

ACCESS TO JUSTICE FOR CHILDREN: BHUTAN

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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?

Bhutan ratified the CRC in 1990. The status of the Convention in the national legal system is specified by the 2008 Constitution,¹ according to which international conventions have the force of law upon ratification.² The CRC has, therefore, the force of law just as any other written law of the Kingdom of Bhutan.

B. Does the CRC take precedence over national law?

Pursuant to the Constitution, the CRC has equal force as any other laws, but it is not clear which would prevail in the case of a conflict between the Convention and a provision of domestic law.

C. Has the CRC been incorporated into national law?

The CRC is considered to be automatically incorporated. Further, the Royal Government of Bhutan has reported that it continues to make efforts to harmonise domestic laws with the provisions of the CRC. Several notable amendments have been made in policy and legislation, including:

- a uniform definition of the child as prescribed in the CRC and in the Constitution of Bhutan enacted in 2008, the Penal Code,³ the Amended Marriage Act of 1996 and the Regulation for Wage Rate, Recruitment Agencies and Workmen's Compensation 1994; and
- the "best interests of the child" principle of the CRC is now enshrined and incorporated in many of Bhutan's legal instruments,⁴ including the Penal Code, the Civil and Criminal Procedure Code⁵, and the Child Care and Protection Act⁶.

¹ The Constitution of the Kingdom of Bhutan 2008, available at: <http://www.bhutanaudit.gov.bt/About%20Us/Mandates/Constitution%20of%20Bhutan%202008.pdf>.

² The Constitution of the Kingdom of Bhutan 2008, Article 10, Section 25.

³ The Penal Code of Bhutan 2004, available at: <http://www.judiciary.gov.bt/html/act/PENAL%20CODE.pdf>.

⁴ *Written replies of Bhutan to the List of Issues in connection with the Second Report*, para. 8.

⁵ The Civil and Criminal Procedure Code of Bhutan 2001, available at: <http://www.judiciary.gov.bt/html/act/Court%20procedure.pdf>, as amended by The Civil and Criminal Procedure Code (Amendment) Act of Bhutan 2011, available at: http://www.nab.gov.bt/ActParliament/24CCPC_Eng_final.pdf.

⁶ The Child Care and Protection Act of Bhutan 2011, available at:

The Constitution contains a number of provisions relevant to children. All fundamental rights of citizens (including children) are guaranteed.⁷ Children are provided with a right to free education⁸ and are specifically protected against all forms of discrimination and exploitation including trafficking, prostitution, abuse, violence, degrading treatment and economic exploitation.⁹ The rights to work and training¹⁰ and fair remuneration and conditions¹¹ are also mandated in the Constitution. The state must provide both traditional and modern health services¹² and security in the event of disability.¹³ It specifies the need to promote conditions that will be conducive to co-operation in community life and the integrity of the extended family structure.¹⁴

Furthermore, the adoption of the Child Care and Protection Act of Bhutan and the Child Adoption Act of Bhutan¹⁵ provides a comprehensive child protection legal framework.¹⁶

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

Given the status of the CRC in national law, it should be possible to rely on it in the courts.

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

No courts have ever received a petition on violation of the Convention.

According to the Royal Government of Bhutan, an instance where the principles of the CRC have been specifically adhered to is when the first in-camera trial was conducted in 2008 for a rape case involving a minor. All future cases involving minors are intended to be conducted in-camera in view of making the courts more child-friendly.¹⁷ Also according to the Royal Government of Bhutan, the principles of the CRC are referred to whenever the National Commission for Women and Children (NCWC), the Royal Bhutan Police and the judiciary deal with cases involving minors.¹⁸

http://www.nationalcouncil.bt/wp-content/uploads/2011/02/Child%20Care%20&%20Protection%20Act_Eng%20&%20Dzo.pdf

⁷ The Constitution of the Kingdom of Bhutan 2008, Article 7.

⁸ The Constitution of the Kingdom of Bhutan 2008, Article 9, Section 16.

⁹ The Constitution of the Kingdom of Bhutan 2008, Article 9, Section 18.

¹⁰ The Constitution of the Kingdom of Bhutan 2008, Article 9, Section 12.

¹¹ The Constitution of the Kingdom of Bhutan 2008, Article 9, Section 14.

¹² The Constitution of the Kingdom of Bhutan 2008, Article 9, Section 21.

¹³ The Constitution of the Kingdom of Bhutan 2008, Article 9, Section 22.

¹⁴ The Constitution of the Kingdom of Bhutan 2008, Article 9, Section 19.

¹⁵ The Child Adoption Act of Bhutan 2012, available at:

http://www.nationalcouncil.bt/wp-content/uploads/2011/02/Child%20Adoption%20Act%202012_Eng.pdf

¹⁶ Bertelsmann Stiftung, *BTI (Bertelsmann Stiftung's Transformation Index) 2012 – Bhutan Country Report*, available at:

<http://www.bti-project.org/fileadmin/Inhalte/reports/2012/pdf/BTI%202012%20Bhutan.pdf>

¹⁷ *Written replies of Bhutan to the List of Issues in connection with the Second Report*, para. ??

¹⁸ *Written replies of Bhutan to the List of Issues in connection with the Second Report*, para. ??

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?

Yes, a child's representative (but not the child independently) may bring a case in a domestic court to challenge a violation of such child's rights. The Civil and Criminal Procedure Code sets out very general guidelines for the participation of children in civil cases. When a person entitled to sue or be sued is a child, the suit must be brought in their name by a family member through a legal guardian or a *jabmi*.¹⁹ A *jabmi* is an attorney who has completed the national legal course, passed the Bar selection examinations and is licenced by the bar council (*Jabmi Tshogdey*) to practice law in Bhutan.²⁰

Criminal cases involving children are brought before the courts through the office of the Attorney General, who is the state prosecutor.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?

Under the Civil and Criminal Procedure Code, children are not permitted to bring a case themselves on their own behalf. A child is considered to be "a person lacking in capacity to sue or be sued" and accordingly must be represented by "the parents/family member/guardian/*jabmi*" when the child has a direct stake in the outcome of litigation but is unable to prosecute or defend the action due to being a child.²²

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

Since there are no provisions in the Civil and Criminal Procedure Code of Bhutan distinguishing infants and young children from older children, cases involving infants and young children also must be brought in the infant's or young child's name by a member of their family through a legal guardian/*jabmi*.²³

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

The Constitution states that "the State shall endeavour to provide legal aid to secure justice which shall not be denied to any person by reason of economic

¹⁹ The Civil and Criminal Procedure Code of Bhutan 2001, Section 117.

²⁰ Globalex, *Research Guide to the Legal System of the Kingdom of Bhutan*, available at: <http://www.nyulawglobal.org/Globalex/Bhutan.htm#bhutaneselegalsystem>.

²¹ The Constitution of the Kingdom of Bhutan 2008, Article 29, Section 5.

²² The Civil and Criminal Procedure Code of Bhutan 2001, Section 148.

²³ The Civil and Criminal Procedure Code of Bhutan 2001, Section 117.

or other disabilities”.²⁴ Further, the Civil and Criminal Procedure Code of Bhutan expressly provides that indigent defendants must be provided legal aid for their defence where the interests of justice so require.²⁵

- 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)?

Bhutan’s Civil and Criminal Procedure Code, 2001 provides the general provisions to institute cases either individually or by the legal representative²⁶ and there is no specific limits on children nor is the consent required.

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?

Every person, presumably that includes children, through their representatives, has the right to approach the courts in matters arising out of the Constitution or other laws.²⁷

More specifically, if there is a potential violation of any fundamental right conferred under Article 7 of the Constitution, any person in Bhutan (presumably including children, through their representatives) may initiate legal proceedings in the Supreme Court or High Court for the enforcement of the right in accordance with the rules of the Civil and Criminal Procedure Code of Bhutan.²⁸

The Royal Courts of Justice must apply any international treaty that has been duly acceded by the Royal Government of Bhutan and ratified by the National Assembly of Bhutan.²⁹

The National Commission for Women and Children (NCWC), the national mechanism in charge of coordination of actions taken to protect children’s rights and improve the monitoring of the implementation of the CRC, has been receiving complaints and acting on behalf of minors in investigations and court. When NCWC receives complaints, it informs the Women and Child Protection Unit (WCPU) and accompanies the complainant to the police, as well as to court to represent the victims, if requested. From spring 2007 until summer 2008, the NCWC handled eight court cases of which four cases involved minors. The cases include a teenage pregnancy, a rape of a minor, a child abuse case and a case where a minor was trafficked to Bhutan. The accused in all four cases were convicted in court. The minors were

²⁴ The Constitution of the Kingdom of Bhutan 2008, Article 9, Section 6.

²⁵ The Civil and Criminal Procedure Code of Bhutan 2001, Section 34.

²⁶ Civil and Criminal Procedure Code 2001, Section 116-117.

²⁷ The Constitution of the Kingdom of Bhutan 2008, Article 21, Section 18.

²⁸ The Constitution of the Kingdom of Bhutan 2008, Article 7, Section 23.

²⁹ The Civil and Criminal Procedure Code of Bhutan 2001, Section 29.

provided counselling and some monitoring.

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

Courts have the power to award restitution and damages.³⁰ The provisions of any law that are inconsistent with the Constitution will be deemed null and void by the courts.³¹

Also, the Supreme Court and the High Court may issue such declarations, orders, directions or writs as may be appropriate in the circumstances of each case³² and, accordingly, the range of remedies that they could offer with regards to a Constitutional violation do not appear to be limited in any manner.

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?

With respect to challenging the constitutionality of a law, every person has the right to approach the courts.³³ There is nothing in the Constitution that expressly requires such a challenge to directly involve an individual victim (whether named or not).

Regarding the privacy rights of a child named in legal proceedings, one of the stated objectives of the Child Care and Protection Act is “to prevent stigmatisation, victimisation and criminalisation of children and facilitate reintegration.”³⁴ In relation to this objective, the same Act specifically provides, among other things, that

- (a) a child’s right to privacy must be respected at all stages of legal proceedings including the investigation by any agency,³⁵
- (b) the media has the duty to maintain professional standards including privacy in reporting and covering cases of children in difficult circumstances and children in conflict with law and, in all publicity concerning children, the best interest of the children must be taken into consideration,³⁶
- (c) unless the Court authorises, any adjudication proceeding must not be published in any newspaper, magazine, or transmitted through audio-visual electronic medium in any form which may disclose the identity of the child,³⁷
- (d) to protect the best interests of the child, no report in any newspaper, magazine or newsletter of any inquiry regarding a child may disclose the name, address or school or any other particulars which may lead

³⁰ The Civil and Criminal Procedure Code of Bhutan 2001, Section 198.

³¹ The Constitution of the Kingdom of Bhutan 2008, Article 1, Section 10.

³² The Constitution of the Kingdom of Bhutan 2008, Article 21, Section 10.

³³ The Constitution of the Kingdom of Bhutan 2008, Article 21, Section 18.

³⁴ The Child Care and Protection Act of Bhutan 2011, Section 15(f).

³⁵ The Child Care and Protection Act of Bhutan 2011, Section 21.

³⁶ The Child Care and Protection Act of Bhutan 2011, Section 28.

³⁷ The Child Care and Protection Act of Bhutan 2011, Section 29.

to the identification of the child nor shall any picture of any such child be published,³⁸ and

- (e) any person, institution or agency will be guilty of the offence of invasion of a child's privacy if such person, institution or agency without specific consent of the child's parents or guardian publishes any article disclosing the identity of the child in conflict with law in any newspaper, magazine or newsletter or publishes or reports any proceeding regarding the child without authorisation by the Court, and the offence of invasion of a child's privacy will be a petty misdemeanor and be liable to pay the amount of reasonable compensation as determined by the Court to the concerned child.³⁹

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

Under the Civil and Criminal Procedure Code of Bhutan, a class action suit may be brought by or against a large numbers of individuals whose interests are closely related provided that the general outlines of a group are recognisable at the outset of the litigation and that common questions of law or fact exist among all of the class members.⁴⁰

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?

It appears that NGOs can engage in public interest litigation under Article 7 Section 23 of the Constitution.⁴¹

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?

The Bhutanese legal system has a four-tier court system: Supreme Court, the High Court, the Dzongkhag Courts, the Dungkhag Courts (these four courts comprise the Royal Courts of Justice). The Supreme Court is the highest court, followed by the High, Dzongkhag and Dungkhag Courts. There are no courts or tribunals of special jurisdiction in Bhutan.⁴²

The Supreme Court is the highest court of law in Bhutan and has appellate,⁴³ advisory⁴⁴ and extra-territorial⁴⁵ jurisdiction. It is the guardian of the

³⁸ The Child Care and Protection Act of Bhutan 2011, Section 30.

³⁹ The Child Care and Protection Act of Bhutan 2011, Section 219.

⁴⁰ The Civil and Criminal Procedure Code of Bhutan 2001, Section 149.

⁴¹ The Bhutanese, *Law comes into conflict with Constitution on nature of PIL*, available at: <http://www.thebhutanese.bt/law-comes-into-conflict-with-constitution-on-nature-of-pil/>.

⁴² Globalex, *Research Guide to the Legal System of the Kingdom of Bhutan*.

⁴³ The Civil and Criminal Procedure Code of Bhutan 2001, Section 17.

⁴⁴ The Civil and Criminal Procedure Code of Bhutan 2001, Section 18.

Constitution and the final authority on its interpretation.⁴⁶ Where a particular case is not covered or is only partially covered by any law in force and is not otherwise excluded from adjudication, the Supreme Court has original jurisdiction over it.⁴⁷

The High Court also exercises original,⁴⁸ appellate⁴⁹ as well as extra-territorial⁵⁰ jurisdiction for cases which arise out of or under international treaties, conventions and covenants.⁵¹

Subordinate to the High Court is the Dzongkhag or District Court in each Dzongkhag (presently, there are a total of twenty). Usually, the Dzongkhag Court is made up of one Bench, though there are some Dzongkhag Courts that have division Benches.⁵² The Dzongkhag Court exercises original jurisdiction in all cases within its territorial jurisdiction⁵³ and hears appeals from the Dungkhag Courts.⁵⁴

The Dungkhag or Sub-District Court is the lowest formal court in Bhutan.⁵⁵ At present, there are three such courts in the country having original jurisdiction in all cases within their territorial jurisdiction.⁵⁶

Before the registration of the case with the registry division of the applicable court, the court shall conduct a “miscellaneous” hearing expeditiously. The Chief Justice in the High Court, Chief Judge/Judge in the Dzongkhag Court or the Judge in Dungkhag Court hears the “miscellaneous” hearing, which is conducted strictly in accordance with the Civil and Criminal Procedure Code. During the “miscellaneous” hearing, the applicable court shall make an initial determination regarding whether sufficient legal cause exists to admit the case for proceedings according to the law. The applicable court shall give written reasons if the petition of a party is dismissed. The hearing is always conducted within the prescribed period and in accordance with the Civil and Criminal Procedure Code of Bhutan. After the “miscellaneous” hearing, the petition, if registered by the registry, is distributed to the benches and a bench clerk is identified. A preliminary hearing is then conducted within ten days of registration in criminal cases and within one hundred and eight days of registration in civil cases. The purpose of the preliminary hearing is to enable the applicable court to entertain challenges to pleadings based on cause, procedure and jurisdiction and clarify substantive or procedural legal issues.⁵⁷

⁴⁵ The Civil and Criminal Procedure Code of Bhutan 2001, Section 20.

⁴⁶ The Constitution of the Kingdom of Bhutan 2008, Article 1, Section 11.

⁴⁷ The Civil and Criminal Procedure Code of Bhutan 2001, Section 19.

⁴⁸ The Civil and Criminal Procedure Code of Bhutan 2001, Section 22.

⁴⁹ The Civil and Criminal Procedure Code of Bhutan 2001, Section 23.

⁵⁰ The Civil and Criminal Procedure Code of Bhutan 2001, Section 20.

⁵¹ The Civil and Criminal Procedure Code of Bhutan 2001, Section 22(a).

⁵² Globalex, *Research Guide to the Legal System of the Kingdom of Bhutan*.

⁵³ The Civil and Criminal Procedure Code of Bhutan 2001, Section 24.

⁵⁴ The Civil and Criminal Procedure Code of Bhutan 2001, Section 25.

⁵⁵ Globalex, *Research Guide to the Legal System of the Kingdom of Bhutan*.

⁵⁶ The Civil and Criminal Procedure Code of Bhutan 2001, Section 26.

⁵⁷ Royal Courts of Justice, *Hearing Procedure*, available at:

<http://www.judiciary.gov.bt/html/court/procedure.php>.

From start to finish, the applicable court conducts the judicial process in accordance with the Civil and Criminal Procedure Code of Bhutan as follows:

Registry of a complaint => Miscellaneous Hearing => Preliminary Hearing
=> Production before Judge => Show Cause => Opening Statement =>
Defence Reply => Rebuttal => Evidence => Independent testimony
=> Exhibit => Cross Examinations => Judicial Investigation => Closing
Statement => Judgment.⁵⁸

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 stated in part II.D, some provision for legal aid is made by the Civil and Criminal Procedure Code.

Court fees may be waived by the court in the case of an indigent plaintiff which presumably includes children.⁵⁹ In general, it is at the discretion of the court based on the outcome of the case to determine an appropriate assignment of costs and other expenses related to a lawsuit and the court has full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary direction for the purposes.⁶⁰

The appellate court may reverse all or part of the judgment awarded by the lower court, remand the case to the lower court with instructions or order a new proceeding.⁶¹

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 does not seem to be any provision in the Constitution or the applicable statutes that expressly prohibits child complainants or their representatives from obtaining 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.

D. Timing. How soon after a violation would a case have to be brought? Are

⁵⁸ Royal Courts of Justice, *Hearing Procedure*.

⁵⁹ The Civil and Criminal Procedure Code of Bhutan 2001, Section 132.3.

⁶⁰ The Civil and Criminal Procedure Code of Bhutan 2001, Section 97.

⁶¹ The Civil and Criminal Procedure Code of Bhutan 2001, Section 111.

there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

There does not seem to be any provision in the Constitution or the applicable statutes that expressly requires a children's rights case to be brought within a certain period. Neither are there special provisions in the Constitution or the applicable statutes that expressly permit young adults to bring cases about violations of their rights that occurred when they were children.

- 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 applicable court must grant a child's representatives the opportunity to present evidence including the right to subpoena witnesses and to compel the production of physical evidence on their behalf.⁶² Evidence may include physical exhibits, the testimony of witnesses or expert opinions.⁶³ Evidentiary standards are codified by the Evidence Act 2005.⁶⁴

All persons (including children) are deemed competent to give oral evidence in a legal proceeding unless the court determines that they are unable to understand the questions put to them or give rational answers to the questions.⁶⁵ At every stage in a legal proceeding, a child must testify only in the presence of the child's parent or guardian except when the court is satisfied that the child is intelligent enough to understand and answer the question, the child's parent or guardian is unavailable, and there exists good cause for their absence.⁶⁶

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

In Bhutan, the court has to establish a hearing calendar⁶⁷ and individual hearing calendars explicitly link the management of a case to a particular judge, making judges accountable to the public.⁶⁸ Moreover, the court is mandated to convene the preliminary hearing within 10 days of registration in criminal cases and within 108 days in civil cases.⁶⁹ Also, the High Court assigns cases to individual bench clerks and makes them responsible to process cases within 18 months. Any pending cases beyond 18 months are monitored directly by the Chief Justice.⁷⁰ Almost all criminal cases are solved within 108 days.⁷¹

⁶² The Civil and Criminal Procedure Code of Bhutan 2001, Section 84.

⁶³ The Civil and Criminal Procedure Code of Bhutan 2001, Section 84.1.

⁶⁴ The Evidence Act of Bhutan, 2005, available at <http://www.judiciary.gov.bt/html/act/Evidence%20Act.pdf>.

⁶⁵ The Evidence Act of Bhutan, 2005, Section 50.

⁶⁶ The Evidence Act of Bhutan, 2005, Section 53.

⁶⁷ The Civil and Criminal Procedure Code of Bhutan 2001, Section 79.

⁶⁸ Globalex, *Research Guide to the Legal System of the Kingdom of Bhutan*.

⁶⁹ Royal Courts of Justice, *Procedural reforms*, available at: <http://www.judiciary.gov.bt/html/reform/procedural.php>.

⁷⁰ Royal Courts of Justice, *Procedural reforms*.

⁷¹ Lungten Dubgyur, *Review of Judicial Reforms in Bhutan*, available at:

Furthermore, in 1991, the High Court introduced a method of comparative assessment to check the performance of the various courts throughout Bhutan, resulting in increased accountability and contributed to the disposal of cases within a reasonable timeframe and without undue delay.⁷²

According to the statistics published by the Royal Court of Justice, in 2013, only 68 of 19,653 cases registered with a Bhutan court were pending beyond 12 months after registration,⁷³ while, in 2012, only 29 of 13,978 cases registered with a Bhutan court were pending beyond 12 months after registration.⁷⁴

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

Bhutan's Civil and Criminal Procedure Code provides a blanket right to appeal to a higher court. A party to a case may file an appeal to a higher court against a judgment of a subordinate court⁷⁵ within ten days of the judgment.⁷⁶ A party may not introduce fresh evidence on appeal or rely on evidence not introduced during proceedings in the lower court.⁷⁷ The appellate court must determine whether there has been an error and, if so, whether such error warrants either a remand or full or partial reversal.⁷⁸

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?

The judiciary, executive and legislature are separate and co-equal arms of the government,⁷⁹ and the independence of the judiciary is respected.⁸⁰ Therefore, no political backlash is expected.

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

In Bhutan, courts enforce their own decisions - the recent directives issued by the Supreme Court mandates the courts to take proactive decision in the enforcement of the judgment.⁸¹

<http://archiv.ub.uni-heidelberg.de/savifadok/volltexte/2013/2618>.

⁷² Royal Courts of Justice, *Case statistics*, available at:

<http://www.judiciary.gov.bt/html/case/statistic.php>.

⁷³ Royal Courts of Justice, *Statistics on the Institution, Disposal and Pendency of cases in the courts of the Kingdom of Bhutan as of 31 December 2013*, available at:

<http://www.judiciary.gov.bt/html/case/report2013.pdf>.

⁷⁴ Royal Courts of Justice, *Statistics on the Institution, Disposal and Pendency of cases in the courts of the Kingdom of Bhutan as of 31 December 2012*, available at:

<http://www.judiciary.gov.bt/html/case/report2012.pdf>.

⁷⁵ The Civil and Criminal Procedure Code of Bhutan 2001, Section 109.

⁷⁶ The Civil and Criminal Procedure Code of Bhutan 2001, Section 109.1.

⁷⁷ The Civil and Criminal Procedure Code of Bhutan 2001, Section 110.4.

⁷⁸ The Civil and Criminal Procedure Code of Bhutan 2001, Section 110.

⁷⁹ The Constitution of the Kingdom of Bhutan 2008, Article 1, Section 13.

⁸⁰ United States Department of State • Bureau of Democracy, Human Rights and Labour, *Country Reports on Human Rights Practices for 2013: Bhutan*, p. 4, available at:

<http://www.state.gov/documents/organization/220601.pdf>.

⁸¹ SC(41)/2014/1378 issued on February 4 February 2015.

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 may be noted that, under the Child Care and Protection Act, if any person is of the opinion that a child is “in difficult circumstances”, such person must inform the police or child welfare officer.⁸²

A “child in difficult circumstances” is any child who:

- is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute;
- has a parent or guardian who is unfit or incapacitated to take care of or exercise control over a child;
- is found to associate with any person who leads an immoral, drunken or depraved life;
- is being or likely to be abused or exploited for immoral or illegal purposes; or
- is a frequent victim at the hands of individuals, families or the community.⁸³

The police and the child welfare office have the discretion to determine whether a child is “in difficult circumstances”⁸⁴ and must consider the most appropriate ways and means of providing assistance and protection to the child.⁸⁵ If the child is sent to a place of safety, the parent or guardian of the child can request a court to review the decision of the child welfare officer and return the child to the parent or guardian, unless the court is of the opinion that the parent or guardian is unfit or unable to provide proper care for the child. In such a case, the child must be sent to a place of safety as deemed fit by the child welfare officer.⁸⁶

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

⁸² The Child Care and Protection Act of Bhutan 2011, Section 60.

⁸³ The Child Care and Protection Act of Bhutan 2011, Section 59.

⁸⁴ The Child Care and Protection Act of Bhutan 2011, Section 64.

⁸⁵ The Child Care and Protection Act of Bhutan 2011, Section 66.

⁸⁶ The Child Care and Protection Act of Bhutan 2011, Section 71.