

ACCESS TO JUSTICE FOR CHILDREN: SRI LANKA

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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?

Sri Lanka ratified the CRC on 12 July 1991.¹ Ratified international instruments do not automatically have the force of law in Sri Lanka. To have domestic effect, they must be incorporated into domestic law through legislation. As stated by the Sri Lankan Supreme Court in *Nallaratnam Singarasa v. The Attorney General*, “a treaty or covenant has to be implemented by the exercise of legislative power by Parliament and where found to be necessary by the people at a Referendum to have internal effect and attribute rights and duties to individuals.”²

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law. It has however been referred to when passing domestic legislation, such as when the Minister of Justice, in introducing the Maintenance Bill in Parliament made reference to the CRC as being a guiding force behind the law.³

C. Has the CRC been incorporated into national law?

To date, the CRC has not been directly incorporated into national law. Sri Lanka has, however, expressed its view that many of the provisions of the CRC are in line with many of the current rights espoused by the 1978 Sri Lankan Constitution (Constitution).⁴

Following the ratification of the CRC, in 1992 Sri Lanka adopted the Children Charter of Sri Lanka.⁵ The Charter has no legal or binding force, but is instead intended as a policy document to guide Sri Lanka in its policy making and legal reforms.⁶ Sri Lanka has additionally initiated reviews of its current laws to determine which are consistent and which are

¹ United Nations Treaty Collection, ‘Convention on the Rights of the Child’, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&lang=en.

² *Nallaratnam Singarasa v. The Attorney General*, S.C. Spl(LA) No. 182/99 (2006).

³ *Second periodic report of Sri Lanka to the UN Committee on the Rights of the Child*, CRC/C/70/Add.17, 19 November 2002, para. 40. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f70%2fAdd.17&Lang=en.

⁴ *Initial report of Sri Lanka to the UN Committee on the Rights of the Child*, CRC/C/8/Add.13, 5 May 1994, para. 72. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f8%2fAdd.13&Lang=en.

⁵ *Ibid.*, para. 161.

⁶ *Third and fourth periodic reports of Sri Lanka to the UN Committee on the Rights of the Child*, CRC/C/LKA/3-4, 20 January 2010, para. 72. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fLKA%2f3-4&Lang=en.

inconsistent with the CRC.⁷ Furthermore, Sri Lanka has pointed towards legislation that was passed in a number of areas which strengthen the rights of children and enhance their protection.⁸

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

The CRC cannot be directly enforced in Sri Lankan courts, although it can be used to interpret legislation and legal principles concerning the rights of the child.⁹

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

There do not appear to be any examples of domestic courts using or applying the CRC or any other relevant international instruments in domestic proceedings.

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?

In Sri Lanka, children and their representatives are entitled to bring cases in the Sri Lankan Supreme Court to challenge violations of their “fundamental rights,” the term used by the Constitution to refer to an individual’s rights. Importantly, claims concerning violations of an individual’s fundamental rights can only be brought before the Sri Lankan Supreme Court in Colombo (see part III.A below).

Children through their representatives may initiate civil actions for damages for torts or pecuniary and non-pecuniary losses incurred as a result of the violation.¹⁰ A child through their representative may initiate a criminal action against the perpetrator by making a complaint to the court that an offence has been committed, provided the police have not filed an action themselves.¹¹

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?

The Civil Procedure Code of Sri Lanka states the rules governing the participation of minors (unmarried and unemancipated children under 18)¹² in civil court proceedings.¹³ Every action by a child is required to be made in the child’s name by an adult who is designated as the “next friend” of the child.¹⁴ This next friend may be required to pay any costs in the action as if they

⁷ Ibid., para. 16.

⁸ Ibid., para. 17.

⁹ UNICEF, ‘Law reform and implementation of the Convention on the Rights of the Child’, December 2007, p. 6, available at http://www.unicef-irc.org/publications/pdf/law_reform_crc_imp.pdf.

¹⁰ See Civil Procedure Law.

¹¹ Criminal Procedure Code, section 136.

¹² A minor is any person under 18. A minor shall be deemed to have attained majority or full age on his or her attaining the age of 18, or on marriage, or on obtaining letters of *venia aetatis* (i.e. emancipation): Civil Procedure Code, section 502.

¹³ Ibid., chapter XXXV.

¹⁴ Ibid., section 476.

were the plaintiff.¹⁵ Likewise, if an action is brought on behalf of a child, it must be brought by the child's next friend or guardian for the action.¹⁶

A next friend can be any person of sound mind and full age (i.e., who is not themselves a minor), as long as they are not a defendant in the action and their interests are not adverse to those of the child.¹⁷ Becoming a next friend requires an application by way of a summary procedure supported by an affidavit which shows the fitness of the applicant, and that the applicant does not have any interests that are adverse to those of the child.¹⁸ The court is entitled to remove the next friend if, on application made by summary procedure by either the child or a defendant, the next friend is shown to be connected with a defendant, ceases to reside within Sri Lanka, or for any other sufficient cause.¹⁹ If a next friend is removed, proceedings are stayed until the appointment of a new one.²⁰

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

Under Sri Lankan law there appears to be no difference in the initiation of a case between infants and young children, and “minors” as defined under the Civil Procedure Code.²¹ As such, a case would be brought in line with the civil procedure rules outlined in 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 are entitled to receive legal aid in both civil and criminal cases if they qualify for financial assistance.²² Legal aid was institutionalised in Sri Lanka with the passage of the Legal Aid Act in 1978, and the subsequent formation of the Legal Aid Commission.²³ To qualify for legal aid through the Legal Aid Commission an individual must have a monthly income of Rs 6000 or less, though the Commission has discretion to provide legal aid for those earning less than Rs 8000 a month depending on the circumstances.²⁴ Of particular note, legal aid is available to all women seeking maintenance for themselves and for their children regardless of whether they meet the financial requirements.²⁵

The Legal Aid Commission operates 47 Legal Aid Centres across Sri Lanka and is mandated to take on both civil and criminal litigation matters. However, most of the cases which it takes on are civil matters.²⁶ Fundamental rights lawyers within Sri Lanka have commented that this discrepancy is due to the fact that the Legal Aid Commission looks at criminal cases with disdain.²⁷ Regardless of this mandate to provide legal aid, the Sri Lankan government has only provided modest funding for the Legal Aid Commission, with some supplementary funding

¹⁵ Ibid., section 476.

¹⁶ Ibid., section 477.

¹⁷ Ibid., section 481(1).

¹⁸ Ibid., section 481(2).

¹⁹ Ibid., section 482.

²⁰ Ibid., section 484.

²¹ Ibid., section 502.

²² Asia Foundation et al., ‘The legal aid sector in Sri Lanka: searching for sustainable solutions’, 2009, p. 29, available at <http://asiafoundation.org/resources/pdfs/SriLankaLegalAid.pdf>.

²³ Ibid., p. 12.

²⁴ Ibid., p. 29.

²⁵ Legal Aid Commission of Sri Lanka, ‘About Legal Aid Commission’, available at <http://www.legalaidcommission.com/aboutus.php>.

²⁶ Asia Foundation et al., pp. 27, 29.

²⁷ Crisis Group Asia, ‘Sri Lanka’s judiciary: politicised courts, compromised rights’, 2009, p. 29.

coming from international donors.²⁸ This modest level of funding has impacted on the Legal Aid Commission's ability to deliver effective services.²⁹

In addition to the Legal Aid Commission's mandate, Article 13 of the Constitution can be read to require a right to an attorney in criminal proceedings.³⁰ This right to a lawyer in criminal proceedings is codified within section 260 of Sri Lanka's Code of Criminal Procedure, and within the International Covenant on Civil and Political Rights (ICCPR) Act.³¹ Specifically with regard to children, section 5 of the Act states that every child has the right to have legal assistance provided by the State at the State's expense in criminal proceedings affecting the child, if substantial injustice would otherwise result.³²

Furthermore, the Supreme Court may direct the Registrar to refer a fundamental rights petition to the Legal Aid Commission, or a similar organisation, to prepare the documents for the case, as the Supreme Court did in the Boosa cases.³³

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)?

There do not appear to be any other conditions or limitations on children or their representatives bringing cases.

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?

The Constitution confers fundamental rights upon all of its citizens, including children.³⁴ Article 17 states that "[e]very person shall be entitled to apply to the Supreme Court . . . in respect of the infringement or imminent infringement, by executive or administrative action, of a fundamental right. . . ."³⁵ Furthermore, Article 126 states that "[t]he Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right. . . ."³⁶ As such, all cases concerning a violation of fundamental rights, including the violation of a child's fundamental rights, must be brought before the Supreme Court.³⁷ An application to the Court may be heard only with leave to proceed obtained from the Supreme Court, which may be granted or refused by not less than two judges.³⁸

²⁸ Asia Foundation et al., p. 13.

²⁹ Ibid., p. 13.

³⁰ Ibid.; see also Sri Lanka Constitution, Article 13.

³¹ Code of Criminal Procedure, section 260; International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007, available at

<http://asiacatalyst.org/laws/2010/02/international-covenant-on-civil-and-political-rights-act.html>; See also Asia Foundation et al., p. 12.

³² International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007; section 5.

³³ Asia Foundation et al., p. 12; *Second periodic report of Sri Lanka to the UN Committee on the Rights of the Child*, para. 32.

³⁴ Sri Lanka Constitution, chapter III.

³⁵ Ibid., Article 17.

³⁶ Ibid., Article 126.

³⁷ Supreme Court of Sri Lanka, <http://www.supremecourt.lk>.

³⁸ Sri Lanka Constitution, Article 126.

Children or their representatives can also file complaints about violations of children's rights with the National Human Rights Commission. Under the Human Rights Commission Act, the Commission has the power to conduct investigations into complaints of violations of fundamental rights.³⁹ Where an investigation discloses the infringement of a fundamental right, the Commission may refer the matter for reconciliation or mediation.⁴⁰ Where this is not successful, the Commission may recommend to the appropriate authorities that prosecution or other proceedings be instituted against the perpetrator, refer the matter to a court, or make such recommendation to the appropriate authorities with a view to preventing or remedying the violation.⁴¹ At present, there is no bureau for children's rights within the Commission to enhance access for children,⁴² and the number of complaints received by its offices regarding violations of children's rights is low in proportion to other categories of complaints.⁴³ Furthermore, the Committee on the Rights of the Child has expressed its concern about the appointment procedure of commissioners and the Commission's lack of independence from political influence.⁴⁴

Complaints about children's rights violations can also be made to the Department of Probation and Child Care Services (DPCCS) and the National Child Protection Authority (NCPA), which are assigned under the Ministry of Child Development and Women's Empowerment. The DPCCS offers services covering a wide range of issues, including "legal" violations of children's rights, child abuse, child labour, children's right to education and health, and children in conflict with the law.⁴⁵ The NCPA's priorities are prevention, investigation and prosecution of child abuse, which includes all acts of sexual violence against children, trafficking in children, cruelty to children and the use of children in obscene publications and exploitative labour.⁴⁶ However, the number of complaints to the NCPA tend to be much lower than received by the police or the DPCCS.⁴⁷

Children or their representatives may also make calls to the toll-free national children's helpline run by the Ministry of Child Development and Women's Empowerment, currently operating between 8.30 a.m. and 4.30 p.m. Calls needing an urgent response are immediately connected to the police unit of the NCPA. Others are directed to relevant authorities depending on the subject matter of the complaint.⁴⁸

³⁹ Human Rights Commission of Sri Lanka Act, No.21 of 1996, section 14, available at http://www.asiapacificforum.net/members/associate-members/sri-lanka/downloads/enabling-legislation/sla_ct_english.pdf.

⁴⁰ Ibid., section 15(2).

⁴¹ Ibid., section 15 (3).

⁴² UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Sri Lanka*, CRC/C/LKA/CO/3-4, 19 October 2010, paras 14-15. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fLKA%2fCO%2f3-4&Lang=en.

⁴³ *Third and fourth periodic reports of Sri Lanka to the UN Committee on the Rights of the Child*, para. 50.

⁴⁴ UN Committee on the Rights of the Child, paras 14-15.

⁴⁵ Department of Probation and Child Care Services, 'Child rights', available at http://www.probation.gov.lk/web/index.php?option=com_details&Itemid=54&lang=en.

⁴⁶ *Third and fourth periodic reports of Sri Lanka to the UN Committee on the Rights of the Child*, paras 38, 144-145; *Second periodic report of Sri Lanka to the UN Committee on the Rights of the Child*, para. 31.

⁴⁷ *Third and fourth periodic reports of Sri Lanka to the UN Committee on the Rights of the Child*, para. 145.

⁴⁸ Ibid., para. 139.

Finally, under the Prevention of Domestic Violence Act (PDVA), an application to a court in respect of a child victim of domestic violence may be made on his or her behalf by the parent or guardian, a person with whom the child resides or a person authorised in writing by the NCPA. The Act provides for the granting of Protection Orders against the perpetrator of ongoing or imminent acts of domestic violence, which includes emotional abuse committed against children. Children are protected both as direct victims of violence and as children of those suffering violence.⁴⁹

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

The Sri Lankan Supreme Court has wide discretion in its ability to review these violations and in what remedies it can offer. Article 126(4) of the Constitution affirms the Supreme Court's wide discretion, stating that "[t]he Supreme Court shall have power to grant such relief or make such directions as it may deem just and equitable in the circumstance in respect" of any claim regarding fundamental rights properly before the Court.⁵⁰

However, the Supreme Court has a limited ability to rule on the constitutionality of any law. Under Article 16(1) of the Constitution, all "written law and unwritten law" which predates the 1978 Constitution "shall be valid and operative notwithstanding any inconsistency with" the fundamental rights guaranteed in the Constitution.⁵¹ The Constitution further limits the Supreme Court's ability to challenge laws enacted after the adoption of the 1978 Constitution. According to Article 121, the Supreme Court only has jurisdiction to determine the constitutionality of a bill within one week of the bill being placed on the Order Paper of the Parliament.⁵² There exists no jurisdiction for the Supreme Court to determine the constitutionality of the law after this one week window. Once a bill becomes a law in Sri Lanka, no court is allowed to call into question its validity.⁵³ Further, if a petition against the validity of a law placed on the Order Paper of the Parliament does result in the given law being determined to be unconstitutional, it may be passed regardless of its unconstitutionality by a two-thirds majority of Parliament.⁵⁴

Courts can award compensation in civil proceedings. Pecuniary and non-pecuniary aspects are taken into account in the calculation of damages in civil claims but neither rehabilitation nor satisfaction are awarded.⁵⁵

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?

It is possible in Sri Lanka to challenge an action⁵⁶ without directly involving one or more individual victims through the use of public interest litigation. Public interest litigation is not provided for in the Constitution, but has been brought about through the expansion of *locus standi* principles by the Sri Lankan Courts.⁵⁷

⁴⁹ Ibid., para. 136.

⁵⁰ Sri Lanka Constitution, Article 126(4).

⁵¹ Ibid., Article 16(1).

⁵² Ibid., Article 121.

⁵³ Ibid., Article 80(3).

⁵⁴ Ibid., Article 84.

⁵⁵ Redress, 'Sri Lanka', p. 16, available at <http://www.redress.org/downloads/country-reports/SriLanka.pdf>.

⁵⁶ Laws cannot be challenged in Sri Lanka as discussed in part III.B.

⁵⁷ Samararatne, D., 'A critical assessment of public interest litigation In Sri Lanka', available at

Public interest litigation first arose in the Supreme Court case *Wijesiri v. Siriwardene*.⁵⁸ Here, the Supreme Court determined that standing before the court “is satisfied if the applicant can show a genuine interest in the matter complained of, and that he comes before Court as a public spirited citizen concerned to see that the law is obeyed in the interest of all, and not merely as a busy body perhaps with a view to gain cheap publicity.”⁵⁹ The Court elaborated that this inquiry would depend on the facts of the case, and the party bringing forth the claim.⁶⁰

The Centre for Policy Alternatives frequently engages in filing public interest litigation challenging proposed laws or challenging specific government actions.⁶¹

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

Under the Civil Procedure Code, all persons may be joined as plaintiffs in the same cause of action, either jointly or severally.⁶² Furthermore, the Civil Procedure Code allows for one or more persons to bring a claim on behalf of numerous parties who share a common interest in bringing the action.⁶³ If such a claim is brought, notice of the institution of the case must be provided to all parties sharing the common interest by personal service, or if personal service is not reasonable, then by public advertisement, at the party instituting the action’s expense.⁶⁴

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?

As discussed in part III.C above, non-governmental organisations (NGOs) are allowed to file challenges to children’s rights violations through the use of public interest litigation.

Further, NGOs may intervene in cases that have already been filed under the Civil Procedure Code.⁶⁵ The court has discretion, upon the application of either party in the case, or without such application, to join a party “whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in that action...”⁶⁶ Since the court has broadly interpreted who has *locus standi* in actions before it,⁶⁷ NGOs could be found to be necessary parties to a pending action depending upon the facts of the case.

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?

http://www.academia.edu/1958959/A_critical_assessment_of_public_interest_litigation_In_Sri_Lanka.

⁵⁸ [1982] 1 Sri L.R. 171 (Sri Lanka).

⁵⁹ *Ibid.*, p. 175.

⁶⁰ *Ibid.*, pp. 175-176.

⁶¹ See generally Centre for Policy Alternatives, ‘Public interest litigation’,

<http://www.cpalanka.org/public-interest-litigation>.

⁶² Civil Procedure Code, section 11.

⁶³ *Ibid.*, section 16.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, sections 18, 19.

⁶⁶ *Ibid.*, section 18(1).

⁶⁷ See part III.C above.

As stated in part III.A above, cases concerning the violation of a fundamental right in Sri Lanka can only be brought before the Sri Lankan Supreme Court. A victim or their lawyer may file such a complaint through a written petition to the Court praying for relief or redress in respect of such violation.⁶⁸

A civil action for damages can be filed in the District Court.⁶⁹ Such an action must be instituted in the court within the local limits of whose jurisdiction the defendant resides, or the cause of action arises.⁷⁰ Every “regular” action must be instituted by presenting a duly stamped written plaint to the court, which must contain, amongst other things: the name, description, and place of residence of the plaintiff and the defendant; a statement of the circumstances constituting each cause of action; and a demand for relief which the plaintiff claims.⁷¹

A criminal action is filed by making a complaint orally or in writing to a Magistrate’s Court that an offence has been committed, provided the police have not filed an action themselves. Such a complaint if in writing must be drawn up by a pleader and signed by the complainant.⁷²

- 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?

As described in part II.D above, children can receive legal aid if they meet the financial requirements for the provision of such service. The Legal Aid Law provides the Legal Aid Commission the discretion to determine its own guidelines in respect to the payment of costs.⁷³ Outside of this discretion, there is no evidence that child complainants or their representatives could avoid paying costs.

- 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?

It is possible for child claimants or their representatives to obtain pro bono legal assistance, with this largely being handled in Sri Lanka through various NGOs.⁷⁴ Currently in Sri Lanka there is no centralised organisation coordinating the provision of pro bono legal assistance that is done through the NGOs operating within the country.⁷⁵

The following NGOs are the main legal aid service providers in the country:

- Muslim Women's Research and Action Forum;*
- Norwegian Refugee Council;*
- Institute of Human Rights;

⁶⁸ Sri Lanka Constitution, Article 126.

⁶⁹ See Civil Procedure Law.

⁷⁰ Civil Procedure Code, section 9.

⁷¹ Ibid., sections 39-40.

⁷² Criminal Procedure Code, section 136.

⁷³ Legal Aid Law, section 4(e).

⁷⁴ Asia Foundation et al., p. 15.

⁷⁵ Ibid.

- National Centre for Victims of Crime;*
- Open University of Sri Lanka;*
- Consortium of Humanitarian Agencies;*
- Centre for Policy Alternatives;
- Women in Need;
- Lawyers for Human Rights and Development;
- Legal Aid Foundation;*
- Home for Human Rights;* and
- Sarvodaya Legal Services Movement.*⁷⁶

The Centre for Policy Alternatives is the only service provider taking a group rights approach to fundamental rights violations.⁷⁷

In regards to success, contingent, or other alternative fee arrangements, Sri Lanka has no legislation on the issue.⁷⁸

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?

Pursuant to Article 126(2) of the 1978 Constitution cases concerning fundamental rights must be brought within one month of the infringement of the fundamental right.⁷⁹

Civil suits must be brought within two years from the time when the cause of action arose.⁸⁰ In cases against the State, which are brought against the Attorney General, there is a notice period of one month before an action can be instituted.⁸¹

The Code of Criminal Procedure provides that “[t]he right of prosecution for murder or treason shall not be barred by any length of time, but the right of prosecution for any other crime or offence (save and except those as to which special provision is or shall be made by law) shall be barred by the lapse of 20 years from the time when the crime or offence shall have been committed.”⁸²

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 Supreme Court does not hold hearings or gather factual evidence. As such, lawyers must base their cases solely upon the written pleadings.⁸³ Thus, fundamental rights lawyers have stated that fundamental rights cases are particularly difficult in fact-heavy cases.⁸⁴ However, expert opinion is allowed to be admitted where the information the expert provides “is likely to

⁷⁶ The organisations marked with an asterisk provide legal aid services completely free of charge. Ibid., pp. 32, 37.

⁷⁷ Ibid., p. 37.

⁷⁸ Meredith, I. & Aspinall, S., ‘Do alternative fee arrangements have a place in international arbitration?’, 2006, 72 *Arbitration* 22, p. 25.

⁷⁹ Sri Lanka Constitution, Article 126(2).

⁸⁰ Prescription Ordinance, section 9.

⁸¹ Civil Procedure Code, sections 456 and 461.

⁸² Criminal Procedure Code, section 456.

⁸³ Crisis Group Asia, p. 6.

⁸⁴ Ibid.

be outside the experience and knowledge of a judge...”⁸⁵

A 1999 amendment to the Law of Evidence in Sri Lanka permits, in cases of child abuse, the reception of videotaped evidence of the preliminary interview of a child victim or witness in order to avoid children being compelled to give evidence in court.⁸⁶ Despite technical facilities being provided, this provision is rarely resorted to in practice, partly due to the lack of awareness of the legal provisions by the police and law enforcement officials.⁸⁷

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

The Constitution states that the Supreme Court must hear and finally dispose of any petition alleging an infringement of fundamental rights within two months of the filing of such petition.⁸⁸ This two month window may be extended if the Supreme Court refers any matter arising in the course of the hearing of the petition to the National Human Rights Commission for inquiry and report.⁸⁹ The time in which the Commission is conducting this inquiry does not factor into the two month time requirement.⁹⁰

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

Since Sri Lanka requires that all fundamental rights petitions be filed within the Supreme Court, there is no possibility for appealing such decisions as the Supreme Court is the highest court and final court of appeal.

Decisions of courts of first instance in civil and criminal cases may be appealed to the Court of Appeal, followed by the Supreme Court.

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?

Precedent plays an important role in the Sri Lankan judicial system, which is based upon the UK judicial system. The unique status, however, of the Supreme Court being the only court capable of hearing claims regarding a violation of fundamental rights means that such rulings will not be widely spread throughout the judicial system as a whole.

There is the possibility of political backlash from a positive decision. There is a recent occurrence of a Chief Justice being removed, arguably in connection with passing decisions which are out of line with the wishes of the ruling party.⁹¹ Furthermore, Parliament would be allowed to pass a change to the law, adopting an otherwise unconstitutional provision, with a two-thirds majority.⁹²

⁸⁵ *R v. Turner* (1971) 2 WLR 56 (CA) p.60.

⁸⁶ *Second periodic report of Sri Lanka to the UN Committee on the Rights of the Child*, para. 54.

⁸⁷ *Third and fourth periodic reports of Sri Lanka to the UN Committee on the Rights of the Child*, para. 424.

⁸⁸ Sri Lanka Constitution, Article 126(5).

⁸⁹ Human Rights Commission of Sri Lanka Act, sections 12, 13.

⁹⁰ *Ibid.*

⁹¹ See Boronow, C., ‘Silencing the media in Sri Lanka: how the Sri Lankan Constitution fuels self-censorship and hinders reconciliation’, 2013, 53 *Virginia Journal of International Law* 725, p. 751.

⁹² See part III.B above.

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

If there is a positive decision from the Supreme Court there does not appear to be any concerns or challenges in enforcing the decision.

- 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.

It has been noted that bringing fundamental rights cases in Sri Lanka is not a realistic option for many litigants. Sri Lankan attorneys have noted that few lawyers outside of Colombo know about fundamental rights or Supreme Court procedures, and that the cost of travelling to Colombo often limits litigants' ability to file a case.⁹³

Additionally, Sri Lanka has recently come out of a civil war between the Sinhalese majority and the Tamil minority.⁹⁴ Though the state of emergency, and thus emergency laws, have ended,⁹⁵ there still exists the Prevention of Terrorism Act (PTA), which allows expansive police detention powers.⁹⁶ The PTA has extremely limited judicial oversight, and routinely is used against Tamils in matters unrelated to terrorism.⁹⁷ Finally, the President has been strengthening the executive since the conclusion of the civil war, severely limiting the independence of courts, and their ability to oversee and prevent government violations of fundamental rights.⁹⁸

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

⁹³ Crisis Group Asia, p. 22.

⁹⁴ See generally Boronow, C.

⁹⁵ Ibid., pp. 741-42.

⁹⁶ Crisis Group Asia, p. 8.

⁹⁷ Ibid., p. 6.

⁹⁸ See generally Boronow, C.; Crisis Group Asia.