



## 04<sup>TH</sup> UNIVERSAL PERIODIC REVIEW OF SRI LANKA

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Report by AYEVAC "Alliance of Youth to End Violence Against Children"

A Movement of Children and Youth in Sri Lanka

## **Introduction to the Report**

1. This report is mainly considering the information and analysis of two major child protection concerns in Sri Lanka. One of the issues is the **“Corporal Punishment of Children”** which recommended to prohibit in Sri Lanka as per recommendation given in the 3<sup>rd</sup> UPR report of 2017. The other key issue is **“Online Child Sexual Exploitation and Abuse”** which is a highly trending child protection issue in the country which rapidly emerged following the impact of COVID-19. Accordingly, the report has provided a problem analysis and legal analysis to understand the country specific context of both issues.
2. The report has provided number of recommendations in agreement with the children and youth of AYEVAC. Further to that, the report has also brought another set of important recommendations from references which were reviewed in the preparation of report. The recommendations made by AYEVAC in this submission have marked with the symbol ∞.

## **Justification for Submission**

3. AYEVAC as a movement of children and youth in Sri Lanka has taken several initiatives to eradicate corporal punishment and to end Online Child Sexual Exploitation and Abuse (OCSEA). Further, we as the children and youth of Sri Lanka obliged to provide feasible solutions to address the above-mentioned issues.

4. This report is to review and assess the level of implementation of the 3<sup>rd</sup> UPR recommendations pertaining to the progress that has been made by the Government of Sri Lanka (GOSL) to prohibit corporal punishments in all settings and to end OCSEA.

### **Corporal Punishment of Children in Sri Lanka**

5. "Prohibit corporal punishment of children in all settings, including at home" was a recommendation provided by 3<sup>rd</sup> UPR cycle and accepted by the GOSL.<sup>1</sup>
6. A study conducted in 2017 revealed that, 80.4% of students experience corporal punishment in schools; 61.9% of teachers reported using at least one strategy of corporal punishment in the past term and 65.8% of teachers reported using at least one strategy of psychological aggression in the past term.<sup>2</sup>
7. In 2020, cruelty against children incidents specifically in households have increased by 40% as per the complaints received only within 3 months during the first wave of Covid-19 by the National Child Protection Authority (NCPA).<sup>3</sup> Children have exposed to many difficulties within households during the pandemic due to extreme stressful conditions faced by the parents have recognized by National Action and Coordination Group (NACG) Sri Lanka in 2020.<sup>4</sup>

### **Legal Framework of Prohibiting Corporal Punishment in Homes and Schools**

8. Corporal punishment is not specifically prohibited by law in the home. The Penal Code of 1883 was amended in 1995 to provide for the offence of cruelty to children (Art. 308A, amended further in 2006), but Article 82 of the Penal Code States; "Nothing, which is done in good faith for the benefit of a person under twelve years of age, or, of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an

offence by reason of any harm which it may cause/or be intended by the doer to cause, or be known by the doer be likely to cause, to that person....”<sup>5</sup>. Section 341 of the Penal Code, illustration (l) of the offence of “criminal force” which States; “that a schoolmaster who flogs a student is not using force illegally”.

9. Article 71(6) of the Children and Young Persons Ordinance (CYPO) 1939 confirms “the right of any parent, teacher or other person having lawful control or charge of a child... to administer punishment to him”. Sri Lanka’s 2016 report to the Committee on the Rights of the Child declared that the “draft Children (Judicial Protection) Act would be enacted to repeal the CYPO.”<sup>6</sup>
10. The UN Special Rapporteur recommended to “repeal all relevant legislation so that corporal punishment is explicitly prohibited in all settings”.<sup>7</sup> The National Human Rights Action Plan 2017-2022 and the National Plan of Action for Children in Sri Lanka 2016-2020 do not address corporal punishment. In 2019 a committee was set up by the Ministry of Justice to prepare a draft law on “justice in matters involving child victims and witnesses of crimes”, to consider the Children (Judicial Protection) Bill and to discuss the prohibition of corporal punishment in schools.<sup>8</sup> Although, GOSL continuously promised in the international arena to prohibit corporal punishment in Sri Lanka in all settings no child-related bills appeared to be tabled in the Parliament as of December 2019.<sup>9</sup>
11. Corporal punishment is not explicitly prohibited by law in schools also, as confirmed in the explanation of acceptable criminal force in the Penal Code of 1883 (see under “Home”)

12. The instruction issued by Circular No. 12/2016 requiring not to use corporal punishment should be confirmed through the enactment of a relevant legislation by clearly prohibiting all forms of corporal punishment in all education settings, as well as explicitly repealing the Penal Code provision on criminal force in relation to flogging of students (Art. 341) and the right of teachers “to administer punishment” in the CYPO 1939 (Art. 71(6)).
13. The Supreme Court of Sri Lanka (SC/FR/97/2017) decided in 2021 condemning the use of corporal punishment in schools.<sup>10</sup> However, this judgment does not outlaw corporal punishment in schools and is unlikely to be followed with a law reform by the Parliament.

### **Recommendations**

14. Urge the GOSL to take necessary steps to prohibit corporal punishment in all settings by adopting required laws and also to take robust and pragmatic steps to implement all the recommendations posed by 3<sup>rd</sup> UPR cycle<sup>11</sup> and all treaty bodies<sup>12</sup> to Sri Lanka to put an end to corporal punishment in all settings, encourage non-violent forms of discipline as alternatives and conduct public information campaigns to raise awareness about the harmful effects of such punishment.
15. Recommend the Ministry of Education (MoE) to formulate a well versed independent civil body at district level coordinated by the central body to expedite disciplinary action or prosecutions taken in the cases of school corporal punishment or physical abuse respectively.

16. Recommend the MoE to initiate programs aimed at enhancing the mental health of teachers because as the use of corporal punishment is mainly due to unproductive stress and emotional management.<sup>13</sup>
17. ∞ Recommend the legislature to introduce a concrete legal definition for corporal punishment, psychological aggression, and physical abuse in line with the universal definitions to affirm a zero-tolerance policy on any form of corporal punishment, psychological aggression and physical abuse in all settings. These terminologies shall be defined precisely to avoid ambiguity and to circumvent misinterpretation and misrepresentation.
18. ∞ Recommend the GOSL and NGOs to conduct continuous large scale awareness programmes among parents on child rights, positive parenting and childcare concentrating (positive) disciplining strategies and child protection especially on social needs of children.
19. ∞ Recommend schools to educate children against physical and mental abuse (bullying) by older children to younger children considering the impact of bullying and to develop their social personality. Also, programs should be implemented to develop the family environment and mentality of children who commit such violence. (i.e., school prefects committing violence in disciplining other children).
20. ∞ Recommend the GOSL and NGOs to conduct programs aiming at children and youth on 'self-discipline'. This should be taught through practice (such as by videos, debates, discussions, seminars, and charity work) rather than by book-based lessons.

21. ∞ Recommend GOSL to initiate monitoring and evaluation mechanism. In addition to the proposed interventions to educate children, parents and other relevant parties, steps should be taken to monitor, evaluate and follow up the progress of these interventions.
22. ∞ Recommend the GOSL to launch a public awareness campaign to made aware of the reporting system and fear of reporting should be negated through media and open discussions. This system should clearly discourage and detect false allegations.
23. ∞ Recommend the GOSL to strengthen the institutional mechanisms as at present, the institutions established by the government to regulate child abuse issues and prepare a system to increase the efficiency of these institutions.

### **Online Child Sexual Exploitation and Abuse in Sri Lanka**

24. With high mobile phone penetration and growing participation in ICT infrastructure, it is inevitable that children in Sri Lanka have increasing access to the Internet. The 'We are Social' and 'Hootsuite social media report statistics for Sri Lanka determined that there are a total of 6.55 million active mobile internet users.<sup>14</sup>
25. The findings of the study revealed that "over 28% of children have experienced online violence. In other words, 3 out of 10 children interviewed in the study have experienced some sort of online violence. Irrespective of gender all children have suffered from online violence; however, girls (29%) have suffered slightly more

from online violence compared to boys (27%). This online violence includes receiving an indecent message (28%), receiving indecent links and advertisements 26% and having an indecent link/message being shared in a group. In addition, 27% of children have experienced cyber bullying and extortion while nearly 20% have had an indecent image of them being shared on the internet.”<sup>15</sup> The findings suggest a significant prevalence of OCSEA in Sri Lanka.

26. OCSEA and the proliferation of CSAM are serious issues in Sri Lanka. Due to the pandemic, cases of online child sexual abuse have risen from 2,600 cases in 2019 to 15,800 cases in 2020, a sharp rise of 400%.<sup>16</sup> The COVID-19 pandemic, which brought with it increased emotional vulnerabilities, economic hardship and surges in unsupervised time online among children and adolescents<sup>17</sup> is likely to have magnified vulnerabilities to child exploitation and abuse, particularly online.
27. Children using any social media platforms are vulnerable to online violence and 73% of parents in Sri Lanka find it difficult to supervise children’s use of internet as they lack awareness of how the internet works and how children can be exposed to OCSEA.<sup>18</sup> As per the study, 71% of the children stated that Internet Service Providers (ISPs) do not have a good understanding of online violence as they do very little to curb online violence. ISPs have failed to take responsibility for internet service they provide, and the ISPs’ lack of support to law enforcement authorities.<sup>19</sup>
28. As per a study, the question of taking legal action against the perpetrators of online violence was raised among selected children. An alarming majority of children, irrespective of gender – over 92% responded that they would not seek legal support or complain to legal authorities due to the fear of further victimization. It has been a key deterrent to seek legal support.<sup>20</sup>

## **Legal Framework of Online Child Sexual Exploitation and Abuse**

29. Even though there is no consistent legal definition of what constitutes OCSEA it can generally be described as where a child (under the age of eighteen years of age), takes part in sexual activity in exchange for something, either a benefit, promise, or gain.<sup>21</sup> Across numerous multilateral instruments, the definition of child sexual exploitation (CSE) varies.<sup>22</sup>
30. Under the Sri Lankan Constitution, the State is entrusted with the special care of children under Article 27(13).<sup>23</sup> This includes protection from exploitation. Article 27 (2) (h) has been used in conjunction with the Article 12 to shield the rights of children.<sup>24</sup> However, there is no clear legal provision in regard to online child protection matters. Since OCSEA is facilitated and conducted via ICT, it can be challenging to identify the different forms of OCSEA. Additionally, these forms are constantly evolving with technology.
31. Penal Code Section 360B<sup>25</sup> - sexual exploitation of children is inconsistent with the Luxembourg Guidelines (Guidelines) as the Guidelines defines sexual exploitation as 'sexual activity in exchange for something (gain, benefit, promise) from a third party, perpetrator or by the child [themselves].<sup>26</sup> This concept of 'exchange' is not codified in the Penal Code section. Since this section on CSE does not proscribe the many variations of OCSEA nor explicitly include the online aspect of CSE, it is necessary to read section 360B together with the additional provisions of the Penal Code to address the gap that exists in the former.
32. Penal Code Section 360E<sup>27</sup> - soliciting a child is inconsistent with Guidelines as the Penal Code does not explicitly include the online aspect. Further it doesn't target

online grooming an evolving form of OCSEA in Sri Lanka. The Guidelines defines grooming as (i) contacting a child; (ii) if online, through ICTs; (iii) with the intent of luring or inciting the child; (iv) to engage in any sexual activity by any means, whether online or offline.

33. Penal Code Section 286A introduces the offence of "obscene publication and exhibition relating to children" under 18 years of age. But there is a legal gap that has arisen due to the absence of a legal definition to "obscene publication". Penal Code was further amended (2006) Section 286B to extend the reporting duty to persons providing "service by means of a computer," such as cybercafés to prevent the commission of sexual abuse of a child. Section 286C criminalize the storing or distribution of child pornography by email and the internet.
34. The Budapest Convention specifically prohibits child pornography in Article 9. However, Sri Lanka with the enactment of Computer Crimes Act, No 4 of 2007 (Act) availed itself of the four reservations provided for in Article 9 of the Budapest Convention.<sup>28</sup> It therefore avoided the obligation to criminalize this conduct.<sup>29</sup> This is problematic as the Act does give broad investigatory powers for the crimes that are enumerated in the Act. Thus, by excluding child pornography it weakens the protection system on OCSEA.
35. OCSE is a transnational crime, and thus it is essential to have provisions in place for extradition. The Extradition Law, No. 8 of 1977 governs extradition. Usually, there must be either: a ratified bilateral treaty between states; or a multilateral treaty that includes extradition obligations that have been given effect to through domestic legislation. Once the obligation to extradite exists, the next step is determining if the conduct is criminalized in both states and is punishable by no less than one

year.<sup>30</sup>

### **Recommendations**

36. ∞ Recommend legislature to agree on terminologies to proscribe OCSEA as the current legal framework uses imprecise terminology and thus the identification of perpetrators and methods of ICT- facilitated Child Sexual Exploitation (CSE) is adversely impacted.
  
37. ∞ Recommend to educate children and youth on what constitutes OCSEA by including it as a subject to the school curriculum. As online education continues, it is not only online sexual abuse that children are exposed to, but also other forms of abuse such as online bullying and discrimination, addiction to social media, online gaming and interactions with unknown people, all of which could lead to various psychological effects. Further, educating children on proper use of internet, educate them on online safety and precautions as well as how they could identify danger online and how they should react on such occasions.
  
38. ∞ Recommend banning the online education for below 5 years of age children as it is inappropriate to use online devices and online education for children under 5 years of age. Also, online education should be standardized for children above age 5, by banning online classes at inappropriate times (at night). Further create a mechanism to block underage users from accessing obscene material on the internet, and it is a part of the responsibility of internet service providers to implement such mechanisms.
  
39. ∞ Recommend creating a centralized complaint system within the law-enforcement and technical institutions. There are currently multiple institutions that

receive complaints and also re-direct complaints. To reduce the confusion amongst these institutions, there should be understanding and knowledge of the capacity and comparative advantage of each of the partner institutions and there should be centralized complaint system to avoid re-victimization of victims who are redirected to multiple institutions.<sup>31</sup>

40. ∞ Recommend providing equal access and equal education to children living all over Sri Lanka without any discriminations on lack of IT literacy, network and devices required for online education. Due to this situation, children are mentally abused. Therefore, steps should be taken to eliminate this discrimination.
41. Recommend the GOSL to accede to Lanzarote Convention,<sup>32</sup> the first international instrument that defines and calls on States to prohibit grooming. Sri Lanka should accede to the Convention which would provide incentive to criminalize grooming which the Convention defines as a predecessor to sexual abuse of children.
42. Recommend implementing a criminal liability for responsible stakeholders. Liability of parents, guardians, caregivers, principals, and teachers as well as all adults who have knowledge about Online Violence Against Children and omitted to protect children from it should be made criminally responsible for non-disclosure of know information.

END

- 1 See 5 June 2008, A/HRC/8/46, Report of the working group,  
 paras. 82(9) and 82(10); 18 December 2012,  
 A/HRC/22/16, Report of the working group, paras. 127(46), 127(62), 127(71) and 127(72); 21 February 2013,  
 A/HRC/22/16/Add.1, Report of the working group: Addendum, para. 4.13; 29 December 2017, A/HRC/37/17,  
 Report of the working group, para. 116(165)
- 2 De Silva H. et al, (2017). A Study on Child disciplinary methods practiced in Schools in Sri Lanka, National Child  
 Protection Authority, Sri Lanka
- 3 UNICEF and NCPA Gravely Concerned by Increase in Proportion of Child Cruelty Cases Reported to NCPA Hotline  
 Since the Start of the Covid-19 Curfew, UNICEF and NCPA Joint Press Release; 9 April 2020, Colombo, Sri Lanka
- 4 Ibid
- 5 Article 82 of the Penal Code 1883
- 6 See CRC/C/LKA/5-6, (2016) Fifth-sixth report, para. 209
- 7 22 December 2016, A/HRC/34/54/Add.2, Report of the Special Rapporteur on torture and other cruel, inhuman or  
 degrading treatment or punishment on his mission to Sri Lanka, para. 116.k
- 8 Information provided to the Global Initiative, October 2019
- 9 No relevant bills listed at [www.parliament.lk](http://www.parliament.lk), accessed 16 December 2019
- 10 Case no.SC/FR/97/2017
- 11 See A/HRC/37/17 (29 December 2017) Report of the working group, para. 116(165)
- 12 2 February 2018, CRC/C/LKA/CO/5-6 Advance unedited version, Concluding observations on fifth/sixth report,  
 paras. 4, 21 and 22; 19 October 2010, CRC/C/LKA/CO/3-4, Concluding observations on third/fourth report, paras.  
 40 and 41; 2 July 2003, CRC/C/15/Add.207, Concluding observations on second report, paras. 28 and 29; 21 June  
 1995, CRC/C/15/Add.40, Concluding observations on initial report, paras. 15 and 32; 8 December 2011,  
 CAT/C/LKA/CO/3-4, Concluding observations on third/fourth report, para. 30; 15 December 2005,  
 CAT/C/LKA/CO/1/CRP.2, Concluding observations on second report, para. 3; November 2014, CCPR/C/LKA/CO/5],  
 Advance Unedited Version, Concluding observations on fifth report, paras. 3 and 19; 1 December 2003,  
 CCPR/CO/79/LKA, Concluding observations on the combined fourth and fifth reports, para. 11 and 27 July 1995,  
 CCPR/C/79/Add.56, Concluding observations on third report, sections 3 and 5
- 13 Afifi, T. O., Mota, N. P., Dasiewicz, P., MacMillan, H. L., & Sareen, J. (2012). Physical Punishment and Mental  
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- 14 Hootsuite and We are Social. (2019). Digital 2019: Sri Lanka. Retrieved from  
 <<https://datareportal.com/reports/digital-2019-sri-lanka>>. Accessed on 13 July 2022.
- 15 Fernando, N., Hakeem, M.A.M., Seneviratne, W., De Silva, M., Cooray, J (2021), Online Violence Against Children in  
 Sri Lanka: A National Research on Incidence, Nature and Scope. State Ministry of Women and Child  
 Development, Pre-Schools & Primary Education, School Infrastructure & Education Services – Sri Lanka, Colombo.
- 16 ECPAT Sri Lanka, “The Growing Dangers of Online Sexual Exploitation of Children” (Groundviews, 20 November,  
 2021) < <https://groundviews.org/2021/11/20/the-growing-dangers-of-online-sexual-abuse-of-children/>>  
 accessed on 13 July 2022
- 17 United Nations Children’s Fund, ‘Protecting Children from Violence in the Time of COVID-19: Disruption in  
 Prevention and Response Services’, UNICEF, New York, 2020
- 18 Supra n 16
- 19 Ibid
- 20 Ibid
- 21 Luxembourg Guidelines. (2016. January 28), p. 24- 27)

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<sup>22</sup> Luxembourg Guidelines. (2016. January 28) p.24 - 27 , noting that the Convention of Rights of the Child, Article

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34 defines sexual exploitation as “the exploitative use of children in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performances and materials”; The African Charter on the Rights and Welfare of the Child 1999, Article 27 defines sexual exploitation as, (a) the inducement, coercion or encouragement of a child to engage in any sexual activity; (b) the use of children in prostitution or other sexual practices; (c) the use of children in pornographic activities, performances and materials; The Optional Protocol on Child Pornography, Article 3 requires state parties to criminalise sexual exploitation which it defines as ‘sale of children.’; the Lanzarote Convention, the Council of Europe, refers to behaviour constituting sexual exploitation and sexual abuse in Article 18-23. ; The European Union Directive 2011/93, refers to acts such as making a child participate in pornographic performances, knowingly attending pornographic performances that include children, making a child participate in child prostitution, and engaging in sexual activities with a child where recourse is made to prostitution; The United Nations Secretary General’s Bulletin: Special Measures for Protection for Sexual Exploitation and Abuse states that ‘any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially, or politically from the sexual exploitation of another’

<sup>23</sup> Article 27 (13) Chapter VI of the 1978 Constitution stipulates that the State is to promote with special care the interest of children and youth so as to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination

<sup>24</sup> In *Chandani De Soysa v. Minister of Education (SC/FR. 2016/77)*, where the Court held that children living or affected by HIV have the full right to education and cannot be discriminated against such a ground with reference to Article 12 and Article 27 (2) (h) of the Constitution

<sup>25</sup> Penal Code Section 360B

<sup>26</sup> Luxembourg Guidelines. (2016). Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse

<sup>27</sup> Penal Code Section 360E

<sup>28</sup> Reservation contained in a Note Verbale from the Embassy of Sri Lanka to Belgium, dated 26 May 2015, and in the instrument of accession, deposited simultaneously on 29 May 2015 – Or. Engl. In accordance with Article 42 and Article 9, paragraph 4, of the Convention, Sri Lanka reserves the right not to apply sub-paragraphs 1(d) and (e) and sub-paragraph 2(b) and (c). Retrieved from <[https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/declarations?p\\_auth=gEUG7A7q&coeconventions\\_WAR\\_coeconventionsportlet\\_enVigueur=false&coeconventions\\_WAR\\_coeconventionsportlet\\_searchBy=state&coeconventions\\_WAR\\_coeconvention sportlet\\_codePays=LKA&coeconventions\\_WAR\\_coeconventionsportlet\\_codeNature=2](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/declarations?p_auth=gEUG7A7q&coeconventions_WAR_coeconventionsportlet_enVigueur=false&coeconventions_WAR_coeconventionsportlet_searchBy=state&coeconventions_WAR_coeconvention sportlet_codePays=LKA&coeconventions_WAR_coeconventionsportlet_codeNature=2)> Accessed on 12 July 2022

<sup>29</sup> However, under the Optional Protocol on the Sale of Children, Child Pornography and Prostitution (which Sri Lanka is a party to) the definition of child pornography does include simulated images of children, and it requires state parties to ensure that uncertainty as to the actual age of the victim should not prevent prosecution. OPSC, Article 2 and Article 8

<sup>30</sup> The Extradition Law, No. 8 of 1977. In Sri Lanka, an extraditable offence is one that falls either within the relevant extradition treaty or within the schedule of the Extradition Law. Relevant offences include rape, carnal intercourse with a female between twelve and fourteen years of age, unnatural offences, and procuring a girl or woman to become a prostitute

<sup>31</sup> Verite Research, Sri Lanka: Online Child Sexual Exploitation: Legal Gap Analysis (2019) Retrieved from, <[VeriteResearch-Study-on-Legal-Framework-on-Online-Child-Sexual-Exploitation-in-Sri-Lanka.pdf](#)> Accessed on 09 July 2022.

