

SRI LANKA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 14th session, 2012

*From Dr Sharon Owen, Research Coordinator, Global Initiative,
info@endcorporalpunishment.org*



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

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

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 in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in Sri Lanka, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and other treaty bodies as well as the Government’s acceptance during the initial UPR in 2008 of the recommendations to comply with the Convention on the Rights of the Child.

We hope the Human Rights Council will note with concern the repeated and unfulfilled treaty body recommendations on corporal punishment. We hope states will raise the issue during the review in 2012 and recommend to Sri Lanka that legislation is enacted to explicitly prohibit corporal punishment of children in all settings, including the home, as a matter of priority.

1 The initial review of Sri Lanka by the Human Rights Council (2008)

1.1 Sri Lanka was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 2). No recommendation was made concerning corporal punishment of children, though the issue was included in the compilation of UN information¹ and the summary of stakeholders' information.² However, the following recommendations were made, and accepted by the Government:³

“Ensure that its domestic legislation is in full compliance with the Convention on the Rights of the Child (Poland);

“Continue its efforts for the full implementation of international human rights instruments to which it is a party (Morocco).”

1.2 Prohibiting corporal punishment is a key obligation under the Convention on the Rights of the Child and other international human rights instruments, though it is an obligation frequently ignored or evaded by governments. Specifically challenging Sri Lanka in this respect during its second UPR would reflect the seriousness with which the Human Rights Council views violations of the rights of all persons, including children.

1.3 The Government of Sri Lanka made a commitment to prohibiting corporal punishment of children in all settings, including the home, 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. In 2010, the Government stated its intention to prohibit corporal punishment in remand homes and alternative care settings.⁴ The Ministry of Women Empowerment and Child Welfare was reported in September 2011 to be drafting legislation to prohibit corporal punishment in schools, penal institutions and children's homes.⁵ As at March 2012 however, there has been no change in the legality of corporal punishment of children since the initial review in 2008: it is lawful in the home, schools, penal institutions and alternative care settings.

2 Legality of corporal punishment in Sri Lanka

2.1 Corporal punishment is lawful in the **home**. The Penal Code (1883) was amended in 1995 to provide for the offence of cruelty to children (article 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” (article 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) and the Prevention of Domestic Violence Act (2005) are not interpreted as prohibiting all corporal punishment of children.

¹ 8 April 2008, A/HRC/WG.6/2/LKA/2, Compilation of UN information, para. 15

² 3 April 2008, A/HRC/WG.6/2/LKA/3, Summary of stakeholders' information, para. 18

³ 5 June 2008, A/HRC/8/46, Report of the Working Group, paras. 82(9) and 82(10)

⁴ 6 October 2010, CRC/C/SR.1567, Summary record of examination by the Committee on the Rights of the Child, para. 42

⁵ *Sri Lanka Guardian*, 2 September 2011

2.2 Corporal punishment is lawful in **schools**, as confirmed in the above noted illustration of acceptable criminal force in the Penal Code. Circular No 2005/17, 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, though persistent truancy can no longer be punished by court-ordered corporal punishment.

2.3 In the **penal system**, corporal punishment is prohibited as a sentence for crime by the Corporal Punishment (Repeal) Act No. 23, which repeals the Corporal Punishment Ordinance (1889) and all provisions authorising judicial corporal punishment in other laws.

2.4 Corporal punishment is lawful as a disciplinary measure in penal institutions. The Corporal Punishment (Repeal) Act No. 23 repeals corporal punishment in prisons under the Prisons Ordinance, 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.

2.5 Corporal punishment is lawful in **alternative care settings** under articles 82 and 341 of the Penal Code and article 71(6) of the Children and Young Persons Ordinance (see above).

3 Recommendations by human rights treaty monitoring bodies

3.1 The **Committee on the Rights of the Child** first made recommendations on corporal punishment of children in Sri Lanka in 1995.⁶ In 2003, the Committee recommended prohibition of all forms of corporal punishment.⁷ Again in 2010, the Committee expressed concern at the legality of corporal punishment and recommended its prohibition in the home, schools and care settings.⁸

3.2 In 2011, the **Committee Against Torture** recommended that Sri Lanka prohibit corporal punishment in all settings.⁹

3.3 In 2003, the **Human Rights Committee** recommended prohibition of all corporal punishment in Sri Lanka, particularly in schools and prisons.¹⁰ The Committee had previously (1995) recommended that provisions authorising corporal punishment as a judicial sanction be revoked.¹¹

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@encorporalpunishment.org
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⁶ 21 June 1995, CRC/C/15/Add.40, Concluding observations on initial report, paras. 15 and 32

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

⁸ 1 October 2010, CRC/C/LKA/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 40 and 41

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

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

¹¹ 27 July 1995, CCPR/C/79/Add.56, Concluding observations on third report, sections 3 and 5