

ACCESS TO JUSTICE FOR CHILDREN: NEPAL

This report was produced by Child Rights International Network (CRIN) in December 2014. CRIN takes full responsibility for any errors or inaccuracies in the report.

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?

Under the Treaty Act, ratified international treaties including the CRC form part of national law.¹ The Interim Constitution, in force since 2007, also requires the State “to implement effectively international treaties and agreements to which [it] is a party.”²

B. Does the CRC take precedence over national law?

The CRC takes precedence over national law. Specifically, where there is a conflict between a treaty provision and a national law, the law is considered void and the treaty is enforceable in its place.³

C. Has the CRC been incorporated into national law?

As above, the Treaty Act incorporates all international treaties including the CRC into national law.⁴ However, a study of the CRC sub-committee of the Human Rights Treaty Monitoring Coordination Center (HRTMCC) shows that Nepalese laws fail to accord with the CRC, its Optional Protocols and other ratified treaties.⁵

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

As it has been fully incorporated, the CRC is directly enforceable in national courts. However, the decisions of the Supreme Court of Nepal do not show Nepal's consistent stand in the applicability of ratified treaty provisions.⁶

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

Among other things, the Supreme Court has cited the CRC in cases related to birth registration, children's associations, the education of children with disabilities and the prohibition of corporal punishment.⁷

¹ Treaty Act, 2047 (1990), Section 9, available at <http://www.lawcommission.gov.np/en/documents/prevaling-laws/func-startdown/169/>.

² Interim Constitution of Nepal, 2063 (2007), Section 33(m), available at http://www.ccd.org.np/resources/2010-10-13-NEPAL_Interim_Constitution_8amd.pdf.

³ Treaty Act, Section 9.

⁴ Treaty Act, Section 9.

⁵ Comments provided by SASANE, Nepal, December 2014.

⁶ Ibid.

⁷ CRC/C/RESP/88, Written Replies by the Government of Nepal to the Committee on the Rights of the Child, 11 May 2005, para. 28, available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.RESP.88.pdf>; CRC/C/NPL/3-5, Combined Third, Fourth and Fifth Reports of the Government of Nepal to the

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?

Civil and criminal cases alleging violations of children's rights may be filed in line with the General Code.⁸

The Interim Constitution, Children's Act and Civil Rights Act also provide for procedures to challenge rights violations. All Nepali citizens have the right to file a petition directly with the Supreme Court to demand review of a law that runs counter to the Interim Constitution.⁹ Similarly, cases related to violations of children's rights under the Children's Act may be initiated by any person on behalf of the child or children involved, and violations of the Civil Rights Act may be challenged by petition to the Court of Appeal.¹⁰

In addition, victims of human rights violations may file complaints with the National Human Rights Commission.¹¹ The Commission has broad powers to investigate alleged violations and make recommendations for further legal action, including the initiation of court proceedings against the person or persons responsible.¹²

Where a public official fails to meet his or her responsibilities or acts in contravention of any law, decision or order, the Commission for the Investigation of Abuse of Authority may also conduct an investigation, file a case, or otherwise take action against the person responsible.¹³ A person negatively affected by these actions may file a complaint with the Commission, and any person may file a complaint to challenge actions that relate to matters of public interest or concern.¹⁴

The Children Welfare Committee of Nepal may also bring a case on behalf of a child.¹⁵

Committee on the Rights of the Child, Undated, paras. 96, 104, available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.NPL.3-5.doc>. See also Dinesh Gajurel, Child Rights in Nepal (2007), p. 39, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1106619.

⁸ See General Code, Part 2, available at

<http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/Prevailing-Laws/Statutes---Acts/English/Muluki-Ain-%28General-Code%29-2020/>.

⁹ Interim Constitution, Sections 32, 107.

¹⁰ Children's Act, 2048 (1992), Section 20, available at

<http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/Prevailing-Laws/Statutes---Acts/English/Children-Act-2048-%281992%29/>; Civil Rights Act, 2012 (1955), Section 17, available at <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/Prevailing-Laws/Statutes---Acts/English/Civil-Rights-Act-2012-%281955%29/>.

¹¹ Interim Constitution, Section 132; National Human Rights Commission Act, available at <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/func-startdown/1551/>.

¹² Interim Constitution, Section 132.

¹³ Commission for the Investigation of Abuse of Authority Act, 2048 (1991), Sections 3, 4, available at <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/Prevailing-Laws/Statutes---Acts/English/Commission-for-the-Investigation-of-Abuse-of-Authority-Act-2048-%281991%29/>.

¹⁴ Commission for the Investigation of Abuse of Authority Act, Section 8.

¹⁵ Comments provided by SASANE, Nepal, December 2014.

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?

Although the General Code neither specifically authorises nor forbids children from filing complaints on their own initiative or in their own name, it appears that the assistance of a parent or adult representative is generally required. Along these lines, adult family members of a child under age 16 may seek permission of the court to file a complaint or take action in existing legal proceedings on behalf of that child.¹⁶ Where there is no family member available to take legal action on behalf of a child, the child's guardian or caretaker may do so.¹⁷ Similarly, complaints involving children's rights under the Children Act may be filed by a parent, guardian or special court appointee.¹⁸

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

As above, the General Code anticipates that parents, guardians, adult family members or caretakers will bring and defend cases on behalf of children under age 16.¹⁹ Similarly, the Children's Act states that parents and guardians may file or defend any case related to children's rights on behalf of a child in their care.²⁰

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

Any Nepalese citizen with an annual income below the level set by the Central Legal Aid Committee, currently 40,000 rupees, is entitled to apply for legal aid with the local District Committee for Legal Aid.²¹ Decisions on whether to grant legal aid are in part related to the nature and timeliness of the case, and must be made within 45 days.²² Where aid is granted, the costs of this must be generally be reimbursed from any proceeds acquired by the recipient as a result of the case.²³

In addition, all persons have the right to consult and be defended by a lawyer upon arrest.²⁴ In juvenile justice proceedings, children must be represented by a legal practitioner, and the Government is required to provide or arrange for children accused of committing offences to receive legal services.²⁵ Parents of children under 16 must also be informed when their child is arrested and wherever possible be present during

¹⁶ General Code, Part 2, Chapter 1, Number 83.

¹⁷ General Code, Part 2, Chapter 1, Number 83.

¹⁸ Children's Act, Section 51.

¹⁹ General Code, Part 2, Chapter 1, Number 83.

²⁰ If a child has no parent or guardian, the Children's Act also authorises a "claimant" to bring a case on behalf of the child, but does not provide further details as to the nature or appointment of this role. Children's Act, Section 51.

²¹ Legal Aid Act, 2054 (1997), Sections 3, 6, 7, available at <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/func-startdown/182/>; see also Legal Aid Rules, 2055 (1998), Sections 3, 5, available at <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-rules/func-startdown/1556/>.

²² Legal Aid Rules, Section 5.

²³ Legal Aid Act, Section 4; Legal Aid Rules, Section 7.

²⁴ Interim Constitution, Section 24; Civil Rights Act, Section 15.

²⁵ Children's Act, Section 19.

initial police questioning.²⁶ Children accused of committing offences further have the right to have a parent or lawyer by their side during later questioning and courtroom proceedings.²⁷

Moreover, in every court there is a free of charge lawyer who can assist those who cannot afford to hire a lawyer after a request has been made to the respective court.²⁸

- 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)?

While it is not a formal limit on children bringing cases to challenge violations of their rights, official court filings and documents to be signed by children under age 16 must in most circumstances be executed in the presence of a parent or guardian.²⁹

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 brought to challenge violations of children's rights under domestic law in line with the General Code.³⁰ Any civil complainant must have standing to file suit, which usually means that he or she must have been directly affected by the actions in question.³¹ Criminal proceedings are also brought under the General Code, and victims of rights violations that amount to criminal offences can seek permission from the courts to launch a private prosecution.³² Applications for private prosecution must be accompanied by criminal complaints and relate to matters of concern to the Government or the public interest.³³ There are no separate civil and criminal courts in Nepal, and both kinds of cases are usually filed in the first instance with the District Court.³⁴

Where a child's rights under the Children's Act have been violated³⁵, any person may file a petition on behalf of that child to seek enforcement of these rights.³⁶ The

²⁶ Juvenile Justice Procedural Rules, 2063 (2006), Section 4, available at <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-rules/Prevailing-Laws/Rules-and-Regulations/English/Juvenile-Justice-Procedural-Rules-2063-%282006%29/>.

²⁷ Juvenile Justice Procedural Rules, Sections 5, 12.

²⁸ Comments provided by SASANE, Nepal, December 2014.

²⁹ General Code, Part 2, Chapter 1, Number 24.

³⁰ See General Code, Part 2, available at <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/Prevailing-Laws/Statutes---Acts/English/Muluki-Ain-%28General-Code%29-2020/>.

³¹ General Code, Part 2, Chapter 1, Number 82.

³² General Code, Part 2, Chapter 1, Number 10.

³³ General Code, Part 2, Chapter 1, Number 10.

³⁴ Administration of Justice Act, 2048 (1991), Section 7, available at <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/Prevailing-Laws/Statutes---Acts/English/Administration-of-Justice-Act-2048-%281991%29/>.

³⁵ Chapter 2 of the Children's Act is dedicated to the rights and interests of children.

³⁶ Children's Act, Section 20. Notably, a petition to enforce children's right to maintain contact with both parents in the event of separation or divorce may only be filed on behalf of the child affected by his or her mother or father. See Sections 8, 20.

Children's Act also states that in any matter concerning children's rights in general, a child's parent or guardian may file a complaint to initiate legal proceedings on behalf of the child.³⁷ This includes the right to prosecute criminal offences under the Act, although these may also be pursued by the Government.³⁸

All Nepali citizens have the right to file a petition with the Supreme Court to challenge a national law that imposes an unreasonable restriction on fundamental constitutional rights or is otherwise inconsistent with the Interim Constitution.³⁹ These kinds of cases are often known as “public interest litigation,” and may be initiated by any person with a “meaningful relation” to the issue at hand.⁴⁰ In addition, where a person's rights under the Civil Rights Act have been violated, he or she may file a petition with the Court of Appeal to launch an inquiry into the acts in question.⁴¹

Rules governing the procedures for filing complaints within the national justice system have been published by the Supreme Court.⁴² Notably, special time limits and notice periods may apply when filing a civil case against the Government.⁴³

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

District Courts have general powers to “try and settle” cases, and can award compensation or issue injunctions requiring a party to carry out or cease a particular action.⁴⁴ In certain criminal cases, District Courts may also be entitled or mandated to offer victims compensation.⁴⁵ For violations of children's rights under the Children's Act, courts can issue “the appropriate order, direction or writ” and are specifically authorised to grant children reasonable compensation where these violations are substantiated.⁴⁶

The Court of Appeal has the power to issue orders enforcing the legal rights of any

³⁷ Children's Act, Section 51.

³⁸ Children's Act, Section 51.

³⁹ Interim Constitution, Sections 32, 107.

⁴⁰ See, e.g., Malcolm Langford and Ananda Mohan Bhattarai, Constitutional Rights and Social Exclusion in Nepal, *International Journal on Minority and Group Rights* 18 (2011), available at <http://www.jus.uio.no/smr/english/people/aca/malcolml/nepal-langford-and-bhattarai.pdf>, citing *Radheshyam Adhikari v. Cabinet Secretariat*, SCN, (April 1992), N.K.P. 2048, vol. 12, p. 810.

⁴¹ Civil Rights Act, Section 17.

⁴² Administration of Justice Act, 2048 (1991), Section 31, available at <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/func-startdown/660/>; Supreme Court Act, 2048 (1991), Section 11, available at <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/func-startdown/301/>. The District Court, Appellate Court and Supreme Court rules are available in Nepali at <http://www.supremecourt.gov.np/main.php?d=lawmaterial&f=nirdeshika>.

⁴³ Government Cases Act, 2049 (1992), Sections 25, 26, available at <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/func-startdown/180/>. Legal provisions related to filing cases against the Government also appear in other Nepali legislation, including the Civil Rights Act, which requires that two months advance notice be given for cases brought against the Government or a Government official in his or her official capacity. Civil Rights Act, Section 19.

⁴⁴ Administration of Justice Act, Section 7.

⁴⁵ For instance, victim compensation is specifically authorised following convictions for rape, sexual misconduct or human trafficking and mandatory for kidnapping, abduction, battery or intentionally inflicting harm. See General Code, Part 4, Chapters 8A, 9, 11, 13, 14.

⁴⁶ Children's Act, Section 20.

person, including writs of mandamus and habeas corpus.⁴⁷ Writs of mandamus can force the Government or any public authority to undertake an action as required by law, while writs of habeas corpus can require a person in detention to be brought before a court. Where a person's rights under the Civil Rights Act have been violated, the Court of Appeal may also order the offending party to pay compensation to the victim.⁴⁸

If the Supreme Court finds that a law contravenes the Interim Constitution, it may declare that law to be null and void and take any necessary or appropriate measures to enforce citizens' fundamental rights.⁴⁹ Among other things, the Supreme Court may issue writs ordering the Government take an action required by law, cease an action prohibited by law or justify its exercise of authority.⁵⁰ The Supreme Court can also make directive orders that require the Government to develop and implement laws and policies that better protect constitutional rights.⁵¹ It may further issue guidelines to cover situations where appropriate protection measures do not exist⁵², and even create committees to compensate victims of rights abuses within established parameters.⁵³

When the National Human Rights Commission determines that a complainant's human rights have been violated, it may make recommendations for Government authorities to take action against the person or body responsible for the violation and, where appropriate, order that individual victims be compensated.⁵⁴ The Commission for the Investigation of Abuse of Authority, meanwhile, has the power to conduct inquiries and “take necessary action” in response to reports of rights violations by public officials.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?

As above, cases may be filed to challenge a national law that infringes on fundamental constitutional rights without naming or involving an individual victim.⁵⁶ Similar cases may be filed in relation to violations of children's rights the Children's Act, but this requires identifying the individual child victim or victims.⁵⁷ By the same token, cases

⁴⁷ Administration of Justice Act, Section 8.

⁴⁸ Civil Rights Act, Section 17.

⁴⁹ Interim Constitution, Section 107.

⁵⁰ Interim Constitution, Section 107. These are known, respectively, as writs of mandamus, prohibition and quo warranto.

⁵¹ See Constitutional Rights and Social Exclusion in Nepal, citing *Reena Bajracharya v. Royal Nepal Airlines Corporation & Ors.*, SCN, June 2000, N.K.P. 2057 no. 5, p. 376; *Meera Dhungana v. Cabinet Secretariat & Ors.*, SCN, March 2004, N.K.P. 2061 no. 4, p. 377; *Sapana Pradhan Malla & Ors. v. Ministry of Law, Justice and Parliamentary Affairs & Ors.*, SCN, December 1995, N.K.P. 2053 no. 2, p. 105.; *Sarmila Parajuli & Ors. v. Cabinet Secretariat & Ors.*, April 2004, SCN, N.K.P. 2061, vol. 10, p. 1312.

⁵² See Constitutional Rights and Social Exclusion in Nepal, citing *Prakash Mani Sharma v. Ministry of Women, Children and Social Welfare & Ors.*, 28 November 2008, SCN, Writ No. 2822 of 2062; *Gopal Shivakoti & Ors. v. Ministry of Finance & Ors.*, April 1994, SCN, N.K.P. 2051 no. 4. p. 255; *Sapana Pradhan Malla v. GoN, Prime Minister and Council of Ministers*, 25 December 2007, SCN, Writ No. 3561 of 2063.

⁵³ See Constitutional Rights and Social Exclusion in Nepal, citing *Rajendra Prasad Dhakal & Ors. v. GoN, Ministry of Home & Ors.*, 1 June 2007, Writ No. 3775 of 2055, 1 NJA L.J. (2007) at pp. 301–340.

⁵⁴ Interim Constitution, Section 132.

⁵⁵ Commission for the Investigation of Abuse of Authority Act, Section 8.

⁵⁶ Interim Constitution, Sections 32, 107.

⁵⁷ Children's Act, Section 20.

alleging violations of the Civil Rights Act must involve a specific victim.⁵⁸

Filing civil or criminal cases also requires the identification of individual victims. Nonetheless, legal proceedings relating to children are not generally open to the public, and identifying information relating to any child involved cannot be published without the permission of the court.⁵⁹

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

Collective action is not specifically provided for under the General Code. However, where multiple parties have filed a civil case against one or more defendants, they may jointly designate a lead plaintiff or appoint an outside representative to handle all matters related to the legal proceedings.⁶⁰

Although technically not a form of collective action or group litigation, public interest litigation cases filed with the Supreme Court offer an avenue to address widespread constitutional rights violations.⁶¹

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?

Advocates associated with non-governmental organisations may file public interest litigation cases related to any violation of fundamental rights as authorised under the Interim Constitution, and the Children's Act similarly permits advocates to initiate proceedings to enforce children's rights.⁶²

If a case has already been filed, non-governmental organisations may make submissions to the court on a particular point of law or matters of judicial interpretation as a friend of the court, otherwise known as “amicus curiae”.⁶³

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?

⁵⁸ Civil Rights Act, Section 17.

⁵⁹ Children's Act, Section 49.

⁶⁰ General Code, Part 2, Chapter 1, Number 69.

⁶¹ Interim Constitution, Sections 32, 107.

⁶² Interim Constitution, Sections 32, 107; Children's Act, Section 20. See, e.g., *Advocate Prakash Mani Sharma for Pro Public vs His Majesty Government Cabinet Secretariat and Ors.*, WP 2991/1995, available at <http://www.elaw.org/node/1391>; *Prakash Mani Sharma v. His Majesty's Government Cabinet Secretariat and Others*, WP 2237/1990, available at <https://www.elaw.org/node/1594>; *Prakash Mani Sharma v. Ministry of Women, Children and Social Welfare & Ors.*, Writ No. 2822 of 2062, available at <http://www.escri-net.org/node/364785>.

⁶³ See, e.g., <http://reproductiverights.org/en/case/lakshmi-dhikta-v-government-of-nepal-amici-supreme-court-of-nepal>; <http://www.barhumanrights.org.uk/amicus-curiae-role-attorney-general-supreme-court-nepal>.

The Nepali justice system is divided into District Courts, Appellate Courts and the Supreme Court, with the Supreme Court having the final authority to interpret and give verdicts on the Interim Constitution and prevailing laws.⁶⁴ Most cases are initially filed with the presiding District Court, although the Court of Appeal may in some instances try cases that present “serious or complicated” legal issues.⁶⁵ Suits against government employees or matters related to the judiciary are also filed with the appellate court⁶⁶, while cases brought under the Interim Constitution to enforce fundamental rights are filed directly with the Supreme Court.⁶⁷

The Children Act provides for the creation of Juvenile Courts to hear cases in which either the plaintiff or defendant is a child under 16.⁶⁸ Cases alleging violations of children's rights are still brought before the District Court, however, and District Courts also hear other cases involving children where no presiding Juvenile Court has been formed.⁶⁹

As above, Nepal does not have separate civil and criminal jurisdiction. Civil cases are typically filed either where the actions in question occurred or where the plaintiff or defendant resides.⁷⁰ Criminal cases are most often filed where the alleged offence occurred⁷¹, and civil cases arising out of criminal cases are reviewed by the same court hearing the criminal proceedings.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?

Filing a civil lawsuit typically requires the payment of court fees determined in line with the Nepal Court Fees Act⁷³, although courts may authorise the filing of a lawsuit, appeal, or petition without the payment of fees if the complainant is found to be indigent.⁷⁴

Where payable, the fees to be levied depend on the nature of the claim and the amount sought, and can in some circumstances be recovered from the losing party if the suit is successful.⁷⁵ Notably, there are fees for settling civil cases that range from one to five percent of the amount changing hands, depending on how far proceedings have progressed.⁷⁶ Court fees are also charged for appeals and petitions for the review or

⁶⁴ Interim Constitution, Sections 101, 102; Administration of Justice Act, Chapter 2.

⁶⁵ Administration of Justice Act, Sections 3, 8.

⁶⁶ General Code, Part 2, Chapter 1, Number 29.

⁶⁷ Interim Constitution, Section 107.

⁶⁸ Children's Act, Section 55.

⁶⁹ Children's Act, Section 55.

⁷⁰ General Code, Part 2, Chapter 1, Number 29.

⁷¹ General Code, Part 2, Chapter 1, Number 29.

⁷² General Code, Part 2, Chapter 1, Number 81.

⁷³ Nepal Court Fees Act, 2017 (1960), available at <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/func-startdown/692/>.

⁷⁴ Nepal Court Fees Act, Section 23.

⁷⁵ Nepal Court Fees Act, Chapters 3, 6.

⁷⁶ General Code, Part 2, Chapter 1, Number 183.

revision of judgments.⁷⁷

- 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?

Lawyers are not permitted to set their fees as a percentage of monetary awards or to base their fees on the outcome of a case.⁷⁸ If a lawsuit is successful, however, it is possible for plaintiffs to recover legal fees and other costs associated with bringing the case from the losing party.⁷⁹

Pro bono legal services, legal aid and case support may be available from a wide variety of organisations working in human and children's rights. Among others, these include Advocacy Forum⁸⁰, the Center for Legal Research and Resource Development⁸¹, Forum for Protection of People's Rights⁸², the International Institute for Human Rights, Environment and Development (INHURED International)⁸³, the Legal Aid & Consultancy Center⁸⁴, the Nepal Bar Association Access to Justice Project⁸⁵, and Pro Public.⁸⁶

- 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?

Time limits for bringing cases vary based on the nature of the suit to be filed, but tend to range from 35 days to 3 years as set out in the General Code and are typically set at 1 year under the Children's Act.⁸⁷ Notably, petitions under the Civil Rights Act must be filed within 8 months of the alleged rights violation.⁸⁸ Individual complaints must be filed with the Commission for the Investigation of Abuse of Authority within 35 days of the act in question, but there is no time limitation for complaints filed in the public interest.⁸⁹

⁷⁷ Nepal Court Fees Act, Sections 18, 19.

⁷⁸ Code of Conduct for Legal Practitioners, 2051 (1994), Section 3(q), (s), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&ved=0CEMQFjAE&url=http%3A%2F%2Fwww.nepalbarcouncil.org.np%2Fdocuments%2FCode%2520of%2520Conduct_1.docx&ei=wPs2UaSAOc7DPJP-gNgJ&usg=AFQjCNHuGh_9mfAMRzHemcLI1FogiiooAdw&bv=bv.43287494,d.d2k. The Code of Conduct for Legal Practitioners was issued by the Nepal Bar Council pursuant to the Nepal Bar Council Act. Nepal Bar Council Act, 2050 (1993), Section 27, available at <http://www.lawcommission.gov.np/en/prevaling-laws/prevaling-acts/Prevailing-Laws/Statutes---Act/s/English/Nepal-Bar-Council-Act-2050-%281993%29/>.

⁷⁹ Court Fees Act, Section 16.

⁸⁰ <http://www.advocacyforum.org/>.

⁸¹ <http://www.celrrd.org/>.

⁸² <http://pprnepal.org.np/>.

⁸³ <http://www.inhuredinternational.org/>.

⁸⁴ <http://lacc.org.np/>.

⁸⁵ <http://www.nepalbar.org/projects/NEBA-AJP.php>.

⁸⁶ <http://www.propublic.org/approaches.php>.

⁸⁷ See General Code, Parts 2, 3; Children Act, Section 54.

⁸⁸ Civil Rights Act, Section 20.

⁸⁹ Commission for the Investigation of Abuse of Authority Act, Section 8.

Where there is no time limitation specified by law, cases can be brought at any time.⁹⁰ For children under age 16, periods of limitation do not begin to run until they have reached their sixteenth birthday.⁹¹ If a suit is filed after a period of limitation has lapsed, the court may still accept the filing if the plaintiff can within 15 days demonstrate why it was not possible to file the suit within the limitation period.⁹²

- 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?

Any person may testify about matters deemed “reasonable from his or her wisdom, in consideration of honesty and duty.”⁹³ Children may serve as witnesses provided they are able to understand and give rational answers to the questions asked of them.⁹⁴ Witnesses are examined by the court, and documentary evidence may be presented in line with the rules set out in the General Code and the Evidence Act.⁹⁵

In cases involving children, court proceedings are not generally open to the public.⁹⁶ Children's lawyers and parents or guardians are permitted to attend, as are child protection professionals with the permission of the judge.⁹⁷ Information and pictures related to these cases may not be published without court approval.⁹⁸ Juvenile justice proceedings must also be conducted in a “child friendly environment,” and children accused of committing offences are questioned via video link in a separate room from the court.⁹⁹ Child psychologists or similar professionals can also be appointed to facilitate communication.¹⁰⁰

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

Cases being heard for the first time must in most instances be decided by the courts within 35 days of reviewing the evidence or, at the latest, within one year of receipt of the defending party's initial filing, known as a “note of defense.”¹⁰¹ Judges can, however, apply to a higher court to extend this period where they can demonstrate why the matter cannot be resolved within the usual time limit.¹⁰² If the initial or extended deadline passes without the court reaching a resolution, either party can ask a higher court to review the case and order that a decision be issued.¹⁰³

Civil cases seeking less than 1,000 rupees, criminal cases punishable by fines up to the

⁹⁰ General Code, Part 2, Chapter 1, Number 36.

⁹¹ General Code, Part 2, Chapter 1, Numbers 40, 83.

⁹² General Code, Part 2, Chapter 1, Number 39.

⁹³ General Code, Part 2, Chapter 1, Numbers 5, 6.

⁹⁴ Evidence Act, Section 38.

⁹⁵ General Code, Part 2, Chapter 1, Number 77; Evidence Act, 2031 (1974), available at <http://www.lawcommission.gov.np/en/prevaling-laws/prevaling-acts/func-startdown/294/>.

⁹⁶ Children's Act, Section 49.

⁹⁷ Children's Act, Section 49.

⁹⁸ Children's Act, Section 49.

⁹⁹ Juvenile Justice Procedural Regulations, Section 12.

¹⁰⁰ Juvenile Justice Procedural Regulations, Section 12.

¹⁰¹ General Code, Part 2, Chapter 1, Number 14.

¹⁰² General Code, Part 2, Chapter 1, Number 15.

¹⁰³ General Code, Part 2, Chapter 1, Number 17.

same amount or terms of imprisonment not more than six months, and certain other cases brought under specified laws are handled under expedited summary procedures.¹⁰⁴ These cases must be decided within 3 days of the conclusion of proceedings, at the latest within 90 days of the defending party's response to the complaint.¹⁰⁵ Applications to initiate a private prosecution are decided on the same day they are submitted.¹⁰⁶

Priority is given to cases involving children.¹⁰⁷ Specifically, cases involving children under 16 who do not have the support of a parent or guardian are given priority in the courts¹⁰⁸, and juvenile justice proceedings must be decided within 120 days of charges being filed.¹⁰⁹ Where an adult family member, guardian or caretaker seeks permission to file or act in a suit on behalf of a child under 16, the court must make a decision on the matter within one month's time.¹¹⁰

Despite these rules, reports suggest there is a large backlog of cases before Nepali courts and that lengthy delays are common.¹¹¹

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

Rules governing the filing of appeals have been published by the Supreme Court.¹¹² Appeals are filed with the designated appellate court, which has the power to confirm, alter or reverse a lower court's decisions, to accept new evidence the lower court failed to examine, or to order that the lower court resolve unanswered questions.¹¹³

The Court of Appeal is empowered to review decisions issued by the District Court, and the Supreme Court may in turn review certain decisions issued by the Court of Appeal.¹¹⁴ Specifically, the Supreme Court has jurisdiction to accept appeals where cases were tried and settled by the Court of Appeal in the first instance, where a sentence of 10 or more years' imprisonment was imposed, or where the Court of Appeal reversed a District Court decision.¹¹⁵ Where a case cannot be appealed to the Supreme Court, the Court may nonetheless revise a judgment or final order issued by the Court of Appeal where it involves a serious legal error in interpreting the Interim Constitution or prevailing law; Supreme Court precedent has not been followed; public property has been misappropriated; or justice is impaired due to lack of proper representation of a child, woman, elderly or disabled person.¹¹⁶ The Supreme Court may also intervene in cases in lower courts that raise a "complicated question of interpretation" of the Interim Constitution or any other prevailing law, either deciding the case in full or answering

¹⁰⁴ Summary Procedures Act, 2028 (1972), Section 3, Schedule 1, available at <http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/func-startdown/1548/>.

¹⁰⁵ Summary Procedures Act, Section 10.

¹⁰⁶ General Code, Part 2, Chapter 1, Number 10.

¹⁰⁷ General Code, Part 1, section 11; District Court Regulations, section 31; Appellate Court Regulations, section 51(3); Supreme Court Regulations, section 63(3).

¹⁰⁸ General Code, Part 2, Chapter 1, Number 11.

¹⁰⁹ Juvenile Justice Procedural Regulations, Section 16.

¹¹⁰ General Code, Part 2, Chapter 1, Number 83.

¹¹¹ See, e.g., Trial Court System in Nepal (2008), available at http://crespienrico.files.wordpress.com/2008/11/trial-court-system-in-nepal-_english_-doc.pdf.

¹¹² See Administration of Justice Act, Section 31.

¹¹³ General Code, Part 2, Chapter 1, Numbers 195, 202; Administration of Justice Act, Section 14.

¹¹⁴ Administration of Justice Act, Sections 8, 9.

¹¹⁵ Administration of Justice Act, Section 9.

¹¹⁶ Administration of Justice Act, Section 12.

the question and returning the case to the lower court for final review.¹¹⁷

Interim orders may also be appealed¹¹⁸, as may decisions that deny permission to begin a private prosecution.¹¹⁹ Appeals and petitions for revision must generally be filed within 35 days of a court decision, including for cases brought under the Children Act, and must be decided within 6 months' time.¹²⁰ Appeals from small civil cases and minor criminal cases are granted on a discretionary basis, and must typically be filed within 30 days and decided within 3 days of the conclusion of appellate proceedings and at the latest 90 days from the date of filing.¹²¹

- 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 Nepali judicial system. Courts must follow their own and higher courts' decisions, which means that the effects of a negative decision for children's rights could be felt for many years. Within the judicial system, a negative decision from a higher court will have more far-reaching effects than a negative decision from a lower court.

While there are not widespread reports of the Government reversing court decisions through the passing or amendment of legislation, the Government has been known to withdraw or otherwise discontinue criminal cases that seek to address human rights violations.¹²² There are also risks that court decisions will not be reached on solid legal ground, as concerns have been expressed around the ethics, professionalism and fairness of actors in the justice system.¹²³

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

Complaints related to actions taken during the execution of judgments may be filed with the office responsible within 15 days of the act in question and, if not adequately addressed, raised with the office of the appellate court.¹²⁴ Where such a complaint is received, it should be handled within two months' time.¹²⁵

Nonetheless, the Nepali justice system, in particular the Supreme Court, has faced criticism for failing to ensure that its judgments are fully enforced.¹²⁶

¹¹⁷ Administration of Justice Act, Section 15.

¹¹⁸ Administration of Justice Act, Section 16.

¹¹⁹ General Code, Part 2, Chapter 1, Number 10.

¹²⁰ General Code, Part 2, Chapter 1, Numbers 14, 193; Administration of Justice Act, Section 12; Children Act, Section 56.

¹²¹ Summary Procedures Act, Sections 11, 11B.

¹²² See, e.g., Amnesty International, Nepal descending towards full-spectrum impunity for human rights abuses committed during the conflict (2010), available at <http://www.amnestynepal.org/campaigns/ai-nepal-activities/open-letter-to-the-government.html>; Human Rights Watch & Advocacy Forum, Adding Insult to Injury: Continued Impunity for Wartime Abuses (2011), available at http://www.hrw.org/sites/default/files/reports/nepal1211Upload_0.pdf.

¹²³ See, e.g., Trial Court System in Nepal.

¹²⁴ General Code, Part 2, Chapter 2, Number 61.

¹²⁵ General Code, Part 2, Chapter 2, Number 61.

¹²⁶ See, e.g., Constitutional Rights and Social Exclusion in Nepal. See also research report of the Court

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.

The Nepali Government is considering replacing the General Code with separate civil and criminal codes. Reports indicate these new codes have been drafted by the Ministry of Justice, but not yet approved.¹²⁷ In addition, there has been discussion of piloting separate civil and criminal courts.¹²⁸ It has also been reported that the Ministry of Women, Children and Social Affairs is in the process of drafting a new version of the Children's Act.¹²⁹

A new Constituent Assembly was formed in 2013 after the previous one was dissolved in May 2012.¹³⁰ All parties have been working towards building a new Constitution;¹³¹ as at August 2015, the new Constitution is in the process of being introduced into Parliament.¹³²

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

Strengthening Committee (2058): Comments provided by Punya Shila Dawadi Ghimire, Legal Officer, Legal Aid & Consultancy Center Nepal, August 2015.

¹²⁷ See The Archaic Muluki Ain, The Kathmandu Post, available at <http://www.highbeam.com/doc/1P3-2455568081.html>; Urgent attention is needed over the draft criminal and civil laws that will replace the entire Muluki Ain (legal code of Nepal) (2011), available at <http://ebookbrowse.com/urgent-attention-is-needed-over-the-draft-criminal-and-civil-laws-that-will-replace-the-entire-muluki-ain-docx-pdf-d69261516>; Muluki Ain to Become History Soon (2010), available at <http://www.ekantipur.com/the-kathmandu-post/2010/04/01/top-stories/Muluki-Ain-to-become-history-soon/206755/>.

¹²⁸ See UNDP Statement on the Interaction Programme on Civil Procedure Guidelines (2002), available at <http://www.undp.org.np/uploads/news/200511091147231.pdf>.

¹²⁹ See Government of Nepal, National Progress Report (2006), available at http://www.unicef.org/worldfitforchildren/files/Nepal_WFFC5_Report.pdf; Regional Campaign Against Corporal Punishment of Children, Equal Protection of Children, available at <http://www.saievac.org/cp/nepal>.

¹³⁰ See Constituent Assembly of Nepal, available at <http://www.can.gov.np/en>.

¹³¹ Comments provided by SASANE, Nepal, December 2014.

¹³² Comments provided by Punya Shila Dawadi Ghimire, Legal Officer, Legal Aid & Consultancy Center Nepal, August 2015.