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The human rights imperative to prohibit all corporal punishment of children

National Assembly's Cross-Party Group on Children,
Wales, 19 November 2013

Banning corporal punishment: A strong interest of the Committtee

- Repeatedly raised with states
 - in all dialogues
 - In all concluding observations
- General Comment No. 8 on corporal punishment
- General Comment No. 13 on protection from all forms of violence
- General Comment No. 15 on the right to health

General Comment No 8

- Respect for the child's human dignity and physical integrity and equal protection under the law
- Obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment
- An immediate and unqualified obligation
- Also a key strategy for reducing and preventing all forms of violence in societies

General Comment No 8, cont.

- Art. 19: States are required to take all appropriate measures to protect the child from all forms of violence
- “all forms of physical or mental violence” does not leave room for any level of legalized violence against children
- Measures include legislation

General Comment No 8, cont.

- Best interests of the child is no justification for “reasonable” corporal punishment
- The Convention requires the removal of any provisions (in statute or common law) that allow some degree of violence against children (e.g. “reasonable” chastisement)
- Not only must the criminal law apply fully to assaults on children, it is also essential that family law clearly prohibits its use

Other treaty bodies

- Including the UN Human Rights Committee, the UN Committee on Economic, Social and Cultural Rights, the UN Committee against Torture and the European Committee of Social Rights
- Have reflected the same view in their concluding observations on States parties' reports

Concluding Observations to UK 1995

- ... the Committee is worried about the national legal provisions dealing with **reasonable chastisement** within the family. The **imprecise nature** of the expression of reasonable chastisement as contained in these legal provisions may pave the way for it to be interpreted in a **subjective and arbitrary** manner

Concluding Observations to UK 2002

- The Committee is of the opinion that the Government's proposals to limit rather than to remove the “reasonable chastisement” defence do not comply with the principles and provisions of the Convention and the aforementioned recommendations, particularly since they constitute a serious violation of the dignity of the child. ...

2002, cont.

- ... Moreover, they suggest that some forms of corporal punishment are acceptable, thereby undermining educational measures to promote positive and non-violent discipline.

Concluding Observations to UK 2008

- The Committee welcomes the **commitment** of the National Assembly in **Wales** to prohibiting all corporal punishment in the home, but notes that under the terms of devolution it is not possible for the Assembly to enact the necessary legislation.

2008, cont.

- The Committee ... emphasizes its view that the existence of **any 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.

Recommendation to UK 2008

- Prohibit as a matter of priority all corporal punishment in the family, including through the **repeal of all legal defences**, in England and Wales ...;

Recommendation 2008, cont.

- Actively promote **positive and non-violent forms of discipline** and respect for children's equal right to human dignity and physical integrity,
- with a view to raising public awareness of children's right to protection from all corporal punishment
- and to decreasing public acceptance of its use in childrearing
- However: **Legislation** is a must!

Wales' commitment

UK report 2007:

- “The Welsh Assembly Government has already committed itself to supporting a ban on physical punishment of children and has funded publication of a booklet *Help in Hand* given to all new parents that advises on positive ways of dealing with behaviour and avoiding smacking.”

Concluding Observations to UK 2008

- The Committee welcomes the **commitment** of the National Assembly in **Wales** to prohibiting all corporal punishment in the home, but notes that under the terms of devolution it is not possible for the Assembly to enact the necessary legislation.

Further development

- The Rights of Children and Young Persons (Wales) Measure 2011: “Due regard” to the CRC
- Devolved powers 2011
- Motion for complete ban 2011, turned down
- Children’s Rights Scheme 2012 emphasizes the commitment to the CRC

Wales, what next?