

# Ending family violence in Sri Lanka – challenging physical punishment of girls and boys



Information for the Committee on the Elimination of Discrimination Against Women's 66<sup>th</sup> session, from the Global Initiative to End All Corporal Punishment of Children ([www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)), January 2017

---

## **Introduction: violence against children in their homes in Sri Lanka and CEDAW's examination of the eighth state party report**

Violent punishment of boys and girls is lawful in Sri Lanka. Article 71(6) of the Children and Young Persons Ordinance 1939 confers the right to “administer punishment” to parents, teachers and persons with lawful control of a child; and provisions protecting children from violence are not interpreted as prohibiting all corporal punishment. Although the Government committed to prohibiting all corporal punishment of children over a decade ago, in July 2006, law reform has not yet been achieved. The current revisions of relevant laws and particularly the Children and Young Persons Ordinance provide an opportunity for achieving the necessary law reform.

**We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Sri Lanka. In particular, we hope the Committee will, in its concluding observations on the eighth state party report, recommend that Sri Lanka take immediate action to ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation be immediately enacted prohibiting corporal punishment of children in all settings.**

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in Sri Lanka and immediate opportunities for reform
  2. Treaty body and UPR recommendations on the issue made to Sri Lanka to date.
-

# 1 Laws on the use of force in “correcting” children in Sri Lanka and immediate opportunities for prohibiting violent punishment of girls and boys

## Summary

1.1 In Sri Lanka, parents and carers have the right to “administer punishment” to children – which means that children can lawfully be subjected to violent punishment. The Government’s long-standing commitment to prohibit corporal punishment as well as the current review of the relevant laws provide the opportunity for law reform.

## Detail

1.2 Corporal punishment is lawful in the home. 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.

1.3 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

1.4 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, has been approved by the Cabinet; its implementation strategy was 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,<sup>4</sup> the Plan provides for prohibition of corporal punishment only in schools: it does not explicitly address the issue in other settings. It does, 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 incorporation of children’s rights in the Constitution. Amendments to the Constitution in 2015 did not relate to children’s rights.<sup>5</sup>

<sup>1</sup> 6 October 2010, CRC/C/SR.1567, Summary record of examination by the Committee on the Rights of the Child, para. 22

<sup>2</sup> SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

<sup>3</sup> 21 February 2013, A/HRC/22/16/Add.1, Report of the working group: Addendum, para. 4.13

<sup>4</sup> *Sri Lanka Guardian*, 2 September 2011

<sup>5</sup> Welikala, A. (2015), “Sri Lanka: The Nineteenth Amendment to the Constitution – from start to finish”, 26 May 2015,

1.5 In 2013, a Children (Judicial Protection) Bill had been drafted.<sup>6</sup> In September 2014, the Government reported to the Human Rights Committee that amendments to the Children and Young Persons Ordinance had been proposed.<sup>7</sup> We do not know if prohibition of corporal punishment has been drafted and proposed in the context of these reforms: as at December 2016, no child-related bills appear to have been tabled in Parliament.<sup>8</sup>

**1.6 We hope the Committee will remind the state party of its international obligations and recommend that prohibition of all corporal punishment of children in all settings be immediately enacted.**

## **2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review**

2.1 **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.<sup>9</sup>

2.2 **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,<sup>10</sup> the second report in 2003<sup>11</sup> and the third in 2010.<sup>12</sup>

2.3 **HRC:** The Human Rights Committee recommended on three occasions that corporal punishment of children be prohibited in all settings – in 1995, 2003 and 2014.<sup>13</sup>

2.4 **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.<sup>14</sup>

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children  
[www.endcorporalpunishment.org](http://www.endcorporalpunishment.org); [info@endcorporalpunishment.org](mailto:info@endcorporalpunishment.org), January 2017*

---

[http://www.constitutionnet.org/news/sri-lanka-nineteenth-amendment-constitution-start-finish?utm\\_source=newsletter&utm\\_medium=email](http://www.constitutionnet.org/news/sri-lanka-nineteenth-amendment-constitution-start-finish?utm_source=newsletter&utm_medium=email), accessed 30 May 2015

<sup>6</sup> 31 January 2013, CCPR/C/LKA/5, Fifth state party report, para. 293

<sup>7</sup> 2 September 2014, CCPR/C/LKA/Q/5/Add.1, Reply to list of issues, para. 95

<sup>8</sup> No relevant bills listed at [www.parliament.lk](http://www.parliament.lk), accessed 16 January 2017

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

<sup>10</sup> 21 June 1995, CRC/C/15/Add.40, Concluding observations on initial report, paras. 15 and 32

<sup>11</sup> 2 July 2003, CRC/C/15/Add.207, Concluding observations on second report, paras. 28 and 29

<sup>12</sup> 19 October 2010, CRC/C/LKA/CO/3-4, Concluding observations on third/fourth report, paras. 40 and 41

<sup>13</sup> 27 July 1995, CCPR/C/79/Add.56, Concluding observations on third report, sections 3 and 5; 1 December 2003, CCPR/CO/79/LKA, Concluding observations on the combined fourth and fifth reports, para. 11; and November 2014, CCPR/C/LKA/CO/5], Advance Unedited Version, Concluding observations on fifth report, paras. 3 and 19

<sup>14</sup> 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)