

Corporal punishment of children in Sri Lanka: Briefing for the Universal Periodic Review, 28th session, 2017

From the Global Initiative to End All Corporal Punishment of Children, March 2017



Global Initiative to
**End All Corporal Punishment
of Children**

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Sri Lanka, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture and the Human Rights Committee.

We hope the Working Group will note with concern the legality of corporal punishment of children in Sri Lanka. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Sri Lanka clearly prohibit all corporal punishment of children in all settings, including the home, and repeal all the legal defences.

1 Review of Sri Lanka in the 2nd cycle UPR (2012) and progress since

1.1 Sri Lanka was reviewed in the second cycle of the Universal Periodic Review in 2012 (session 14).

The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information.² No recommendation was made specifically on corporal punishment but the Government accepted recommendations on the protection of children's rights.³

1.2 Since the review in 2012, the Government has stated its intention to revise or repeal the Children and Young Persons Ordinance and is drafting a Children (Judicial Protection) Bill. It is however unclear whether prohibition of corporal punishment is included in those drafts. Sri Lanka has also pledged its commitment to prohibition as one of the pathfinder countries in the Global Partnership to End Violence against Children in 2016 and committed itself to ending all forms of violence including corporal punishment by 2030.

1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Sri Lanka. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Sri Lanka clearly prohibit all corporal punishment of children in all settings.

¹ 13 August 2012, A/HRC/WG.6/14/LKA/2, Compilation of UN information, para. 30

² 30 July 2012, A/HRC/WG.6/14/LKA/3, Summary of stakeholders' views, para. 31

³ 18 December 2012, A/HRC/22/16, Report of the working group, paras. 127(46), 127(62), 127(71) and 127(72)

2 Legality of corporal punishment in Sri Lanka

Summary of current law and opportunities for achieving prohibition

In Sri Lanka corporal punishment of children is unlawful as a sentence for a crime but it is lawful in the home, in alternative care settings, in day care, in schools and in penal institutions.

- 2.1 **Home (lawful):** The Penal Code 1883 was amended in 1995 to provide for the offence of cruelty to children (art. 308A, amended further in 2006), but article 82 of the Code states: “Nothing, which is done in good faith for the benefit of a person under twelve years of age, or, of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause/or be intended by the doer to cause, or be known by the doer be likely to cause, to that person....” Illustration (i) of the offence of “criminal force” (art. 341) states that a schoolmaster who flogs a student is not using force illegally. Article 71(6) of the Children and Young Persons Ordinance 1939 confirms “the right of any parent, teacher or other person having lawful control or charge of a child ... to administer punishment to him”. Provisions against violence and abuse in the Penal Code, the Children’s Charter 1994, the Torture Act 1994, the Prevention of Domestic Violence Act 2005 and the International Covenant on Civil and Political Rights Act 2007 are not interpreted as prohibiting all corporal punishment of children.
- 2.2 At a meeting of the South Asia Forum in July 2006, following on from the regional consultation in 2005 of the UN Secretary General’s Study on Violence against Children, the Government made a commitment to prohibition in all settings, including the home. During the Universal Periodic Review (UPR) in 2008, the Government accepted the recommendation to ensure its domestic legislation is fully compliant with the Convention on the Rights of the Child but a subsequent review of the Children and Young Persons Ordinance did not result in proposals to prohibit corporal punishment.⁴ In 2010, Government representatives in SAIEVAC (South Asia Initiative to End Violence Against Children) developed a national action plan to achieve prohibition and in 2011 endorsed a report on progress towards prohibiting corporal punishment in South Asia states which included an analysis of the reforms required in Sri Lanka.⁵ In the context of accepting recommendations on children’s rights made during the UPR in 2012, the Government stated that laws would be reformed in line with the recommendations of the Committee on the Rights of the Child.⁶
- 2.3 A National Action Plan for the Promotion and Protection of Human Rights 2011-2016, based on the UPR recommendations of 2008 and the recommendations of treaty bodies, was adopted with its implementation strategy approved in 2011. Despite media reports in 2011 that the Ministry of Women Empowerment and Child Welfare was drafting legislation to prohibit corporal punishment in settings outside the home,⁷ the Plan provided only for prohibition of corporal punishment in schools (goal 7.5): it did not explicitly address the issue in other settings. It did, however, envisage the enactment of a Child Protection Bill/amendments to the Children and Young Persons Ordinance 1939 and other legal reforms in relation to other issues, and the

⁴ 6 October 2010, CRC/C/SR.1567, Summary record of examination by the Committee on the Rights of the Child, para. 22

⁵ SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

⁶ 21 February 2013, A/HRC/22/16/Add.1, Report of the working group: Addendum, para. 4.13

⁷ *Sri Lanka Guardian*, 2 September 2011

incorporation of children’s rights in the Constitution. A new National Human Rights Action Plan was drafted in 2016 for the period 2017-2022. As of March 2017, the Cabinet-approved Action Plan is not yet public. National Action Plans on Children and on Early Childhood are being drafted; we do not know whether prohibition of corporal punishment is included in the drafts.

2.4 In 2013, a Children (Judicial Protection) Bill had been drafted,⁸ and in September 2014, the Government reported to the Human Rights Committee that amendments to the Children and Young Persons Ordinance had been proposed.⁹ The state report declared that the “draft Children (Judicial Protection) Act (CJPA) would be enacted to repeal the Children and Young Person’s Ordinance”.¹⁰

2.5 **Alternative care and day care (lawful):** Corporal punishment is lawful in alternative care and day care settings under articles 82 and 341 of the Penal Code 1883 and article 71(6) of the Children and Young Persons Ordinance 1939. The Guidelines and Standards for Childcare Institutions 2013 prohibit the use of corporal punishment in children’s homes, hostels and day care centres, but this prohibition is not translated into law.

2.6 **Schools (lawful):** Corporal punishment is lawful in schools, as confirmed in the explanation of acceptable criminal force in the Penal Code 1883 (see above). Section 2 of Circular No. 17/2005, issued by the Ministry of Education in 2005, states that corporal punishment should not be used in schools, but this has not been confirmed in legislation. Provisions in the Education Ordinance 1939 allowing the court to order corporal punishment for persistent truancy (s56) were repealed by the Corporal Punishment (Repeal) Act No. 23 2005.

2.7 **Penal institutions (lawful):** Corporal punishment is lawful as a disciplinary measure in penal institutions. The Corporal Punishment (Repeal) Act No. 23 2005 repeals corporal punishment in prisons under the Prisons Ordinance 1877 (amended 1939), but there is no prohibition relating to other penal institutions for young persons in conflict with the law such as remand homes, approved homes and certified schools. Article 14 of the Youthful Offenders (Training Schools) Ordinance 1939 provides for the Minister to make regulations for discipline in training schools, but we have no information concerning such regulations.

2.8 **Sentence for crime (unlawful):** Corporal punishment is prohibited as a sentence for crime by the Corporal Punishment (Repeal) Act No. 23 2005, which repeals the Corporal Punishment Ordinance 1889 and all provisions authorising judicial corporal punishment in other laws.

3 Recommendations by human rights treaty bodies and during the UPR

3.1 **CRC:** The Committee on the Rights of the Child has recommended to Sri Lanka that all corporal punishment of children be prohibited on three occasions – in concluding observations on the initial report in 1995,¹¹ the second report in 2003¹² and the third in 2010.¹³

3.2 **CAT:** In 2011, the Committee Against Torture recommended to Sri Lanka that the Penal Code be reviewed with a view to prohibiting corporal punishment in all settings.¹⁴

⁸ 31 January 2013, CCPR/C/LKA/5, Fifth state party report, para. 293

⁹ 2 September 2014, CCPR/C/LKA/Q/5/Add.1, Reply to list of issues, para. 95

¹⁰ [June 2016], CRC/C/LKA/5-6, Fifth-sixth report, para. 209

¹¹ 21 June 1995, CRC/C/15/Add.40, Concluding observations on initial report, paras. 15 and 32

¹² 2 July 2003, CRC/C/15/Add.207, Concluding observations on second report, paras. 28 and 29

¹³ 19 October 2010, CRC/C/LKA/CO/3-4, Concluding observations on third/fourth report, paras. 40 and 41

¹⁴ 8 December 2011, CAT/C/LKA/CO/3-4, Concluding observations on third/fourth report, para. 30

3.3 **HRC:** The Human Rights Committee twice recommended that corporal punishment of children be prohibited in all settings, in 2003¹⁵ and 2014.¹⁶

3.4 **UPR:** Specific recommendations to prohibit corporal punishment were not made during the UPRs of Sri Lanka in 2008 and 2012, but the Government accepted more general recommendations to ensure national legislation complies with the Convention on the Rights of the Child and other relevant recommendations.¹⁷

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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.

¹⁵ 1 December 2003, CCPR/CO/79/LKA, Concluding observations on the combined fourth and fifth reports, para. 11

¹⁶ [November 2014, CCPR/C/LKA/CO/5], Advance Unedited Version, Concluding observations on fifth report, paras. 3 and 19

¹⁷ 5 June 2008, A/HRC/8/46, Report of the working group, paras. 82(9) and 82(10); 18 December 2012, A/HRC/22/16, Report of the working group, paras. 127(46), 127(62), 127(71) and 127(72)