



STOP CHILD CRUELTY TRUST
CHILD PROTECTION IS A NATIONAL CRISIS IN SRI LANKA
UNIVERSAL PERIODIC REVIEW – FOURTH CYCLE

RELATED TO : SRI LANKA

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Stop Child Cruelty Trust

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ENDING VIOLENCE INCLUDING CORPORAL PUNISHMENT OF CHILDREN IN SRI LANKA

INTRODUCTION:

1. Stop Child Cruelty Trust (SCC) is a registered charitable Trust focused on ending violence against children, especially eliminating corporal punishment in schools in Sri Lanka, SDG 16.2. Since its establishment in 2018, SCC has succeeded in extensive awareness, training and advocacy campaign.
2. SCC works in partnership with internationally acclaimed End Violence Against Children, Global Initiative to End Corporal Punishment of Children and UNICEF. SCC's Founder Chairperson, Dr Tush Wickramanayaka is the first Sri Lankan to be recognized as the Global End Violence Champion at the Children & Youth (CY21) convened by UNICEF.
3. SCC spearheaded the formation of Sri Lanka's first Child Protection Alliance (CPA), association of credible organizations committed to protection and promotion of rights of children in September 2021

SUMMARY:

CONTEXT AND JUSTIFICATION

4. **From July 2020 to July 2022 sixteen children were physically/sexually abused or neglected and murdered;** yet Government of Sri Lanka (GOSL) has done nothing effective to ensure the safety and welfare of 25% of population of citizens, approximate 5.1 million children. This is an unprecedented level of unnatural deaths of children in a country without armed conflict, famine, natural disaster or disease¹.
5. Sri Lanka's first and second UPR reviews took place in May 2008 and November 2012 respectively. Sri Lanka ratified the United Nations Convention of the Rights of the Child (UNCRC) in 1991. Despite many promises by successive Governments at every international forum, GOSL has failed to deliver its statutory obligations to protect and promote the rights of children.
6. During the third UPR Working Group, Sri Lanka accepted recommendations calling for adoption of measures to continue its efforts for the protection of children, prohibit corporal punishment of all children in all settings, including at home and adopt special measures to ensure that persons in vulnerable situations, such as children have meaningful access to the justice system and other complaint procedure².
7. In the 'Concluding observations on the combined fifth and sixth periodic reports of Sri Lanka' on 2 February 2018, the UNCRC highlighted main areas of concern and recommended that urgent measures must be taken to prohibit violence, including corporal punishment as top priority³.

FAILURE TO IMPLEMENT NATIONAL HUMAN RIGHTS ACTION PLANS

8. At the conclusion of the third UPR review of Sri Lanka, Zeid Ra'ad Al Hussein, High Commissioner for Human Rights welcomed Sri Lanka's adoption of the National Human Rights Action Plan for 2017-2021 and encouraged Sri Lanka to achieve concrete results. In endorsing right of children, the High Commissioner recommended to put an end to corporal punishment in all settings and take measures to promote positive non-violent forms of discipline and end child labor. However, the emphasis to protect and promote the rights of children has been diminished in the National Action Plan as shown below⁴.

The National Human Rights Action Plan 2011-2016 states specifically the following:

¹ "List of Physically/ Sexually Abused and Murdered Children in Sri Lanka from July 2020 to June 2022", ANNEXTURE A attached
² "A/HRC/37/17", UN General Assembly, Report of the Working Group on the Universal Periodic Review Sri Lanka, recommendation 116.64 (Poland), 116.65 (Montenegro) and 116.62 (Bahrain), 29 December 2017, ANNEXTURE B attached
³ "CRC/C/LKA/CO/5-6", Concluding observations on the combined fifth and sixth periodic reports of Sri Lanka, 2 February 2018, Section 111, paragraph 21
<https://stopchildcruelty.com/media/doc/1554788284.pdf>
⁴ "Letter by the High Commissioner to the Foreign Minister", ohchr.org, 13th April 2018
<https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session28/LK/SriLankaHCLetter.pdf>

9. Section 2.1, preventing and responding **effectively** to all children who have experienced neglect, abuse and exploitation and Section 7.5 **elimination of corporal punishment in schools**⁵.

The National Human Rights Action Plan 2017-2021 states non -specifically the following:

10. Section 5.1 provide education free of mental and physical aggression without any effective implementation to end corporal punishment or prevent all forms of abuse. As a consequence, severity of abuse has got worse with children being beaten to death⁶.

FAILURE TO END CORPORAL PUNISHMENT IN SCHOOLS AND HOMES

11. On 29 April 2016 the Ministry of Education issued Circular Number 12/2016⁷, ‘Maintaining Discipline in Schools’ recommending not to use corporal punishment in schools addressed to Provincial Education Secretaries, Provincial Education Directors, Zonal Education Directors and Principals of all Government and Government Approved Private Schools. However, in February 2018, following the landmark decision to convict a teacher for corporal punishment of a student in Kurunegala District the Ceylon Teachers Service Union, a powerful Trade Union conducted massive protests demanding to use physical punishment to discipline children. The President, Maithripala Sirisena whilst addressing a public rally in preparation for the Provincial Council Elections of 2018, endorsed corporal punishment reveling in his own childhood experiences. The Circular was removed from the Ministry of Education website. It is a Circular that is ineffective and blatantly ignored by teachers. A student was brutally beaten by a teacher recently⁸.
12. The number of cases reported annually to National Child Protection Authority shows that Cruelty to Children aka physical abuse is the most common form of child abuse from 2010 to 2021. Of the 3892 total number of cases reported in 2010, 905 cases were cruelty; in 2021 the numbers were 11,187 and 2741 respectively⁹.

FAILURE TO PROTECT HUMAN RIGHTS OF CHILDREN ATTENDING INTERNATIONAL SCHOOLS

13. The Ministry of Education Circular No 12/2016, ‘Maintaining Discipline in Schools’, is valid only for Government schools. International Schools were first established in the country during the process of the liberalization of the economy in 1978 and were registered under the Board of Investment (BOI). Over 90% of students attending these schools, in some cases 100% of students are local Sri Lankan citizens. In 2013 the BOI stopped registering schools and these education centers were registered as Businesses. Although there is a separate section in the Ministry of Education called ‘Private Schools’, **none of the International Schools are regularized by the Ministry of Education. Hence, none of the Government circulars including Circular No 12/2016 is valid for students attending International Schools.** In 2019 the Minister of Education, Akila Viraj Kariyawasam stated there were around 300 International schools with over 100,000 or more students. However, as there is no accurate monitoring process these figures are believed to be much higher¹⁰.
14. Because the students attending International Schools are not subjected to the Government regulatory processes, children are exposed to corporal punishment and other forms of abuse. The discriminatory failure to protect all children equally was exposed in a landmark case of an eleven year old Sri Lankan girl student who was subjected to corporal punishment at Gateway College, Negombo in January 2018. The Human Rights Commission of Sri Lanka (HRCSL) initially accepted the complaint from the victim filed on 28 January 2018, Case Reference No HRC/450/18 and wrote to Registrar of BOI, Officer in Charge (OIC) of Seeduwa Police and Secretary of Ministry of Education on 26 February 2018, but dropped the case on 4 April 2018, claiming that International Schools were not

⁵ “Sri Lanka National Action Plan for the Protection and Promotion of Human Rights 2011-2016”, stopchildcruelty.com <https://stopchildcruelty.com/media/doc/1554788126.pdf>

⁶ “Sri Lanka National Action Plan for the Protection and Promotion of Human Rights 2017-2021”, stopchildcruelty.com <https://stopchildcruelty.com/media/doc/1554788053.pdf>

⁷ “Maintaining Discipline in Schools”, Circular Number 12/2016, Ministry of Education, stopchildcruelty.com <https://stopchildcruelty.com/media/doc/1558933946.pdf>

⁸ “A/L student brutally beaten by teacher”, dailymirror.lk, 13 December 2021 https://www.dailymirror.lk/latest_news/AL-student-brutally-beaten-by-teacher/342-226753

⁹ “1929 National Child Care Hotline Statistics 2010-2021”, childprotection.gov.lk <https://www.childprotection.gov.lk/resource-centre/statistics-3>

¹⁰ “Setting standards for private education”, themorning.lk, 22 January 2019 <http://www.themorning.lk/pg6-2/>

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within their purview leaving the victim without any recourse. The child victim filed a FR petition at Supreme Court of Sri Lanka, Case Reference No SC (FR) 241/2018 but leave to proceed was not granted.

15. The child victim proceeded to file a case, communication submitted for consideration under the optional protocol to the International Covenant on Civil and Political Rights (ICCPR) before the UN Human Rights Committee on 18 August 2019. The communication was registered at UN Committee on 22 July 2020, Case reference No 3793/2020 and State party was due to submit its response by 21 March 2021. **This case is believed to be the world's first case filed by an eleven year old against corporal punishment at UN Committee.**

FAILURE TO RECOGNISE THE CHILD AS A RIGHTS HOLDER

16. On 26 March 2020, Sri Lankan President Gotabaya Rajapaksa granted a Presidential Pardon to Sergeant Sunil Rathnayaka, a former soldier, convicted and sentenced to death by a five-member bench of the Supreme Court for the murder of eight unarmed civilians, including four children in December 2000 in Marusavil, Jaffna. This was condemned by many Human Rights organizations globally, including Amnesty International¹¹.
17. 52% of citizens of 21 million population of Sri Lanka are women and 25% are children. In August 2020, President Rajapaksa abolished the Cabinet Level Ministry for Women and Children's Affairs downgrading it to a State Ministry Level with severe restrictions of financial and resource allocation from the National Budget. SCC with imminent professionals and rights activists appealed to the President to re-establish the Ministry on 30 August 2020. "We wish to remind that the Government of Sri Lanka is obligated as a State Party to the United Nations Convention of Women (CEDAW 1981) and United Nations Convention of Children (UNCRC 1991) to ensure these communities receive top priority with strategic services via independent State institutions and successive Governments have reported to the International Treaty Bodies monitoring implementation of Sri Lanka's commitment". The President has failed to acknowledge the appeal to date¹².
18. SCC handed over a public petition with 4167 signatures, 'Stop Corporal Punishment of Children of Sri Lanka 2020' to President Maithripala Sirisena on 19th August 2018. SCC also handed over a petition, 'Say No to Child Abuse in Sri Lanka' with 2536 signatures to President Gotabaya Rajapaksa on 5 November 2021. Another petition is currently active, 'End Violence Against Children in Sri Lanka' with 4566 signatures^{13,14,15}.
19. National Report submitted during the twenty eighth session of the working group of the UPR in November 2017, Section D, Rights of Specific Persons, Children, Section '114 – Child Protection and Justice Bill' is not concluded and Children and Young Persons Ordinance is not repealed as proposed. The 'National Partnership to End Violence Against Children (NPEVAC)' launched on 2nd June 2017 was halted almost immediately with no further action taken¹⁶.

FAILURE TO IMPLEMENT THE JUVENILE JUSTICE SYSTEM

20. On 12 February 2021, Case No SC/FR/97/2017¹⁷, the Supreme Court of Sri Lanka gave a landmark decision to ban corporal punishment of children and recommended amendments to the Penal Code Section 341(i). "A, a schoolmaster, in the reasonable exercise of his discretion as master, flogs B, one of his scholars. A does not use

¹¹ "Sri Lanka: Amid pandemic, Sri Lanka pardons soldier convicted of massacre", amnesty.org, 30 April 2020

<https://www.amnesty.org/en/documents/asa37/2247/2020/en/>

¹² "Appeal to Establish Separate Cabinet Ministry for Women and Children's Affairs", 13 August 2020, ANNEXTURE C attached

¹³ "END CORPORAL PUNISHMENT IN SCHOOLS IN SRI LANKA - VISION 2020", change.org

<https://www.change.org/p/end-corporal-punishment-in-schools-in-sri-lanka-vision-2020>

¹⁴ "Say NO to child abuse in Sri Lanka", change.org

<https://www.change.org/p/say-no-to-child-abuse-in-sri-lanka>

¹⁵ "සමහරුන්ට පාඩමක් වන පරිදි ශිෂ්‍යයන්ට දණ්ඩනයක්! END Violence Against Children in Sri Lanka!", change.org

<https://chng.it/qDyNZxH9>

¹⁶ "A/HRC/WG.6/28/LKA/1", UN General Assembly, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 - Sri Lanka, 24 August 2017, ANNEXTURE D attached

¹⁷ "Case no.SC/FR/97/2017, IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA", 12 February 2021

<https://stopchildcruelty.com/media/doc/1614055555.pdf>

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criminal force to B, because, although A intends to cause fear and annoyance to B, he does not use force illegally.” The SC endorsed the recommendations of UNCRC.

21. The UNCRC recommended further amendments to the Penal code, which were in contrary to the Convention. Penal Code Section 82 “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 expressed or implied, of the guardian or other person having lawful charge of that person, is an offense by reason of any harm which it may cause, or be known by the, doer to be likely to cause, to that person...”
22. The average time duration to conclude a case of child abuse is 7-10 years, often the child victim has forgotten the evidence or exhausted to seek justice as a grown adult. It is estimated that there are over 20,000 cases of child abuse backlogged for a decade at the Attorney General’s Department and over 40,000 cases unresolved from 2010 to 2019 at National Child Protection Authority^{18,19}.
23. On 6 October 2020, Hansard of Parliament, Section 304/2020, The Minister of Education, Prof G L Peiris was asked (i) the number of complaints received by the National Child Protection Authority in 2020 regarding cases of child abuse; (ii) out of those complaints, the number of those of which investigations have been completed; (iii) out of the number of cases of which investigations have been completed, the number of those for which prosecution has been initiated. The answers given by the Minister were (i) 6063 from 2020.01.01 to 2020.09.23; (ii) 3900 (iii) 303. The Minister confirmed that 3900 cases were concluded out of the 6063 complaints received and that this was an “unsatisfactory number” and assured that a program will be implemented regarding this. However, no further action has been initiated²⁰.

FAILURE OF THE POLICE AND PROBATION AND CHILDCARE DEPARTMENT TO PROTECT CHILDREN

24. In a landmark verdict given by the Supreme Court of Sri Lanka, Case No SC (FR) No 677/2012 on 12 June 2019, A Senior Female Police Officer, Waruni Bogahawatta of Matara Police Station was found guilty of violation of fundamental rights by unlawfully taking a child into custody and detention. The SC recommended 20 point Guidelines that ‘law enforcement authorities must adhere to. However, it is shocking to see her reinstated at Matara Police Station in her previous rank/role as OIC Women's and Children's Bureau within one year. This is a mockery of the highest level of the independent judiciary and absolute abuse of authoritative power to reinstate a corrupt police officer. It is a customary practice frequently observed in Government service.
25. On 25 May 2020 an autistic 14 year old boy from Darga Town, Kalutara was assaulted by Police, visible on video recording, was later denied by investigating officers²¹.
26. A petition was handed to President Gotabaya Rajapaksa, ‘Keep Dirty Cops Off Sri Lanka’s Child Protection Services’ with 1418 signatures on 10 June 2020 but OIC Bogahawatte continues to deal with children’s cases directly at Matara Police Station to date²².
27. Mass child abuse by officers of the Probation and Child Care Department has become malignant. The Probation Department of the Southern Province is particularly notorious for employing staff who are accused of child abuse. Probation Officer, Baragama Gamage Pradeep Anurudda was charged with assaulting three children at ‘Kanchadewa Home’, a Government home for disabled children in Southern Province in 2020. Pradeep was charged, remanded, released on bail and given “punishment transfer” to ‘Halpathota Detention Home’ in Baddegama, Southern Province to work directly with children who are in care due to family circumstances. The children are not accused of crimes. On 10 February 2022, Pradeep was charged with eight cases of grievous sexual abuse, Penal Code 365(1)/365 (2), one case of sexual assault, Penal Code 345 and one case of assault, Penal Code 314/315; victims are all boys aged under 15 years. The case numbers at Baddegama Magistrate Court are B/99/22, B/100/22, B/101/22, B/102/22, B/103/22, B/104/22, B/108/22, B/109/22, B/100/22 and B/101/22. **It is the largest mass child abuse case that has occurred in a State Institution in the history of the Probation Services/child care in Sri Lanka.**

¹⁸ “Briefing Note: Prevention of Child Abuse in Sri Lanka – Impediments & Opportunities”, srilankabrief.org, 21 November 2021

<https://srilankabrief.org/briefing-note-prevention-of-child-abuse-in-sri-lanka-impediments-opportunities/>

¹⁹ “Child protection guardian falling behind on abuse shame”, sundaytimes.lk, 6 March 2022

<http://www.sundaytimes.lk/220306/news/child-protection-guardian-falling-behind-on-abuse-shame-475421.html>

²⁰ “Parliamentary Debates (Hansard)”, 6 October 2020, ANNEXTURE E attached

²¹ “Police probing alleged assault by cops of autistic teenager in Dharga town”, economynext.com, 4 June 2020

<https://economynext.com/police-probing-alleged-assault-by-cops-of-autistic-teenager-in-dharga-town-70674>

²² “KEEP DIRTY COPS OFF SRI LANKA’S CHILD PROTECTION SERVICES”, change.org

<https://www.change.org/p/child-protection-in-sri-lanka-is-a-national-crisis>

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28. The victims of the above cases are continually harassed by the officers working at the Halpathota Home. A 15 year old victim of Case No B/101/22 who was subjected to grievous sexual abuse was prevented from attending school from 24 March 2022 to 09 May 2022, a gross violation of human rights. He is in the first year of GCSE at school.
29. On 6 July 2022, the same victim of Case No B/101/22 was transferred to a Certified School aka Young Offender's Unit for those accused of crimes via bizarre court order from Baddegama to Bandarawela, 215km away from his family, without informing legal guardians. The psycho social report conducted by National Child Protection Authority clearly indicates that the boy refused to be transferred as he feels mentally stable in familiar environment and loves attending school. The victim has no choice to attend mainstream education in a Certified School as per the probation department protocol and is being forced to attend a skill development centre on site, which he vehemently refuses. SCC complaint to National Child Protection Authority on 06 July 2022, Complaint Reference No CC/22/07/107 but he remains in Bandarawela.
30. On 26 May 2022, Indika Varusavithana, a staff member of Halpathota Home assaulted the victim of Case No B104/22 a 14 year old boy. Indika was charged on Penal Code 314/316, assault, Baddegama Magistrate Case No B441/22 and received "punishment transfer" to 'Suraliya Home' in Southern Province to work directly with vulnerable women with special needs who are above age 12 years, putting them at great risk.

RECOMMENDATIONS

In light of the aforementioned, SCC suggests the following recommendations be made to Sri Lanka:

- a) Establish a Presidential Task Force for child protection immediately and include child protection in the heart of the national security agenda.
- b) Implement the National Human Rights Action plan effectively, especially to prevent child abuse and end corporal punishment.
- c) Implement the Supreme Court directive of Case No SC/FR/97/2017 immediately and ensure effective implementation of Circular 12/2016 to unequivocally ban corporal punishment in schools.
- d) Regularize International Schools by Ministry of Education ensuring the welfare of all children equally honoring the global principle of 'in the best interest of the child'.
- e) Authorize Human Rights Commission of Sri Lanka to ensure the protection and promotion of rights of all children irrespective of whether they receive Government or Private education.
- f) Make the National Child protection Authority an Independent institution as per the Parliamentary Act No 50 of 1998 and recommendations of UNCRC.
- g) Expedite the implementation of the National Child Protection Policy without following the original five year plan.
- h) Expedite the conclusion of child abuse cases within two years at Attorney General Department and improve direct communication between National Child Protection Authority and Sri Lanka Police.
- i) Re-establish the Cabinet Level Ministry of Women's and Children Affairs immediately and improve funding and resources for prevention and awareness activities.
- j) Implement the National Plan to End Violence Against Children (NPEVAC) immediately.
- k) Expedite the establishment of Juvenile Courts and effective law enforcement.

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