

ACCESS TO JUSTICE FOR CHILDREN: BANGLADESH

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

As Bangladesh follows a dualist approach, the CRC and other ratified international instruments do not automatically become part of national law in Bangladesh.¹ Courts have confirmed that treaties must be incorporated via implementing legislation to be given effect.²

Although there is no constitutional provision on the status of treaties in the national legal order, Article 25 of the Constitution of Bangladesh provides that principles of international law will be respected by the State. This article has no binding effect such that in case of violation, one can go to the highest court for enforcement. However, by virtue of Article 8(2) of the Constitution, the principles of Article 25 are to be 'fundamental' to the governance and law making of the State.

The applicability of the CRC when dealing with cases in the courts was considered in the decision of *The State v. Metropolitan Police Commissioner*,³ which recognised that 'Bangladesh was one of the first signatories to the Convention and is bound to take steps for implementing the provisions thereof. Being signatory we cannot ignore, rather we should, so far as possible, implement the aims and goals of the UNCRC.'

In *BNWLA v. Government of Bangladesh and others*, the Court looked to the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and other international conventions as aids to interpret provisions of Part III of the Constitution on citizens' fundamental rights and freedoms. The Court stated the following:

'[W]hen there is a gap in the municipal law in addressing any issue, the courts may take recourse to international conventions and protocols on that issue for the purpose of formulating effective directives and guidelines to be followed by all concerned until the national legislature enacts laws in this regard.'

Additionally, in the case of *Ershad v Bangladesh and ors*,⁴ B B Roy Chowdhury J in a

¹ Comments on this report provided by Shihab Ahmed Shirazee, Advocate, Bangladesh, December 2014.

² See, e.g., *BNWLA v. Government of Bangladesh and others* (14 BLC (2009) 703).

³ (60 DLR 660).

⁴ (Appeal, 21 BLD (AD) 2001, 69; ILDC 476 (BD 2000), 16 August 2000).

separate opinion stated the following:

'National courts should draw upon the principles incorporated in the international instruments if the domestic laws are ambiguous or absent. Where the domestic laws are clear, but inconsistent with the international obligations of the state concerned, the national courts will be obliged to respect national law.'

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law, but national law is interpreted in a manner consistent with the CRC and other human rights obligations. This is particularly so with regard to the Constitution, which in Part III sets out citizens' fundamental rights and freedoms.⁵

C. Has the CRC been incorporated into national law?

The CRC has not as yet been directly incorporated into national law. However, some provisions have been incorporated in response to directions of the Supreme Court. For example, following the recommendations of the Court in the *Metropolitan Police Commissioner* case, the Children Act, 1974 was repealed and replaced with the Children Act, 2013 ("Children Act").⁶ The preamble to the Children Act states that it has been enacted for the purpose of implementing the CRC, and the new provisions reflect some of the provisions of the Convention. The Government of Bangladesh has also referenced incorporation of CRC provisions in its National Children Policy since 1994.⁷

D. Can the CRC be directly enforced in the courts?

The CRC cannot be directly enforced in Bangladeshi courts, but is often used as a source of interpretive guidance in legal proceedings that involve children's rights. Some of the provisions of the CRC have been incorporated into the Children Act and can therefore be enforced in courts indirectly.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

Bangladeshi courts have regularly referenced the CRC and other international human rights conventions where relevant to a matter at hand.⁸ Specifically, courts have discussed the CRC in cases involving corporal punishment⁹, children in conflict with the law¹⁰ and child protection.¹¹ The *Roushan Mondal* case is an example of where the CRC and the Children

⁵ Constitution of Bangladesh, available at: <http://www1.umn.edu/humanrts/research/bangladesh-constitution.pdf>.

⁶ See http://www.supremecourt.gov.bd/web/contents/Children_Act_2013-Brief_Commentary_v4.pdf.

⁷ See http://www.unicef.org/bangladesh/National_Children_Policy_1994.pdf.

⁸ See, e.g., www.fowlio.com/justice_m_imman_ali_bd.

⁹ See *BLAST v. Secretary of the Ministry of Education and others*, available at: <http://www.crin.org/Law/instrument.asp?InstID=1570>.

¹⁰ See *State v. Mondal*, available at: <http://www.crin.org/Law/instrument.asp?InstID=1438>.

¹¹ See *State v. Secretary, Ministry of Law, Justice & Parliamentary Affairs and Others*, available at:

Act, 1974 were discussed at length.¹²

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

As described in further detail below, children are permitted to bring civil lawsuits in national courts to challenge violations of their rights, but must do so through a “next friend”,¹³ firstly through his/her natural guardian then through his/her de facto guardian. In addition, any person seeking to enforce his or her fundamental rights under the Constitution may file an application with the High Court to review the decision of a public authority.¹⁴ These kinds of proceedings are often known as “public interest litigation” where the rights or interests of a large number of people are affected.¹⁵

If the rights violation amounts to a crime, any person may seek the permission of a magistrate to file and prosecute a criminal complaint against the alleged offender, or a magistrate may initiate criminal proceedings on their own motion when provided with information to indicate that an offence has been committed.¹⁶ When a case has been initiated on a private complaint and it later appears to the presiding magistrate that a related police investigation is underway, however, the private criminal proceedings must be stayed pending the results of the investigation.¹⁷

Where any person has reason to believe that a child has been the victim of a criminal offence or is a witness to such offence, he/she must inform the Child Affairs Police Officer (CAPO),¹⁸ Probation Officer or Social Worker who must make arrangements for the child’s overall safety.¹⁹

The Children Act guarantees children’s right to participate in all stages of court proceedings.²⁰ The Act provides for dealing with any child in contact with the law at all stages of the court proceedings with respect for his/her dignity keeping in mind his/her age, gender, incapacities and maturity.²¹

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

<http://www.crin.org/Law/instrument.asp?InstID=1462>.

12 Available at: <http://www.crin.org/node/6988>.

13 Code of Civil Procedure, Schedule 1, Order XXXII, available at:

http://bdlaws.minlaw.gov.bd/pdf/86___THE%20FIRST%20SCHEDULE%20Schedule.pdf.

14 Constitution, Article 102.

15 For more information, see <http://shailalb.blogspot.co.uk/2009/04/public-interest-litigation-in.html>.

16 Code of Criminal Procedure, Sections 190, 495, available at: http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=75.

17 Code of Criminal Procedure, Section 205D.

18 The Children Act provides for the establishment of child welfare desks at police stations.

19 Children Act, Section 53.

²⁰ Children Act, Section 22.

²¹ Children Act, Section 54(1).

Children of any age may initiate civil proceedings in their own name via an adult “next friend” or guardian for the purposes of the lawsuit.²² Guardians for the lawsuit may be appointed on application, and must demonstrate that the proposed guardian has no conflict of interest, is generally of sound mind and can be considered a “fit person” for the role.²³ Once appointed, the guardian will continue to serve as the child's legal representative throughout all subsequent proceedings, including appeals and actions to enforce or execute a court order.²⁴

Where it would be in the interests of the child's welfare, the court may later direct that a new guardian be appointed to represent the child.²⁵ If a child involved in a civil lawsuit reaches the age of 18, he or she must elect whether to continue the suit without a guardian, but may be liable to pay the costs of a defending party if the suit is abandoned.²⁶

C. In the case of infants and young children, how would cases typically be brought?

In the case of infants and young children, the child's parent or legal guardian would typically bring a lawsuit as a next friend in line with the provisions described above. There is no uniform family law in Bangladesh on parental rights, duties or responsibilities, although parents are generally entrusted to manage their children's property and affairs.²⁷ Where this is not the case, legal guardianship can be granted to suitable and willing persons under the Guardianship and Wards Act.²⁸

Provided they meet the criteria established in the Code of Civil Procedure, other adults may also seek the permission of the court to serve as a child's next friend for the purposes of bringing a lawsuit.²⁹

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Following current regulations, persons with an income below 50,000 Taka are eligible to seek legal aid from the National Legal Aid Services Organisation (NLASO)³⁰ in most civil, criminal and family proceedings.³¹ Applications for legal assistance may be filed with the NLASO District Committee and, if rejected, may be appealed to the Organisation's National

22 Code of Civil Procedure, Schedule 1, Order XXXII, Rule 1.

23 Code of Civil Procedure, Schedule 1, Order XXXII, Rules 3, 4.

24 Code of Civil Procedure, Schedule 1, Order XXXII, Rule 3.

25 Code of Civil Procedure, Schedule 1, Order XXXII, Rules 4, 9.

26 Code of Civil Procedure, Schedule 1, Order XXXII, Rule 12; Majority Act, 1875, available at: http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=33.

27 See <http://www.lawcommissionbangladesh.org/reports/69.pdf>.

28 Guardianship and Wards Act, Sections 7, 8, 17, available at: http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=64.

29 Code of Civil Procedure, Schedule 1, Order XXXII, Rules 3, 4.

30 Bangladesh established the National Legal Aid Services Organization (NLASO) with the passage of the Legal Aid Services Act of 2000, available at: http://www.nlaso.gov.bd/Form-NLASO/LASA_2001.pdf. Under the Act, NLASO was given the mandate to set up a legal aid scheme and establish eligibility criteria, policies and procedures to provide persons “incapable of seeking justice” with legal assistance (Section 7).

31 See Legal Aid Policies, 2001, available at: <http://www.nlaso.gov.bd/Form-NLASO/Policy%202001.pdf>.

Board of Management within 60 days.³²

In addition, where there is no qualified person willing to serve as a guardian for a child bringing a civil suit, a court officer may be appointed to fill this role. The court may later direct, however, that either or both of the parties pay the costs of this representation.³³

Any person arrested and detained in custody has the right to consult and be defended by a lawyer of his/her choosing.³⁴

Specifically, the Children Act provides for the right to legal representation for children in conflict or in contact with the law;³⁵ no court may proceed with the trial of a case involving such a child without legal representation for the child.³⁶ If the child's parents or, in their absence, foster carer, guardian or relatives do not appoint a representative for the child or if such person is not available, or if there are insufficient funds to engage a lawyer, the Children's Court must appoint a lawyer from the District Legal Aid Committee or Supreme Court to conduct the case. The District Legal Aid Committee must not take more than 30 days to appoint a lawyer.³⁷ Probation Officers have a duty to ensure legal representation for the child including the provision of legal aid through the District Legal Aid Committee or non-government legal aid organisations.³⁸

Where the child's parents or, in their absence, foster carer, guardian or relatives appoint a lawyer, such lawyer must be present at all hearings of the case or may, for a reasonable cause, remain absent from the hearing with the permission of the Children's Court.

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

A child's parents' or guardian's consent is not required to initiate a lawsuit, but the child's legal guardian, father or other "natural guardian" must be notified of and given an opportunity to object to the appointment of a guardian to bring a lawsuit.³⁹ In addition, where the guardian for the lawsuit is not otherwise a legal guardian of the child, the child's legal guardian may at any point seek to be appointed in the next friend's place.⁴⁰

While it is not a constraint on bringing proceedings, the next friend or guardian for a lawsuit cannot enter into any agreement on behalf of the child concerned without permission from the court.⁴¹

32 Legal Aid Services Act, Section 16.

33 Code of Civil Procedure, Schedule 1, Order XXXII, Rule 4.

34 Constitution, Article 33; Code of Criminal Procedure, Article 341.

35 A "child in contact with the law" includes a child who is a victim of or a witness to an offence under any existing law: Children Act, Section 2(4).

36 Children Act, Section 55(1).

37 Children Act, Section 56(2).

38 See http://www.supremecourt.gov.bd/web/contents/Children_Act_2013-Brief_Commentary_v4.pdf.

39 Code of Civil Procedure, Schedule 1, Order XXXII, Rule 3.

40 Code of Civil Procedure, Schedule 1, Order XXXII, Rule 9.

41 Code of Civil Procedure, Schedule 1, Order XXXII, Rule 7.

III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Civil proceedings may be initiated in line with the Code of Civil Procedure.⁴² Notably, there are certain special procedures that must be followed if the lawsuit is to be filed against the Government, including the provision of two months' advance written notice of the complainant's intention to sue.⁴³ In addition, in any lawsuit involving a "substantial question as to the interpretation of constitutional law" concerning the Government, the presiding court must give notice to the Attorney General and may upon request at any stage of the proceedings add the Attorney General as a party to the case.⁴⁴

The Constitution specifies that all laws found to be inconsistent with the fundamental rights and freedoms it sets out in Part III are considered void, and grants any person alleging the violation of these the right to initiate proceedings in the High Court.⁴⁵ Courts may also open proceedings to investigate and review the decisions of public bodies on their own initiative, known as "suo motu" proceedings, where rights violations are brought to their attention.⁴⁶

Children may also challenge human rights violations by lodging complaints with the National Human Rights Commission.⁴⁷ The Constitution and Ombudsman Act 1980 further provide for the appointment of an Ombudsman to receive and investigate complaints of injustice resulting from public actions.⁴⁸ Nonetheless, despite the explicit authorisation for the creation of an Ombudsman's office, one has yet to be appointed.⁴⁹

B. What powers would courts have to review these violations, and what remedies could they offer?

Civil lawsuits may seek redress in the form of money damages or an injunction ordering a party to follow a particular course of action. In a lawsuit demanding that a party cease actions causing injury to the complainant, the presiding court may also at any point during the proceedings issue an injunction to restrain the defending party from carrying out the

42 Schedule 1, Order IV.

43 Code of Civil Procedure, Article 80; Schedule 1, Order XXXVII.

44 Code of Civil Procedure, Schedule 1, Order XXVIA.

45 Constitution, Articles 26, 102.

46 See, e.g., *State v. Secretary, Ministry of Law, Justice & Parliamentary Affairs and ors.*, available at:

http://www.crin.org/docs/FileManager/State_-_versus_Secretary_Ministry_of_Law_Justice_and_Parliamentary_Affairs_and_others.pdf.

47 National Human Rights Commission Act 2009, Section 12, available at:

<http://www.asiapacificforum.net/members/associate-members/bangladesh/downloads/legal-framework/national-human-rights-commission-act-2009>. For more information, see <http://www.thedailystar.net/newDesign/news-details.php?nid=175687>.

48 Constitution, Article 77; Ombudsman Act, Section 6, available at: http://bdlaws.minlaw.gov.bd/pdf/599_.pdf.

49 For more information, see <http://www.thedailystar.net/newDesign/news-details.php?nid=175687>.

actions in question.⁵⁰

In public interest litigation or other proceedings alleging a violation of constitutional rights, the High Court may appoint an individual or committee to further investigate the matter in question.⁵¹ At the conclusion of proceedings, the court may then invalidate the challenged public act or decision as unlawful, prohibit a public authority from taking certain actions, or order a public authority to take a particular action or series of actions as required by law.⁵²

The court may, on its own motion or on an application by a child victim or his/her parents or, in their absence, foster carer, guardian, relatives, Probation Officer, lawyer or public prosecutor, order any person found guilty of an offence committed against the child to pay compensation in order to restore the child to his/her previous position, or may direct that the money be used for the welfare of the child.⁵³

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Public interest litigation may be filed by an interested party to advance the rights of a particular group or class of persons without naming individual victims.⁵⁴

Otherwise, civil proceedings require an individual victim whose name and status as a child must be disclosed in the initial complaint.⁵⁵

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Where a number of persons have the same interest in a lawsuit, the court may grant permission for one or more of these persons to act on behalf all interested parties.⁵⁶ If so permitted, the representative party must give notice of the lawsuit directly to all persons who have an interest in the claim or, where this not practicable, place a public advertisement to that effect. If desired, any person with an interest in the claim may then apply to the court to become a formal party to the lawsuit.

In addition, lawsuits relating to the same matter may be joined together where “any common question of law or fact would arise”.⁵⁷ Where there are multiple complainants, one or more may be authorised in writing to act on behalf of other parties to the suit.⁵⁸

As above, public interest litigation proceedings may also be initiated on behalf of a large

50 Code of Civil Procedure, Schedule 1, Order XXXIX, Rule 2.

51 For more information, see <http://www.thedailystar.net/law/2006/05/04/info.htm>.

52 Constitution, Article 102.

⁵³ Children Act, Section 38.

54 See, e.g., <http://www.blast.org.bd/whatwedo/pilandadvocacy>.

55 Code of Civil Procedure, Order VII, Rule 1.

56 Code of Civil Procedure, Order I, Rule 8.

57 Code of Civil Procedure, Order I, Rules 1, 3.

58 Code of Civil Procedure, Order I, Rule 12.

section of society without naming individual victims.

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

In the early and mid-1990s, the standards for allowing non-governmental organisations and individual advocates to bring public interest litigation on behalf of children and other disempowered groups were relaxed.⁵⁹ Since that time, these kinds of lawsuits have become an increasingly common way of enforcing constitutional rights, and non-governmental organisations regularly challenge rights violations in their own name.⁶⁰

Where a case has already been filed, non-governmental organisations may also seek to intervene in the case or serve as a friend of the court, otherwise known as “amicus curiae”.⁶¹ In either role, the interested organisation may provide expertise to the court on a particular point of law or make submissions on matters of judicial interpretation.

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Lower civil courts are established under the Civil Courts Act 1887,⁶² and the High Court and Appellate Division form two divisions of the Supreme Court as established under the Constitution.⁶³

Civil proceedings are initiated in the lowest court authorised to hear the case.⁶⁴ Subordinate courts include courts of small causes, which have the jurisdiction to hear cases seeking money damages under a certain amount.⁶⁵ Notably, however, courts of small causes may not hear suits against the Government or concerning public actions.⁶⁶

As above, public interest litigation and other cases brought to challenge violations of fundamental rights under the Constitution are filed directly with the High Court.⁶⁷

In any case where a child in conflict or in contact with the law is involved, the Children's Court has the exclusive jurisdiction to try that case.⁶⁸ The Children Act provides that at least

59 See, e.g., <http://www.aseanlawassociation.org/9GAdocs/Malaysia.pdf>; <http://www.thedailystar.net/law/2006/05/04/info.htm>.

60 See, e.g., <http://www.blast.org.bd/whatwedo/pilandadvocacy>.

61 See, e.g., <http://www.law.georgetown.edu/rossrights/chapters/BangladeshWomenLawyers.html>.

62 See http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=59; more details: <http://www.minlaw.gov.bd/subcourt.htm>.

63 See Constitution, Part VI, Chapter I.

64 Code of Civil Procedure, Article 15: http://bdlaws.minlaw.gov.bd/pdf_part.php?id=86.

65 Small Cause Courts Act 1887, Section 15: http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=58.

66 Small Cause Courts Act 1887, Schedule 2.

67 Constitution, Article 102.

68 Children Act, Section 17.

one Children's Court must be established in every district headquarter and metropolitan area.⁶⁹

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above.

In civil proceedings, the court has full discretion to order either the complaining or defending party to pay costs.⁷⁰

The Code of Civil Procedure allows persons unable to pay court fees - "paupers" - to initiate civil proceedings without charge, although there is no similar guarantee to free legal assistance.⁷¹ However, court fees may be recoverable where a pauper's lawsuit succeeds.⁷²

Legal aid is not available in the case of private prosecutions, but criminal courts may order the Government to pay the reasonable expenses of any complainant attending the proceedings.⁷³ In certain cases, the court may also order a convicted offender to reimburse the fees for initiating and filing the proceedings.⁷⁴

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

There are a number of children's rights, human rights, and legal services organisations that work either independently or in partnership with NLASO to provide legal assistance free of charge.⁷⁵

The Bangladesh Legal Aid and Services Trust (BLAST) is a large, well-known organisation that provides legal aid, advice and representation in criminal, civil and family proceedings. BLAST specifically "prioritises support to women, men and children living in poverty or facing disadvantage or discrimination".⁷⁶ Other national organisations focused on legal aid and human rights include the Bangladesh Legal Reform Project (BLRP)⁷⁷ and the Manusher

⁶⁹ Children Act, Section 16(1).

⁷⁰ Code of Civil Procedure, Article 35.

⁷¹ Code of Civil Procedure, Schedule 1, Order XXXIII.

⁷² Code of Civil Procedure, Schedule 1, Order XXXIII, Rule 10; Court-Fees Act, 1870:

http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=21.

⁷³ Code of Criminal Procedure, Section 544.

⁷⁴ Code of Criminal Procedure, Section 546A.

⁷⁵ See, e.g., <http://www.nlaso.gov.bd/index.php/partners>.

⁷⁶ See <http://www.blast.org.bd/>.

⁷⁷ See <http://blrp-b.hpage.com/>.

Jonno Foundation.⁷⁸ On an international level, the United Nations Development Programme's (UNDP) Promoting Access to Justice and Human Rights in Bangladesh Project (A2J) has worked specifically to provide legal assistance to children.⁷⁹

It is also possible to obtain pro bono legal representation in human rights and public interest matters, although no formal system for providing this assistance exists.⁸⁰ Bangladeshi law does not provide for contingency arrangements whereby a case could be brought without paying legal fees up front.⁸¹

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

Timing requirements for bringing cases are set out in the First Schedule to the Limitation Act, 1906.⁸² Most claims must be filed within periods of one, three or six years from the date of the action in question; notably, suits to challenge public actions must be filed within one year.

For children, however, this period does not begin to run until they have reached the age of majority.⁸³

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The admissibility of information and material into evidence is governed by the Evidence Act, 1972, which allows for, amongst other things, the presentation of documents, public records, and testimony.⁸⁴

In civil proceedings, further rules are provided in the Code of Civil Procedure.⁸⁵ Generally, witnesses giving evidence in civil proceedings must do so in open court in the presence of the presiding judge.⁸⁶ Civil courts may also institute commissions to examine any particular person or conduct a local investigation.⁸⁷ Family courts, which hear matters related to child custody and guardianship, are empowered to hold proceedings in private.⁸⁸ The Children's Court has the powers of a Court of Sessions under the Code of Criminal Procedure, and the powers of a Civil Court in respect of service of summons, summoning witnesses and

78 See <http://www.manusherjonno.org/index.php/home.html>.

79 See http://www.undp.org.bd/projects/proj_detail.php?pid=62.

80 See, e.g. <http://mohammadhossain.wordpress.com/2012/01/13/pro-bono-case-we-have-filed-to-ensure-transparency-in-climate-change-funds-high-court-division-has-issued-notice-upon-the-government-of-bangladesh/>.

81 See <http://books.google.co.uk/books?id=7E7a137aYBEC>.

82 http://bdlaws.minlaw.gov.bd/pdf/88_Schedule.pdf.

83 Limitation Act, Section 6, available at: http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=88.

84 Evidence Act, 1972, available at: http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=24.

85 Code of Civil Procedure, Articles 30, 31; Civil Procedure Rules, Orders XI, XXXIII, XVI, XVIII.

86 Code of Civil Procedure, Schedule 1, Order XVIII, Rule 4.

87 Code of Civil Procedure, Section 75.

88 Family Courts Ordinance, Section 11.

ensuring their attendance, production of documents or materials and receiving evidence on oath.⁸⁹

The Children Act contains a range of child-friendly provisions for the giving of evidence by a child in conflict or contact with the law in proceedings in a Children's Court. Hearings by the Children's Court must take place in an ordinary room without a witness box or podium surrounded by red cloth.⁹⁰ Only the following persons may be present in court: the child concerned, the parents or, in their absence, foster carer, guardian or relatives, court officials, parties to the proceedings, CAPO, the lawyer, any other person directly concerned with the case including the Probation Officer, and any person specially authorised by the court.⁹¹ The lawyer, police or any other official present in court must not wear any professional or official uniform.⁹² The court may, in the best interests of the child, direct any person to leave the court.⁹³ The child may, subject to his/her consent, be removed from the court if his/her presence is not in his/her best interests, provided that the presence of the child's parents or, in their absence, foster carer, guardian or relatives, as well as the Probation Officer and his/her lawyer is ensured.

Proceedings must be conducted in such language that the child understands and, where necessary, the court must order the presence of an interpreter for the child, free of charge.⁹⁴ Probation Officers have a duty to remain present in the court during the trial and provide company to the child as far as possible whenever necessary.⁹⁵ It is the duty of the lawyer engaged on behalf of the child and the Probation Officer to explain to the child any decision or order of the court and the nature and consequences of the proceedings.

The child's evidence may be received through a previously recorded video made in the presence of the lawyer for the accused. Further, evidence is to be taken by conducting a camera trial, or by video link, when available.⁹⁶ If the child declines to testify in the presence of the accused or if it appears that the child will be prevented from telling the truth in front of the accused, the accused will be removed from the court but the accused's lawyer will be given the opportunity to cross-examine the child.⁹⁷ Where a child is involved in any offence along with an adult, evidence in the case of the child must be taken separately from the evidence taken in the case of the adult.⁹⁸ The court may take any other steps it deems fit for the purpose of ensuring the best interests of the child.

In any case under trial before the Children's Court where a child is involved in the case or as a witness, no photograph or description of the child may be published in any print or electronic media or through the internet which may directly or indirectly identify the child

⁸⁹ Children Act, Section 18.

⁹⁰ Children Act, Section 17(4).

⁹¹ Children Act, Section 23.

⁹² Children Act, Section 19(4).

⁹³ Children Act, Section 25.

⁹⁴ Children Act, Section 27.

⁹⁵ See http://www.supremecourt.gov.bd/web/contents/Children_Act_2013-Brief_Commentary_v4.pdf.

⁹⁶ Children Act, Section 54(3).

⁹⁷ Children Act, Section 54(3).

⁹⁸ Children Act, Section 17(2).

unless it is apparent to the court that such publicity will not harm the child's interests.⁹⁹ Breach of this prohibition is an offence under the Children Act.¹⁰⁰

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Where a decision is issued against the Government in a civil case, the court will specify a time by which the judgment must be executed. Three months after this time has passed, the presiding court may make further orders to bring its decision into force.¹⁰¹

All persons accused of criminal offences are guaranteed the "right to a speedy and public trial".¹⁰²

Specifically, the Children's Court must complete a trial within 360 days from the day of the child's first appearance before the court. If for any acceptable or practical reason the trial cannot be concluded within this time, the Children's Court must give reasons and extend the deadline by another 60 days. If the trial is not concluded within the time specified, the child accused must be discharged if the allegation concerns a minor offence.¹⁰³

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

Appeals from original court decisions and certain other court orders may be filed in civil proceedings in line with the Code of Civil Procedure and, if to the Supreme Court, in accordance with the Court Rules of the High Court or Appellate Division.¹⁰⁴

On review of a civil case, appellate courts may affirm or reverse the case on final order, send the case back to the lower court for determination, or frame certain issues or law or fact to be tried in the lower court.¹⁰⁵ Appellate courts also have the power in certain circumstances to take additional evidence.¹⁰⁶ As above, a person who is unable to pay the fees to file an appeal may proceed as a "pauper".¹⁰⁷

Appeals from subordinate courts may be filed with the High Court.¹⁰⁸ Appeals to the Appellate Division may only be filed with the permission of the High Court, including instances where the High Court certifies that the case "involves a substantial question of law as to the interpretation of [the] constitution".¹⁰⁹ In claims solely for money damages, the

⁹⁹ Children Act, Section 28.

¹⁰⁰ Children Act, Section 81.

¹⁰¹ Code of Civil Procedure, Article 82.

¹⁰² Constitution, Article 35.

¹⁰³ Children Act, Section 32.

¹⁰⁴ Code of Civil Procedure, Articles 96, 104; Schedule 1, Orders XLI, XLIII; Supreme Court Rules, available at: <http://www.supremecourt.gov.bd/scweb/rules.php>.

¹⁰⁵ Code of Civil Procedure, Article 107; Schedule 1, Order XLI, Rules 23 – 25.

¹⁰⁶ Code of Civil Procedure, Schedule 1, Order XLI, Rules 27, 28

¹⁰⁷ Code of Civil Procedure, Schedule 1, Order XLIV.

¹⁰⁸ Code of Civil Procedure, Article 106.

¹⁰⁹ Constitution, Article 103; Code of Civil Procedure, Article 109; Schedule 1, Order XLV, Rule 3.

amount requested must exceed a certain amount in order to appeal.¹¹⁰ If no appeal would otherwise be possible, a complainant may also seek a special review of the judgment in question.¹¹¹

Family court decisions may be appealed to the Court of District Judge, likewise a higher subordinate court.¹¹²

Children's Court decisions may be appealed to the High Court.

The time limit to file an appeal depends on the nature of the case and either the court issuing the judgment or the court whose review is sought. In most instances, this time limit will be 20, 30 or 60 days.¹¹³

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Under the Bangladeshi Constitution, decisions of the Appellate Division are explicitly binding on the High Court, whose decisions are in turn binding on subordinate courts.¹¹⁴ This means that the effects of a bad decision for children's rights could be felt for many years, and that negative judgments from higher courts will have more far-reaching effects than such judgments from lower courts.

In addition, as described in more detail below, there are risks that a positive decision may not be respected by public authorities.

I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

Courts have various and flexible powers to enforce the execution of judicial decrees, most of which must be exercised within 3 years' from the date of the final judgment or, in the case of the Appellate Division or certain High Court cases, 12 years.¹¹⁵ In civil proceedings, there are further provisions for the execution of judicial decrees and orders in the Code of Civil Procedure.¹¹⁶

Despite these enforcement powers, however, the Government has not always abided by court decisions finding laws, policies or public actions in violation human rights.¹¹⁷ In circumstances where a court has ordered that the Government institute a new law in following a particular course of action, it may be difficult to monitor the enforcement of this law once it has been enacted. There are also general concerns about corruption and the

110 Code of Civil Procedure, Article 110.

111 Code of Civil Procedure, Article 114; Schedule 1, Order XLVII.

112 Family Courts Act, Section 17.

113 Limitation Act, Schedule 1.

114 Constitution, Article 111.

115 Code of Civil Procedure, Article 51; Limitation Act, Schedule 1.

116 Code of Civil Procedure, Schedule 1, Order XXI.

117 See, e.g., <http://www.escri-net.org/docs/i/400920>.

independence of the judiciary in Bangladesh, leading to weak judicial enforcement of decisions by the Government.¹¹⁸

V. Additional factors. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

In addition to the formal justice system, there is also a system of village courts in operation in rural portions of the country.¹¹⁹

This report is provided for educational and informational purposes only and should not be construed as legal advice.

118 See, e.g., <http://www.u4.no/publications/overview-of-corruption-within-the-justice-sector-and-law-enforcement-agencies-in-bangladesh/downloadasset/2800>; <http://www.article2.org/pdf/v05n04.pdf>.

119 For more information, see <http://www.villagecourts.org/>.