools and Families

<sup>23</sup> English legal definition

to prohibit all forms of violence against children. The UK Government and devolved administrations must also promote positive parenting strategies and develop ongoing and adequately resourced public education and awareness raising campaigns around the negative impact of physical punishment.

Tam Baillie, Scotland's Commissioner for Children and Young People said: "If Scotland really has aspirations to be the best country in the world to bring up children, then we need to give them the same protection against violence as we give to adults. The law currently allows 'justifiable assault' and this is not acceptable."

## **7. Broader Long Term Damage**

**Ask:** Does the Scottish Government accept that the current law may encourage girls to grow up thinking that the law will not protect females from violence?

Article 2 (c) of CEDAW provides that States parties undertake to establish legal protection of the rights of women on an equal basis with men and ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination. In Scotland, girls may grow up with an expectation that the law will treat them differently and not protect them from violence as the State permits adults to hit them as a punishment. CAU believes that the defence of justifiable assault must be removed to ensure Scotland complies with its obligations to protect, respect and fulfill women's human rights to access to justice.

## **Conclusion**

Complying with international human rights law, requires the Scottish Government to take legislative action and abolish the defence of 'justifiable assault' for adults who hit girls as a punishment. As the Scottish Parliament is currently considering the Children and Young People Bill<sup>24</sup>, there is a legislative opportunity to deliver the necessary reform.

Legislative reform would accompany a proactive information strategy for parents and carers on positive non-violent discipline. The Scottish Government published its National Parenting Strategy in 2012 with a commitment to deliver practical advice for parents on what is appropriate in managing behavior but we need a more wide-ranging education campaign to change attitudes and behaviour if we are to give parents and carers greater confidence in managing children's behaviour.

**For further information contact:** Kate Higgins, CHILDREN 1<sup>ST</sup> 00 44 131 446 2323

---

<sup>i</sup> The UN Committee on the Rights of the Child has also recommended three times that the UK Government change its law. Concluding observations CRC/C/GBR/CO/4. 20 October 2008.

<sup>ii</sup> SCCYP submission to SHRC on SNAP, 29 March 2013, para 2 c).

<sup>iii</sup> See also CRC GC No. 8 (2006)

---

<sup>24</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62233.aspx>