

ACCESS TO JUSTICE FOR CHILDREN: SINGAPORE

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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?

Singapore acceded to the CRC on 2 October 1995.¹ Singapore has also ratified the Optional Protocol on the Involvement of Children in Armed Conflict.² The Parliament of Singapore must pass legislation to implement international treaties and conventions to give effect to them in Singapore law.³

B. Does the CRC take precedence over national law?

No, domestic law would prevail in the case of conflict with an incompatible rule of international law.⁴ Furthermore, Singapore entered the following reservation to the accession of the CRC:

The accession to the Convention by the Republic of Singapore does not imply the acceptance of obligations going beyond the limits prescribed by the Constitution of the Republic of Singapore nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution.⁵

C. Has the CRC been incorporated into national law?

Singapore has implemented certain provisions of the CRC through different statutes and secondary legislation (e.g., the Children and Young Persons Act (CYPA),⁶ the Women's Charter, the Criminal Procedure Code and the Penal Code).

However, Singapore has not fully implemented the CRC and has made the following declaration in respect of Articles 12 to 17 and a reservation to the ratification of the CRC:

Declaration: The Republic of Singapore considers that a child's rights as defined in the CRC, in particular the rights defined in Articles 12 to 17, shall in accordance with Articles 3 and 5 be exercised with respect for the authority of parents,

¹ <http://app.msf.gov.sg/Policies/ChildrenYouth/ObligationsundertheUNConventionontheRights.aspx>.

² https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en.

³ *Initial report of Singapore to the UN Committee on the Rights of the Child, CRC/C/51/Add.8, 17 March 2003, para. 50. Available at:*

⁴ See: <http://www.singaporelaw.sg/sglaw/laws-of-singapore/overview?id=38>.

⁵ See:

http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en#EndDec.

⁶ *Ibid.*

schools and other persons who are entrusted with the care of the child and in the best interests of the child and in accordance with the customs, values and religions of Singapore's multiracial and multi-religious society regarding the place of the child within and outside the family.

Reservation: The Constitution and the laws of the Republic of Singapore provide adequate protection and fundamental rights and liberties in the best interests of the child. The accession to the Convention by the Republic of Singapore does not imply the acceptance of obligations going beyond the limits prescribed by the Constitution of the Republic of Singapore nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution.

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

No, the CRC cannot be directly enforced in the courts. An aggrieved party may only approach the Singapore courts with regard to violations of his/her rights under the CRC by invoking the relevant provisions of domestic legislation which implement the CRC in Singapore.

Nonetheless, the approach of the Singaporean courts is to give due consideration to international obligations when deciding the constitutional validity of a provision of domestic law.⁷

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

The CRC has been cited in a number of cases in domestic courts, including cases concerning child custody and access,⁸ maintenance for “illegitimate” children,⁹ and child prostitution.¹⁰

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?

Children through their representatives can bring civil cases, initiate judicial review proceedings to challenge violations of their constitutional rights and administrative actions, as well as commence private prosecution (see part III.A below).

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?

In general, a child under the age of majority is not deemed to have legal

⁷ See, for example, *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR 410, para. 434; see: <http://www.singaporelaw.sg/sglaw/laws-of-singapore/overview?id=38>.

⁸ *CX v. CY (minor: custody and access)* [2005] SGCA 37 (19 July 2005); *ZO v ZP and another appeal* - [2011] SGCA 25 (25 May 2011).

⁹ *AAG v. Estate of AAH, deceased* [2009] SGCA 56 (19 November 2009).

¹⁰ *Tan Chye Hin v. Public Prosecutor* [2009] SGHC 111 (6 May 2009).

competence. The Rules of Court under the Supreme Court of Judicature Act¹¹ describe a person under 18 years as one “under disability”¹² so that he/she can only start court proceedings with a “litigation representative”.¹³ The “litigation representative” can be a legal guardian, who is usually either a parent or next-of-kin, or any other person the court may appoint. Further, the litigation representative must have no interest in the cause or matter in question adverse to the child.¹⁴

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

See part II.B above.

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

Children who are Singapore citizens or permanent residents in Singapore can receive legal aid administered by the Legal Aid Bureau¹⁵ in certain civil and family law matters only.¹⁶ An application for a child under the age of 21 must be made by a guardian (e.g. parent) on his/her behalf, and applicants must pass a means test (determining financial eligibility) and a merits test (determining the merits of the case).¹⁷

The Legal Aid Bureau does not provide legal aid in criminal proceedings; this is instead provided by the Singapore Law Society which administers the Criminal Legal Aid Scheme (see part IV.C below).¹⁸

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)?

The litigation representative is required to act by a solicitor.¹⁹ There are no other such conditions or limits.

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 claims may be brought against the alleged wrongdoer for damages in cases such as personal injury. Plaintiffs should follow the procedures set out in the Rules of Court under the Supreme Court of Judicature Act. Proceedings may be begun

¹¹ (Chapter 322, Section 80), available at: <http://app.supremecourt.gov.sg/default.aspx?pgID=97>.

¹² Rules of Court, Order 1, r. 4(3).

¹³ Ibid., Order 76, r. 2(1).

¹⁴ Ibid., Order 76, r. 3.

¹⁵ <https://www.mlaw.gov.sg/content/lab/en.html>.

¹⁶ <https://www.mlaw.gov.sg/content/lab/en/what-we-do/what-types-of-cases-are-handled-by-lab.html>.

¹⁷ <https://www.mlaw.gov.sg/content/lab/en/eligibility/do-i-qualify-for-legal-aid.html>.

¹⁸ <https://www.mlaw.gov.sg/content/lab/en/what-we-do/what-types-of-cases-are-not-handled-by-lab.html>.

¹⁹ Rules of Court, Order 76, r. 2(3).

by writ of summons or originating summons (see part IV.A below).²⁰

Where a legal provision violates an individual's fundamental rights set out in the Constitution, the individual can seek judicial review of the provision. However, there is no basis to challenge a domestic law which is potentially in violation of the CRC. Furthermore, any person can apply to the High Court for judicial review of administrative acts or decisions.

Any person who wishes to seek recourse for a crime that he/she believes has been committed against him/her may file a magistrate's complaint (see part IV.A below).

For any offences punishable under the CYPA, no court shall try any offence punishable under that Act except with the consent of the Public Prosecutor or Deputy Public Prosecutor or upon a complaint made by certain parties, which includes a Protector appointed under the CYPA.²¹ In other words, the Act contemplates a system where instances of mistreatment of children will be referred to the Child Protection Service. The Protector would then determine whether or not to apply to the courts to try the offence. There are instances of self-referral but the vast majority of cases are referred by hospitals, schools or the police.²²

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

In general terms, the courts may, under the relevant legislation and secondary legislation, impose criminal sanctions such as fines or imprisonment (bearing in mind statutorily prescribed sanctions where applicable) or civil remedies such as damages or injunctions where applicable.

The High Court can grant the following remedies following judicial review of laws, subsidiary legislation, rules, or administrative acts or decisions: mandatory order, prohibiting order (prohibition), quashing order (*certiorari*), order for review of detention (*habeas corpus*), and declaration.²³ The High Court can hold any law, subsidiary legislation, rules, or administrative acts or decisions that are inconsistent with the Constitution to be void.²⁴ The Government Proceedings Act bars the High Court from granting injunctions against the Government or its officers.

Under the CYPA, the courts can impose various care and protection orders,²⁵ including removal and placement of a child in temporary care and protection or referral to a doctor,²⁶ or orders to attend counselling, psychotherapy or some other form of treatment.²⁷

C. Would such a challenge have to directly involve one or more individual child

²⁰ Rules of Court, Order 5, r. 2.

²¹ Children and Young Persons Act, section 20.

²² http://app.msf.gov.sg/portals/0/summary/publication/Materials_Protect_Children_in_Spore.pdf.

²³ See Rules of Court, Orders 53 and 54.

²⁴ See Constitution, article 4.

²⁵ Children and Young Persons Act, section 49.

²⁶ *Ibid.*, section 9.

²⁷ *Ibid.*, section 51.

victims, or is it possible to challenge a law or action without naming a specific victim?

A challenge to a law cannot be made where there is no actual victim involved. In order to seek judicial review of any law for breach of the fundamental rights set out in the Singapore Constitution, the claimant must have suffered a violation of a personal right and must have a real interest in bringing the action.²⁸

With respect to the naming of a victim, as the Rules of Court describe a person under 18 years as one “under disability”, the purpose of which is to protect the victim, it would be possible to challenge the law or action without naming the victim if he/she is under 18 years. Section 35 of the CYP A further prohibits the publication or broadcasting of information relating to any proceedings in any court of the name, address, school, picture or any particulars that could lead to the identification of any child concerned in any court proceedings.

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

The only form of group litigation permitted by Singapore law is representative action. Under the Rules of Court a representative action may be commenced by one person representing a group of people with the same interest in proceedings.²⁹ These actions are very rare and do not appear to have been used in the context of judicial review proceedings.

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?

Non-governmental organisations are unable to do so unless they act as the next friend or the litigation representative of the child victim.

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?

For civil cases, the amount of the claim will determine which court the action will be commenced in. In general, civil cases involving claims not exceeding \$60,000 are dealt with by the Magistrate’s Courts; claims of more than \$60,000 but not exceeding \$250,000 are dealt with by the District Courts; and claims above \$250,000 are dealt with by the High Court.³⁰ To commence proceedings, the plaintiff may issue a writ of summons and statement of claim, or an originating summons with a statement of the questions on which the plaintiff seeks the determination or direction of the court or a concise statement of the relief or remedy claimed in the proceedings. Where the plaintiff sues in a representative

²⁸ *PP v. Salwant Singh s/o Amer Singh.*

²⁹ Rules of Court, Order 15, r. 12.

³⁰ <http://probono.lawsociety.org.sg/Documents/pdf/Know%20the%20Law%20NOW-FINAL.pdf>.

capacity, the writ or originating summons must contain a statement of the capacity in which he/she sues.³¹ Further details to be included are provided in the Rules of Court.³²

Regarding judicial review, an application for a mandatory order, prohibiting order or quashing order may only be made if leave has been granted by the High Court.

³³ An application for leave must be made by originating summons, and supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by an affidavit, to be filed when the application is made, verifying the facts relied on.³⁴ An application for an order for review of detention must be made by originating summons to a judge and supported by an affidavit by the person restrained (or a person on his/her behalf) setting out the nature of the restraint.³⁵

Criminal proceedings are commenced by the State in the Magistrate's Courts for offences where the maximum imprisonment term does not exceed five years or are punishable with a fine only; in District Courts for offences where the maximum imprisonment term does not exceed 10 years or are punishable with a fine only; or in the High Court for offences punishable with death or with imprisonment for a term which exceeds 10 years.

Alternatively, any person who wishes to seek recourse for a crime that he/she believes has been committed against him/her may submit a magistrate's complaint to the Complaints Counter of the Crime Registry.³⁶ The complainant and respondent will first be required to attend criminal mediation. If the magistrate hearing the complaint is not able to get the parties to settle and the complainant wishes to proceed, the complainant can then issue a private summons and prosecute these cases through his/her appointed counsel.³⁷

The Juvenile Court deals with offences committed by persons below 16 years of age.

- 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.

Regarding the means test, only applicants (i.e. the child's guardian) with a disposable income of not more than S\$10,000 per year and a disposable capital of not more than S\$10,000 may be granted legal aid.³⁸ Under the merits test,

³¹ Rules of Court, Order 6, r. 2.

³² Ibid.

³³ Ibid., Order 53, r. 1(1).

³⁴ Ibid., Order 53, r. 1(2).

³⁵ Ibid., Order 54, r. 1.

³⁶ <https://app.statecourts.gov.sg/criminal/page.aspx?pageid=10028>.

³⁷ <http://probono.lawsociety.org.sg/Documents/pdf/Know%20the%20Law%20NOW-FINAL.pdf>.

³⁸ <https://www.mlaw.gov.sg/content/lab/en/eligibility/what-is-the-means-test.html>.

applicants must show that they have a good reason to bring or defend their case under the law.³⁹

Legal aid is not free. Most recipients will be required to pay a contribution towards the costs of work done in the case, which is assessed having regard to the recipient's financial means, the nature of the case, the amount of work done and the amount of money recovered for the recipient. The total contribution usually does not exceed S\$1,000, but it may be more in some cases.⁴⁰

The claimant will be required to pay for the preparation of documents essential for his/her case and service of court documents on the opposing party. If the claimant loses, he/she will usually not be ordered by the court to pay costs if legal aid is granted to him/her, otherwise he/she will be required to pay a portion of the costs of the opposing party unless the court disposes of it.⁴¹

Court hearing and filing fees may be waived by the Registrar of the Supreme Court in cases of genuine hardship. Court hearing fees are fully refundable if parties settle the matter 14 days before the hearing or earlier.⁴²

- 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 practicing 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?

The Singapore Law Society's Pro Bono Services Office⁴³ runs several programs that child victims or their representatives may resort to should they fail to obtain legal aid:

- The Ad Hoc Pro Bono Referral Scheme offers legal representation to persons with exceptional circumstances who do not meet the criteria for existing legal aid schemes but nonetheless are in urgent need.⁴⁴
- The Community Legal Clinic offers free basic legal advice to persons who are facing a legal issue on a personal matter and do not have legal advice or representation, are unable to afford a lawyer, and are a Singaporean or Singapore permanent resident living in Singapore;⁴⁵ and
- The Criminal Legal Aid Scheme provides criminal legal assistance to the poor and needy, including children, who are unable to afford a lawyer and are facing charges in a Singapore court for certain offences.⁴⁶

Lists of other legal clinics in Singapore that offer free legal advice are available at: <http://probono.lawsociety.org.sg/Legal-Clinic-Locator1/Legal-Clinic-Locator/> and <http://legalclinics.sg/>.

Private law firms may also take on clients on a pro bono basis.

³⁹ Ibid.

⁴⁰ <https://www.mlaw.gov.sg/content/lab/en/what-we-do/is-legal-aid-free.html>.

⁴¹ Ibid.

⁴² <http://www.ifaq.gov.sg/supremecourt/>.

⁴³ <http://probono.lawsociety.org.sg>.

⁴⁴ <http://probono.lawsociety.org.sg/About-Us/Our-Services/>.

⁴⁵ <http://probono.lawsociety.org.sg/Help-for-Public/personal-legal-issue/CommunityLegalClinic/>.

⁴⁶ <http://probono.lawsociety.org.sg/Help-for-Public/personal-legal-issue/CriminalLegalAidScheme1/>.

- 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?

Section 6 of the Limitation Act (Chapter 163) provides that tort claims must be brought within six years from the date on which the cause of action accrued. Section 24 of the Limitation Act provides that where any right of action for which a period of limitation is prescribed by the Limitation Act accrues to a person “under disability” (i.e., a child), the action may be brought generally within six years from the date when the person ceases to be “under disability” (i.e. at age 18) or dies.

No such limitations exist if the conduct concerned amounts to a criminal offence and criminal proceedings have been initiated.

- 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 evidence required would be sufficient if the violation is proven on the balance of probabilities for a civil wrong and beyond reasonable doubt for a criminal offence. Admissibility of evidence is governed by the Evidence Act (Chapter 97) and the CYPA.

Where the context requires, children are treated differently when giving evidence in court. Certain courtrooms in the Subordinate Courts are specially designed to be equipped with facilities for child witnesses to testify at the trial in private or via video-link, and where required, with a volunteer support officer assigned to provide comfort and support.⁴⁷

The Child Advocate, or Court-appointed Counsel scheme, was introduced in July 1999 to provide support for children who are subjects of tumultuous custody cases, particularly those involving allegations of child abuse, evidence of alienation from one parent or cultural or religious differences between the parents affecting the child. If the child is over eight years old and capable of forming an opinion and expressing his/her preferences, under the Child Advocate scheme, the court will appoint an *amicus curiae* to interview the child to ascertain his/her views and other concerns which are relevant to the child’s welfare. The counsel will be assisted by Family and Juvenile Justice Centre counsellors when interviewing the child. The counsel will see both parties thereafter and act as a neutral moderator to assist parties to settle the custody issue. If the matter goes to trial, the counsel will give a legal submission to the court which highlights the child’s wishes as well as all other relevant factors which may not have been disclosed by the parties.⁴⁸

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

⁴⁷ http://app.subcourts.gov.sg/Data/Files/File/eJustice/Archives/ISPCAN_Paper.pdf

⁴⁸ https://app.subcourts.gov.sg/Data/Files/File/eJustice/Archives/ISPCAN_Paper.pdf

Approximately nine to 12 months. The process can be expedited if the case is pressing or urgent.

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

The Court of Appeal is the highest appellate court.

With respect to civil matters, save for certain matters which are non-appealable or only appealable with leave in accordance with section 34 of the Supreme Court of Judicature Act, the Court of Appeal will hear appeals from the High Court (including cases appealed to the High Court from subordinate courts, e.g., the Family Court).

With respect to criminal matters, the Court of Appeal only hears appeals from cases originating in the High Court, i.e., not cases that have been appealed to the High Court from a subordinate court (although questions of law may be submitted to the Court of Appeal for determination). A case on any question of law may be appealed from a subordinate court to the Court of Appeal if a party to the subordinate court proceedings applies directly to the Court of Appeal to apply for leave for the case to be heard directly in the Court of Appeal as opposed to the High Court.⁴⁹

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?

According to the doctrine of judicial precedent, decisions of the Court of Appeal are binding on the High Court and Subordinate Courts, and decisions of the High Court are binding on District Courts and Magistrates' Courts. Therefore, a negative decision by the Court of Appeal or High Court can potentially have a long-term impact. However, a practice statement of the Court of Appeal states that it can depart from previous decisions of its own or of the Privy Council (formerly Singapore's highest court of appeal) "in any case where adherence to such prior decisions would cause injustice in a particular case or constrain the development of the law in conformity with the circumstances of Singapore... [T]his power will be exercised sparingly".⁵⁰

The effect of both positive and negative decisions which Parliament views as being contrary to the interests of Singapore may be reversed by legislative changes.

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

None.

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.

⁴⁹ Criminal Procedure Code, section 396.

⁵⁰ Practice Statement (Judicial Precedent) [1994] 2 S.L.R. 689, C.A.

The Committee on the Rights of the Child has expressed its concern that Singapore has not established an independent mechanism to receive and independently investigate complaints on the violations of the rights of children.⁵¹

It is notable that children cannot apply to the court for protection orders when it comes to corporal punishment, which remains lawful. Personal Protection Orders under section 65 of the Women’s Charter, which are issued by a court to prohibit an offender from using violence against a family member or from inciting or assisting anyone to commit violence against a family member, are not available with respect to “correction towards a child below 21 years of age.”⁵²

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

⁵¹ UN Committee on the Rights of the Child, *Concluding observations on the second and third periodic report of Singapore*, CRC/C/SGP/CO/2-3, 4 May 2011, para. 14. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSGP%2fCO%2f2-3&Lang=en.

⁵² Women’s Charter, section 64.