



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### **Report submitted by Sri Lanka under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, due in 2008\***

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\* The present document is being issued without formal editing.



## I. Introduction

1. The Government of Sri Lanka takes this opportunity to report to the Committee on the Rights of the Child on measures taken to implement the Optional Protocol II (OP II) to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography (the “Protocol”), in accordance with Article 12 thereof. This initial report follows the General Guidelines of the Committee on the Rights of the Child regarding the form and content of initial reports to be submitted by States Parties (CRC/OPSA/1, 4 April 2002).

2. Issues pertaining to child sexual exploitation, child prostitution and child pornography are critical, with increasing access to information and communication technologies which have brought with them the concern that children will be exposed to harm through these platforms. As there is little data on the prevalence, drivers or trends of violence against children linked to information technology, there is a distinct need for better evidence and analysis. Different social requirements such as economic difficulties, education of parents, exposure to economic activities, in particular the tourism industry, fisheries, plantation sectors, etc. appear to have driven children into such commercial activities. As mentioned above, up-to date data and disaggregated data on these forms of violence against children are not available nationally, except in the database maintained by the National Child Protection Authority (NCPA) in relation to the “childline” complaints. However, different studies conducted by scholars, incidents reported in the media, and complaints received by certain agencies reveal that children have sometimes become victims of child sexual exploitation and pornography.

3. Sri Lanka is in the process of aligning its national strategies to combat these forms of violence against children by strengthening the local framework and implementing its international commitments in this regard. The National Plan of Action on Children (2016–2020), launched by the Ministry of Women and Child Affairs, contain provisions and activities to protect children from all forms of sexual exploitation in relation to trafficking, sale, and commercial sex networks, and to respond to the needs of such children for counseling, therapy, and rehabilitation. The National Plan of Action and Policy Framework on Sexual Gender Base Violence (2016–2020), developed by the Ministry of Women and Child Affairs also addresses issues related to child exploitation and pornography. Remedies for the prevalence of child sexual exploitation and child trafficking, as well as minimizing the negative impact of using internet, cyber platforms, social media and electronic devices, are among the strategic areas identified in the segment relating to children in the said Plan of Action. In addition, other action plans implemented by different ministries/institutions such as the Ministry of Labour, National Child Protection Authority (NCPA), Department of Probation and Child Care Services, Sri Lanka Computer Emergency Regulation Team (SLCERT), comprise the preventive mechanism in this regard.

4. It may also be noted that Sri Lanka is a party to the United Nations Convention Against Transnational Organized Crime, and more recently, also became a party to the Palermo Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.

5. In addition, Sri Lanka has ratified/acceded to and is implementing a number of ILO Conventions including the Minimum Age Convention, 1973 (C138), Worst Forms of Child Labour Convention, 1999 (C182), which are relevant in the effective implementation of the Optional Protocol.

6. It is noteworthy that Sri Lanka’s domestic legal framework contained a number of legislation/regulations aimed at sale of children, child protection and child pornography, even prior to the GoSL becoming a party to Optional Protocol II. These include the Penal Code Ordinance No 2 of 1883 and substantive amendments thereto, the Obscene Publications Ordinance No 27 of 1927, Children and Young Person’s Harmful Publication Act No.48 of 1956, Children and Young Person Ordinance No. 48 of 1939 and Employment Of Women, Young Persons, And Children Act (No. 47 of 1956).

7. At the regional level, Sri Lanka is committed to implementing the SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution (2002) which seeks to promote cooperation amongst member States in dealing with various aspects of prevention and suppression of trafficking in women and children; repatriation and rehabilitation of victims of trafficking, and preventing the use of women and children in international prostitution networks, particularly where the SAARC member countries are the countries of origin, transit and destination.

8. Moreover, Sri Lanka is a member country to the South Asia End Violence Against Children (SAIEVAC) and is committed to work on its regionally prioritized issues, especially in relation to child sexual exploitation, child labour and trafficking. The GoSL has hosted expert group meetings on drafting regional plans of action on child labour and on sexual exploitation and online safety. One such expert group meeting on drafting a regional action plan on sexual exploitation and online safety was held in Sri Lanka in August 2017.

9. Sri Lanka has been recognized by the UN as a path finder country to the Global partnership to End Violence against Children. The Ministry of Women and Child Affairs oversees the national implementation of strategies of the global partnership concept, and a National Secretariat has been established at the Ministry of Women and Child Affairs in collaboration with the UNICEF Sri Lanka, and other leading International Non-Government Organizations (INGOs), and Non-Government Organizations (NGOs). Sri Lanka's decision to join the Global Partnership to End Violence against Children as a path finder country has reaffirmed the country's commitment to accelerating action towards preventing and responding to violence against children. It is noted that approaches to prevention of sexual and gender based violence and online safety will be covered under the strategic plan that is to be implemented under this initiative.

## **II. Information on measures and developments relating to the implementation of the protocol**

10. Article 1 provides that "States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol." Article 2 defines "sale of children," "child prostitution" and "child pornography".

11. Sufficient legal provisions to combat sale of children and child prostitution are available in the domestic law, including in the Penal Code of 1883 and its amendments which prohibit the sale and trafficking of children and child prostitution. With regard to child pornography, there are several legal provisions in the Obscene Publications Ordinance No. 27 of 1927 and its Amendments, the Penal Code Amendment No.16 of 2006 and Children and Young Persons (Harmful Publications) Act No. 48 of 1956 which prohibit the use of communications equipment and technology for the purpose of sexual abuse of children, including strict penalties for the commission of such offences including imprisonment and of fines.

12. The legal enactments cited above, despite not using the same terminology as the Optional Protocol, conform to the definitions provided in the Optional Protocol. It is GoSL's understanding that that the term 'sale of children' as defined in Article 2(a) of the Protocol means any transactions in which remuneration or other consideration is given and received under circumstances in which a person who does not have a lawful right to custody of the child thereby obtains de facto authority over the child. This situation is covered by section (360C) of Penal Code under trafficking, which reads as follows:

"(1) Whoever:

(a) buys, sells or barter or instigates another person to buy, sell or barter any person or does anything to promote, facilitate or induce the buying, selling or bartering of any person for money or other consideration;

(b) recruits, transports, transfers, harbours or receives any person or does any other act by the use of threat, force, fraud, deception or inducement or by exploiting the vulnerability of another for the purpose of securing forced or

compulsory labour or services, slavery, servitude, the removal of organs, prostitution or other forms of sexual exploitation or any other act which constitutes an offence under any law;

(c) recruits, transports, transfers, harbours or receives a child or does any other act whether with or without the consent of such child for the purpose of securing forced or compulsory labour or services, slavery, servitude or the removal of organs, prostitution or other forms of sexual exploitation, or any other act which constitutes an offence under any law, shall be guilty of the offence of trafficking”.

13. The above provision further stipulates that “any person who is guilty of the offence of trafficking shall on conviction be punished with imprisonment of either description for a term not less than two years and not exceeding twenty years and may also be punished with fine and where such offence is committed in respect of a child, be punished with imprisonment of either description for a term not less than three years and not exceeding twenty years and may also be punished with a fine.

14. As required by the Optional Protocol, child prostitution/sexual exploitation has been made an offence in Sri Lanka through the amendment to the Penal Code in 1995 which introduced Section 360 A which defines sexual exploitation of children by procurement as follows:

“Whoever:

(1) procures, or attempts to procure, any person whether male or female of whatever age (whether with or without the consent of such person) to become, within or outside Sri Lanka, a prostitute;

(2) procures, or attempts to procure, any person, under sixteen years of age, to leave Sri Lanka (whether with or without the consent of such person) with a view to illicit sexual intercourse with any person outside Sri Lanka, or removes, or attempts to remove, from Sri Lanka any such person (whether with or without the consent of such person) for the said purpose;

(3) procures, or attempts to procure, any person of whatever age, to leave Sri Lanka (whether with or without the consent of such person) with intent that such person may become the inmate of, or frequent, a brothel elsewhere, or from Sri Lanka any such person (whether with or without the consent of such person) for the said purpose;

(4) brings, or attempts to bring, into Sri Lanka any person under sixteen years of age with a view to illicit sexual intercourse with any other person, in Sri Lanka or outside Sri Lanka;

(5) procures, or attempts to procure, any person of whatever age (whether with or without the consent of such person) to leave such person's usual place of abode in Sri Lanka with a view to illicit sexual intercourse within or outside Sri Lanka; [29 of 1998];

(6) detains any person without the consent of such person in any premises with a view to illicit sexual intercourse or sexual abuse of such person, [29 of 1998] commits the offence of procuration and shall on conviction be punished with imprisonment of either description for a term of not less than two years and not exceeding ten years and may also be punished with a fine”.

Thus, Section 360B of Penal Code amendment 1995 further clarify that:

“(1) Whoever:

(a) knowingly permits any child to remain in any premises, for the purposes of causing such child to be sexually abused or to participate in any form of sexual activity or in any obscene or indecent exhibition or show;

(b) acts as a procurer of a child for the purposes of sexual intercourse or for any form of sexual abuse;

(c) induces a person to be a client of a child for sexual intercourse or for any form of sexual abuse, by means of print or other media, oral advertisements or other similar means;

(d) takes advantage, of his influence over, or his relationship to, a child, to procure such child for sexual intercourse or any form of sexual abuse;

(e) threatens, or uses violence towards, a child to procure such child for sexual intercourse or any form of sexual abuse;

(f) gives monetary consideration, goods or other benefits to a child or his parents with intent to procure such child for sexual intercourse or any form of sexual abuse, commits the offence of sexual exploitation of children and shall on conviction be punished with imprisonment of either description for a term not less than five years and not exceeding twenty years and may also be punished with a fine”.

15. This prohibition on sexual exploitation has been further strengthened by the Children and Young Person Ordinance no 48 of 1939 which prohibits the keeping of any child at a place where prostitution takes place.

16. Article 2(c) of the Convention defines child pornography as any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. In this regard, it may be noted that Section 286 A on Obscene publication, exhibition relating to children [of Penal Code Amendment No. 22 of 1995] has made clear provision as follows:

“(1) Any person who:

(a) hires, employs, assists, persuades, uses, induces or coerces, any child to appear or perform, in any obscene or indecent exhibition or show or to pose or model for, or to appear in, any obscene or indecent photograph or film or who sells or distributes, or otherwise publishes, or has in his possession, any such photograph or film; or

(b) being the parent, guardian or person having the custody of, a child, causes or allows such child to be employed, or to participate, in any obscene or indecent exhibition or show or to pose or model for, or to appear in, any such photograph or film as is referred to in paragraph (a);

(c)

(i) takes, or assists in taking of any indecent photograph of a child; or;

(ii) distributes or shows any such photograph or any publication containing such photograph;

(iii) has in his possession for distribution or showing, any such photograph or publication;

(iv) publishes or causes to be published, any such photograph or publishes or causes to be published, any advertisement capable of conveying the message that the advertiser or person named in the advertisement distributes or shows any such photograph or publication or intends to do so,

commits the offence of obscene publication and exhibition relating to children and shall on conviction be punished with imprisonment of either description for a term not less than two years and not exceeding ten years and may also be punished with A fine”.

17. Further, Section 286 B of Penal Code Act (16 of 2006) has specifically addressed the situations where computer facilities are used for the commission of an act constituting an offence relating to the sexual abuse of a child in the following manner:

1. A person who provides a service by means of a computer shall take all such steps as are necessary to ensure that such computer facility is not use for the commission of an act constituting an offence relating to the sexual abuse of a child;

2. A person referred to in sub-section (1) who has knowledge of any such computer facility referred to in sub-section (1) being used for the commission of an act constituting an offence relating to the sexual abuse of a child, shall forthwith inform the officer in charge of the nearest police station of such fact and give such information as may be in his possession with regard to such act and the identity of the alleged offender;

3. person who contravenes the provisions of sub-sections (1) and (2) shall be guilty of an offence and shall on conviction be liable to imprisonment of either description for a term not exceeding two years or to a fine or to both such imprisonment and fine.

18. Moreover, provisions for offences related to pornography are also available in the Section 2 of Act No. 22 of 1983 which introduced amendments to the Obscene Publications 4 of 1927. The relevant provisions in the Amendment read as follows:

“It shall be an offence against this Ordinance punishable on conviction by a Magistrate,

1. for the first offence, with a fine not exceeding two thousand five hundred rupees or imprisonment of either description for a term not exceeding six months, or with both such fine and imprisonment; and [5, 12 of 2005;

2. for a subsequent offence committed after a conviction for the first offence, with imprisonment of either description for a term not exceeding six months and in addition with a fine not exceeding five thousand rupees, to do any of the following acts namely:

(a) for purposes of or by way of trade or for distribution or public exhibition to make or produce or have in possession for purposes stated or otherwise, obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films, video cassettes or any other obscene objects;

(b) for the purposes above mentioned to import, convey, or export or cause to be imported, conveyed, or exported any of the said obscene matters or things, or in any manner whatsoever to put them in to circulation;

(c) to carry on or take part in a business, whether public or private, concerned with any of the said obscene matters or things, or to deal in the said matters or things in any manner whatsoever, or to distributes them or to exhibits them publicly or to make a business of lending them; (d) to advertise or make known by any means whatsoever, in view of assisting in the said punishable circulation or traffic, that a person is engaged in any of the above punishable acts, or to advertise or to make known how or from whom the said obscene mailers or things can be procured either directly or indirectly”.

19. It may also be noted that the Computer Crimes Act No 24 of 2007 supplements the implementation of the publications on child pornography, contained in the laws set out above.

20. Article 3(1) provides that States Parties shall ensure that the following acts are covered under their criminal or penal law and punishable by appropriate penalties, taking into account the grave nature of such offenses:

- in the context of sale of children, the offering, delivering, or accepting by whatever means a child for the purpose of sexual exploitation of the child, transfer of organs for profit, or engagement of the child in forced labor (Article 3(1)(a)(i));
- in the context of sale of children, “improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international instruments on adoption” (Article 3(1)(a)(ii));
- offering, obtaining, procuring or providing a child for child prostitution (Article
- 3(1)(b)); and

- producing, distributing, disseminating, importing, exporting, offering, selling, or possessing for these purposes child pornography (Article 3(1)(c)).

21. With regard to the above Article, the State Party shall ensure that said acts are fully covered under its criminal or penal law including the adoption of a child which should be done in conformity with applicable international legal instruments specifically the Hague Convention concluded on May 29th 1993.

22. It is also important to stress that for the first time in the criminal jurisprudence of Sri Lanka, the phrase “Child Abuse” has been introduced and defined by the amendment Act No. 28 of 1998 brought to the Code of Criminal Procedure [Act No.15 of 1979] Section 2 of the amendment states that:

“**Child Abuse**” means an offence under section 286 A,288,288A,288B,308A,360 A,360 B,360 C,363,364 A,365,365A or 365 B “of the Penal Code when committed in relation to a child.

**Article 3(l)(a)(i)a — Sexual Exploitation:** the requirement to criminalize child abuse in terms of sexual exploitation has been fulfilled in the existing domestic law including the Penal Code and the Code of Criminal Procedure Act. Section 360 B of Penal Code Amendment Act No 22 of 1995, cited above, states that if any person knowingly permits any child to remain in any premises for the purpose of causing such child to be sexually abused commits an offence, is punishable by imprisonment of either description for a term not less than 5 years and not exceeding 20 years and also a fine.

23. Article 3(l) (a) (i) b — **Transfer of Organs of the Child for Profit:** it is the understanding of the GoSL that this article covers situations where (1) the sale of a child has occurred and (2) the organs of that child have been subsequently extracted and sold for a profit.

The current Sri Lankan law contains comprehensive protections against trafficking in the organs of a child. Section 360 (c) of Penal Code amendment Act no 22 of 1995 states that recruiting, transporting, transferring, harbouring or receiving a child or does any other act whether with or without the consent of such child for the purpose of securing forced or compulsory labour or services, slavery, servitude or the removal of organs, prostitution or other forms of sexual exploitation, or any other act which constitutes an offence under any law, shall be guilty of the offence of trafficking. The situation cited in the above has also been criminalized under Amendment Act No 28 of 1998 brought to the Code of Criminal Procedure Act No.15 of 1979.

24. **Article 3(l) (a) (i) c — Engagement of the Child in Forced Labor:** The GoSL has enacted criminal laws to protect children from sexual exploitation by adults. For example, child sexual abuse and statutory rape have been defined as offences in the Penal Code. Moreover, as set out in detail in the analysis under Articles 3(1) (b) and 3(1) (c), the law prohibits the exploitation of children for purposes of prostitution and pornography. Additionally, it prohibits trafficking in children for sexual purposes.

Paragraph (a),(b),(c) and (d) of Section 358 of Penal Code Amendment No 16 of 2006, stresses that any person who subjects or causes any person to be subjected to debt bondage or serfdom, force or compulsory labour, slavery; or engages or recruits a child for use in armed conflict, shall be guilty of an offence. The sub section 2 provides the general penalty for the above offence as imprisonment of either description for a term not exceeding twenty years and a fine. However, this penalty has been made more stringent in the situation where the offence is committed in relation to a child i.e. imprisonment of either description for a term not exceeding thirty years and to a fine.

25. Child labour is strictly prohibited in Sri Lanka. Particularly, Sri Lanka has ratified the International Labour Organisation (ILO) Convention on Minimum Age to Employment, 1973 (No C138) and the Convention on Worst Forms of Child Labour, 1999 (No.C182). As the national strategy for combating worst forms of child labour, the Ministry of Labour Relations and Productivity Promotion of the Government of Sri Lanka has developed a

2016 Road Map on the worst forms of child labour- From Commitment to Action. The primary objective of the Road Map is to prevent and eliminate all forms of child labour, as per the Convention on Minimum Age to Employment, 1973 (No. 138). The principal targets set out in the Roadmap are to identify immediate action required to end worst forms of child labour, which are defined in the ILO Convention on the Worst Forms of Child Labour, 1999 (No. 182) as:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and
- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

26. In 2010, the GoSL approved the Hazardous Occupation Regulations by way of Gazette Notification No 1667/41 of 2010.08.20 under the Employment of Women, Young Persons and Children Act No.47 of 1956, which added a new section, 20 A, prohibiting the employment of children in hazardous occupations and identifying 51 hazardous forms of child labour. In addition, the new policy on education declared in 2016 raised the age of compulsory education to 16 years. A National Policy on Elimination of Child Labour in Sri Lanka was approved by the Cabinet on 13th December 2016, and was submitted to the relevant institutions for implementation.

**Article 3(l) (a) (ii) — Improperly inducing consent as an intermediary for adoption in violation of applicable international legal instruments on adoption**

27. The GoSL understands that the commitment contained in Article 3(l)(a)(ii) to criminalize “improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption” is in connection with the “Hague Convention” to which Sri Lanka became a party in 2001. Pursuant to the requirement in the Hague Convention (Article 4(c)(3)) that an adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin determine, inter alia, that consent has not been induced by payment or compensation of any kind, the Department of Probation and Child Care Services of Sri Lanka which is responsible for processing foreign adoption, strictly follows the guidelines set out in the Hague Convention and the Optional Protocol.

28. In addition, steps have been taken to ensure that above requirement is covered under criminal or civil laws as well. Accordingly, Section 360 D of Penal Code, [16 of 2006] provides sufficient safeguards relating to adoption including the criminalization of situations where a person arranges for, or assists to a child to travel to a foreign country without the consent of his parent or lawful guardian; (ii) obtains the consent, whether written or oral of a pregnant woman, for money or any other consideration, for the adoption of the unborn child of such woman; (iii) recruits a woman or a couple to bear children; (iv) being a person concerned with the registration of births, knowingly permits the falsification of any register used for the registration of births or any birth record contained in any such register; (v) engages in procuring children from hospitals, shelters for women, clinics, nurseries, day care centres or other child care institutions or welfare centres, for money or other consideration or procures a child for adoption from any such institution or centre, by intimidation of the mother or any other person; or (vi) impersonates the mother or assists in such impersonation, the penalty for such offences has been stipulated as imprisonment of either description for a term not exceeding twenty years or to a fine or to both such imprisonment and fine”.



### **Article 3(l) (b) — Child Prostitution**

29. In the implementation of this Article, the GoSL seeks to prohibit the offering, obtaining, procuring or providing of a child for child prostitution, as defined in Article 2; Section 360 B of the Penal Code Amendment No. 22 of 1995 states that anyone who “knowingly permits any child to remain in any premises”, “acts as a procurer of a child”, “induces a person to be a client of a child”, “takes advantage, of his influence over, or his relationship to, a child, to procure”, “threatens, or uses violence towards a child to procure such child”, “gives monetary consideration, goods or other benefits to a child or his parents with intent to procure” commits the offence of sexual exploitation of children and shall on conviction be punished with imprisonment of either description for a term not less than five years and not exceeding twenty year and may also be punished with fine.

30. At the implementation/prevention level, the NCPA has conducted programmes on the zero tolerance policy of the Sri Lankan Government with regard to child sex tourism, for foreigners in Bentota and Kalutara in 2016. Hotel staffs have also been briefed on the legal responsibility cast on them with respect to preventing child sex tourism. Accordingly, 5 Child Protection Awareness programmes have been conducted recently for 360 beneficiaries. Programmes on strategies for combating child labour and child sex tourism have also been conducted for 1,893 beneficiaries in the plantation sector and for education and health sector staff.

### **Article 3(l)(c) — Child Pornography (Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in Article 2)**

31. Several domestic laws such as Amendments to the Penal Code, Code of Criminal Procedure Act No.15 of 1979, Obscene Publication Ordinance No. 4 of 1927 and its amendments, Intellectual Property Act No.36 of 2003, Offences under Sri Lanka Telecommunications Act No. 25 of 1991, Computer Crimes Act of 2008 provide legal protection to children against child pornography. The GoSL remains committed to further strengthen this legal framework as per the Optional Protocol.

32. It may be noted that Section 286 A of Penal Code Amendment Act no 22 of 1995 covers the provision of the Optional Protocol in similar language.

For instance, Section 286 A of the said Act states that:

(a) any person who hires, employs, assists, uses, induces any child to appear, perform in any obscene or indecent exhibition or show or to pose or model for, or to appear in, any obscene or indecent photograph or film or who sells or distributes, or otherwise publishes, or has in his possession any such photograph or films; or,

(b) being the parent, guardian, or person having the custody of a child, causes or allows such child to be employed or to participate in any obscene or to pose or model for or to appear in any such photograph or film; or,

(c)

(i) takes or assists taking of any indecent photograph of a child; or,

(ii) distributes or shows any such publications, containing such photograph; or,

(iii) has in his possession for distribution or showing, any such photograph or publication; or

(iv) publishes or causes to be published, any such photograph or publishes or causes to be published, any advertisement capable of conveying the message that the advertiser or person named in the advertisement distributes or shows any such photograph or publication or intends to do so,

commits the offence of obscene publication and exhibition relating to children and shall on conviction be punished with imprisonment of either description for a term not less than two years and not exceeding ten years, and may also be punished with fine.

33. The Obscene Publications Ordinance No. 4 of 1927 also addresses the offences relating to obscene publications (a),(b),(c) of Section 2 of the said Ordinance state that “for purposes of or by way of trade or for distribution or public exhibition to make or produce or have in possession for purposes stated or otherwise, obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films, video cassettes or any other obscene objects, or import, convey, or export or cause to be imported, conveyed, or exported any of those my its mean and to carry on or take part in a business as such shall be an offence under this Ordinance punishable on conviction by a Magistrate.

#### **Article 3(2) — Ancillary Criminal Liability**

34. Article 3(2) provides that “subject to the provisions of a State Party’s national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts”.

35. Section 490 of the Penal Code states that whoever attempts to commit an offence, is punishable by this Code with imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence shall, where no express provision is made by that Code for the punishment of such attempt, be punished with imprisonment of either description provided for the offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Section 286A of the Penal Code (Amendment) Act No 22 of 1995 states that whoever hires, employs, assists, persuades, uses, induces or coerces any child to appear or perform in any obscene or indecent exhibition, or who having custody of a child, allows the child to be employed or participate in any obscene or indecent exhibition, will be guilty of committing the offence of obscene publication relating to children, and shall on conviction be punished with imprisonment of either description for a term not less than two years and not exceeding ten years and may also be punished with fine.

#### **Article 3(3) — Each State Party shall make these offences punishable by appropriate penalties that take into account their grave nature**

36. As discussed in detail above, the national laws of Sri Lanka contain adequate provisions to criminalize the offences set out in Articles 3(1), 3(2) of the Optional Protocol along with strict penalties commensurate with the gravity of the said offences.

37. As indicated, Section 360 C of Penal Code Amendment Act No. 22 of 1995 stipulates the penalty in relation to any offenses pertaining to sale of children as imprisonment of either description for a term not less than three years and not exceeding twenty years that may accompany a fine, whereas Section 360(B) of the same Act states that an offence relating to child prostitution involves a term of imprisonment not less than five years and not exceeding twenty years that may also accompany a fine. According to Section 286(A) of the aforesaid Act, the penalty for child pornography is not less than two years and not exceeding ten years of imprisonment that may also accompany a fine.

#### **Article 3(4) — Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph I of the present Article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.**

38. At the level of implementation, 42 children’s and Women’s bureaus have been established at police stations across the country to look into complaints pertaining to children and the Ministry of Women and Child Affairs conducts regular trainings for their officials in addition to refurbishment of said units. The National Child Protection Authority (NCPA) also accepts public complaints on child abuse and channels such complaints to law enforcement agencies. The toll free child help line -1929 functions under the NCPA whereby all complaints lodged are forwarded for investigation through the police unit attached to NCPA, the child protection officers attached to the Divisional Secretariats, and through the units of children and women’s bureaus at police stations.

39. The Human Rights Commission of Sri Lanka (HRCSL) has also established a separate unit to investigate direct complaints received through the public relating to children. The GoSL recognizes the need to further strengthen investments on developing capacity of the staff and development of infrastructure at HRCSL.

**Article(3)5 — States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments**

40. Sri Lanka ratified the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (“the Hague Convention”) and adoptions have been processed and certified in accordance with the Hague Convention since May 1995. The State agency for oversight of the adoption process is the central office of the Department of Probation and Childcare Services in Colombo.

41. Illegal adoptions are prohibited under Sec. 360 D of the Penal Code Amendment Act No 16 of 2006. This amendment prohibits the recruitment of women or couples to bear children or procuring children from hospitals, shelters for women, clinics, nurseries, daycare centers or other childcare institutions for money or other consideration or procuring a child for adoption from any such institution or center by intimidation of the mother. Any person who does so is deemed to have committed the offence of trafficking and could be imprisoned for a period not less than 5 years and not more than 20 years and will be liable to a fine.

**Article 4 — Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State**

42. Section 128 of Criminal Procedure Code Act No 15 of 1979 sets out the jurisdiction relating to offences subject to adjudication by Magistrate Courts.<sup>1</sup>

Accordingly,

1. Every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed.
2. Any Magistrate’s Court within the local limits of the jurisdiction of which an accused may be found shall have jurisdiction respectively in all cases of offences otherwise within their respective jurisdictions which have been committed on the territorial waters of Sri Lanka.
3. An offence committed on the territorial waters of Sri Lanka to which subsection (2) is not applicable or an offence committed on the high seas, or on board any ship or upon any aircraft may be tried or inquired into by the Magistrate’s Court of Colombo if it otherwise has jurisdiction or on indictment by High Court.

Further, Section 4 of the Offences Against Aircraft Act No 24 of 1982 covers the jurisdiction of courts over offences committed on board Sri Lankan aircraft, as follows:

- Any act or omission committed, or taking place, on board a Sri Lankan aircraft in flight or on the surface of the high seas or of any other area outside the territory of any State, which if committed or taking place in Sri Lanka would have constituted an offence under the law of Sri Lanka, shall constitute that offence, whether such act or omission is committed by a citizen of Sri Lanka or not.
- Where an offence under the law of Sri Lanka is committed on board a Sri Lankan aircraft in flight or on the surface of the high seas or of any other area outside the territory of any State (not being an offence of a political nature or

<sup>1</sup> Magistrate Courts are the courts of first instance with regard to criminal offences.

based on racial or religious discrimination), such offence shall, if it is an offence which if committed in Sri Lanka would have been triable under the law of Sri Lanka.

(a) by a Magistrate's Court, be tried by the Magistrate's Court of Colombo; or

(b) by the High Court, be tried by the High Court Holden in the judicial zone of Colombo.

**Article 4.2 — Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 3, paragraph 1, in the following cases**

43.

1. When the alleged offender is a national of that State or a person who has his habitual residence in its territory.

2. When the victim is a national of that State:

Section 3 of Convention on Preventing and Combating Trafficking of Women and Children for Prostitutions Act No 30 of 2005 states that “where an act constituting an offence under this Act is committed outside Sri Lanka, the High Court referred to in subsection (1) shall have jurisdiction to try such offence as if it were committed within Sri Lanka, if:

(a) The person who committed such act is present in Sri Lanka;

(b) Such act is committed by a citizen of Sri Lanka or by a stateless person who has his habitual residence in Sri Lanka; as such state party takes measures to establish its jurisdiction over the offences those are alleged under referred violations. Section 3(2) (c) of the same Act confers similar jurisdiction on the High Court where that “the person in relation to whom the offence is alleged to have been committed is a citizen of Sri Lanka”, as well.

**Article 5 — The offences referred to in Article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in those treaties**

44. Any offence pertaining to children constitutes an extraditable offence under extradition agreements signed between Sri Lanka and other countries, provided that the offence is question is deemed an offence under both States and the offence entails a minimum term of imprisonment of 1 year in both countries. For instance, the extradition treaty signed between China and Sri Lanka namely “Hong Kong, China-Sri Lanka Extradition Treaty contains the following provisions:

(a) Sec.4. offences of a sexual nature including rape; sexual assault; indecent assault; unlawful sexual acts on children; statutory sexual offences;

(b) Sec.5. gross indecency with a child, a mental defective or an unconscious person;

(c) Sec.6. kidnapping; abduction; false imprisonment; unlawful confinement; dealing or trafficking in slaves or other persons; taking a hostage;

(d) Sec.33. stealing, abandoning, exposing or unlawfully detaining a child; any other offences involving the exploitation or abuse of children, including any offence against the laws relating to child pornography;

(e) Sec.39. any offence relating to women or children.

## Article 06 — Mutual Legal Assistance

45. This Article provides for general mutual legal assistance between States Parties in connection with investigations, or criminal or extradition proceedings brought in respect of offenses established in Article 3(1).

46. Section 7 of Mutual Assistance in Criminal Matters Act No 25 of 2002 states that:

1. Where the Central Authority receives a request from the appropriate authority of a specified country, for assistance in locating a person who:

- (a) Is suspected to be involved in; or
- (b) Is able to provide evidence or assistance in,

any criminal matters falling within the jurisdiction of a criminal court in such specified country and who is believed to be in Sri Lanka or if the identity of such person, the Central Authority may in his discretion, refer such request to the Secretary to the Ministry of the Minister in charge of the subject of Defence and request him to cause such inquiries to be made as necessary to comply with the request of appropriate authority and upon receipt of a report to be sent to the appropriate authority of the specified country making the request.

2. Where there are reasonable grounds to believe that a person who:

- (a) Is suspected to be involved in; or
- (b) Is able to provide evidence or assistance in,

any criminal matters within the jurisdiction of a criminal court in Sri Lanka is in a specified country, the Central Authority may in its discretion request the appropriate authority in such specified country to assist in locating such person and if his identity is not known, to assist in identifying and locating such person.

## Article 07 — Seizure and Confiscation

47. Under Article 7, States parties are required: (1) to provide for the seizure and confiscation of goods used to commit offences under the Protocol or proceeds derived from such offenses (Article 7(1)); (2) to execute requests from another State Party for seizure and confiscation of such goods or proceeds (Article 7(2)); and (3) aimed at closing on a temporary or definitive basis premises used to commit such offenses.

48. Section 116 (2) of the Code of Criminal Procedure Act (No. 15 of 1979), states that when a suspect is forwarded before a Magistrate's Court, the officer in charge of a police station or an inquirer shall send to such court "any weapon or other article or document or specimen or sample which it may be necessary to produce before such court."

49. The Section 11 (1) and (2) of Mutual Assistance in Criminal Matters Act No 25 of 2002 states that:

1. The Central Authority may at the request of a court exercising criminal jurisdiction in Sri Lanka request the appropriate authority of a specified country to arrange:

- (a) Evidence to be taken in the specified country; or,
- (b) Documents or other articles to be produced in the specified country, for the purpose of a proceeding in relation to a criminal matter in the court.

2. Where the Central Authority receives from an appropriate authority in a specified country in respect to the request made by him under subsection (1);

- (a) Any evidence taken in such specified country; or,
- (b) Any document or other article produced in such specified country;

Such evidence, documents or articles shall be admissible in any proceeding to which such request relates to but shall not, without the consent of such appropriate

authority, be used for the purpose other than for the purpose of the criminal matter specified in the request.

**Article 08 — Recognizing the vulnerability of child victims and adopting procedures to recognize their special needs including their special needs as witnesses**

50. In view of the vulnerability and special needs of child victims, Sri Lanka has put in place special judicial procedures to ensure the best interests of the child victims. Section 3 of the Act [No. 4 of 2015] assistance to the Act on Protection of Victims of Crimes and Witnesses provides that:

A victim of crimes shall have the right:

- (a) To be treated with equality, fairness and with respect to the dignity and privacy of such victim;
- (b) Where the victim is a child victim, to be treated in a manner which ensures the best interests of such child;
- (c) In accordance with procedures as may be prescribed, to receive prompt, appropriate and fair redress, including reparation and restitution, for and in consideration of any harm, damage or loss suffered as a result of being a victim of a crime;
- (d) To be appropriately protected from any possible harm including threats, intimidation, reprisals or retaliations;
- (e) To be medically treated for any mental or physical injury, harm impairment or disability suffered as a victim of a crime;

51. Furthermore, the Code of Criminal Procedure Act No. 15 of 1979 and its amendments to Section 451A and 453B, also set out the requirement relating to the care and protection of child victims. Accordingly, Section 451A states that:

- (i) Where it appears to a court in which indictment or charge for child abuse has been filed, that the child in relation to whom the child abuse is alleged to have been committed requires care and protection, the court may order such child to be kept in a place of safety for care and protection, pending trial;
- (ii) Where a court makes an order under subsection (i.) that a child in relation to whom the child abuse is alleged to have been committed be kept in a place of safety for care and protection, a warrant substantially in the form set out in the Second Schedule shall be signed by the court and delivered to the Fiscal of the court. in accordance with Section 453A: every court shall give priority to the trial of any person charged with or indicted for child abuse before such court and to the hearing of any appeal from the conviction of any person for child abuse or against any sentence imposed on such conviction.

52. The GoSL considers the best interest of the child as of paramount importance in all situations. The International Covenant on Civil and Political Rights (ICCPR) Act, No. 56 of 2007 in Section 5, states that:

- 1. Every child has the right to — (a) have his or her birth registered and to have a name from his or her date of birth; (b) acquire nationality; (c) **be protected from maltreatment, neglect, abuse or degradation;** and (d) **have legal assistance provided by the State at State's expense in criminal proceedings affecting the child, if substantial injustice would otherwise result.**
- 2. In all **matters concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interests of the child shall be of paramount importance.**

53. The emphasis placed by the government on child friendly judicial procedures is also evident in the establishment of Child Friendly Courts in Battaramulla, Jaffna and

Anuradhapura, which are proposed to be extended to Moneragala, Puttalam, Mannar and Ampara as well.

54. The Children (Judicial Protection) Bill (CJPB) makes improvements to the current justice administration for system, with the best interests of the child being given predominant consideration in all matters in relation to the child. Whilst currently in its draft stages, the CJPB also extends the commitment by the GoSL towards the creation of judicial procedures that place the needs of the child at their core.

#### **Article 9 — Prevention**

55. Article 9 states that States Parties shall, with respect to the offenses referred to in the Protocol, (1) adopt or strengthen, implement, and disseminate laws, policies, and programs to prevent the offenses; (2) promote awareness in the public at large, including children, about “the preventive measures and harmful effects of the offences”; (3) take all “feasible” measures with “the aim” of ensuring “all appropriate” assistance to victims of such offenses, including their full social reintegration and their full physical and psychological recovery; (4) ensure that child victims have access to adequate procedures to seek compensation; and (5) take “appropriate” measures “aimed at” effectively prohibiting advertisement of the offenses covered by the Protocol.

56. With respect to Articles 9(1) and 9(2), the GoSL has considered it is a priority commitment to strengthen and implement laws to prevent the commission of offences against children. Steps have been taken to create a climate of prevention through education, social mobilization, and development activities aimed at ensuring that parents and others legally responsible for children are able to protect children from sexual and other forms of exploitation.

57. Easily accessible channels have been set up for lodging complaints related to violence against children confidentially through the 1929 24-hour childline operated by the NCPA. While professional officials have been stationed to provide appropriate services for victims, a mechanism has been put in place to investigate the complaints received through the hotline. Easy access for either children or any other person who becomes a victim of any form of violation has also been provided to Police via 119 toll free helpline which operates in both vernacular languages.

58. With regard to the online safety of children including from pornography, the government is taking necessary measures to educate children through special programmes. The NCPA, in collaboration with Sri Lanka Computer Emergency Readiness Term (CERT), has provided a facility for lodging complaints on cyber crimes. A special programme for developing the capacity of officers who work in the area of protecting children is also being conducted by the NCPA collaboration with CERT.

59. The Children and Women’s Bureau which functions under the purview of Sri Lanka Police has expanded its services by establishing 42 separate desks in police stations across the country. Capacity building programme are conducted for officers of these units and strengthening their knowledge on the CRC and its Optional Protocols. The Ministry of Women and Child Affairs also intervenes to develop infrastructure of these units. A National Database on complaints received by the police desks has also been established, and a special segment on complaints relating to sexual exploitation and pornography is also contained in the database.

60. As stated, the Ministry of Women and Child Affairs has developed a National Action Plan for Children for the period of 2016 to 2020 and several activities related to combatting sexual exploitation and pornography including awareness programmes are to be conducted specially in coastal areas to educate children, parents and community have been included in the Action Plan.

61. As an important initiative the Ministry of Justice, in 2010, established a National Human Trafficking Task Force to strengthen the co-ordination and collaboration of all key stakeholders in addressing human trafficking. The Task Force has been developing strong coordination and engaging in regular dialogue with representatives from civil society organisations working on Human Trafficking.

62. In January 2016, a Presidential Taskforce for the protection of children was commissioned under the President. The Presidential Taskforce was implemented considering the need for greater coordination between Ministries and other entities for the protection of children and the prevention of crimes against children.

#### **Article 10 — International Cooperation and Assistance**

63. The GoSL welcomes international cooperation and assistance not only with regard to the subject area of the Optional Protocol, but for the entire process of child protection and ensuring an environment free from all forms of violence for children. Local and international organizations such as UNICEF, Save the Children, World Vision, Plan Sri Lanka, Leads, Peace, etc. and local non-governmental organizations such as Sarvodaya, Fridsro, etc. and civil societies that are in operation from village level to national levels also work closely with the government to end violence against children.

64. Peace, an affiliated agency of ESPACT, directly works for children who are exposed to child prostitution and sale. The Department of Probation and Child Care Services works with this organization closely on the subject matter.

65. Sri Lanka also ratified the first Protocol of the Palermo Convention, on the trafficking of persons. Whilst a signatory to the Protocol, the GoSL introduced legislation in keeping with the provisions of the Protocol, by means of an amendment to the Penal Code in 2006. This amendment defined the offence of trafficking in line with the provisions of the Protocol, whilst also criminalizing multiple forms of exploitation including forced or compulsory labour, slavery, servitude, organ removal, sexual exploitation, and any other related acts.

66. The Secretariat for National Partnership to End Violence against Children, which is the national entity of global partnership to end violence against children, has been established at the Ministry of Women and Child Affairs and is functioning under the purview of the Ministry. Technical and financial assistance for the Secretariat is provided by the UNICEF and other INGOs to operate from the grassroot level to national level. As one of its main activities, the National Partnership has developed a roadmap for the next five years for prevention of forms of violence against children in Sri Lanka.

67. South Asian countries including Nepal, India, Pakistan, Bhutan, Maldives, Bangladesh, Afghanistan and Sri Lanka joined hands in 2010 and mutually agreed to function as the South Asian Initiative to End Violence Against Children. Sri Lanka became a member to the South Asia Initiative to End Violence Against Children (SAIEVAC). SAIEVAC was formed following the recommendations of the UN study on violence against children. Under this initiative, each member country has made a strong commitment to end violence against children throughout the last few years.

68. The GoSL, in partnership with SAIEVAC, has taken several steps in the last five years to end violence against children. Specially, the following initiatives were taken to prevent child labour, sale of children, child prostitution and ensure online safety of children:

(a) In 2015/16, GoSL supported the hosting of the Expert Group Meeting to review and finalize the Regional Plan of Action to end Child Labour formulated by SAIEVAC;

(b) In March 2017, GoSL hosted the international children consultation on Child Sexual Abuse and Exploitation including online safety;

(c) In August 2017, with the support of GoSL, SAIEVAC was able to hold the Regional Expert Group Meeting on Child Sexual Abuse and Exploitation including online safety.

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