

# UNIVERSAL PERIODIC REVIEW OF SRI LANKA

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Contribution prepared by:



**Protecting Environment and Children Everywhere  
(PEaCE/ECPAT Sri Lanka)**

**in collaboration with ECPAT International**



## **PEaCE/ECPAT Sri Lanka**

Protecting Environment and Children Everywhere (PEaCE) began operating as the local group of the ECPAT network in 1991 to end child prostitution in Asian tourism. It was the first national organisation aiming to combat child sex tourism (CST) in Sri Lanka. PEaCE is the only organisation in Sri Lanka focusing solely on the commercial sexual exploitation of children (CSEC). PEaCE works to create awareness on CST and offers training for the Sri Lankan audiences, taught in collaboration with international experts, but grounded in local, national, regional, and international experiences. The awareness programme is the foundational principle of PEaCE's activities. It extends from urban areas to inland villages and brings out local situations and helps to locate cases of abuse. Most of the court cases PEaCE assists in originate from the localities where awareness programmes were conducted. The victims of CSEC are not capable of fighting cases without legal aid. PEaCe also provides counselling and other forms of support to child victims. PEaCE assists the Counselling/Education Program for mothers, which serves as a community response to problems in the most vulnerable areas.

Website: [www.ecpatsrilanka.org](http://www.ecpatsrilanka.org)

**ECPAT International** (End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes) is the leading global network working to end the commercial sexual exploitation of children (child prostitution, child pornography and child trafficking and child sex tourism). It represents 82 member organizations from 75 countries. ECPAT International holds Consultative status with ECOSOC.

Website: [www.ecpat.net](http://www.ecpat.net)

## **Executive Summary**

This contribution aims to provide a review of the status of implementation of international obligations and commitments regarding the commercial sexual exploitation of children (CSEC) in Sri Lanka during the four year period between 2008 and 2011. Internationally, the country has ratified essential legal standards regarding CSEC, with the exception of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, the UN Convention against Transnational Organized Crime and the ILO Minimum Age Convention. Therefore, it is highly recommended that the country ratify these major international legal treaties. At the national level, Sri Lankan legislation on CSEC has not been improved upon since 2006. Even though certain amendments to the Penal Code were made in 2006, many provisions remain out of date, leading to insufficient punishment and regulation. Definitions of child trafficking, child prostitution and child pornography also need to be better clarified and brought in line with international legal standards.

In terms of policy framework, Sri Lanka has several National Plans of Action (NPA) in place contributing to preventing and combating the commercial sexual exploitation of children. However, comprehensive and effective implementation of these NPAs has not taken place thus far.

The following findings are drawn from relevant literature from international experts including the Committee on the Rights of the Child and key players in the field of children's rights, including ECPAT International, UNICEF and the international NGO Terre des Hommes.

### **I. Current normative and institutional framework for the promotion and protection of human rights**

#### **1.1 Legal Framework**

##### **1.1.1 International Legal Standards**

Sri Lanka ratified the *Convention on the Rights of the Child* (CRC 1989) in 1991, the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OPSC, 2000) in 2006, the *ILO Convention on the Worst Forms of Child Labour* (No. 182, 1999) in 2001. It signed the *UN Convention against Transnational organized Crime* in 2000 and the *ILO Minimum Age Convention* (1973) but has not yet ratified either of them.

Sri Lanka has also signed but not yet ratified the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (2000).

#### **Recommendation:**

- To urgently ratify the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*;
- To submit the initial report under the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography;

##### **1.1.2 Regional Legal Standards**

Sri Lanka ratified the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in 2002. It also ratified the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia in 2002.

### 1.1.3 Domestic Legal Framework

There is no specific child protection legislation in Sri Lanka. The provisions of the Sri Lankan *Penal Code* and other laws relating to children are relatively comprehensive and cover many forms of violence against children. Several amendments have been made to the existing laws to bring them in conformity with principles and provisions of the Convention on the Rights of the Child (CRC) but overall enjoyment of child rights is negatively affected by the continuing application of emergency regulations, national laws and personal laws (Kandayan or Muslim law) and various national laws addressing different issues relating to children.

The inconsistencies in domestic law lead to a lack of uniformity with respect to legal definition of the child in terms of age and such disparities have resulted in weak law enforcement, specifically in cases involving children between the age of 16 to 18.<sup>1</sup> Legal inconsistencies concerning the definition of child in various areas including marriage, child labour and penal code provisions on sexual abuse need to be addressed through legal reform aiming to bring the law in line with relevant international standards.

The Penal Code does not have a definition of sexual exploitation and lacks provisions to punish clients who have sex with children.

The *National Child Protection Authority Act of 1998 (NCPA)* provides a broad definition of 'child abuse'. This definition is a composite term used to describe any and all forms of violence against children, including CSEC. The NCPA Act and the Penal Code do not make any distinction between the terms – child abuse and/or commercial sexual exploitation of a child. The Penal Code defines 'grave sexual abuse' which basically covers all forms of abuse which not amounting to rape, including psychological and mental trauma.

#### 1.1.3.1 General Principles

*Non – discrimination* is not fully respected. Besides caste discrimination, other types of discrimination still exist, particularly against children belonging to the Veddha, Muslim and Tamil communities. Discrimination also persists against girls, rural children, refugee and internally displaced children, children of overseas workers, children in institutional care, and children with disabilities.<sup>2</sup>

*Best interest of the child* has not been consistently applied in legislative, administrative or judicial proceedings, nor in policies and programmes relating to children.<sup>3</sup>

*Right of the child to be heard* (article 12) is still absent from the majority of legislation concerning children and is not applied in legislative, administrative, or judicial proceedings or in family, school and community<sup>4</sup>.

#### 1.1.3.2 Laws regarding Child Pornography

Since 2008, there very little significant improvement in Sri Lankan law related to child pornography. Even though the law (Sections 285, 286, 286A and 286B of the Penal Code) criminalises the production, distribution and possession of pornographic materials, it does not

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<sup>1</sup> ECPAT International, "Global Monitoring Report status of action against commercial sexual exploitation of children – Sri Lanka", forthcoming version 2012

<sup>2</sup> CRC, Concluding Observations: Sri Lanka, Fifty – Fifth Session, 1 September – 13 October 2010

<sup>3</sup> Ibid, 2010

<sup>4</sup> Ibid, 2010

define what constitutes child pornography and does not cover conduct related to child pornography, notably, the production, dissemination and mere possession of child pornography. The law only protects children from being used for the production of obscene or indecent photograph or film. The meaning of the terms “obscene” or “indecent” is unclear and is open to subjective interpretations.

This is a major legal gap that should be addressed by the harmonisation of existing law with relevant provisions of the Optional Protocol on the sale of children, child prostitution and child pornography.

In addition, in 2008 the Government of Sri Lanka introduced the Computer Crime Act addressing all kinds of ‘computer crimes’ or criminal activity resulting from use of internet. Unfortunately, there was no provision included in the Act which referenced crimes committed against children through the use of the Internet.<sup>5</sup> The Cyber Watch programme aimed at monitoring the Internet for child pornography and child sex tourism related crimes was discontinued and the Cyber Crimes Unit closed due to lack of funding.

### **1.1.3.3 Laws regarding Child Trafficking**

Recent amendments to the Penal Code have provided for a more protective legal framework against child trafficking for sexual purposes. The current law is consistent with relevant international standards. The law prohibits trafficking in children for prostitution or any form of sexual exploitation by protecting both boys and girls from internal and external trafficking. Under Section 360(c) of the Penal Code, it is illegal to recruit, transport, transfer, harbour or receive a child, regardless of the child’s consent, for purposes of prostitution or other forms of sexual exploitation. Punishment for cases where the victim is found to be a child can extend from three years up to 20 years of imprisonment with a fine. Furthermore, the wording of the provision keeps the interpretation broad and open-ended by using the phrase ‘any other acts’ when describing the exploitative phase of trafficking in persons. This broad interpretation makes it possible for the law to address a wide range of mechanisms of recruitment of children for sexual exploitation.

However, Sri Lanka has still not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and current legislation provides very low penalties for trafficking in children. Moreover, the enforcement of the law remains weak as investigations into cases of human trafficking are rarely followed by prosecutions or convictions and efforts to prevent trafficking and to protect victims of trafficking have been limited.

### **1.1.3.4 Laws regarding Child Prostitution**

As pointed out in the Committee on the Rights of the Child’s concluding observations in October 2010, Sri Lankan legislation is inadequate to protect children from sexual exploitation children without a definition of ‘child prostitution’.<sup>6</sup> The existing *Vagrants Ordinance* applies only to girls under 16 years, leaving children (boys and girls) under 16 years, without legal protection. The law lacks provisions to punish individuals who have sex

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<sup>5</sup> ECPAT International, “Global Monitoring Report status of action against commercial sexual exploitation of children – Sri Lanka”, forthcoming version 2012

<sup>6</sup> Committee on the Rights of the Child, “Concluding Observations: Sri Lanka”, fifty-fifth session, 13 September – 1 October 2010.

with children<sup>7</sup>. It has to be highlighted that certain provisions may be used to criminalise child victims of prostitution. For instance, the *Vagrant Ordinance (1941)* is currently used by Sri Lankan law enforcement agencies and authorities to arrest children under Section 3 for being “common prostitutes found wandering in the streets and behaving in a riotous or indecent manner.”<sup>8</sup> The *Brothels Ordinance* - addresses crimes related to prostitution but provisions are not sufficiently detailed to address child prostitution.

#### 1.1.3.5 Laws regarding Child Sex Tourism

Sri Lanka remains a common destination for child sex tourism with a high number of boys being sexually abused and exploited by foreign nationals.

The Penal Code provisions extend to the prosecution of foreign nationals for committing crimes related to sexual exploitation of children in Sri Lanka. Therefore, if foreign tourists sexually abuse a child in Sri Lanka, they can be tried in Sri Lanka and can be extradited to be tried in Sri Lanka under the provisions of the Extradition Law of 1977 or the Mutual Assistance in Criminal Matters Act of 2002.<sup>9</sup> If alleged child sex offenders escape prosecution in Sri Lanka, they can be prosecuted and convicted in their home country, where the home country has extended extraterritorial jurisdiction for prosecuting their citizens for committing sexual offences against children in foreign countries.

The Extradition law of Sri Lanka (No. 8 of 1977, as amended by the Act 48 of 1999) has not been further amended so as to reflect the amended version of the Penal Code on commercial sexual exploitation of children and trafficking. The double criminality principle (an alleged crime should be considered an offense both in Sri Lanka and in the foreign country) is not required as long as there is willingness to bring the victims to justice<sup>10</sup>.

The extradition law allows for the prosecution of those who conspire to commit an offence within or outside Sri Lanka, or incite someone else to commit the offence. The Schedule to the Extradition Laws describes extraditable offences including carnal intercourse with a female between 12 and 14 years, unnatural offences, procuring a girl or woman to become a common prostitute but does not include offences relating to pornography and trafficking in children.<sup>11</sup>

Sri Lanka passed amendments in 2006 that punish Sri Lankan nationals for violations of the Penal Code outside Sri Lanka (extraterritorial legislation). The amendment stated that crimes committed wholly or partly within the country or its territorial waters and air space could be prosecuted. It also includes crimes committed on board any ship or air craft registered in Sri Lanka. The amendments make it possible to prosecute a Sri Lankan national for crimes against children committed outside the territorial borders of Sri Lanka.

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<sup>7</sup> ECPAT International, “Global Monitoring Report status of action against commercial sexual exploitation of children – Sri Lanka”, forthcoming version 2012.

<sup>8</sup> Frederick, John, “Innocenti Working Paper on Sexual Abuse and Exploitation of Boys in South Asia – A review of research findings, legislation, policy and programme responses”, No. 2010 – 02, 2009, UNICEF Innocenti Research Centre.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

### 1.1.3.6 Laws regarding Forced or early marriage

Personal laws in Sri Lanka lack specific minimum age requirements. For example, Muslim personal laws allow girls to be married before the age of 12. Sri Lanka has the *Marriage Registration (Amendment) Act* which establishes the minimum age of marriage at 18 years. However, a subsequent amendment to this law has created some confusion in interpretation as to whether a person below 18 years could marry with the consent of his or her parents.

#### Recommendations on the legal framework:

- To ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- To revise current legislation in order to provide clear and comprehensive definitions of child trafficking, child prostitution and child pornography (consistent with relevant international legal standards) as well as adequate penalties for those offenses;
- To revise the law addressing child pornography and ensure that mere possession of child pornography is criminalised;
- To enforce the provisions of the Penal Code criminalising child trafficking and prosecute and convict traffickers;
- To ensure that revised provisions uniformly protect boys and girls under 18 years;
- To ensure that children forced into prostitution can never be prosecuted;
- To ensure implementation of existing child-friendly provisions;
- To adopt legal provisions prohibiting early and forced marriages and raise the minimum legal age for marriage to 18 years for both boys and girls;<sup>12</sup>
- To urgently strengthen and enforce legislation addressing the commercial sexual exploitation of children in travel and tourism.

## II. Promotion and protection of Human Rights on the ground: implementation of international human rights standards

Sri Lanka has several national plans in place contributing to the overall well-being of children. It has national plans addressing CSEC. However, comprehensive and effective implementation of these NPAs has not taken place thus far.

### 2.1 Key areas of concern with regard to the implementation of the children's right to protection against commercial sexual exploitation on the ground

#### 2.1.1 Lack of prioritization of child rights issues, particularly CSEC

Child issues, in theory, should be a top priority on the government's agenda. However, in reality, there exists insufficient public concern regarding children's issues. This is evident from inadequate coordination among public authorities and institutions working on and for children with lack of adequate funding for their operation and staff training programmes.<sup>13</sup>

Due to the lack of prioritization, there is underestimated public budget allocation on children's issues, especially on CSEC.

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<sup>12</sup> Committee on the Rights of the Child, "Concluding Observations: Sri Lanka", fifty-fifth session, 13 September – 1 October 2010.

<sup>13</sup> Ibid.

**Recommendation:**

- To improve financial sources to programmes, policies and institutions working on and for children.

**2.1.2 Inadequate support to child victims of CSEC**

The provision of support to child victims of CSEC is insufficient. In particular, there are few shelters established for child victims of sexual abuse and exploitation. There is also imbalanced concern paid to boy and girl victims of CSEC. Trained professionals are urgently required to meet the recovery and rehabilitation and social reintegration needs of children victims of sexual abuse and exploitation.

**Recommendations:**

- To apply a child-sensitive and multi-sectoral approach to provide essential social services to child victims of CSEC;
- To further implement appropriate policies and programmes for prevention, recovery and social reintegration of child victims;
- To ensure that all boys and girls below 18 years victims of CSEC are duly protected and supported and can no longer be prosecuted;
- To provide adequate training for staff working on and with children to support CSEC victims in recovery, rehabilitation and reintegration.

**2.1.3 Lack of necessary technical training on Child sex tourism**

The Police lack the necessary technical expertise to combat child sex tourism. More training is necessary for the Police on investigative and computer evidence gathering techniques to identify child sex tourists and chat room paedophiles and ensure that perpetrators of child sex tourism are prosecuted and convicted.

**Recommendation:**

- To organize training for police on investigation and computer evidence gathering techniques to identify child sex tourists and chat room child sex offenders.

**2.1.4 Lack of coordination with related stakeholders in implementing the National Plan of Action on CSEC**

It has been observed that there is limited participation of local NGOs, social services, religious and community groups, and other stakeholders working in the field of child protection. Moreover, there is lack of coordination between multiple agencies tasked with implementation and monitoring such as the National Committee on Child Rights (NCCR), National Monitoring Committee (NMC) and the National Child Protection Authority (NCPA). Inadequate coordination persists between the national, provincial and district authorities tasked with implementation.<sup>14</sup>

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<sup>14</sup> Committee on the Rights of the Child, "Concluding Observations: Sri Lanka", fifty-fifth session, 13 September – 1 October 2010.

**Recommendations:**

- To underline the crucial role of Civil Society Organizations in providing assistance in policy implementation and law enforcement<sup>15</sup>;
- To set up horizontal and vertical mechanisms to ensure the flow of information and coordination of activities among public institutions;
- To clarify the mandate and duty of each child-concerned-authority so as to prevent an overlap in responsibilities.

**2.1.5 Absence of data collection, limited research and monitoring on CSEC cases**

There is no comprehensive data available on child sexual exploitation and abuse and no central body to monitor the investigation and prosecution of child sexual exploitation of children. In addition, research conducted in the area of CSEC has been very limited, making it very difficult to have a comparative understanding of the magnitude of the problem. Moreover, most child prostitution related research conducted in Sri Lanka focuses on boys and little information regarding girls is available.

Investigations into cases of human trafficking are rarely followed by prosecutions or convictions. Studies on the CSEC and CST have focused primarily on boys as victims and the 'destination' end of the situation.<sup>16</sup> The 'source' side of the situation – that is, in the families and communities from which the exploited children originate is a lesser explored area of research and documentation.<sup>17</sup>

**Recommendation:**

- To establish a consistent and comprehensive data collection system at all levels and sectors;
- To invest more in research and studies on CSEC, with more information on the prostitution of girls;
- To improve the efficiency of investigations regarding CSEC cases; strengthening the skills and competencies of the officials in relevant sectors.

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<sup>15</sup> Committee on the Rights of the Child, "Concluding Observations: Sri Lanka", fifty-fifth session, 13 September – 1 October 2010.

<sup>16</sup> Terre des Hommes, Sri Lanka Report : The sexual abuse, commercial sexual exploitation and trafficking of children in Sri Lanka, 2008.

<sup>17</sup> Ibid.