



Cynghrair o sefydliadau sy'n ceisio diwygio'r gyfraith i rhoi'r un amddiffyniad i blant ag sydd gan oedolion rhag ymosodiad a hyrwyddo disgyblaeth gadarnhaol di-drais

An alliance of organisations seeking legal reform to give children the same protection under the law on assault as adults and promoting positive non-violent discipline

GBV68

Communities, Equality and Local Government Committee

Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill : Stage 1

Response from: Children are Unbeatable! Cymru

Written evidence from 'Sdim Curo Plant/Children are Unbeatable! Cymru to:

National Assembly for Wales

Communities, Equality and Local Government Committee

Stage 1 consultation on the general principles of the

Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill

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Grŵp Strategaeth y Gynghrair / Alliance Strategy Group:

Achub y Plant/Save the Children, Barnardo's Cymru, Action for Children/Gweithredu dros blant, NSPCC Cymru, Plant yng Nghymru/Children in Wales, Cymorth i Fenywod Cymru/Welsh Women's Aid, Homestart UK, Rhwydwaith yr Eglwysi yn Erbyn Trais/Churches Network for Non-Violence

Written evidence from 'Sdim Curo Plant/CAU! Cymru to:

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Introduction

Our written evidence to the Committee's Stage 1 inquiry focuses on a key omission from the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill (the Bill). One crucial measure for combating domestic abuse and inter-personal violence – prohibiting and eliminating the physical punishment of children – has been overlooked. Without the inclusion of a provision to remove the 'reasonable punishment' defence available in cases of assaults against children (Children Act 2004, Section 58) we believe that the Bill can only have limited success in achieving its aims. Not only is this a missing key component of any strategy to reduce violence and domestic abuse, but both Welsh Government and the National Assembly have for over a decade committed to such a reform. In addition, the international human rights pressure to introduce this measure is considerable.

From our reading of the White Paper preceding this legislation as well as the Explanatory Memorandum to the Bill it would seem that while the development and delivery of high quality services to deal with the consequences of Gender-based Violence, Domestic Abuse and Sexual Violence may be supported by the legislation, it fails on several counts to ensure a progressive lowering of demand for such services and responses by grasping the nettle on this key issue of equality and human rights. Furthermore, it continues to promote a confused and incomplete picture of the reality of interpersonal violence and structural inequalities which affect children in general, as well as girls and women.

To include such a measure would have been entirely consistent with the Welsh Government's 'people approach' to policy development and service delivery which was referred to frequently during consideration of the Social Services and Well-being (Wales) Bill before it was enacted.

Although the risk of harm for children who *witness* violence between adults is mentioned, we are extremely disappointed that Welsh Government appears to have dropped its earlier definition of domestic abuse as something that children also *experience* themselves. Without addressing the issue of the inequality in protection from assault that currently exists and going to the root of the problem, Wales cannot hope to tackle domestic abuse, gender-based violence and sexual violence effectively.

Children are Unbeatable! Cymru is an alliance of organisations united in calling for this change in order to give children the same level of protection as currently available to adults. Our supporters include the leading parenting, children's rights and child protection organisations as well as organisations working to end violence against women. The campaign also has the support of the Archbishop of Wales, Children's Commissioner Keith Towler, the Rt Hon Rhodri Morgan, several Christian denominations, Muslim leaders and AMs and MPs from all political parties.

Our aim, which has the support of the 150+ organisations working with children and families throughout Wales who are part of this campaign, is to secure legal reform to give children equal protection under the law on assault as soon as possible. This should be accompanied by public education and support for families. Experience from other countries¹ has shown that a change in the law is essential in order to have the necessary impact. It cannot be achieved through positive parenting education alone. The current legal position is 'bad law' that does not reflect children's human rights, gives mixed messages to parents and to children; it undermines work to reduce domestic abuse and places vulnerable children at risk.

The Wales and UK-wide organisations working to end violence against women² strongly support removal of the 'reasonable punishment' defence because they recognise it as an equality and human rights issue for children and because of the obvious relationships between physical punishment and domestic abuse. They recognise that prohibiting and eliminating physical punishment is an essential preventive strategy for ending the social acceptance of violence in inter-personal relationships.

We were for many years encouraged that Welsh Ministers had been completely supportive of this aim and indeed adopted it as their own. Welsh Government has at times in the past funded the work of CAU! Cymru and Ministers voted to express regret at the lack of progress on this issue at Westminster in 2004. The National Assembly has twice voted by large cross-party majorities in support of reforming the law. Yet children in Wales are still waiting.

The complete removal of the defence of 'reasonable punishment' under section 58 of the Children Act 2004 is supported by leading agencies in the domestic abuse field who understand that the legality of physical punishment undermines efforts to end domestic violence because:

- It breaches the universal human right to protection from violence
- It teaches children that violence is acceptable
- It weakens the principle of 'zero tolerance' of violence in the home

¹ A summary of research in other countries is available in a separate briefing document which is available here: <http://www.childrenareunbeatablecymru.org.uk/wp-content/uploads/2014/03/International-experience-of-introducing-a-'smacking-ban'.pdf>

² See Annex 1 for a list of domestic abuse organisations who have formally signed-up to the CAU! Campaign.

Section 1: Why this Bill is the right vehicle for reform

In her concluding statement during the Stage 3 debate on the Social Services and Well-being (Wales) Bill, the Deputy Minister for Social Services, Gwenda Thomas AM stated that there would be opportunities to examine this issue in forthcoming legislation in this Assembly term. As previously mentioned, the National Assembly for Wales has already voted twice for a ban on physical punishment by large cross-party majorities (in 2004 and 2011). This Bill would appear to be the ideal opportunity to take this forward.

There has been well over a decade of support from the Assembly and successive Welsh Governments³, with the Government including information on its policy stance in public statements, consultation documents and publications for many years. Parenting materials have been produced and relevant programmes with children and families funded. The Welsh Government made an explicit promise to the UN Committee on the Rights of the Child, and subsequently to Wales's children and young people when the UK was examined on progress towards implementation of the United Nations Convention on the Rights of the Child (UNCRC). As outlined in Section 5 below, achieving removal of the defence was a well-publicised Welsh Government policy for so long that the claim to have 'no mandate' sometimes made by current Ministers is astounding.

The 'reasonable punishment' defence is an unjustifiable anomaly, in conflict with equality and human rights. It is an anomaly also based on an outdated and anachronistic understanding of the relationships of 'ownership', power and control between children and adults. The defence is contained in Section 58 of the Children Act 2004 – not in criminal justice legislation.

As with any Welsh legislation, the possibility of legal challenge including referral to the Supreme Court is present. However, recent political developments and Supreme Court judgments on earlier Bills suggest that the likelihood of this occurring is now far lower. In any event any delay would not be prolonged and given the legal advice from several different sources is unlikely to succeed. Since the GVDA&SV Bill as introduced has a focus on placing existing policy on a statutory basis, there would be no need to delay the positive contribution the Bill would make to the addressing gender-based violence, domestic abuse and sexual violence in Wales.

Experience from the passage of the Social Services and Well-being (Wales) Act confirms that the necessary amendment to remove the defence of 'reasonable punishment' in relation to assaults on children in Wales is clear, concise and self-contained. It would not have an adverse impact on the successful introduction of other improvements contained elsewhere in the Bill; it would

³ A chronology of the Assembly and Welsh Government support can be found in a separate CAU Cymru briefing which can be found here: <http://www.childrenareunbeatablecymru.org.uk/wp-content/uploads/2014/03/Wales-Devolution-and-Equal-Protection.pdf>

not delay their implementation and in the long-term would add considerably to their effectiveness.

The Bill as introduced and the Explanatory Memorandum

The Explanatory Memorandum states that the Bill's overall intention (page 4) is to create a stronger and more consistent focus on prevention of violence between family members (including parents and children), the protection of victims and support for all affected. The Bill is concerned with ending and dealing with the impacts of gender-based violence which has its roots in current and historical societal imbalances in power and control. It seeks to end violence within the family but ignores the fact that physical punishment of children is the only form of inter-personal violence which remains lawful.

Paragraph 6 on page 8 of the Explanatory Memorandum says that the Bill is intended to provide a "strategic focus" and to "ensure consistent consideration of preventive, protective and supportive mechanisms." While hitting children remains legal there can be no consistency of approach in either prevention or protection from violence and abuse.

The Explanatory Memorandum says a leadership gap on gender violence was identified by both the Safer Lives and the Robinson reports (para 16 quotes Robinson: "...Leadership is required because many of the issues are sensitive, disturbing and 'below the radar' of both frontline professionals and most citizens... Leadership is required because the Welsh Government's commitment in this area, as indicated by this legislative initiative, must lead to an effective and sustainable programme of change.").

These observations are equally applicable to the physical punishment of children. Prohibiting violence is absolutely dependent on leadership and any further delay does not reflect well on Welsh Government or the Assembly. No country has prohibited the physical punishment of children on the back of public opinion. If Welsh Government is brave enough to challenge public attitudes in relation to the human rights of adults, it is difficult to see why they cannot demonstrate the same determination in relation to the human rights, welfare and protection of children. There cannot be an effective programme of change if domestic abuse of any kind continues to be legitimised.

Paragraph 33 of the Explanatory Memorandum states that the Welsh Government's principal aim for this Bill is for it to "reduce rates of violence", by awareness-raising and other measures. Section 5 below outlines research evidence which indicates that rates of violence to children do visibly reduce following a smacking ban.

Paragraph 40 makes clear that "domestic abuse" includes violence between "**family members**" (our emphasis). This must include between parent and child, so there can be no justification for

the Bill allowing the existence of section 58 in Wales.

Finally, paragraph 55 of the Explanatory Memorandum refers to the measures the Welsh Government is taking in relation to schools. Schooling is important but does not start until a child has already developed an understanding of what is acceptable from patterns of behaviour experienced at home. It is universally recognised that parents/carers are children's primary role models and most influential educators and the social acceptability of violence must be tackled in the home as well as in schools.

Section 2: A human rights imperative⁴

Protection from assault is a universal human right

Wales was the first country in the UK to accept that the policy definition of domestic abuse should include violence inflicted on children in the family, acknowledging that we cannot effectively challenge domestic violence while maintaining the legality of assaulting children in the family. The definition now used has changed, despite the introduction of the Rights of Children and Young Person's (Wales) Measure (the Measure) which places a duty on Ministers to have 'due regard' to the UNCRC. The Measure was adopted unanimously by the National Assembly and is now fully in force. It requires respect for the UN Convention on the Rights of the Child and the Committee's recommendations.

Due regard for the UNCRC in this area of work, as required by the Measure, implies an explicit commitment to fully protect children from all forms of violence in the family home (Article 19 of the Convention) as confirmed by the UN Committee on the Rights of the Child.

In Section 3 below we describe a number of research studies which demonstrate strong associations between the "ordinary" physical punishment of children and aggressive, violent and coercive behaviour both in childhood and in later life. This evidence is ultimately irrelevant given the overwhelming human rights case for a law prohibiting physical punishment. The UK has been told repeatedly by international human rights treaty bodies that it must remove the defence of 'reasonable punishment.'⁵ We do not need research studies on the effectiveness of torture or the impact of wife-beating on relationships to ban these things: they are a part of human rights.

⁴ Full details of the Human Rights pressure on Wales as part of the UK to remove the 'reasonable punishment' defence can be found in a separate briefing here: <http://www.childrenareunbeatablecymru.org.uk/wp-content/uploads/2014/03/Why-Wales-should-ban-smacking-now-International-Human-Rights-pressure-and-the-Rights-of-Children-and-Young-Persons-Wales-Measure.pdf>

⁵ These include: The Committee on the Rights of the Child (three times: 1995, 2002 and 2008); The Committee on Economic, Social and Cultural Rights (twice: 2002 and 2009); The Committee on the Elimination of Discrimination against Women (twice: 2008 and 2013); The European Committee of Social Rights (twice: 2005 and 2012). In addition, the UK has received repeated recommendations from other states to prohibit all corporal punishment in the Universal Periodic Review by the Human Rights Council in Geneva (twice: 2008 and 2012)

Some have argued that children are different to adults because they are not yet competent and in need of parental guidance and control. But older people with dementia may have to be managed and controlled by their carers in the same way as children; yet no-one says that the carer therefore has a right to hit them. This is because we recognise that, however diminished his or her capacities, an older person still has human rights.

It can be difficult for some to recognise that physical punishment is a violation of rights, and a bad way to raise children because it has for so long been commonly used by parents and condoned by society – much in the same way as domestic abuse used to be tolerated in the past as ‘a private matter’. Children are smacked by those they love best in their early and most formative years and naturally accept this as normal and correct behaviour. Many will say they deserved it.

The overwhelming majority of parents who have physically punished their children have done so because they thought it was the right thing to do, not in order to cause them pain or harm. Similar reasons – citing cultural or religious beliefs – have been given in the past for practices which are now considered abhorrent (such as Female Genital Mutilation). If it were simply a matter of intellect then physical punishment would have been outlawed decades ago. Many of those who support CAU! Cymru say that their attitudes have changed with the times and with experience – not least because a ban is an obvious preventive measure to combat violence between adults.

Removing the defence, and thus giving children equal protection under the law on assault is an immediate obligation under the UNCRC and other human rights instruments accepted by the UK Government. Removal has been recommended repeatedly to the UK Government by UN human rights monitoring bodies (including three times by the Committee on the Rights of the Child and twice by the Committee on the Elimination of Discrimination against Women (CEDAW) – the UN human rights body most concerned with violence against women and girls).

These international human rights bodies are unequivocal in stating that children have the same right to legal protection from assault as adults. The vulnerability of children makes it even more vital that the law protects them, making the existing anomaly of giving them less legal protection both disturbing and absurd.

CEDAW - which monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women - has recognised that the Convention requires governments to protect women against violence of any kind occurring within the family and other areas of social life, and that full implementation of the Convention requires States to eliminate all forms of violence against women. In its concluding observations on the UK's report in 2008, the Committee noted with concern “that corporal punishment is lawful in the home and constitutes a form of violence against children, including the girl child”. The Committee recommended “that the State party include in its legislation the prohibition of corporal punishment of children in the home”. In 2013 it repeated its concern that corporal punishment was still lawful in the home,

and urged the UK “to revise its legislation to prohibit corporal punishment of children in the home”.

The UNCRC 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 body for the UNCRC – consistently interprets the Convention as requiring prohibition of all physical punishment in the family and all other settings, linked to awareness-raising and public education. In 2006, the Committee adopted General Comment No.8 on the right of the child to protection from physical punishment and other cruel or degrading forms of punishment: addressing corporal punishment of children is, the Committee states, “a key strategy for reducing and preventing all forms of violence in societies”.

The current Chair of the UN Committee on the Rights of the Child, Kirsten Sandberg, visited the National Assembly in November 2014 and presented this information to the Assembly All-Party Group on Children and Young People. Her bewilderment at why progress on this issue in Wales had stalled was clear.

Section 3: Child protection

Removing this defence, which only applies in cases of assaults against children, would address an outdated anomaly. It would not create a new offence but would extend to children the protection the law already gives other individuals, giving children *equal* protection – no more, no less.

Section 58 undermines child protection because:

- Research shows that, because it is ineffective in changing long-term behaviour, some parents escalate from ‘mild’ smacking to serious assaults;
- It permits an arbitrary level of violence which invades children’s physical integrity, making it a potential pathway to more serious physical or sexual abuse;
- professionals working with families are unable to deliver clear messages that hitting and hurting children is not allowed;
- children do not report something they are told is permitted and justified;
- those witnessing violence to children have little confidence in either intervening themselves or reporting it to the authorities;
- parents are receiving confusing messages about the legitimacy of hurting their children;
- Section 58 fails to protect children from painful, dangerous, humiliating or frequent assaults and sends them the message that hitting people is acceptable;
- The ‘reasonable punishment’ defence undermines initiatives to reduce domestic abuse and levels of violence in general because it is inconsistent with the message that it is

never acceptable to try and control another person's behaviour by hitting or hurting them.

Some may argue that a smack does not constitute child abuse, but physical punishment does play a central role in child abuse. With the law as it currently stands child protection professionals are unable to deliver clear messages to families that hurting children is not allowed.

Scaremongering about the 'criminalisation' of good parents

The main purpose of changing the law is to prevent children being physically punished in the first place, not to prosecute parents after they've hurt their children. Parents have freedom to raise children their own way, but within limits. Banning smacking does not add to the problems of vulnerable families.

Parents don't enjoy smacking and tend only to use it when they are stressed and angry.⁶ When parents stop smacking they invariably find family life and children's behaviour gets better and they are happy to have taken this step.⁷ Thus a ban is as much of an incentive – a “nudge” measure – as it is a deterrent. Organisations delivering parenting support in Wales confirm that changing from negative to positive parenting creates a win/win situation. Parents set clearer boundaries, children behave better, family relationships improve and the need to punish diminishes.

Experience from the 39 countries that have already made the change shows that public attitudes and practice quickly change after law reform. No country that has introduced such legislation has repealed it; even when there have been changes of government. We know from the experience of countries such as Sweden, Finland, Germany and New Zealand – that the likelihood of adverse consequences from a so-called 'smacking ban' as this reform is sometimes described, is virtually nil. On the contrary, following a ban we can be confident that Wales will be a place where children are safer, happier, better behaved, more able to fulfil their potential and less likely to be involved in domestic violence in adulthood or to believe that they 'deserve' abuse from a partner.

Making this change would not mean that every smack would lead to a prosecution nor that good parents are criminalised. The 'significant harm' threshold that child protection professionals, including the police, use would not change. In most cases parenting support or support with other challenges the family is facing would be what is needed; but in more serious

⁶ Gershoff, E. T. (2002), "Corporal punishment by parents and associated child behaviors and experiences: A meta-analytic and theoretical review", *Psychological Bulletin*, 128(4), 539-579;

⁷ See above, and also Beauchaine T. P. et al (2005), "Mediators, moderators, and predictors of 1-year outcomes among children treated for early-onset conduct problems: a latent growth curve analysis", *Journal of Consulting and Clinical Psychology* 73: 371-88, a study of 500 families trained away from the use of physical punishment which exactly correlated with an improvement in the children's behaviour.

cases professionals would be able to use the law when necessary to fully protect vulnerable children. It is scaremongering to suggest parents would be dragged through the criminal justice system for minor smacks, since both CPS and childcare services have confirmed that this would not be the case⁸.

Police and social workers already receive reports from those concerned about children being hit and are accustomed to intervening appropriately, aiming to support parents and children without resorting to legal intervention unless it is in the best interests of the child or children. Removal of the 'reasonable punishment' defence could only help this process. Removing the 'reasonable punishment' defence would not lead to the prosecution of parents for trivial smacks unless this was considered to be both in the public interest and in the best interest of the child concerned. Again we would stress that there would be no change in the threshold of 'significant harm' for formal social work investigations. But the law would be doing all it could by sending into the family home the clear message that it is as illegal and unacceptable to hit a child as to hit anyone else.

Section 58 fails to protect children from painful, dangerous, humiliating or frequent assaults and, by permitting an invasion of children's physical integrity, creates a potential pathway to sexual abuse. Those witnessing (or experiencing) physical punishment are often reluctant to intervene or complain. Following reform, members of the public will feel more confident about reporting incidents they are concerned about. Parents who feel that they are about to 'lose it' will also know that hitting out is against the law.

Section 4: Links between physical punishment, domestic abuse and other violence

Physical punishment teaches children that violence is acceptable

Whenever children are physically punished, they receive two clear messages. The first is that hitting someone is a legitimate way to exert control over them, sort out a conflict or express displeasure. The second message is that the recipients of physical punishment deserve such treatment. Both messages can have a toxic effect on the growing minds of children and contribute to the social acceptance of violence in adult life.

⁸ In evidence to the Joint Parliamentary Committee on Human Rights on May 25 2005 the then Director of Public Prosecutions did not rule out the possibility that a parent might be taken to court for a mild smack, but stressed that this might be appropriate only in very rare circumstances. In a joint statement in 2008 the Association of Directors of Children's Services, BASW, BASPCAN, Unite – Community Practitioners' and Health Visitors' Association; NSPCC, Parenting UK and Royal Colleges of paediatrics and nursing confirmed that the threshold of "significant harm" for social work intervention in families at risk would not change following a ban on smacking. A similar joint statement has recently been signed by ADSS Cymru, BASW Cymru and a number of Local Safeguarding Boards in Wales.

Even where there is legislation much work has to be done to change social attitudes. For example, government research found that 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. A survey of more than 2,000 young people aged 14-21 found 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, and one in eight of the young men thought that “nagging” was a justification for violence. An NSPCC survey of young people found that almost half (43 per cent) of teenage girls believe that it is acceptable for a boyfriend to be aggressive towards his partner.⁹

Perpetrators of domestic violence often seek to justify their behaviour with reference to victims’ behaviour, using language which is strongly redolent of physical punishment – “it was just a smack”, “she was asking for a slapping”. Such views do not appear out of the blue. Research has shown that there may be an association between physical punishment in childhood and partner-abuse in later life (see Section 5 below). The acceptability of punitive violence is internalised from an early age and is deeply rooted in our society.

Measures to change the social acceptability of interpersonal violence – for example by providing healthy relationships education in schools - will be seriously undermined unless it is absolutely clear that using violence of any kind to control or punish others, whatever their age, is never acceptable.

Use of physical punishment weakens the principle of zero tolerance of violence in the home

Professionals working in domestic violence have expressed deep frustration with the smacking law; Women’s Aid and Refuge pointed out the irony of introducing a law which makes common assault between adults an arrestable offence in the same year that introduced the defence of ‘reasonable punishment’ for common assaults against children, and of having a law which acknowledges the harm to children of witnessing domestic violence while denying them protection from experiencing it. The vast majority of services in the field of domestic and sexual violence do not just support the aims of the Children are Unbeatable! Alliance, they also practice what they preach by maintaining a true zero tolerance policy, banning all forms of violence in refuges, including the physical punishment of children.

It is self-evident that attitudes to violence begin in the home and are influenced by treatment in pre-school years. This work does not start at the school gates. We know that parents act as role models – parents who smoke are more likely to have children who smoke, parents who have gone to prison are more likely to have children who commit offences and so forth – and it is therefore imperative that measures are taken to stop parents hitting their children. Whatever the disciplinary intention, the message physical punishment carries is overwhelming - that hitting a loved-one in order to punish or control them is acceptable behaviour. This message is

⁹ Alarm at acceptance of abuse by teenage girls, 2005
<http://www.theguardian.com/uk/2005/mar/21/ukcrime.children>

transmitted to children at an early stage of their development and is internalised and unexamined.

Physical punishment undermines gender equality in family life and wider society

“Gender ideologies that dictate that men should control women or allow for men to physically control their partners or children are forms of gender-based structural violence.”

Rashida Manjoo, UN Special Rapporteur on Violence Against Women

Ending all violence in the family home is a key element of ensuring equality in family life. The UN Committee on the Elimination of Discrimination Against Women’s General Recommendation No. 19 on violence against women (1992)¹⁰ makes it clear that gender-based violence constitutes discrimination and impairs or nullifies the fulfilment of women’s rights including the right to equality in the family. Violence against women and physical punishment of children in the family home are closely linked and they often coexist.

General Recommendation No. 19 highlights that traditional attitudes by which women are regarded as subordinate to men perpetuate family violence. Ending the legality of all violence in the family home is an essential part of challenging these attitudes.

Physical punishment of children and violence against women arise from the same hierarchical and patriarchal power structures, which uphold the concept of girls’ and women’s inferiority to men and children’s inferiority to adults. The legality of physical punishment of children perpetuates these power structures.

Unless children are given equal protection, the perverse situation will continue with the same adults who are prevented in law from inflicting violence on their partners still able to inflict it on their children with impunity. The Bill avoids the issue by acknowledging only the harm done to children by witnessing violence in the home while ignoring the violence inflicted directly on them in the guise of ‘discipline’. From a human rights perspective this is indefensible. A home where it is lawful to punish children by hitting and hurting them can never be completely safe or violence-free.

Reducing violence and abuse within the domestic sphere, as well as gender-based violence, can only be achieved if the concept that all family members are equal holders of human rights - including the right to freedom from being hit, hurt or abused - is reflected in legislation. If physical punishment of children remains lawful, the idea that it is acceptable for those with perceived higher social status to use violence to control and regulate the behaviour of those perceived to be subservient remains enshrined in law.

¹⁰ <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

This weakens the protection of women as well as children. Countries who have not prohibited physical punishment are in effect allowing the power structure which is the basis of domestic violence against women to go unchallenged.

Section 5: Implementation

No reason for further delay

There has been substantial public consultation on this issue in Wales and across the UK already. Previous Welsh Governments' intention to legislate has been in the public domain for over a decade and throughout that time parenting and public education messages have reflected that fact. Those delivering parenting programmes, as well as parents and professionals, have been expecting the change for some time.

Welsh Government first formally expressed its support for the UN Committee on the Rights of the Child's recommendation that all physical punishment should be prohibited in law back in 2002¹¹ and until 2011 there was explicit support for legislative reform. The only barrier appeared to be a lack of legislative powers.

In the intervening years Children Are Unbeatable! Wales received funding from the Welsh Government, the National Assembly voted by a large majority to express its formal regret that the UK had failed to legislate to ban physical punishment, a number of Ministerial statements were made on the Welsh commitment to ban and Assembly Members visited Sweden to explore the effect of its ban (passed 35 years ago). In 2004 Welsh Assembly Government issued *Rights to Action* setting out its proposals for policy and provision for children and young people in Wales, including full prohibition:

“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...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** (our emphasis).”¹²**

In 2005 funding was provided for the development of a bilingual tool kit for those working with parents to change attitudes and behaviour towards physical punishment and support parents in

¹¹ Cabinet Statement, *Supporting children and parents in Wales*, 23 October 2002.

¹² Framework for Partnership *Children and Young People: Rights to Action* Welsh Assembly Government, July 2004

finding alternative methods of managing children's behaviour¹³. The UK's 2008 report to the UN Committee on the Rights of the Child recorded that:

“The Welsh Assembly Government has already committed itself to supporting a ban on physical punishment of children and has funded publication of a booklet called Help in Hand given to all new parents that advises on positive ways of dealing with behaviour and avoiding smacking.”¹⁴

In 2009 the Welsh Government launched its five year action plan for children and young people, *Getting it Right*, of which Priority 10 (of 16) is to “make physical punishment of children and young people illegal in all situations”¹⁵.

In 2011, following confirmation by the First Minister that the Assembly now has power to repeal section 58 and thus ‘ban smacking’, the National Assembly voted by a majority of 24 to 15 to urge the Welsh Government to introduce this legislation (Government ministers were required to abstain in this vote).¹⁶

A great deal of preparatory work has already been done in Wales and children should not have to wait now that Wales has the power to legislate. It is hard to imagine a similar argument for delay being used in relation to protecting women from assault – any suggestion that law reform needed to wait until there was adequate provision of programmes for perpetrators, services for alcohol or substance misuse or full-employment achieved would have been greeted with derision.

Section 6: Evidence from research

Research on physical punishment and domestic violence

Research evidence shows clear associations between physical punishment in childhood and the perpetration of violence against partners in later life. In 2002 Elizabeth Gershoff conducted a meta-analysis of 88 studies on the effect of “ordinary” physical punishment, specifically excluding studies on “abuse” (i.e. assaults requiring state intervention)¹⁷ In 2008 the findings

¹³ The toolkit is still in use, see <http://www.helpathandtoolkit.info/>

¹⁴ UN Committee on the Rights of the Child: Third and fourth periodic reports of the United Kingdom of Great Britain and Northern Ireland, 25 February 2008, CRC/C/GBR/4

¹⁵ *Getting it right 2009 United Nations Convention on the Rights of the Child A 5-year rolling Action Plan for Wales setting out key priorities and actions to be undertaken by the Welsh Assembly Government in response to the Concluding Observations of the UN Committee on the Rights of the Child 2008*, November 2009, Welsh Assembly Government <http://wales.gov.uk/topics/childrenyoungpeople/publications/gettingitright2009/?lang=en>

¹⁶ National Assembly for Wales record of proceedings, October 19 2011

¹⁷ E. T. Gershoff (2002), *Corporal punishment by parents and associated child behaviors and experiences: A meta-analytic and theoretical review*. Psychological Bulletin, 128(4), 539-579

were updated.¹⁸ The meta-analysis showed a strong consensus on physical punishment's many negative outcomes, including eroded parent-child relationships, weak internalisation of moral standards, increased child aggression, violence in later life and poor mental health. Twelve of the studies examined the relation of physical punishment to mental health problems of children, such as anxiety and depression, and eight examined its relationship to mental health problems in later life; without exception, these 20 studies revealed that physical punishment was associated with an increased probability of mental health problems. Thirteen studies investigated antisocial behaviour: in 12 of the 13 studies physical punishment was found to be associated with a higher probability of delinquent and anti-social behaviour. The same near unanimity (four out of five) was found for studies of the relation between experiencing physical punishment as a child and later adult criminal behaviour.

Aggression in childhood

Above all, the evidence shows that physical punishment is associated with increased aggression in children. All 27 studies on the topic included in Gershoff's meta-analysis found an association, now confirmed by numerous other studies. Studies which use a prospective design increasingly refute the idea that children who are more aggressive experience more physical punishment – research consistently suggests that experiencing physical punishment directly causes children's levels of aggression to increase.¹⁹ The reasons may include that aggression is a reflexive response to experiencing pain, that children copy their parents' behaviour and that children learn that violence is an appropriate method of getting what you want. Children in a New Zealand study described feeling aggressive after being smacked: *"like you want payback and revenge"* (nine year old boy); *"you hurt your sister, like you take it out on somebody else"* (13 year old boy).²⁰ Children in the UK said that after they have been smacked, children *"act naughty and start to hurt people"* (five year old girl) and that *"if they're very little, they might think it's right to smack and go off and smack somebody else"* (seven year old girl).²¹

Large-scale studies on this association include a study involving more than 1,000 mothers in the USA who were interviewed and observed when their children were one, three and four years old, which found that children who experienced physical punishment aged one were more likely to have both "internalising" and "externalising" behaviour problems aged three and four²² and a study in the USA of 2,461 children, which found that children who were "spanked" more than

¹⁸ E. T. Gershoff *Report on physical punishment in the United States: what research tells us about its effects on children* (2008) Center for Effective Discipline, Columbus, Ohio

¹⁹ Durrant, J. & Ensom, R. (2012), "Physical punishment of children: lessons from 20 years of research", *Canadian Medical Association Journal*, 6 February 2012

²⁰ Dobbs, T. (2005) *Insights: children & young people speak out about family discipline*, Save the Children New Zealand

²¹ Willow, C. & Hyder, T. (1998) *It Hurts You Inside: young children talk about smacking*, Save the Children & National Children's Bureau

²² Mulvaney, M. K. & Mebert, C.J. (2007) "Parental corporal punishment predicts behavior problems in early childhood", *Journal of Family Psychology*, 21(3): 389-397

twice in the previous month aged three were more likely to be more aggressive aged five (the study controlled for the children's level of aggression at age three).²³

Some studies have focused on children's aggression towards their peers. A study in the USA which examined how 106 three to six year-old children behaved in playgrounds found that children whose parents who used less "power assertive discipline" (including punishing, threatening and belittling the children) were more popular with other children and showed fewer disruptive playground behaviours, such as arguing and aggression.²⁴

Another US study of five to seven and nine to 10 year old children and their mothers found that children whose mothers used more "power assertive discipline" (such as physical punishment and threats) were less popular with their peers and were more likely to use "unfriendly methods", such as hitting another child, to resolve conflicts with their peers.²⁵ The effect continues into adolescence: a US study of 134 parents and children aged 10-15 found that children who were physically punished by their parents were more likely to approve of the use of violence in their peer relationships, to have been involved in a fight in the past year, to bully their peers and to have experienced violence from their peers in the last school term.²⁶

Children who experience physical punishment from their parents are more likely to be aggressive towards their parents, as confirmed by a US study of 1,023 couples with a child aged between three and 17. It found that 13% of the mothers who did not use physical punishment in the past year had been hit by their child that year, compared to 30% of those who had used physical punishment once or twice and 40% of those who had used it three or more times.²⁷

Violence in adult life

Physical punishment was associated with violence towards a partner as an adult in all five studies on the topic included in Gershoff's meta-analysis. All four studies on other forms of aggression in adulthood found that physical punishment is significantly associated with increased aggression in adulthood, and four of the five studies on corporal punishment and criminal and antisocial behaviour in adulthood found an association.

²³ Taylor, C. A. et al (2010) "Mothers' Spanking of 3-Year-Old Children and Subsequent Risk of Children's Aggressive Behavior", *Pediatrics* 125(5): 1057-1065

²⁴ Hart, C.H. et al (1992) "Maternal and paternal disciplinary styles: Relations with preschoolers' playground behavioral orientations and peer status", *Child Development*, 63(4): 879-892

²⁵ Hart, C.H. et al (1990) "Children's expectations of the outcomes of social strategies: Relations with sociometric status and maternal disciplinary styles", *Child Development*, 61(1): 127-137

²⁶ ²⁶ Ohene, S. et al (2006) "Parental Expectations, Physical Punishment, and Violence Among Adolescents Who Score Positive on a Psychosocial Screening Test in Primary Care", *Pediatrics* 117(2): 441-447

²⁷ Ulman, A. & Straus, M. A. (2003) "Violence by children against mothers in relation to violence between parents and corporal punishment by parents", *Journal of Comparative Family Studies* 34: 41-60

A major study involving men in Brazil, Chile, Croatia, India, Mexico and Rwanda found that those who had experienced violence, including physical punishment, during childhood, were more likely to perpetrate intimate partner violence, hold inequitable gender attitudes, be involved in fights outside the home, pay for sex and experience low self-esteem and depression, and were less likely to participate in domestic duties, communicate openly with their partners, attend pre-natal visits when their partner is pregnant and/or take paternity leave.²⁸

A study of 717 boys in Canada found that experience of harsh parental practices (being punished by being hit, slapped, scolded all the time or called names and feeling rejected by parents) contributed directly and significantly to the boys being perpetrators of “dating violence” at 16 and 17 years old.²⁹ A study of 608 respondents in the USA who were interviewed in 1982 at ages 12-19 and again ten years later found that those who had experienced “harsh physical discipline” were more likely to be violent towards a “romantic partner” as adults.³⁰

A study which used data from over 4,400 adults in the USA, who took part in a nationally representative survey of American heterosexual couples with and without children, found that the more often respondents – both men and women – had experienced physical punishment as teenagers, the more likely they were to physically assault their partners as adults and to approve of violence in adult relationships, such as slapping a partner’s face).³¹ Another study in the USA, involving 188 married couples without children, found that individuals who were physically punished during childhood were more controlling with their spouse, less able to take their spouse’s perspective and more likely to engage in physical and verbal aggression with their spouse. The authors suggest that this is because physical punishment both teaches children destructive problem-solving strategies – verbal and physical aggression – and hinders them learning essential problem-solving skills – taking others’ perspectives, demonstrating empathy and understanding how their behaviour affects others.³²

Other aspects of sexuality which place adults and young people at risk of violence and abuse

There are, of course, clear links between being physically punished as a child and being sexually excited by ‘disciplinary’ sex – indeed, according to research this appears to be a sexual orientation which is definitely created by childhood experiences rather than genetically

²⁸ Contreras, M. et al (2012), *Bridges to Adulthood: Understanding the Lifelong Influence of Men's Childhood Experiences of Violence*, Analyzing Data from the International Men and Gender Equality Survey, Washington DC: International Center for Research on Women (ICRW) and Rio de Janeiro: Instituto Promundo.

²⁹ Lavoie, F. et al (2002), “History of family dysfunction and perpetration of dating violence by adolescent boys: a longitudinal study”, *Journal of Adolescent Health*, 30, pp 375–383

³⁰ Swinford, S. P. et al (2000), “Harsh physical discipline in childhood and violence in later romantic involvements: The mediating role of problem behaviors”, *Journal of Marriage and the Family*, 62, 508–519

³¹ Straus, M. A., & Yodanis, C. L. (1996), “Corporal punishment in adolescence and physical assaults on spouses later in life: What accounts for the link?” *Journal of Marriage and Family*, 58, 825–841

³² Cast, A. D. et al (2006), “Childhood physical punishment and problem solving in marriage”, *Journal of Interpersonal Violence*, 21:244-261

determined.³³ Recent research also shows 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 when adult.³⁴

Conclusion and recommendations

The amendment needed to remove the 'reasonable punishment' defence is clear and concise. It simply repeals, in relation to assaults on children in Wales, section 58 of the Children Act 2004. This is civil not criminal justice legislation. The amendment would have no adverse effects on other elements of the Bill (on the contrary it would of course have a very favourable impact on their long-term outcomes) and the Government's own legal advisers have confirmed that giving children equal protection is within the Assembly's competence.

- We therefore recommend that, as a primary preventive measure against domestic abuse, the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill is amended in order to effect repeal of Section 58 of the Children Act 2004 in Wales and thus prohibit all forms of physical punishment, including in the domestic home.
- We further recommend that the Welsh Government links this long overdue law reform to expanded parenting and school education on positive discipline and healthy relationships. Much of the groundwork has already been done in Wales and the introduction of the legal reform would be helpful for professionals and practitioners working with children and families as well as giving clarity to parents. It is also a necessary part of successful preventative education with children and young people.

Commentary

Without a change in the law any educational programmes or initiatives to promote healthy relationships, reduce tolerance of abuse and interpersonal violence will be seriously undermined. If our recommendations are accepted, Welsh Government will be able to rely on the support of the voluntary sector including the major children's organisations, professional associations and faith groups who are committed to supporting implementation with practical measures.

While using hitting or hurting children in order to control their behaviour or punish them remains legal, the public discourse on domestic abuse and interpersonal violence remains confusing and

³³ See for example Ian Gibson, 1978, *The English Vice: Beating, Sex and Shame in Victorian Britain and After* Duckworth.

³⁴ See for example, Douglas, Emily M and Murray A Straus. 2006. *Assault and injury of dating partners by university students in 19 countries and its relation to corporal punishment experienced as a child*. European Journal of Criminology 3:293-318. More on <http://pubpages.unh.edu/~mas2/CP-Empirical.htm>

conflicted. Decisive action by Welsh Government is long overdue and while the legal anomaly remains, what it means to be 'a good parent' remains paralysed, fixated on the pointless red herring of smacking. There is nothing good about physical punishment and much that is bad. Interpersonal violence must not become normalised in childhood and government must demonstrate strong leadership in showing that it is never acceptable to hit or hurt another person, whatever their age, gender or circumstance.

Since Welsh Government first committed to changing the law to give children equal protection 27 other countries (including 15 in Europe) have taken the action needed to do so. At the time of writing 39 countries have now prohibited all physical punishment of children, with more due to bring legislation into force soon. Although not one of these countries took this step in response to public demand, once the ban is in force rates of violence fall and none of the negative outcomes predicted by opponents has occurred. Any further delay in Wales places vulnerable children at risk, undermines other initiatives to reduce violence, bullying and abuse (on whatever basis) and calls into question Wales's previous reputation on children's rights.

**'Sdim Curo Plant!
Children are Unbeatable! Cymru
September 2014**

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ANNEX 1

Organisations addressing Gender-based Violence, Domestic Abuse and Sexual Violence who are signed-up supporters of Children are Unbeatable! Cymru

Aberconwy Women's Aid
Action for Children/Gweithredu dros Blant
AVA – Against Violence and Abuse
Bangor & District Women's Aid
Barnardo's Cymru
BAWSO Ltd
Blaenau Ffestiniog Women's Aid/De Gwynedd Women's Aid
Caerphilly Women's Aid
Calan DVS
Cardiff Women's Safety unit
Cardigan Women's Aid
Delyn Women's Aid
Eaves (UK)
EVAW - End Violence Against Women (UK Coalition)
Glyndwr Women's Aid
Hafan Cymru
Lliw Valley Women's Aid
National Association of Probation Officers
National Society for the Prevention of Cruelty to Children (NSPCC) Cymru
North Wales Women's Centre
Port Talbot and Afan Women's Aid
Refuge
Respect
Rhondda Cynon Taf Women's Aid
Shelter
Torfaen Women's Aid
Victim Support
Welsh Women's Aid (CAU! Cymru Strategy Group member)
Zero Tolerance Charitable Trust

Note that this list is not exhaustive. Many more of our supporter organisations are also concerned with these issues as part of their work.

ANNEX 2

States with Full Prohibition of Corporal Punishment of Children in all settings

In the following 39 states, children are protected by law from all corporal punishment (most recent first):

1. Bolivia (2014)
2. Brazil (2014)
3. Malta (2014)
4. Honduras (2013)
5. TFYR Macedonia (2013)
6. South Sudan (2011)
7. Albania (2010)
8. Republic of Congo (2010)
9. Kenya (2010)
10. Tunisia (2010)
11. Poland (2010)
12. Liechtenstein (2008)
13. Luxembourg (2008)
14. Republic of Moldova (2008)
15. Costa Rica (2008)
16. Togo (2007)
17. Spain (2007)
18. Venezuela (2007)
19. Uruguay (2007)
20. Portugal (2007)
21. New Zealand (2007)
22. Netherlands (2007)
23. Greece (2006)
24. Hungary (2005)
25. Romania (2004)
26. Ukraine (2004)
27. Iceland (2003)
28. Turkmenistan (2002)
29. Germany (2000)
30. Israel (2000)
31. Bulgaria (2000)
32. Croatia (1999)
33. Latvia (1998)
34. Denmark (1997)
35. Cyprus (1994)
36. Austria (1989)
37. Norway (1987)
38. Finland (1983)
39. Sweden (1979)