



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

SRI LANKA – COUNTRY REPORT

Child population: 5,850,000 (UNICEF, 2009)

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, schools, penal institutions, alternative care settings

Is there a legal defence for corporal punishment which must be repealed?

Yes – Article 82 of the Penal 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 students is not using force illegally. Article 71(6) of the Children and Young Persons Ordinance recognises “the right of any parent, teacher or other person having lawful control or charge of a child ... to administer punishment to him”. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable or lawful. These provisions should be repealed and explicit prohibition enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

Other legislative measures necessary

Schools – Explicit prohibition in legislation applicable to all education settings (public and private) is necessary, in addition to repeal of all legal defences for the use of corporal punishment.

Penal institutions – Provisions for corporal punishment in remand homes, approved schools, and Borstal institutions should be repealed and explicit prohibition enacted in relation to the disciplinary measures used in all institutions accommodating children in conflict with the law.

Alternative care settings – Explicit prohibition should be enacted in legislation applicable to all alternative care settings, including public and private day care, residential institutions, foster care, etc, in addition to repeal of all legal defences for the use of corporal punishment.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

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.

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. A review of the Children and Young Persons Ordinance did not result in proposals to prohibit corporal punishment, but in September 2011 it was reported that the Ministry of Women Empowerment and Child Welfare was drafting legislation to prohibit corporal punishment in settings outside the home (see below).

Schools

Corporal punishment is lawful in schools, as confirmed in the explanation of acceptable criminal force in the Penal Code (see above). Section 2 of Circular No 2005/17, issued by the Ministry of Education in 2005, states that corporal punishment should not be used in schools, but as at 2011 this had not been confirmed in legislation. Provisions in the Education Ordinance (1939) allowing the court to order corporal punishment for persistent truancy (section 56) were repealed by the Corporal Punishment (Repeal) Act No. 23 (2005). As at September 2011, legislation was being drafted to prohibit corporal punishment in schools.

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. In 2010, a draft Juvenile Justice Procedure Code was under discussion.

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. Article 14 of the Youthful Offenders (Training Schools) Ordinance provides for the Minister to make regulations for discipline in training schools, but we have no information concerning such regulations. Under examination by the Committee on the Rights of the Child in 2010, the Government stated its intention to prohibit corporal punishment in remand homes. As at September 2011, legislation was being drafted to prohibit corporal punishment in penal institutions.

Alternative care

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). Under examination by the Committee on the Rights of the Child in 2010, the Government stated its intention to prohibit corporal punishment in alternative care settings. As at September 2011, legislation was being drafted to prohibit corporal punishment in children's homes.

Prevalence research

A study into institutional care in Sri Lanka found that corporal punishment and other cruel treatment occurred sometimes in institutions. The study recommended that corporal punishment of children in care be banned. (Save the Children in Sri Lanka (2005), *Home Truths: Children's Rights in Institutional Care in Sri Lanka*)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

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

“While commending the abrogation of the Corporal Punishment Ordinance of 1889 and the Circular No. 2005/17 issued by the Ministry of Education on 11 May 2005 which prohibits physical assault or corporal punishment in the school system by any adult on a child, the Committee expresses concern that the Education Ordinance of 1939 permitting corporal punishment in schools has not been abrogated and that corporal punishment therefore remains lawful in schools as well as in the home and in alternative care settings.

“The Committee, recalling its previous recommendation (CRC/C/15/Add.207 para. 29) draws the attention of the State party to its General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and urges that it:

- a) prohibit unequivocally by law without any further delay corporal punishment in the family, schools and alternative care institutions;
- b) ensure that laws prohibiting corporal punishment are effectively implemented and that legal proceedings are systematically initiated against those responsible of mistreating children; and
- c) introduce sustained public education, awareness-raising and social mobilization programmes, involving children, families, community and religious leaders, on the harmful effects of corporal punishment with a view to changing the general attitude towards this practice and promote positive, non-violent, participatory forms of child-rearing and discipline as an alternative to corporal punishment.”

Committee on the Rights of the Child

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

“The Committee is deeply concerned that male child offenders can be sentenced to whipping or caning under the Corporal Punishment Ordinance of 1889, and that the Education Ordinance of 1939 permits corporal punishment to be used as a disciplinary measure for boys and girls in schools and that many teachers and principals consider corporal punishment to be an acceptable form of discipline.

“The Committee reiterates its previous recommendation that the State party repeal the Corporal Punishment Ordinance of 1889 and amend the Education Ordinance of 1939 to prohibit all forms of corporal punishment. Furthermore, the Committee recommends that the State party undertake well-

targeted public awareness campaigns on the negative impact corporal punishment has on children, and provide teacher training on non-violent forms of discipline as an alternative to corporal punishment.”

Committee on the Rights of the Child

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

“With respect to child abuse, including sexual abuse, the Committee is seriously alarmed by the prevalence of this type of abuse. The Committee is worried about the fact that no specific rehabilitation measures exist for abused children and that they are treated like delinquents. Corporal punishment also persists in Sri Lankan society and is accepted in schools.

“The Committee recommends that the State party take measures to combat violence and abuse of children, including sexual abuse and corporal punishment. During the process of reviewing its laws on child abuse, the State party should carefully take into account all the provisions guaranteed by article 19 of the Convention. It further suggests that professional groups, including teachers, law enforcement personnel, social workers and the military, be trained with respect to the provisions on the Convention. International technical assistance could be requested by the authorities in relation to this matter.”

Committee Against Torture

([November 2011], Advance Unedited Version, Concluding observations on third/fourth report, para. 30)

“The Committee notes that, while corporal punishment is prohibited as a penal sentence under the Corporal Punishment (Repeal) Act No. 23 of 2005, it is not prohibited as a disciplinary measure in penal institutions for juvenile offenders, in the home or alternative care settings, under article 82 of the Penal Code. The Committee also notes with concern that, despite the issuance of Circular No. 2005/17, by the Ministry of Education in 2005, stating that corporal punishment should not be used in schools, there is no prohibition in law and its use is still widespread. (arts. 10 and 16)

The State party should consider amending its Penal Code, with a view to prohibiting corporal punishment in all settings and raising public awareness.”

Committee Against Torture

(15 December 2005, CAT/C/LKA/CO/1/CRP.2, Concluding observations on second report, para. 3)

“The Committee notes with satisfaction the following positive developments:

g) the recent abolition of corporal punishment by Act No. 23 of 2005.”

Human Rights Committee

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

“While noting that corporal punishment has not been imposed as a sanction by the courts for about 20 years, the Committee expresses concern that it is still statutorily permitted, and that it is still used as a prison disciplinary punishment. Moreover, despite directives issued by the Ministry of Education in 2001, corporal punishment still takes place in schools (art.7).

The State party is urged to abolish all forms of corporal punishment as a matter of law and effectively to enforce these measures in primary and secondary schools, and in prisons.”

Human Rights Committee

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

“The Committee expresses its satisfaction at the Government’s stated policy of not implementing death sentences and that corporal punishment as a penalty has been suspended for the last 10 years.

“Noting that the definition of torture given in the Convention Against Torture Act passed by Parliament on 25 November 1994 is somewhat restrictive, the Committee recommends that the Act be amended to bring it into conformity with article 7 of the Covenant, taking into account the Committee’s General Comment No. 20 (44). It further recommends that in view of the statement by the Government that corporal punishment has been suspended the provisions of the domestic legislation allowing this form of punishment be revoked.”

Universal Periodic Review

Sri Lanka was examined in the first cycle of the Universal Periodic Review in 2008. No recommendations were made concerning corporal punishment of children. Examination in the second cycle is scheduled for 2012.

Report prepared by the Global Initiative to End All Corporal Punishment of Children
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