

A LEGAL AND INSTITUTIONAL ASSESSMENT OF SRI LANKA'S JUSTICE SYSTEM FOR CHILDREN



August 2017

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A Message from the Secretary of Ministry of Justice

The Juvenile Justice System encompasses the need to provide necessary protection to and safeguard the rights of children and as such, is a responsibility holding us all mutually accountable. Sri Lanka as a collective people, has had to face many complex issues in the area of juvenile justice and are on the upward climb out of the troubled waters.

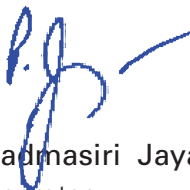
In order to accelerate the climb, a comprehensive study, scrutinizing the legal and institutional challenges faced by the country, has been a pressing need. Therefore this report was prepared capturing many of the issues that need improvement in the juvenile justice system. I am happy that the Ministry now has a well-researched document for all the stakeholders to act on.

I am happy to acknowledge that the Ministry has already initiated action related to some areas which the report highlights. These include increasing the minimum age of criminal responsibility and amending the Children and Young Person's Ordinance.

I would also especially like to thank the UNICEF for its enduring partnership with the Ministry of Justice, which has seen the Juvenile Justice system through some of the most positive changes witnessed in recent times. Under its purview, and in partnership with the Ministry of Justice, Sri Lanka, Child Friendly annexures are currently being constructed in court houses in Anuradhapura, Moneragala, Mannar and Puttalam. This initiative is expected to address some of the issues of juvenile justice once they become functional.

It is the intention of the Ministry to energize itself to improve the Juvenile Justice system for children in Sri Lanka with the cooperation of relevant Ministries and Institutions including the Ministry of Women and Child Affairs, the National Child Protection Authority and the Ministry of Social Services.

I hope that our collective efforts will bear the necessary fruits and contribute in a substantial manner towards a better tomorrow for the children of Sri Lanka.



Padmasiri Jayamanne
Secretary
Ministry of Justice

A Message from UNICEF Sri Lanka

It is critical that justice for children is designed for the benefit of all children who are in conflict with the law or part of the justice process, either as victims or witnesses. All children must have access to child-sensitive and child-friendly services from law enforcement agencies, courts and corrective settings.

Strengthening all components of the child protection system, including the justice mechanisms, to operate in the best interest of children is a key priority for UNICEF and in particular strengthening the national juvenile justice system. This includes improving the quality of justice services, facilitating access to justice services to address child protection and child rights violations, and supporting the Government to comply with its domestic and international obligations.

At the time of publication of this study, Sri Lanka is revising the Children Judicial Protection Bill so that it fully respects the rights of children and adolescents in conflict with the law. Reforms in law and policy must be combined with improvements in institutional standards and practices in line with the principles of the Convention on the Rights of the Child. We must recognize that deprivations such as the extended periods of detention and long-term institutionalisation can impede a child's development and ability to reach his or her full potential. This is of particular concern when this practice is applied indiscriminately and as a mainstream procedure.

Supporting efforts by the Government of Sri Lanka is a priority for UNICEF. I would like to acknowledge, with appreciation the commitment of the Ministry of Justice in leading child friendly-reforms in justice mechanisms and in helping to facilitate this study.

UNICEF envisages that this study will contribute to the discourse on the existing gaps in the justice system and establish a foundation from which to build on and strengthen the administration of justice for children in the country to ensure that they are better served and protected.



Tim Sutton
Representative
UNICEF Sri Lanka

List of Acronyms

APVCW	Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015
CCIs	Child Care Institutions
CCPA	Code of Criminal Procedure Act, No. 15 of 1979
CJPB	Children (Judicial Protection) Bill
CPC	Civil Procedure Code
CPU	Child Protection Unit
CRPOs	Child Rights Promotion Officers
CWD	Children and Women's Desk of the Police
CYPO	Children & Young Persons Ordinance No.48 of 1939
DPCCS	Department of Probation and Child Care Services
JMO	Judicial Medical Officer
JSC	Judicial Services Commission
KI	Key Informant
ICCPR	International Covenant on Civil and Political Rights
NCPA	National Child Protection Authority
NCPA Act	National Child Protection Authority Act, No. 50 of 1998
NGOs	Non-Governmental Organizations
OIC	Officer-in-Charge
OMP	Office of Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016
POs	Probation Officers
POA	The Probation of Offenders Act, No. 10 of 1948
PCO	The Prevention of Crimes Ordinance, No. 2 of 1926
PDVA	Prevention of Domestic Violence Act, No. 34 of 2005
PDPCCS	Provincial Departments of Probation and Child Care Services
TOR	Terms of Reference
VCDCs	Village Child Development Committees
VR	Verité Research
YOTSA	The Youthful Offenders (Training School) Act, No. 42 of 1944
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children's Fund

Executive Summary

Justice for children encompasses legislation, policies, procedures and mechanisms specifically applicable to children who are victims (and witnesses) of crime and children in conflict with the law. UNICEF commissioned a comprehensive study of the functionality of Sri Lanka's justice system for children. The report analyses the legal and institutional challenges to the effective administration of justice for children.

It is presented in four parts:

1. An analysis of the gap between prevailing international standards and the domestic framework on justice for children
2. An assessment of the performance of key institutions involved in the provision of specialised justice services for children
3. Recommendations to strengthen the administration of justice for children from a legislative, policy and institutional standpoint.
4. A mapping of the above recommendations in terms of their impact and solvability in the context of Sri Lanka's administration of justice for children.

1. Legal Gap Analysis

The United Nations Convention on the Rights of the Child (CRC) is the primary international instrument that sets out the civil, political, economic, social and cultural rights of children. Article 1 of the CRC defines a child as an individual that is below the age of eighteen. Articles 37, 39 and 40 of the CRC deal specifically with the administration of justice for children in conflict with the law and child victims of crime.

Sri Lanka ratified the CRC on 12 July 1990. The primary Acts governing children's justice in Sri Lanka are:

- (1) The Children and Young Persons Ordinance, No. 48 of 1939 (CYPO);
- (2) The Probation of Offenders Act, No. 10 of 1948 (POA); and
- (3) The Youthful Offenders (Training School) Act, No. 42 of 1944 (YOTSA).

Sri Lanka's domestic framework on justice

for children falls short of international best practices in certain areas. Such shortfalls include the failure to (a) stipulate a uniform definition of a child, and an internationally acceptable age of minimum criminal responsibility (b) consider the deprivation of a child's liberty being a matter of last resort (c) prioritise the diversion of children away from the formal justice system, and (d) distinguish the responses applicable to children in conflict with the law and children in need of care and protection.

To address the prevailing shortcomings of the CYPO, the Ministry of Justice has drafted the Children (Judicial Protection) Bill (CJPB). The Bill, although yet to be placed on the Order Paper of Parliament, contains a number of notable improvements to the framework governing justice administration for children. For instance, it requires the best interests of the child to be given predominant consideration with regard to all matters concerning

the child. Moreover, the Bill provides for the appointment of a judicial guardian to assist the child during legal proceedings. The Bill also prioritises the foster care system in the justice administration of children. However,

despite the improvements above, the Bill fails to prioritise the diversion of children away from the formal justice system as a matter of first resort.

2. Institutional Analysis

This section analyses the institutions within Sri Lanka's justice system for children. These institutions include: Sri Lanka Police, the Attorney General's Department, the Judicial Medical Officer, the Courts, the Department of Probation and Child Care Services and the National Child Protection Authority. The analysis assesses performance on three factors. They are:

1. The institution of child friendly processes: institutional processes are developed in a manner that secures the best interest of the child
2. Adequate resources to perform functions: the institution has sufficient technological, financial and human resources to perform its intended function
3. Technical competency: officials attached to the institution are trained and regularly meet the requirements of justice administration for children

The institutional assessment revealed certain challenges in relation to the administration of justice for children. They are: (a) the failure to prioritise the diversion of children away from the formal justice system; (b) the weak implementation of existing child-specific processes; (c) the lack of differential treatment afforded to children that are victims, and children in conflict with the law; (d) human resource constraints (i.e. attitudinal and capacity) prevailing in the children's justice system; (e) weak technical training and awareness on the application of the best interests of the child amongst professionals engaged in the justice sector; and (f) a lack of prioritisation on addressing the root-causes of offending behaviour and vulnerability in children.

3. Recommendations

This section proposes legislative and institutional recommendations to improve the quality of justice services for children in Sri Lanka. A summary of the proposed recommendations is presented below:

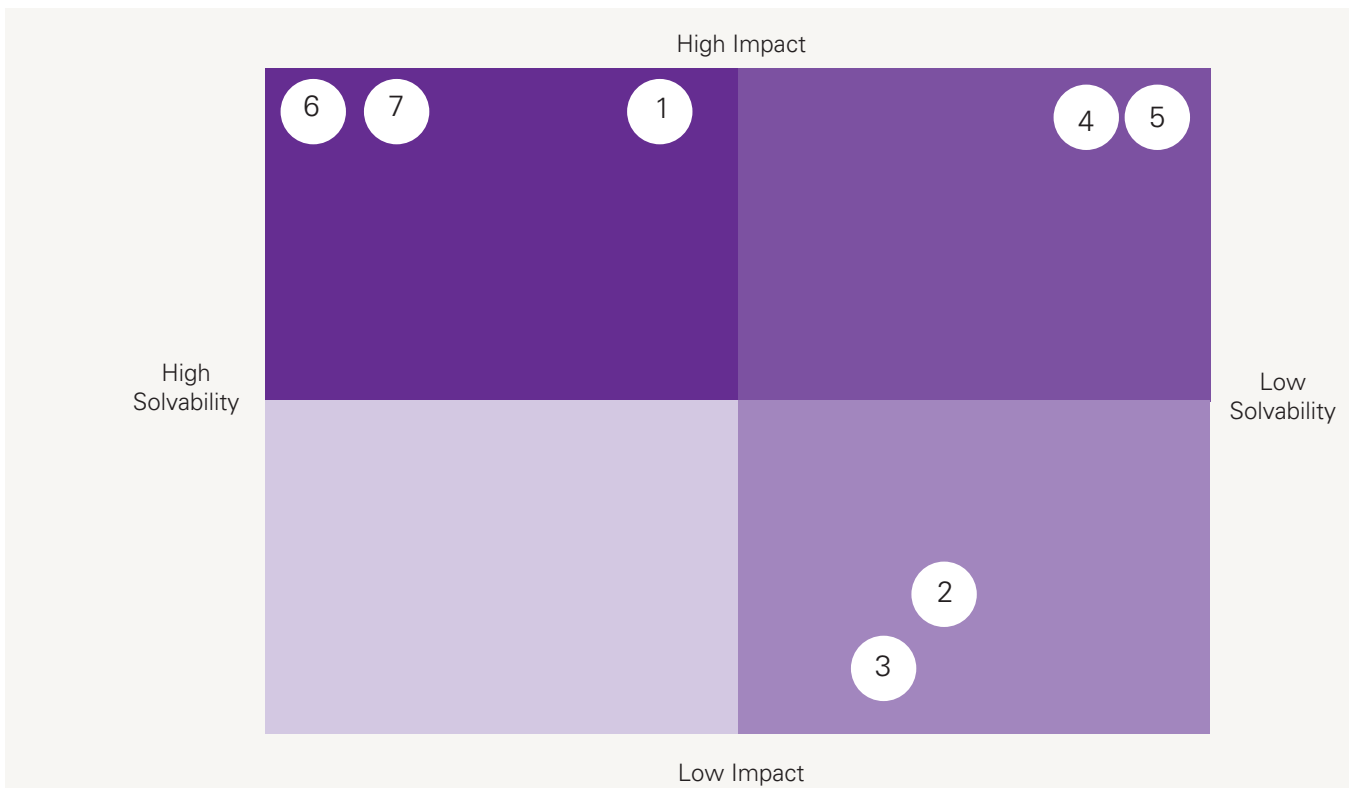
	No.	Recommendation
Legislative Interventions	1.	The passage of the Children (Judicial Protection) Bill (CJPB), subject to certain amendments.
	2.	Amendment to the Code of Criminal Procedure Act, No.15 of 1979 to mandate professionals and ordinary citizens to report instances of crimes against children.
	3.	Amendment to the Prevention of Crimes Ordinance No.2 of 1926 to provide for the registration of offenders that commit crimes against children.
	4.	Amendment of the Evidence Ordinance No.14 of 1885 to permit child witnesses to be cross-examined via closed-circuit television.
	5.	Amendment to Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015 to permit a child victim or witness of crime to be cross-examined via contemporaneous audio-visual linkage.
	6.	Amendment to the Penal Code No.2 of 1883 to increase the minimum age of criminality to twelve years of age.
	7.	Amendment to the Youthful Offenders Training Schools Ordinance No. 42 of 1994 to define a 'youthful person' as a person between the ages of eighteen and twenty-two.
Institutional Interventions		
Law Enforcement	8.	Police stations should be made more child friendly. Police stations should be staffed with at-least one female plain clothed officer that is adequately trained in child protection.
	9.	Strengthening the capacity of the Special Police Unit (SPU) to function as a centrally located hub within the Sri Lanka Police. The SPU should be resourced to conduct in-house DNA testing and forensic evidence gathering.
	10.	Diverting children from the criminal justice system using Section 114 of the Code of Criminal Procedure Code Act No. 15 of 1979, and the Mediation Boards Act No. 72 of 1988. Alternative dispute resolution methods should also be used in instances where in the context of alleged statutory rape the victim is over fifteen years of age, and the perpetrator is under nineteen years of age.
Attorney General's Department	11.	Staffing the Child Protection Unit with additional permanent cadre and mandating existing officials to either complete or transfer their case files prior to the termination of their contracts.
Judicial Medical Officers	12.	A Circular should be issued that mandates all JMOs to initiate a clinical case conference in cases involving children
Courts	13.	The Supreme Court should issue Rules regarding juvenile justice procedures. These procedures should guarantee that children are entitled to basic rights and standards in the context of juvenile justice administration.
	14.	A circular should be issued by the Judicial Services Commission that instructs Magistrates and judges to order the institutionalisation of a child as a matter of last resort. Diversion of children from the formal justice process should be made a priority.

	No.	Recommendation
	15.	A Circular should be issued by the Judicial Services Commission that directs courts to impound the records of proceedings against children in conflict with the law.
	16.	Courts should introduce measures to increase the efficiency of case file processing.
Department of Probation and Child Care Services	17.	Probation Officers should work with Child Rights Promotion Officers to identify suitable placement options for children in the justice system. For instance, these officers can document a list of fit persons at district and divisional level, and map the quality of child care institutions.
	18.	Probation Officers should be specifically mandated to be present and mediate on behalf of child after he or she is taken into police custody. Child Rights Promotion Officers should be mandated to monitor the wellbeing of children that are produced before the Mediation Boards.
	19.	The Provincial Departments of Probation and Childcare Services, in collaboration with the Department of Health, should establish a screening centre in every province that is tasked with assessing the psychological, social and educational needs of the child at the point of placement.
	20.	Each Provincial Probation Department should be allocated sufficient resources in order to facilitate the transportation of children to and from the courtroom.
Cross cutting interventions	21.	All criminal justice institutions should be required to have a separate area for children which is designed in a child friendly manner and is overseen by plain-clothed officers.
	22.	Child friendly documentation should be developed across the justice system for children. This should include the use of child-specific forms, and the use of language appropriate for children.
	23.	The wellbeing of children should be tracked in the penal chain. This should involve the institution of a Wellbeing Index that monitors the child's psychological, social and educational condition
	24.	A database should be developed to track and monitor children within the justice system. This database should be maintained and operated by the NCPA.
	25.	In-service training programmes should be initiated for identified officials within the juvenile justice system (e.g. police officers, POs, Magistrates and officers working in CCLs).
	26.	The NCPA should convene bi-annual meetings with key institutions (e.g. DPCCS, JMO, AG's Department, CRPOs, Magistrates, and Sri Lanka Police) to both reaffirm their roles and responsibilities and address prevailing challenges the children's justice system.
	27.	Additional clerical staff should be recruited to manage the processing of case files relating to children within the criminal justice system. These clerical staff should include court clerks, typists and paralegals stationed at institutions such as the CPU, Juvenile Courts and the SPU.

4. Intervention Mapping

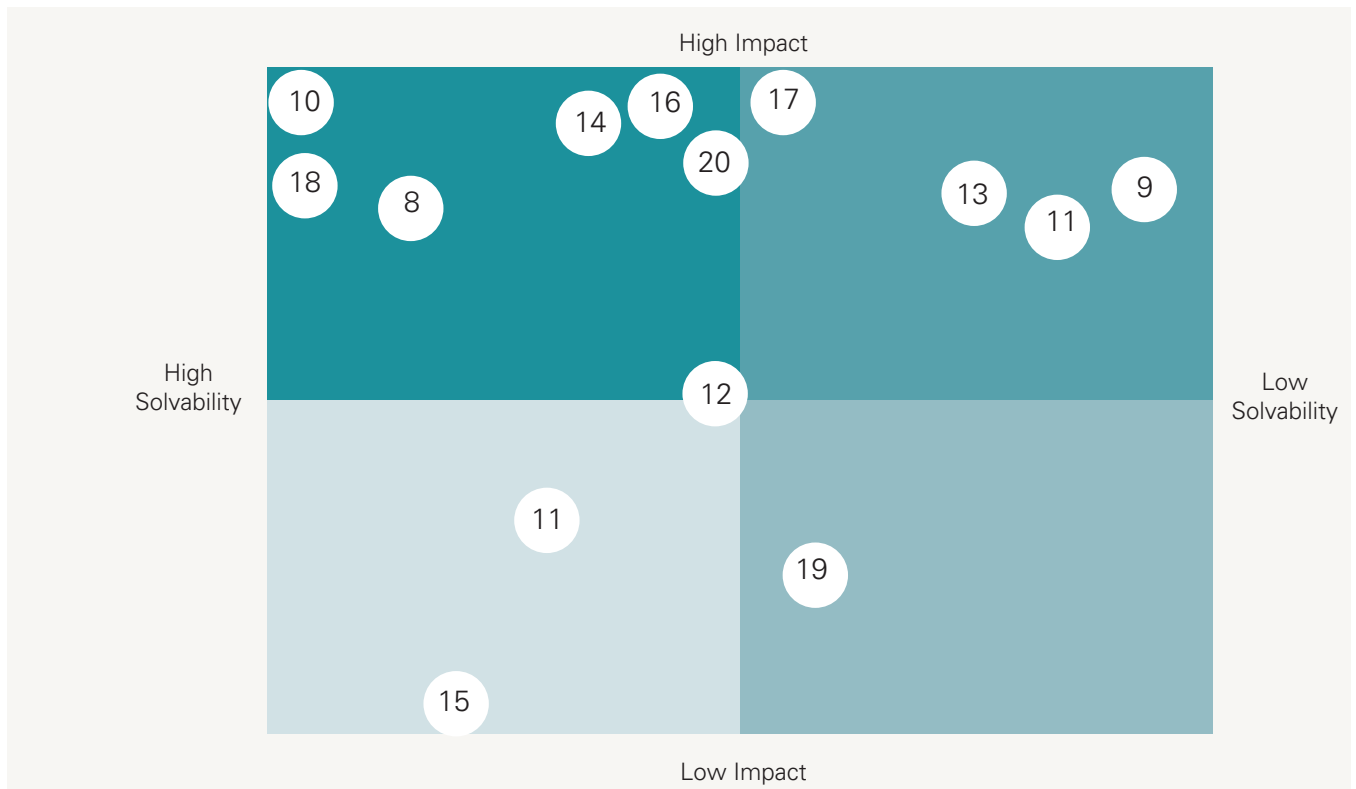
The following figures map the above recommendations according to their impact and solvability. The impact axis assesses the extent to which the particular intervention advances the wellbeing of children within the justice system. The solvability axis estimates the relative time and complexity associated with the implementation of an intervention.

FIGURE 1
Legislative Interventions



No.	Recommendation
1.	The passage of the Children (Judicial Protection) Bill.
2.	Amendment to the Code of Criminal Procedure Act, No.15 of 1979.
3.	Amendment to the Prevention of Crimes Ordinance No.2 of 1926.
4.	Amendment of the Evidence Ordinance No.14 of 1885.
5.	Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015
6.	Amendment to the Penal Code No.2 of 1883
7.	Amendment to the Youthful Offenders Training Schools Ordinance No. 42 of 1994

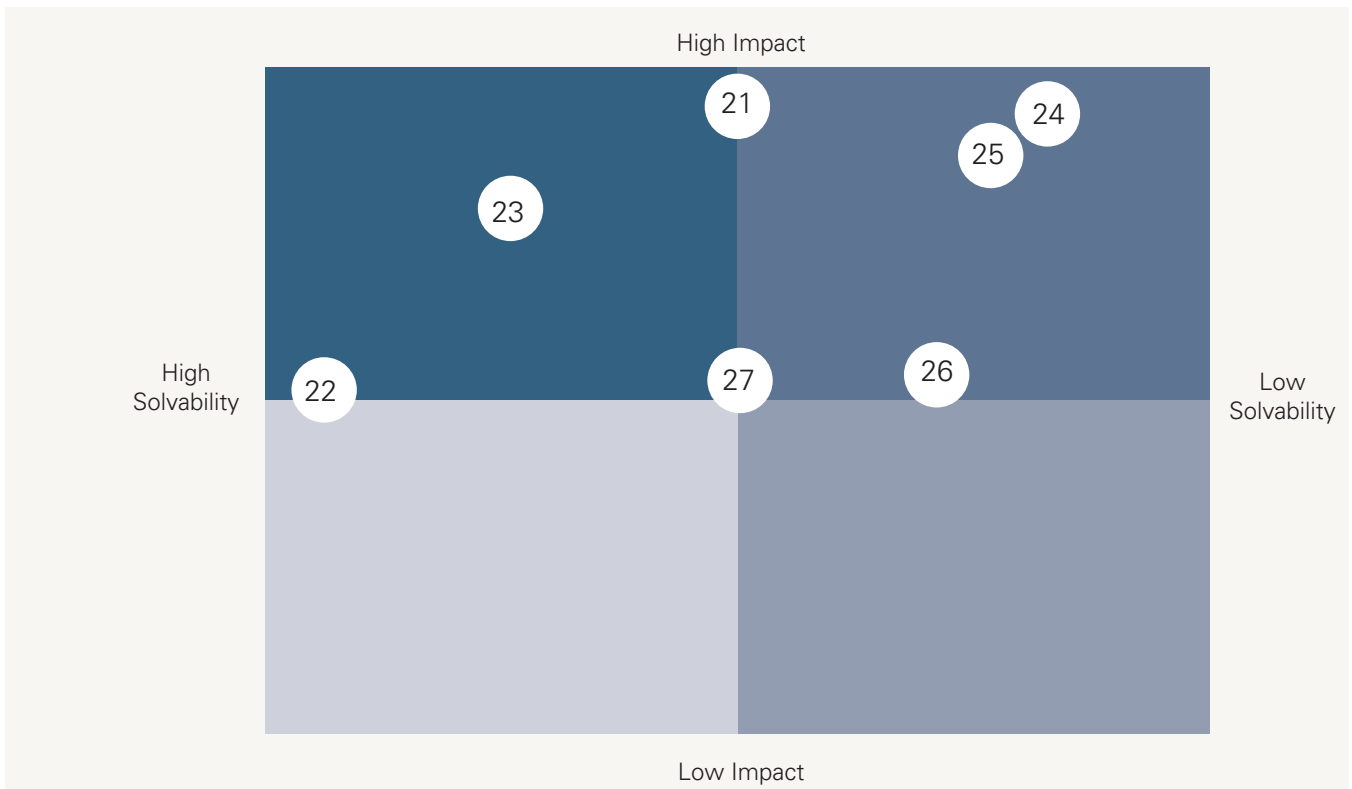
FIGURE 2
Institutional Interventions



No.	Recommendation
8.	Making Police Stations More Child Friendly
9.	Strengthening Capacity of the Special Police Unit
10.	Diverting children from the criminal justice system
11.	Building the Capacity of the Child Protection Unit
12.	Clinical Case Conferencing
13.	Child-Friendly Court Procedures
14.	Deprivation of liberty as a last resort
15.	Impounding Records of Proceedings
16.	Reducing Case Flow Delays
17.	Improve the Information Supplied by Probation Officers to Court
18.	Ensuring a Child’s Well-Being within the criminal justice system
19.	Screening Children in the Juvenile Justice System
20.	Transportation of Children

FIGURE 3

Cross cutting Interventions



No.	Recommendation
21.	Separating children from adults within criminal justice institutions.
22.	Child friendly documentation.
23.	Ensuring the oversight of children’s cases within the criminal justice system.
24.	Monitoring cases involving children.
25.	Incentivising the performance of juvenile justice officials.
26.	Promoting multi-sectoral coordination
27.	Ensuring the recruitment of support staff to juvenile justice institutions.

1

Background

Justice for children encompasses legislation, policies, procedures and mechanisms specifically applicable to children who are victims (and witnesses) of crime and children in conflict with the law. In the context of children in conflict with the law, specialised justice systems for children have a further obligation to ensure that they are (a) positioned to address the root causes of offending behaviour, and (b) facilitate the reintegration of children into society.

In Sri Lanka, weak legislative frameworks and institutional practices, as well as inefficient enforcement, have widened the gap between domestic standards and international best practices pertaining to justice for children. Such weaknesses result in an increased risk of children being re-victimised and exploited by the justice system. Addition-

ally, the increasing backlog in courtrooms has further impeded the effectiveness of Sri Lanka's children's justice system. According to data gathered in 2012, it took an average of six years between the investigation of a child's case, and the commencement of a corresponding trial.¹ At present, there are only two specialised Juvenile Courts in the country.² This dearth of specialised Juvenile Courts results in a majority of children's cases being heard alongside those involving adults, contributing to justice services that are insensitive to the specific needs of children.

A large number of children that come into contact with the justice system are in need of care and protection. Unfortunately, these children have encountered increased institutionalisation, often at the expense of their social and psychological well-being. In 2009,

1. Briefing Sheet Child Protection, UNICEF Sri Lanka, 2012, *accessible at*: https://www.unicef.org/srilanka/2012_SL_Fast_facts_CP.pdf.

2. *Ibid.*

there were over 14,000 children institutionalised across the country.³

Against this backdrop, UNICEF commissioned a comprehensive study of the functionality of Sri Lanka's justice system for children. This report analyses the legal and institutional challenges to the effective administration of justice for children. It is presented in four parts. First, the report analyses the gap between prevailing international standards and the domestic

framework on justice for children. Second, it assesses the performance of key institutions involved in the provision of specialised justice services for children. Third, the report proposes recommendations to strengthen the administration of justice for children from a legislative, policy and institutional standpoint. Finally, it organises and maps the recommendations in terms of their impact and solvability in the context of Sri Lanka's administration of justice for children.

3. Current status of Childcare institutions and institutionalised children in Sri Lanka: A situational analysis, Department of Probation and Childcare Services, Ministry of Women and Child Affairs, researched by National Institute of Social Development, 2013, at 17.

2

Research Design and Method

UNICEF commissioned Verité Research (VR) to assess the effectiveness of Sri Lanka's justice services for children from a legislative, policy and institutional perspective. It examines the rights and status of children across two broad groups: i.e. children in conflict with the law, and children as victims and witnesses of crime.

VR adopted an interdisciplinary approach to address and deliver the requirements of the Terms of Reference (ToR). The assessment contemplated by the ToR comprised two specific objectives:

1. A comprehensive review of the legislative and institutional framework pertinent to the administration of justice for children; and
2. Framing recommendations based on the above review.

VR identified the following research questions, which correspond to the components identified in the ToR. These questions are:

- a. Does the existing legal framework governing Sri Lanka's children's justice system comply with international best practices?
- b. How effective are Sri Lanka's criminal justice and alternative care institutions in ensuring justice for children?

VR developed a holistic analytical approach that incorporated perspectives from several disciplines, including law and sociology. This study is compiled from a review of primary and secondary sources, and interviews with key informants (KIs) attached to the children's justice system.

The recommendations developed by VR focused on entry points to strengthen Sri Lanka's administration of justice for children from a legislative, policy and institutional perspective. These recommendations were then organised and mapped according to their short-term, medium-term and long-term impact and solvability.

The key limitations of the study were that a majority of the findings were based on key informant interviews, and could not be corroborated by empirical research. Moreover, children in institutions were not interviewed as part of this assessment.

Annex 1 contains an overview of the legislative and policy dimensions pertaining to children in the context of transitional justice. Annex 2 presents the overall methodological

framework of the study. Although transitional justice mechanisms are yet to be established, its implications for the administration of justice for children are worthy of mention. Annex 3 contains the list of KIs interviewed during the course of the study. Annex 4 contains the list of stakeholders whose comments on the report were incorporated into the report prior to its finalisation.

3

Legal Gap Analysis

3.1 International Standards on Justice for Children

3.1.1 United Nations Convention on the Rights of the Child

General Principles

The United Nations Convention on the Rights of the Child (CRC) is the primary international instrument that sets out the civil, political, economic, social and cultural rights of children. Article 1 of the CRC defines a child as an individual that is below the age of eighteen, unless according to the law applicable to children in the respective state party, majority is attained earlier.⁴

States parties are required to adhere to the general principles enshrined in articles 2, 3, 6 and 12 of the CRC. Article 2 of the CRC sets out the principle of non-discrimination, under which States parties are required to take all

the necessary measures to ensure that all children are treated equally. Article 3 of the CRC provides that the best interests of the child should be a primary consideration in the administration of justice.

This principle advances the idea that children differ from adults in their physical and psychological development, as well as their emotional and educational needs. The above factors constitute the basis for the differential treatment of children (a) in conflict with the law (e.g. by the use of rehabilitation and restorative justice measures), and (b) children who may come into contact with the law (e.g. through neglect, and as victims and witnesses).

Article 6 of the CRC provides for the right to life, survival and development of the child.

4. Convention on the Rights of the Child, United Nations General Assembly, (1989), article 1.

This right imposes an obligation on states parties to develop effective national policies and programmes targeted at responding to and preventing children at-risk of coming into contact or conflict with the law. Article 12 of the CRC affords children the right to express their views freely in all matters affecting them. In the context of justice for children, the Committee on the Rights of the Child has stated that article 12 casts an obligation on states parties to ensure that the voices of children are respected and integrated at every stage of the proceedings.⁵ This article also details the importance of having child-friendly and child-sensitive communication methods through the use of substitute technical terms and visual aids.

Administration of Justice for Children Requirements under the CRC

Articles 37, 39 and 40 of the CRC deal specifically with the administration of justice for children in conflict with the law and child victims of crime. Article 37(2) states that ‘no child shall be deprived of his or her liberty unlawfully or arbitrarily’. Moreover, the article states that the arrest, detention or imprisonment of a child should be used only as a ‘measure of last resort’ and for the ‘shortest appropriate period of time’.⁶ Article 37(2) also mandates that children deprived of liberty should be separated from adults, unless it is considered in the child’s best interest not to do so.

Article 39 of the CRC places an obligation on states parties to take appropriate measures to promote ‘physical and psychological

recovery and social integration of a child victim from any form of neglect, exploitation or abuse’. Moreover, the Convention mandates that such recovery and reintegration take place in an environment that fosters the health, self-respect and dignity of the child.⁷

In respect of article 39, the Committee on the Rights of the Child noted the inadequate measures taken by states parties to ensure the psychosocial recovery of child victims in cases of abuse.⁸ Moreover, the Committee highlighted cases of ill-treatment of child victims by law enforcement personnel as a matter of concern.⁹ Accordingly, the Committee recommended that states parties strengthen the responsiveness of their law enforcement mechanisms when dealing with offences against children.¹⁰ The Committee also recommended the institution of adequate procedures and mechanisms for dealing with complaints of child abuse, such as special rules of evidence, special investigators and community focal points.¹¹

Article 40 of the CRC covers the rights of children accused of infringing the penal law of state parties. The article covers the treatment of the child from the point an allegation is made, through the stages of investigation, arrest, charge, trial and sentencing. Article 40 3(b) requires that states parties promote a distinctive system of justice for children that incorporates alternatives to institutionalisation. Such alternatives include access to counselling, foster care, education and vocational training. Furthermore, article 40 details a list of minimum guarantees

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5. General comment *No. 10: Children’s Rights in Juvenile Justice*, UN Committee on the Rights of the Child (CRC), 2007, at 16.
 6. Convention on the Rights of the Child, United Nations General Assembly, (1989), Article 37(2).
 7. Article 39, Convention on the Rights of the Child 1989.
 8. Report of the Committee on the Rights of the Child, (2000) Supplement No. 41 (A/55/41), at 10 – 32.
 9. *Ibid.*
 10. *Ibid.*
 11. *Ibid.*

applicable for children in conflict with the law. These guarantees include a minimum age of criminal responsibility, and the right to privacy during judicial proceedings.¹² The Committee on the Rights of the Child concluded that 'a minimum age of criminal responsibility below the age of twelve years was not internationally acceptable.'¹³

In its 2000 report to the UN General Assembly, the Committee on the Rights of the Child expressed concern regarding the conditions experienced by children deprived of their liberty, both in certified schools and in separate facilities at adult prisons.¹⁴ The Committee further pointed to insufficient facilities in states parties, in terms of education, counselling and rehabilitation services for children in conflict with the law.¹⁵ The report by the Committee also states that states parties experienced challenges in (a) ensuring access to justice for children in a prompt manner for children in detention, and (b) limiting the imposition of aggravated penal penalties regarding 'property offences' committed by children.¹⁶

In this context, the Committee recommended that states parties regularly review their legislative frameworks to ensure that decisions regarding legal assistance for children in conflict with the law are taken impartially and in the best interests of the child.¹⁷ Moreover, the Committee recommended that states

parties invest in both ensuring the improvement of the conditions of children living in detention centres, and developing alternative measures to institutionalisation.¹⁸

In addition to the provisions of the CRC, there are a number of General Comments that deal specifically with states parties obligations on justice administration for children. These General Comments include: (a) General Comment No. 10, on Children's Rights in Juvenile Justice, (b) General Comment No. 12, on Children's Rights to be Heard, (c) General Comment No. 13, on Children's Rights to be Free from All Forms of Violence, and (d) General Comment No. 14, on Children's Rights to have his or her best interests taken as a primary consideration.

General Comment No. 10 recommends that states parties take all necessary measures to ensure that all children in conflict with the law are treated equally.¹⁹ Furthermore, under this General Comment, special attention is to be paid to vulnerable groups of children such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law.²⁰ The General Comment also recommends that all professionals involved in the administration of juvenile justice be knowledgeable on child

12. *Ibid.* Article 40.

13. UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, paragraph 32.

14. Eva Clarhall, *Monitoring Implementation of the UN Convention on the Rights of the Child* (August 2011), at. 12; Committee on the Rights of the Child, *Report of the Committee on the Rights of the Child* (2000) Supplement No. 41 (A/55/41), at 6.

15. Committee on the Rights of the Child, *Report of the Committee on the Rights of the Child* (2000) Supplement No. 41 (A/55/41), at 10 – 32.

16. *Ibid.*

17. *Ibid.*

18. *Ibid.*, at 80.

19. UN Committee on the Rights of the Child, *General Comment No. 10, on Children's Rights in Juvenile Justice* (2007), at 4.

20. *Ibid.*

development and violence against children, so that they are in a position to facilitate a child's reintegration into society.²¹

General Comment No. 12 recommends that all juvenile justice proceedings be accessible and child-appropriate.²² General Comment No. 13 recommends that judicial involvement in children's cases should consist of differentiated and mediated responses to dispute resolution such as family group conferencing and restorative justice.²³ This General Comment also recommends the establishment of specialised children's units within the police, the judiciary, and the prosecutor's office.²⁴ General Comment No. 14 places an obligation on states parties to ensure that the best interest of the child is a primary consideration. The Comment states that this principle should be applicable to all judicial and administrative decisions as well as policies and legislation concerning children.

3.1.2 Other International Instruments Relating to Justice for Children

There are a number of international rules and guidelines that deal with the care, protection and treatment of children coming into conflict with the law. These include:

- The UN Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985;
- The UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) 1990; and
- The UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) 1990.

The Beijing Rules provide guidance to states on protecting children's rights and respecting their needs when developing separate and specialised systems of juvenile justice.²⁵ The Riyadh Guidelines represent a comprehensive and proactive approach to prevention and social integration of child offenders.²⁶ The Havana Rules²⁷ are applicable to juveniles that are confined to any institution or facility by order of any judicial, administrative or other public authority. The Bangkok Rules provide that the institutionalisation of children in conflict with the law should be avoided to the maximum extent possible. The Vienna Guidelines focus on ensuring that states parties are able to implement their obligations under the CRC. To this end, the Guidelines set out measures that should be implemented at the international and national levels. The rules and guidelines

21. UN Committee on the Rights of the Child, *General Comment No. 10, on Children's Rights in Juvenile Justice* (2007), at 6.

22. UN Committee on the Rights of the Child, *General Comment No. 12, on the right of the child to be heard* (2009), at 9.

23. UN Committee on the Rights of the Child, *General Comment No. 13, The right of the child to freedom from all forms of violence* (2011) at 21.

24. UN Committee on the Rights of the Child, *General Comment No. 14, on the right of the child to have his or her best interests taken as a primary consideration* (2013) at 22.

25. UN Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (1985).

26. UN Guidelines for the Prevention of Juvenile Delinquency, adopted by the General Assembly Resolution 45/112 of December 1990.

27. UN Rules for the Protection of Juveniles deprived of their liberty, adopted by the General Assembly Resolution 45/113 of December 1990.

above give primary importance to the principle of the best interests of the child, and provide frameworks for its implementation in practice.²⁸

In addition to the above, former United Nations Secretary General Kofi Annan identified the following strategic priority areas for states parties on justice for children. They are:²⁹

- a. Advancing legislation to ensure that children are deprived of their liberty as a last resort, and for the shortest period possible;
- b. Developing alternative structures (e.g. restorative justice systems) to deal with children in conflict with the law, without resorting to judicial proceedings;
- c. Limiting juvenile delinquency through effective educational opportunities, counselling, stable family environments and community based programmes; and
- d. Training of law enforcement officials, prosecutors, judges, lawyers and social workers on existing international standards with respect to juvenile justice.

3.2 An Assessment of the Domestic Legal Framework on Justice for Children

3.2.1 An Overview of Justice for Children's Legislation in Sri Lanka

Article 12 of the Sri Lankan Constitution guarantees the equal protection of the law, and non-discrimination under the law. Article 12(4) states that 'nothing shall prevent special provision being made for the advancement of women, children or disabled persons'. Furthermore, the Directive Principles of State Policy place an obligation on the state to 'promote with special care the interests of children and youth, so as to ensure their full development'.³⁰

Sri Lanka ratified the CRC on 12 July 1990. Sri Lanka's obligations under the CRC were subsequently adopted into state policy by

way of the Children's Charter. The CRC is not justiciable (i.e. enforceable in any court of law), as there is no corresponding Act of Parliament that incorporates the Convention into national law. Notwithstanding this limitation, a number of existing laws have been amended to reflect Sri Lanka's obligations under the CRC. For instance, section 2 of the Children and Young Person's Ordinance, No. 48 of 1939 provides for a system of specialised juvenile courts. Moreover, the Evidence Ordinance, No. 14 of 1995 permits children to lead evidence-in-chief via a video link. Additionally, the Corporal Punishment (Repeal) Act, No. 23 of 2005 sought to repeal corporal punishment as a method of sentencing under Sri Lankan law.

28. In addition to the above, the following supplementary rules and guidelines exist with respect to justice for children. They are: The United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) (1990); Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines) (1997); The United Nations Basic Principles on the use of Restorative Justice Programmes in Criminal Matters (2002); and the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules) (2010).

29. We the children, Meeting the promises of the World Summit for Children, Kofi. A. Annan, Secretary General of the United Nations, 2001, *accessible at*: https://www.unicef.org/publications/files/pub_sgreport_adapted_en.pdf.

30. Article 27(13), Constitution of the Democratic Socialist Republic of Sri Lanka.

The primary Acts governing children's justice in Sri Lanka are:

1. The Children and Young Persons Ordinance, No. 48 of 1939 (CYPO);
2. The Probation of Offenders Act, No. 10 of 1948 (POA); and
3. The Youthful Offenders (Training School) Act, No. 42 of 1944 (YOTSA).

The CYPO provides for the establishment of Juvenile Courts, the treatment of juvenile offenders and the safeguarding of children and young persons in need of care and protection. Under the CYPO, a 'child' is defined as an individual under the age of fourteen.³¹ A 'young person' is defined as an individual between the ages of fourteen and sixteen.³² Moreover, the CYPO mandates that every court dealing with a child or young person shall focus primarily on the welfare of the child.³³

The POA provides for the circumstances under which a Probation Order may be made by a court. Probation Orders function as alternatives to the institutionalisation of children that come into conflict with the law. The Act also stipulates the circumstances, duration, and conditions governing a Probation Order.³⁴ The YOTSA provides for the establishment of training schools for the detention, training and rehabilitation of male youthful offenders between the ages of sixteen and twenty-two.³⁵ The purpose of the YOTSA is to attempt to change a child's behaviour through education and training.

Additionally, certain laws concerning human

rights, access to justice and witness protection have incorporated children's rights into their ambit. In 2007, the Sri Lankan Parliament enacted the ICCPR Act, No. 56 of 2007 to give effect to its obligations under the International Covenant on Civil and Political Rights (ICCPR). Section 5(2) of the Act states:

In all matters concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities, or legislative bodies, the best interest of the child shall be of paramount importance.

The ICCPR Act thus gives statutory recognition to the internationally recognised principle of the 'best interests of the child'. Additionally, the Prevention of Domestic Violence Act, No. 34 of 2005 (PDVA) permits a child in respect of whom an act of domestic violence has been (or is likely to be) committed, to apply to the Magistrate for a Protection Order.³⁶ Furthermore, the child's parent, a police officer, or a person authorised by the National Child Protection Authority (NCPA) is permitted to apply to the Magistrate on behalf of the child for the issuance of a protection order.³⁷

The Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 (APVCW) contains specific rights applicable to child victims or witnesses. For instance, section 3(b) of the Act provides that the child victim has the right to be treated in a manner that ensures the best interests of the child. Moreover, section 25(3) of the APVCW provides that the assistance and

31. Children and Young Persons Ordinance, No. 48 of 1939, section 88.

32. *Ibid.* Section 88.

33. *Ibid.* Section 21.

34. Probation of Offenders Act, No. 10 of 1948, sections 4 and 5.

35. Youthful Offenders (Training Schools), Section 2(1), Section 16.

36. Prevention of Domestic Violence Act, No. 34 of 2005, section 2(b).

37. *Ibid.* Section 2.

protection provided by a court or commission to a victim or witness of crime should include the adoption of special measures to protect the rights of children and ensure the best interests of child victims of crime and child witnesses.³⁸ The APVCW also permits witnesses and victims of crime to give any evidence or a statement via contemporaneous audio video linkage between the Courts, law enforcement and the location that the victim or witness is testifying from.

In 1995, an amendment made to the Penal Code, No. 2 of 1883 introduced specialised offences with respect to children. For example, section 308A(1) of the Penal Code provides for the offence of cruelty to children. Section 350B of the Penal Code provides for the offence of sexual exploitation of children, while section 360C of the Penal Code provides for the offence of trafficking of children.

At present, the Sri Lankan legal framework does not extend protection to refugee children. This lack of protection can further increase the vulnerability of refugee children and expose them to risks of trafficking and other forms of exploitation.

3.2.2 Minimum Age of Criminal Responsibility

There is no uniform definition of a 'child' under Sri Lankan law. Moreover, section 75 of the Penal Code provides for a minimum age of criminal responsibility at eight years old.³⁹ However, under this section, children

between the ages of eight and twelve can be held criminally responsible if it can be proved that the child has a level of maturity to understand the nature and consequences of his or her conduct.⁴⁰ Notwithstanding this provision, the current position under Sri Lankan law seemingly violates the acceptable minimum age of criminal responsibility (i.e. twelve years) set out by the Committee on the Rights of the Child.⁴¹

3.2.3 Children Coming into Contact with the Justice System

Article 3 of the CRC requires states parties to ensure that children have access to the protection and care that is necessary for their well-being. In accordance with the above, section 17(1) of the CYPO requires a law enforcement officer to notify a relevant Probation Officer (PO) in the event a child or young person is to be brought before a Magistrate. In terms of section 17(2) of the CYPO, upon receiving notification from a law enforcement officer, the PO is required to investigate the background of the child and prepare a report to be submitted to court. Section 13 of the CYPO casts a specific obligation on law enforcement officers and the court to ensure the separation of children or young persons from adult offenders during the pendency of their case. This section is compliant with requirements under article 37 of the CRC that stipulate that every child deprived of liberty be separated from adults, unless it is considered in the child's best interest not to do so.

38. Despite the passage of the Victims and Witnesses Protection Act, No. 4 of 2015, Sri Lanka still does not have a functioning witness protection program. Therefore, the protection afforded by the Act is limited in practice.

39. In November 2016, the Cabinet took a decision to increase the minimum age of criminality from eight years to twelve years of age. However, at the time of writing, no such amendment to the Penal Code has been made. Decision taken by the Cabinet of Ministers at its meeting held on the 1st of November 2016, to amend the Penal Code, *accessible at*: <http://dgi.gov.lk/news/cabinet-decisions/238-decisions-taken-by-the-cabinet-of-ministers-at-its-meeting-held-on-01-11-2016>.

40. Section 75 of the Sri Lanka Penal Code, 1885.

41. General Comment No.10 of 2007, Children's rights in juvenile justice, United Nations, p.11.

Article 40(2)(ii) of the CRC obligates states parties to inform the child 'promptly and directly of the charges against him or her, and if appropriate through his or her parents or guardians'. Additionally, Rule 7 of the Beijing Rules states that children should have access to basic procedural safeguards, such as the right to be notified of charges. Notwithstanding these obligations, the CYPO does not require that a parent or guardian be notified prior to a child being brought before a Magistrate. Moreover, law enforcement officers are not required to explain to a child who is deprived of his or her liberty of the reasons for his or her arrest. The CYPO also does not require the PO, once notified, to inform the child in question of the progress of his or her case, or provide details pertaining to the impending judicial process. The above shortcomings could jeopardise a child's well-being and basic procedural rights at the point of contact with the justice system.

3.2.4 Judicial Proceedings

Article 40(3) of the CRC obligates states parties to promote the establishment of procedures, authorities and institutions 'specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law'. Accordingly, the CYPO provides for the establishment of separate Juvenile Courts for the purpose of hearing cases dealing with children and young persons.⁴² Under the CYPO, a 'Juvenile Court' is defined as a court of summary jurisdiction, sitting for the purpose of hearing any charge against a child or young person, or for the purpose of exercising any other jurisdiction conferred on a Juvenile Court.⁴³

The CYPO casts a specific obligation on the Magistrate to explain in language that is appropriate to the child or young persons' age and level of maturity, the substance of the alleged offence.⁴⁴

In addition to the above, the Evidence (Special Provisions) Act, No. 32 of 1999 permits a child to give evidence as a witness *via* a pre-recorded video.⁴⁵ This facility has replaced the need to lead the child's evidence-in-chief in open court. However, because the above provision only applies to evidence-in-chief and does not extend to the cross-examination of the child, its impact on reducing the psychological trauma caused to the child during the judicial proceedings is minimal. Moreover, the facility to provide pre-recorded video evidence is not extended to children in cases of domestic violence under the PDVA.

Article 40(2)(iii) of the CRC entitles a child in conflict with the law to have access to legal or other appropriate assistance in the preparation and presentation of his or her defence. Moreover, the Beijing Rules state that children should have the right to be represented by a legal adviser, or to apply for free legal aid, throughout the court proceedings.⁴⁶ Section 5(1)(d) of the ICCPR Act states that 'every child has the legal right to legal assistance provided by the State, at the State's expense in criminal proceedings affecting the child'.

Notwithstanding these obligations, the CYPO does not contain provisions granting children in the justice system the right to legal representation. Section 16(3) of the CYPO places a duty on the court to require the

42. Children and Young Persons Ordinance No. 48 of 1939 Part I.

43. *Ibid.* Section 2.

44. *Ibid.* Section 9(1).

45. Evidence (Special Provisions) Act No. 32 of 1999, Section 2.

46. The UN Standard Minimum Rules on the Administration of Juvenile Justice ('the Beijing Rules'), 1985, Rule 15.

attendance of the child's parent or guardian prior to his or her case being heard. This section presumes that the parent or guardian will provide the necessary assistance to the child during the trial. However, this presumption does not amount to a right to legal representation for the child in question, and may not further the best interests of the child in the event he or she is a victim of abuse by the said parent or guardian.

Section 21 of the CYPO requires courts 'to have regard to the welfare of the child or young person' brought before it. However, this provision does not place the onus on courts to give primary consideration to the best interests of a child as stipulated by article 3 of the CRC and section 5(2) of the ICCPR Act. Additionally, the fact that the courts mandated to hear children's cases are termed 'Juvenile Courts', could create a presumption that children that come before such Courts are alleged offenders, rather than those in need of care and protection.

3.2.5 Pre-Trial Detention and Placement

CRC Article 37 (b) and Rule 13 of the Beijing Rules provide that detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. The Beijing Rules also provide that whenever possible, detention pending trial for juveniles shall be replaced by alternative measures, such as close supervision, placement with a family, an educational setting or in a home.⁴⁷

In the context of pre-trial detention, section 15 of the CYPO places an obligation on courts to commit a child that is not released on bail to

a remand home instead of a prison until the conclusion of his or her trial.⁴⁸ Furthermore, under this section, courts are mandated to commit a young person to a remand home instead of a prison, unless he or she is 'so unruly' or 'depraved' as to make detention in a remand home unsafe for the existing occupants.⁴⁹ Moreover, section 23(1) of the CYPO states that a child or young person shall not be committed to prison in default of the payment of a fine. In aiding the court to assess matters of placement, section 17(2) of the CYPO mandates POs to prepare a report that details the circumstances, and requirements of the child.

In order to collect the information necessary to establish guilt, section 10(2) of the CYPO grants the Juvenile Court the right to remand the child or young person alleged to have committed the offence in a remand home or in the custody of a 'fit person' for a period not exceeding twenty one days.⁵⁰ However, the existence of such time-limits for pre-trial detention does not align with international frameworks that require children to be deprived of liberty for the shortest possible period of time. Moreover, these time-limits can result in children being unduly detained without sufficient review or oversight.

Moreover, the CYPO provides broad grounds for pre-trial detention.⁵¹ Such grounds include: (a) for the purpose of removing the child from association with an alleged criminal, and (b) if his or her release 'defeats the ends of justice'.⁵² Additionally, despite prevailing international standards, the CYPO does not (a) refer to pre-trial detention as a matter of last resort, or (b) assert the importance

47. *Ibid.* Rule 13.2.

48. Children and Young Persons Ordinance, No. 48 of 1939, section 15.

49. *Ibid.* Section 15(1).

50. Under the CYPO, a fit person constitutes a foster carer.

51. *Ibid.*, section 14.

52. *Ibid.* Section 14(b) and (c).

of diverting children away from the formal justice system.⁵³

Article 40(4) of the CRC states that:

A variety of dispositions such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational trainings and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.⁵⁴

In the event a child or young person is found guilty of an offence, the CYPO grants the court the discretion to order both institutional and non-institutional sentences. Institutional sentences include: (a) committing the individual to custody in a remand home for a specified period that does not exceed one month,⁵⁵ or (b) ordering that the individual (provided that he or she has reached twelve years of age) be sent to an approved or certified school for a period of three years.⁵⁶ Non-institutional sentences include: (a) placing the individual in the care of a PO,⁵⁷ (b) placing the individual in the care of a parent, guardian or relative that executes a bond (with or without sureties),⁵⁸ or (c) placing the individual in the care of a fit person.⁵⁹ Under all of the above, the court is also permitted to levy a fine.

Although they are considered alternatives to institutionalisation, the institutional sentences discussed above are framed in a distinctly punitive manner and still carry the element of deprivation of liberty, which ought to be the exception rather than the rule. For instance, under section 55(1) of the CYPO, a child or young person escaping from a certified or approved school can be apprehended without warrant and brought before the Juvenile Court. Where the child concerned is under sixteen years of age, the court is entitled to order that his or her period of detention be extended for a further period of six months.⁶⁰ Moreover, boys who have reached sixteen years of age during their period of detention may be sent to a Youth Training School for a further three years.⁶¹ Furthermore, even if the child in question has not escaped, the manager of an approved or certified school is entitled to extend the child's period of detention by a period of six months, after obtaining the approval of the relevant Minister.⁶²

Moreover, although a distinction is made under the CYPO between the treatment of children under sixteen and adult offenders, the ultimate result may not be any less punitive.⁶³ For instance, under section 42(2) of the CYPO a detention order by an approved or certified school lasts for a period of three years – potentially longer than an adult would be detained for an equivalent offence.⁶⁴

53. Convention on the Rights of the Child, 1989, Article 37 (b).

54. *Ibid.*, Article 40 (4).

55. *Ibid.* Section 25(1).

56. *Ibid.* Section 26(1).

57. *Ibid.* Section 27(1).

58. *Ibid.* Section 27(1)(a).

59. *Ibid.* Section 27(1)(b).

60. *Ibid.* Section 55(1).

61. *Ibid.* Section 55 (1).

62. Section 44 of the Children and Young Persons Ordinance, No. of 1939.

63. Jill Grime, *An Investigation into Children's Rights in Sri Lanka*, 1994, p.12.

64. *Ibid.*

3.2.6 Treatment of Children Between Sixteen and Eighteen

Article 1 of the CRC states that 'a child means every human being below the age of eighteen years'. Notwithstanding this, children between the ages of sixteen and eighteen do not come under the protective ambit of the CYPO. The CYPO defines a 'young person' as an individual between the ages of fourteen and sixteen.

This results in children between the ages of sixteen and eighteen being placed in the formal justice system, and treated in the manner as adults.⁶⁵ This treatment can adversely affect the psychological and social well-being of such children in the justice system, and violates the principle of the best interests of the child under the CRC. Additionally, the lack of oversight and role afforded to the DPCCS in the treatment of children between the ages of sixteen and eighteen increases their vulnerability to exploitation, abuse, and torture. Such children are not given access to a PO or entitled to have their cases fast-tracked in the justice system. Moreover, children between the ages of sixteen and eighteen are incarcerated in prisons with adult offenders, thereby further impeding their rehabilitation and reintegration into society.

Boys between the ages of sixteen and twenty-two that are sent to training schools established under the YOTSO are not entitled to the oversight of a PO. Instead, responsibility for oversight within these schools lies mainly with the Prisons Department. According to the Report of the Committee to Consider Reforms to the Juvenile Justice Laws:

The numerous references to the provisions of the Prisons Ordinance [in the YOTSO] raises a serious concern of whether this institution, in fact, embodies a punitive environment rather than a reformatory one.⁶⁶

For children between the ages of sixteen and eighteen that are sent to training schools, oversight by the Department of Prisons increases the risk that such children will be detained and transported with adult offenders.

3.2.6 Child Victims of Crime

Article 19(1) of the CRC requires states parties to take all appropriate measures to protect the child from:

All forms of physical or mental violence injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Sections 71 to 77 of the CYPO set out a series of child-related offences. For example, section 71 provides that it is an offence for a person who has the custody of a child or young person to perpetrate an act of cruelty against such a child by assaulting, ill-treating, neglecting, abandoning or exposing him or her. Section 76 provides that it is an offence to sell cigarettes to a person under the age of sixteen.

In addition to the specific offences relating to children under the Penal Code, certain process interventions have been made to secure the rights of child victims. For example, section 453A of the Code of Criminal Procedure Act, No. 15 of 1979 (CCPA) provides that cases

65. The only exception is that under section 53 of the Penal Code, children under eighteen years are not permitted to be sentenced to death.

66. Report of the Committee to Consider Reforms to the Juvenile Justice Laws, November 2009.

of child abuse should be afforded priority. Moreover, the Judicature (Amendment) Act, No. 27 of 1998 transitioned statutory rape (i.e. rape involving girls below the age of sixteen years) from a non-summary offence to a summary offence.⁶⁷ This amendment enables the Attorney-General to forward an indictment directly to the appropriate High Court, thereby facilitating the expeditious disposal of the case in question.

The Prevention of Crimes Ordinance, No. 2 of 1926 (PCO) and the CCPA have provisions to ensure the prevention and protection of victims of crime. The PCO sets out the procedure by which the data pertaining to offenders is registered on a database.⁶⁸ This procedure is used to identify repeat offenders pertaining to a list of crimes set out under the Ordinance.⁶⁹ However, this list does not include within its ambit sexual offences that may be committed by an adult against a child. Moreover, the CCPA does not classify the penal offences that may be committed against a child (e.g. cruelty to children) as offences that require mandatory reporting to the police by citizens.

Article 39 of the CRC requires states parties to take all appropriate measures to promote the physical, psychological and social recovery of a child victim. Accordingly, sections 34 and 35 of the CYPO deal with children in need of care and protection. Moreover, the CYPO provides for POs that are tasked with ensuring the care and protection of children in the justice system. Accordingly, POs are required to supervise children in need of care and protection, and recommend placement options. However, the Act fails to detail a specific role for POs in terms of ensuring the

well-being of children in the justice system, and facilitating their integration into society.

Under section 34(1), a child or young person 'in need of care and protection' includes: (a) an individual having no (or an unfit) parent or guardian, and (b) a person in respect of whom an offence under the CYPO has been committed. In the event a child or young person satisfies the threshold set out in section 34(1), the Juvenile Court is entitled to order that the individual be sent to an approved or certified school, placed under the supervision of a PO, or entrusted to the care of a 'fit person'.⁷⁰

Notwithstanding this, the section does not require the Court to consider diverting children away from the justice system, and to ensure that institutionalisation of child victims is effected as a matter of last resort. Furthermore, the powers under section 34(1) are almost identical to those available to the court when dealing with child offenders. The boundary between child victims and child offenders is therefore blurred under the CYPO. As such, in the context of a child victim, more emphasis is placed on 'correction and containment than on counselling'.⁷¹ Consequently, this failure to cater to the specific needs of child victims is inconsistent with Sri Lanka's obligations under article 39 of the CRC and international best practices. These obligations and best practices stipulate that institutionalising children ought to be a matter of last resort.

In conclusion, Sri Lanka's domestic framework on justice for children falls short of international best practices in certain areas. Such shortfalls include the failure to (a) stipulate a uniform definition of a child, and an interna-

67. Judicature (Amendment) Act, No. 27 of 1998, section 2(1) (b).

68. Prevention of Crimes Ordinance, No. 2 of 1926, section 2(1).

69. *Ibid.* Section 2 (2).

70. *Ibid.* Section 35(1).

tionally acceptable age of minimum criminal responsibility, (b) consider the deprivation of a child's liberty a matter of last resort, (c) prioritise the diversion of children away from the formal justice system, and (d) distinguish the responses applicable to children in conflict with the law and children in need of care and protection.

3.2.7 Judicial Protection Bill

To address the prevailing shortcomings of the CYPO, the Ministry of Justice has drafted the Children (Judicial Protection) Bill (CJPB). The CJPB provides for the repeal of Chapters I, II, IV, and VI of the CYPO. The draft Bill is yet to be placed on the Order Paper of Parliament and is likely to be amended from the version currently under review. In any event, the CJPB contains a number of provisions worth mentioning.

At the outset, the draft Bill provides for the best interests of the child to be given predominant consideration with regard to all matters concerning the child.⁷² Section 68 of the CJPB defines a child as a person below eighteen years of age. The Bill also provides for a specialised system of 'Children's Magistrate's Courts' that are given the jurisdiction to hear cases pertaining to children.⁷³ These courts are required to conduct their sittings during specified hours of a day.⁷⁴

Once legal proceedings commence, the Bill provides for the appointment of a judicial guardian. The role of the judicial guardian as provided for in the Bill is to assist the child during legal proceedings and report to the court in the event of an urgent matter concerning the child.⁷⁵ Section 42 of the CJPB requires that children are given access to adequate legal representation and legal aid during court proceedings.

In addition, the Bill attempts to increase the quality of the assessment of children that come before the justice system by relevant stakeholders.⁷⁶ Such assessments will likely incentivise the consideration of the unique psychological, social and educational needs of the child in question. For instance, section 15(1) and section 30(1) mandate case conferencing for both children in need of care and protection,⁷⁷ and children in conflict with the law.⁷⁸ Moreover, POs are required to produce both an Interim and a Final Report in order to complete their assessment relating to a particular child.⁷⁹

The CJPB prioritises the foster care system in the administration of justice for children. In the event foster care is not available, the CJPB attempts to distinguish the treatment of children in need of care and protection from children in conflict with the law, during pre-trial detention. Children in need of care and protection are required to be transferred to a 'Place of Safety', while

71. Jill Grime, *An Investigation into Children's Rights in Sri Lanka*, *op. cit.*,

72. Section 2(a) of the Children (Judicial Protection) Bill, March 2014.

73. *Ibid.* Section 4.

74. *Ibid.* Section 7(1).

75. *Ibid.* Section 40(1).

76. *Ibid.*

77. *Ibid.* Section 15(1).

78. *Ibid.* Section 30(1).

79. Section 14(1) and 17 of the Children (Judicial Protection) Bill direct the probation officer to compile an Interim and a Final Report for children in need of care and protection and Section 23 of the Bill directs the probation officer to compile an Interim and Final Social Report for children in conflict with the law.

children in conflict with the law are required to be placed in a 'Child Observation Home'. Moreover, the CJPB repeals the provisions in the CYPO that (a) set out broad grounds for pre-trial detention, and (b) permit children in conflict with the law who escape from childcare institutions to be arrested without a warrant.⁸⁰

Under the draft Bill, children in need of care and protection are defined in far broader terms than the CYPO. For instance, section 12(1)(a) recognises children suffering from emotional abuse as a category of children that deserves care and protection.⁸¹ Under the Bill, children in need of care and protection are only permitted to be placed in the custody of the following: (a) POs, (b) parents or guardians, (c) foster carers, and (d) orphanages.⁸² This reduces the likelihood of child victims and children in conflict with the law being placed in the same institution. The CJPB states that a child in conflict with the law can be held in pre-trial detention for a maximum period of four months, subject to the child's case being reviewed every fourteen days.⁸³ Therefore, despite increased monitoring and placement options for children in the justice system, the CJPB (a) fails to prioritise the diversion of children away from the formal justice system as a matter of first resort, and (b) deviates from international best practices

regarding the institution of time-limits for the pre-trial detention of children.

In the context of children in conflict with the law, police officers are required to promptly notify the child's parent or guardian in the event of an arrest.⁸⁴ The draft Bill also reduces the punitive nature of the placement of children in conflict with the law. For instance, the Bill provides for community correction orders (i.e. community service) as a form of alternative programme for children in conflict with the law.⁸⁵ Moreover, section 39 of the CJPB prohibits the use of the words 'conviction' and 'sentence' in relation to a child in conflict with the law. However, similar to the CYPO, the CJPB permits children in conflict with the law to be sent to a certified school for a mandatory period of three years, regardless of the nature of the offence.⁸⁶ In the context of bailable offences, section 24(1) of the CJPB permits a Magistrate to release the child on bail with or without surety, subject to certain conditions that the Magistrate is required to explain to the child.⁸⁷

The draft Bill also strengthens the role of alternate care within the justice system for children. For instance, POs are required to consult with police officers during investigations and regularly monitor the functioning of childcare institutions.⁸⁸

80. Children (Judicial Protection) Bill, March 2014.

81. *Ibid.* Section 12 (1) (a).

82. *Ibid.* Section 19 (4) (a) to (d).

83. *Ibid.* Section 24(3).

84. *Ibid.* Section 22(1).

85. *Ibid.* Section 35 (1) (f) directs the Court to act under S.5 of the Community Based Corrections Act, No.46 of 1999, where the child is above fourteen years of age.

86. *Ibid.* Section 35 (1) (c).

87. *Ibid.* Section 24(1).

88. *Ibid.* Section 31(2).

4

Institutional Analysis

4.1 Institutions within the Children’s Justice System

The following diagram illustrates the institutions within the justice system for children and their primary outputs.

4.2 Institutional Assessment

TABLE 1
Institutional
Output

Institution	Output
Sri Lanka Police	'A' Report
	'B' Report
Attorney-General's Department	Advice
	Indictment
	Prosecution
Judicial Medical Officer	Medico- Legal Form
	Medico-Legal Report
	Clinical Case Conference
Courts	Orders
	Judgements
Department of Probation and Child Care Services	Social Inquiry Report
	Child Care Institutions
National Child Protection Authority	Advising and training juvenile justice officials
	Monitoring children's cases
	Receiving complaints relating to children

This section assesses the performance of the institutions identified in Table 1 above. The performance of these institutions will be measured against three factors:

1. **Institution of Child-Friendly Processes:** institutional processes are developed in a manner that secures the best interest of the child.
2. **Adequate Resources to Perform Functions:** the institution has sufficient technological, financial and human resources to perform its intended function.
3. **Technical Competency:** officials attached to the institution are trained and regularly meet the requirements of justice administration for children.

4.2.1 Sri Lanka Police

Institution of Child-Friendly Processes

Sri Lanka Police is required to ensure that every police station is equipped with a 'Children and Women's Bureau Desk', which is tasked with receiving and investigating complaints involving women and children. However, according to KIs, such desks are irregularly set up across police stations in the country, thus reducing the consistency of their overall value.

Additionally, KIs stated that law enforcement authorities were required to implement child friendly procedures for children in police stations, such as setting up a separate entrance for children entering police stations. There is also a Special Police Investigation Unit (SPU) tasked with investigating cases pertaining to child abuse. Police officers assigned to the Unit are required to wear plain clothes in order to increase the comfort levels of children in police stations. The Unit is also mandated to liaise directly with

the NCPA in the conduct of its functions. However, it was noted that Children's and Women's Desks were severely understaffed, and the officers attached to the SPU were not routinely available to receive and process the complaints made by children. KIs noted that officers handling children within police stations rarely wore civilian clothing, and female children were often accompanied by male police officers. According to KIs, these practices have contributed to the secondary victimisation of children in the justice process, and weakened their willingness to report offences to the police.

International standards on justice administration for children stipulates that children be kept separate from adults during pre-trial detention. However, current law enforcement procedures involving the pre-trial detention of children appear to violate this standard. For instance, in the event a child in conflict with the law is handed over to the courts after four o'clock in the evening, the police will keep the child in custody overnight. In this event, children are often kept in the same holding cells as adults. Moreover, child victims are sometimes forced to remain in the same vicinity as the defendant, while waiting for their case to be brought before a Magistrate the following morning. Additionally, children are often transported to court in the same vehicle as adult prisoners. According to the Report on the Abused Child and the Legal Process of Sri Lanka, submitted to the National Monitoring Committee on the Children's Charter by Vijaya Samaraweera in 1997 (The Samaraweera Report), the escort branch of the Welikada Prison routinely transported children with adult mental patients to and from the courts.⁸⁹ Despite the fact that the Samaraweera Report is two decades old, a number of KIs confirmed that its findings were still relevant in the present context.

89. Vijaya Samaraweera, *Report on the Abused Child and the Legal Process of Sri Lanka, submitted to the National Monitoring Committee on the Children's Charter* (1997), at 97.

Adequate Resources to Perform Functions **Technical Competency**

KIs were of the opinion that law enforcement authorities had significantly improved the efficiency of processing cases involving children. On receiving a complaint of child abuse, the Officer-in-Charge (OIC) of a police station is required to submit a report to a Supervising Officer at the Attorney-General's Department within twenty-four hours of receiving the complaint. KIs noted that this timeframe was largely complied with. Moreover, according to a 2010 survey conducted by the NCPA (NCPA Survey), the police reported 43% of the surveyed cases to the Magistrate within twenty-four hours of receiving the initial complaint.⁹⁰ The 2014 Performance Report of Sri Lanka Police indicates that the time taken to investigate cases pertaining to women and children had reduced by 18% compared to the previous year.⁹¹

Notwithstanding these improvements, cases requiring the gathering of scientific evidence (e.g. sexual offences involving children) have often encountered delays. The lack of DNA-testing facilities within Sri Lanka Police results in this testing being outsourced, thereby contributing to extended delays in case processing.

KIs reported that frequent transfers of police officers resulted in a lack of children's justice expertise being built up within police stations. Moreover, it was noted that working solely on justice administration for children was perceived as a 'demotion' or a 'penalty' among law enforcement actors. This perception contributed to low levels of motivation among police officers engaged in justice for children.

KIs commented that police officers were inadequately trained on issues pertaining to administration of justice for children and child protection. According to KIs, such weaknesses in the training of police officers have undermined the quality of justice services for children and child protection. Moreover, according to a survey conducted in 2015, increased short-term training workshops did not demonstrate a significant positive change in attitudes to child protection amongst police officers.⁹²

KIs also noted that there were knowledge gaps among police officers on the laws and policy requirements pertaining to justice for children. KIs were of the opinion that such knowledge gaps detrimentally affected children coming into contact with the justice system. For instance, it was stated that police officers often failed to inform POs prior to a child being produced before a Magistrate, despite the requirement to do so under section 17 of the CYPO. KIs noted that this failure to notify a PO often increased the vulnerability and the lack of representation of the child during the judicial process.

Section 14(1) of the CYPO permits an OIC to release a child on bail. However, according to the Samaraweera Report, this provision is not utilised in practice.⁹³ The Report revealed that in the Juvenile Court in Bambalapi-tiya, and the Magistrate Courts of Mount Lavinia and Kalutara, there were no recorded instances where a police officer had released a child on bail. KIs indicated that this practice could be attributed to OICs being reluctant to be held accountable in the event they wrongfully released a child on bail.

90. National Child Protection Authority Survey, 2010.

91. Performance Report, Sri Lanka Department of Police, 2014.

92. The effectiveness of a short-term training program on child protection, *International Journal of Political Science and Management*, 2015.

93. Report on the Abused Child and the Legal Process of Sri Lanka, *op. cit.*, p.68.

Furthermore, KIs noted that police officers often do not record a child's statement in the exact words used by the child. For instance, KIs stated that police officers recorded terms such as 'penis' and 'vagina' in the child's statement notwithstanding the fact that the child used alternate terminology to describe the same. This practice has resulted in the credibility of the child's testimony being compromised during cross-examination at the trial stage. Additionally, KIs noted that there have been certain instances in which the Attorney-General's Department received files from the police that were missing essential documentation. These incomplete case files have the potential to cause significant delays in case processing.

A recent study by the University of Colombo found that, in the context of 'children on the street', police officers often harboured negative attitudes to both children in conflict with the law, and children in need of care and protection.⁹⁴ The prevalence of these attitudes has resulted in a failure to distinguish between these two categories of children, and increased police mistreatment of 'children on the street'. Moreover, there have been reports that children 'on the street in need of care and protection' have been arrested under the Vagrants Ordinance, No. 4 of 1841.⁹⁵ This punitive approach is contrary to the CYPO, which requires police officers to take children in need of care and protection to a place of safety.

4.2.2 Attorney-General's Department

Institution of Child-Friendly Processes

A large number of offences by children in conflict with the law do not warrant the

attention of the Attorney-General's Department. This is attributed to the fact that the Department primarily concerns itself with filing indictments against persons accused of serious crimes that are prosecutable in the High Court. As such, the Department's role in the context of justice for children largely focuses on prosecuting cases of child abuse.

The Attorney-General's Department has a dedicated Child Protection Unit (CPU) that is tasked with processing case files relating to children. The Unit comprises nineteen attorneys-at-law who are hired on a contract basis.⁹⁶ In addition, all case files dealing with children are required to be classified with a prefix of 'CH'; this process of classification ensures that the files reach the CPU in an expeditious manner. The CPU has two main functions: (1) advising as to whether the child should be indicted or discharged in cases referred to the Department by the Magistrate's Court, and (2) prosecuting crimes committed against children in the High Court.

The CPU only processes case files up to the point when the indictment is served. As such, there are no State Counsels that are specially tasked with prosecuting cases relating to children. KIs noted that a lack of dedicated Counsel at the point of trial exacerbated the vulnerabilities of children during the court process.

Adequate Resources to Perform Functions

KIs were of the opinion that there was a considerable backlog of children's cases at the Attorney-General's Department. According to a KI, approximately 40% of the total pending criminal cases at the Department were cases of child abuse.

94. Centre for the Study of Human Rights, University of Colombo, *The Vulnerable Child: Research Report on Institutions which protect Children's Rights* (YEAR), at 70 and 71.

95. *Ibid.* p.72.

96. Attorney General's Department, *accessible at*: <http://www.attorneygeneral.gov.lk/index.php/special-units>.

The personnel attached to the CPU are hired on a short-term contract basis. As such, KIs noted that the conclusion of their contracts could result in case-processing coming to a halt. Furthermore, according to the NCPA Survey, 48% of cases took over two months to reach the attention of the High Court Judge from the Attorney-General's Department.⁹⁷ Moreover, 75% of the indictments delivered to the High Court in Colombo took over two months to reach the relevant High Court Judge after being signed by the State Counsel.⁹⁸ This delay can be attributed to the fact that once the State Counsel concerned concludes drafting the indictment or advice, the file is sent to a general pool of typists to type up the relevant documents and to annex the necessary attachments to the file. This process results in considerable time-lags and compromises the efficacy of the CPU.

Technical Competency

The 2009 Report of the Committee to Consider Reforms to the Juvenile Justice Laws (Committee Report) concluded that as the CPU comprised primarily of attorneys-at-law who were newly recruited, the officers were not sufficiently trained in court craft, or laws and procedures relating to children.⁹⁹ Furthermore, the Report concluded that even though Senior State Counsel are required to supervise the officers of the CPU, this practice was not regularised due to the high volume of case files being processed by the Department.¹⁰⁰ This lack of training and supervision can jeopardise the quality of

legal representation available to children at the trial stage.

4.2.3 Judicial Medical Officer

Institution of Child-Friendly Processes

The Judicial Medical Officer (JMO) primarily deals with examination of child victims of crime. The JMO's examination room creates a child-friendly space in order to reduce trauma during the examination stage.

Additionally, when the child is first placed in hospital, there are established guidelines for Clinical Case Conferencing and Institutional Case Conferencing. Clinical Case Conferencing is initiated by the relevant JMO, and focuses on addressing the immediate medical needs of the child.¹⁰¹ The Institutional Case Conference includes key stakeholders such as law enforcement authorities, medical professionals, the NCPA and a PO.¹⁰² The outcome of the Institutional Case Conference is to ensure that a comprehensive assessment of the child is conducted so as to identify his or her psychological, medical, social and educational needs. The report from the Case Conferences is tabled in court for consideration by the relevant Magistrate. However, KIs were of the opinion that Case Conferences were irregularly initiated by JMOs across the country. Moreover, KIs noted that Magistrates failed to take the Case Conferencing reports into serious consideration when making a decision as to the child's placement.

97. NCPA Survey, 2010, *op. cit.*

98. *Ibid.*

99. Report of the Committee to consider reforms to the Juvenile Justice Laws, 2009, *op. cit.*

100. *Ibid.*

101. Sri Lanka College of Pediatricians, National Guidelines for the Management of Child Abuse and Neglect, 2014. Under the Guidelines, child victims under 18 years of age should be referred to the Medico-Legal Unit soon after admission so that a Clinical Case Conference can be convened within twenty-four hours. *accessible at:* <http://crm.b2space.com/r-library/sites/default/files/National%20Guideline%20for%20The%20Management%20of%20Child%20Abuse%20and%20Neglect%20A%20%20%20Multi-Sectoral%20Approach.pdf>

KIs noted that the Safe House *Lama Piyasa* in Ragama was a notable example of how Case Conferencing should be administered by JMOs across the country. *Lama Piyasa* was designed and set up by the Sri Lanka College of Paediatricians and Plan Sri Lanka, together with the Director of the Colombo North Teaching Hospital in Ragama. The confidential and sensitive management of children in contact with the law is prioritised at *Lama Piyasa*. The centre follows the National Guidelines for Management of Child Abuse and Neglect,¹⁰³ and administers a Clinical Case Conference and an Institutional Case Conference for each child under its purview. In addition to the above Case Conferences, KIs stated that *Lama Piyasa* institutes regular meetings with relevant POs and follows up on the status of children's cases.

Adequate Resources to Perform Functions

Reports indicate that there are minimal delays associated with the compilation of the Medico-Legal Form by JMOs.¹⁰⁴ These minimal delays are attributed to the fact that JMOs are trained to consider the examination of a child victim as a medico-legal emergency. Moreover, the Chief JMO has instituted a practice whereby Medico-Legal Forms have to be completed within one month of the initial examination.

Notwithstanding this practice, there are prevailing delays associated with the submission of the Medico-Legal Report by JMOs. According to KIs, these delays are exacerbated by the fact that there is a dearth of clerical assistants to aid in the preparation of Medico-Legal Reports.

The absence of Medico-Legal Reports has also resulted in considerable delays in case file processing. According to a study commissioned by UNICEF, 60.4% of the files pertaining to children in the Attorney-General's Department were unable to be processed due to the absence of Medico-Legal Reports.¹⁰⁵ According to survey data, the failure to annex a Medico-Legal Report to a particular case file can delay the trial by a period exceeding eight months.¹⁰⁶

Technical Competency

Due to the shortages of trained JMOs, a number of clinical forensic examinations on children are conducted by junior doctors. According to KIs, this practice limits the quality of the examinations and may result in further trauma being caused to the child under examination. Moreover, a lack of knowledge on the requirements of justice administration for children can result in practices that compromise justice delivery for children. For example, KIs noted that there have been instances where abusive parents have withheld their consent for the examination of a child victim. It was stated that in this event, certain JMOs had refused to proceed with the examination in question – notwithstanding the fact that it was in the best interests of the child. KIs also revealed that when children disclosed facts to JMOs that had not been previously disclosed to the police, there was no routine practice to require police officers to record an additional statement. KIs noted that the failure to institute this practice could result in conflicting evidence at the trial stage, which could discredit the child's testimony.

102. *Ibid.*

103. Sri Lanka College of Paediatricians, National Guidelines for the Management of Child Abuse and Neglect, 2014.

104. NCPA Survey, 2010, *op. cit.*

105. UNICEF, Special Operation to Classify Missing Files.

106. NCPA Survey, 2010, *op. cit.*

4.2.4 Courts

Institution of Child-Friendly Processes

The CYPO provides for a specialised system of Juvenile Courts, and alternative sentencing options to ensure the welfare of children in the justice system. However, this separation between adult and juvenile justice systems does not always occur in practice.

At present, there are only two discrete children's courts in the country: in Bambalapitiya and Jaffna.¹⁰⁷ Therefore, a majority of cases involving children takes place in Magistrate's Courts that deal with cases of adult crime.¹⁰⁸ In these courts, KIs reported that children in conflict with the law were often dealt with in the same manner as adult offenders. Furthermore, the CYPO requires: (a) children to be removed from the court when other cases are being heard, and (b) the court to be cleared when the child gives evidence. However, KIs noted that in most instances these requirements were not complied with. Moreover, the 2009 Committee Report found that child victims of abuse currently do not report to the Bambalapitiya Juvenile Court due to the alleged involvement of an adult perpetrator.¹⁰⁹

As described above, the CYPO provides for a number of institutional and non-institutional sentencing options for children in conflict with the law. However, KIs noted that courts have often demonstrated a dispensation towards institutionalising children who come into contact with the justice system. This dispensation risks removing the child from a family-oriented environment, and subjecting

him or her to further psychological trauma.

For instance, KIs noted that notwithstanding the provision for placing the child in the care of a 'fit and proper' person in the pre-trial detention and sentencing stages, this option failed to play a part in the criminal justice proceedings to the detriment of children. Moreover, since a large proportion of children in conflict with the law are first time offenders, petty offenders, or offenders as a result of an adult using a child for the purposes of a criminal activity, institutionalising such children adversely affects their reintegration into society.

In the context of children in need of care and protection, the CYPO makes reference to the instances in which a child or young person may be sent to a place of safety. However, there is no comprehensive register of childcare institutions, thereby posing challenges for Magistrates when selecting institutions that are best able to address the unique requirements of children in need of care and protection. Moreover, due to the dearth of childcare institutions, Magistrates are often left with no option but to place children in conflict with the law and child victims of crime in the same institution (e.g. a Remand Home). These institutions are punitive in nature, and have the potential to further traumatise child victims of crime. Additionally, the Samaraweera Report highlighted the fact that documentation pertaining to children in the juvenile justice system failed to specifically recognise child victims.¹¹⁰ This is attributed to the fact that documentation in case files reviewed by Magistrates classes children as either 'suspects' or 'prisoners'.¹¹¹

107. 'Finally, child friendly courts', The Sunday Times, 2010, *accessible at*: http://www.sundaytimes.lk/100328/Plus/plus_10.html; NGO Forum on the Rights of Child, *Supplementary Report to the Initial Report of the State Party of Sri Lanka on the Implementation of the Convention on Report the Child* (June 1995), at 9
108. *Ibid.*

109. Report of the Committee to consider reforms to the Juvenile Justice Laws, 2009, *op. cit.*, p.16.

110. Report on the Abused Child and the Legal Process of Sri Lanka, *op. cit.*, at 57.

111. *Ibid.* p.58.

KIs noted that it was established practice for the Magistrate to call for a progress update on a case relating to a child in pre-trial detention on a monthly basis. According to KIs, this ensured some degree of monitoring over the well-being of the child. However, KIs noted that this same level of scrutiny was absent in the High Court, thus disadvantaging cases of child abuse and sexual exploitation.

In certain instances, it was noted that in the event a case involves an adult perpetrator, the child victim's case in the Magistrate's Court is placed on hold until the case against the perpetrator has been decided in the High Court. This practice excludes child victims from adequate protection and care during the pendency of the case in the High Court.

Adequate Resources to Perform Functions

There are prevailing resource constraints in Magistrates Courts and High Courts that impede effective case management of cases involving children. These constraints result in undue delays of cases involving children, at the cost of their psychosocial wellbeing and continuous education.

According to a survey conducted in 2010, 65% of the cases surveyed took over six months to be referred to the Attorney-General for advice.¹¹² In 27% of the cases surveyed, it took more than six months for an indictment to be served on the accused.¹¹³ Moreover, 85% of the cases surveyed were over a year old and were still pending conclusion.¹¹⁴

According to KIs, these delays were largely attributed to a lack of courtroom support staff (e.g. court recorders), and the increasing backlog of cases in courtrooms. Moreover, KIs highlighted the delays caused in the

event a High Court Judge or a Magistrate was transferred without concluding the cases on his or her case roll. This failure to conclude cases prior to transfer results in significant time lags resulting from the incumbent Magistrate or High Court Judge having to familiarise himself or herself with the facts of the case. Additionally, KIs noted that due to reluctance of the child to testify in open court, costs associated with travelling to the courtroom, and the stigma associated with being a victim of crime, it was common for child witnesses to refuse to testify during the pendency of the trial. According to KIs, this refusal to testify increases the time associated with case dispensation, particularly in the context of child abuse and sexual exploitation.

Additionally, KIs noted that Magistrates who were transferred to specialised children's courts in Bambalapitya and Jaffna perceived the transfer as a penalty, which reduced their motivation to increase the efficiency of justice administration for children.

Technical Competency

KIs revealed that there were weaknesses in the technical competency of Magistrates and High Court Judges in justice administration for children. For instance, KIs noted that notwithstanding the obligations under the CYPO, Magistrates often did not explain the charges to children in conflict with the law in language appropriate to the child's age and level of maturity. Furthermore, in the absence of legal representation, studies have demonstrated that this lack of proper communication by Magistrates led to a number of children in conflict with the law pleading guilty in court.¹¹⁵

112. NCPA Survey, 2010, *op. cit.*

113. *Ibid.*

114. *Ibid.*

115. Jill Grime, *An investigation into Children's Rights in Sri Lanka* (1994).

Additionally, KIs stated that Magistrates and High Court Judges failed to exercise sufficient management functions during trial stage. According to KIs, such failures led to unnecessary postponements being granted to defence counsel, and a failure to prohibit defence counsel from cross-examining the child in a manner that negatively impacted his or her psychological and emotional well-being.

Moreover, KIs noted that the lack of specialised training for Magistrates and High Court Judges on processing cases within the children's justice system has led to instances in which adult offenders are informed of the location of the victim's childcare institution. Additionally, KIs stated that some Magistrates consult with the child victims of crime in their private chambers. In the absence of adequate legal representation, this consultation can compromise the outcome of the child's case.

In the context of considering appropriate sentencing options, KIs noted that Magistrates often failed to examine or place sufficient weight on the Social Inquiry Report submitted by the relevant PO. Additionally, although the imprisonment of children above the age of fourteen is possible, subject to certain conditions, there was no evidence of courts considering the provisions of the Community Based Corrections Act, No. 46 of 1999 as an alternative to imprisonment for young persons. The Orders given under the Act stipulate that the individual performs community work, within his or her locality, for a set time frame. If utilised, these Orders would be far better suited to the best interests of the child than institutionalisation.

It was further noted that in instances where charges of statutory rape were brought against perpetrators under the age of 19,

Magistrates failed to treat the accused child in a manner different to that of an adult. As such, there were minimal attempts by Magistrates to reduce or eliminate penalties for statutory rape in the event both parties were children.

4.2.5 The Department of Probation and Childcare Services

Institution of Child-Friendly Processes

The Department of Probation and Childcare Services (DPCCS) provides both correctional and support services to children in conflict with the law and children in need of care and protection. Accordingly, the Department oversees: (a) the duties and functions of POs and Child Rights Promotion Officers (CRPOs), and (b) the provision of institutional care as an alternative means of protecting children within the justice system.

Pursuant to the enactment of the 13th Amendment to the Constitution, the subject of probation and childcare was devolved to provincial councils.¹¹⁶ Therefore, the DPCCS now functions as a central monitoring and oversight body, while the Provincial Departments of Probation and Childcare Services take the primary responsibility for the implementation of correctional and support services for children within the justice system. KIs were of the opinion that the devolution of probation and childcare services adversely affected service delivery. This opinion was attributed to the fact that there was increased uncertainty with regard to the role of the central Department and its relationship with the provinces. Moreover, it was also noted that devolution had a negative impact on the children's access to justice. For instance, it was stated that the lack of coordination between Provincial Probation and Childcare Services Departments resulted in

116. Report on the Abused Child and the Legal Process in Sri Lanka, *op. cit.*, at 42.

children within the justice system not having access to island-wide facilities and services such as schools, legal assistance and the network of POs. Furthermore, KIs also noted that since probation and childcare services were devolved subjects, there ceased to be uniformity in justice administration for children across the provinces.

Under the CYPO, POs are tasked with supervising children in conflict with the law, and ensuring the well-being of children in need of care and protection that are entrusted to their care. POs are also entitled to receive notification from the police in the event a child or young person is produced in court. In this context, POs have the potential to ensure the protection of children within the justice system, and minimise the need for their institutionalisation.

KIs were, however, of the opinion that the role of POs in justice administration for children had diminished. KIs attributed this decline to low status and visibility of POs in the system. It was further noted that the decline of POs' status was exacerbated by the fact that most Probation Departments do not operate within courtroom premises, thus minimising the POs' access to children and to information. Additionally, POs are not mandated to attend Institutional Case Conferences, thereby further marginalising these officers in the justice system.

The CYPO provides for a number of institutions targeted at rehabilitating and educating children in conflict with the law, and children in need of care and protection. According to data compiled between 2010 and 2016, there were a total of 14,175 children who were institutionalised.¹¹⁷ The government

operates 8% of Childcare Institutions (CCIs) and the remainder are run by non-governmental organisations.

The following Table illustrates the types of institutions that come under the purview of the Department of Probation and Childcare.

Despite the distinctions outlined above, children in conflict with the law and children in need of care and protection are often placed in the same institution due to the lack of childcare facilities. As such, these institutions are unable to adequately address the psychosocial needs of children in their care. Moreover, KIs reported that the conditions in these institutions were largely punitive, with the frequent presence of police officers, and the implementation of stringent rules of behaviour. Punitive measures against children in CCIs include restrictions on mobility and the threat of corporal punishment. It was noted that such conditions adversely affected the rehabilitation of child victims of crime, as they were often perceived as offenders.

A Study on CCIs conducted in 2013 (Situational Analysis), revealed that school attendance among children in CCIs was largely positive.¹¹⁸ According to the Situational Analysis, 8.9% of children surveyed did not attend school, whilst 1.9% of children attended school irregularly. KIs attributed poor school attendance among such children to the fact that: (1) the institutional staff were under the impression that children awaiting the outcome of their trial were not permitted to go to school, (2) the school authorities were reluctant to admit children from CCIs, and (3) the institution lacked transportation and chaperone facilities to send the children to school. KIs also noted that some CCIs

117. Sri Lanka's 2016 State Party Report to the Committee on the Rights of the Child, p. 27.

118. Current status of Childcare institutions and institutionalised children in Sri Lanka: A situational analysis, *op. cit.*, p.45.

TABLE 2
Institutions under
the Department
of Probation and
Childcare

Type of Institution	Details
Remand Home	<p>Remand Homes are detention homes established to house children during pre-trial detention.</p> <p>The six Remand Homes in Sri Lanka are located in Pannipitiya, Anuradhapura, Kithulampitiya, Ranmuthugala, Weralawatta and Jaffna.</p>
Certified Schools	<p>Certified schools provide systematic vocational training to children admitted to their care.</p> <p>There are five certified schools in Sri Lanka, located in Makola, Kappetipola, Hikkaduwa, Ranmuthugala and Kondavil.</p>
Safe House	<p>Safe Houses are state-run accommodation and care providing facilities for children whose court decisions are pending.</p>
Receiving Homes	<p>State Receiving Homes provide the necessary safety and protection to children temporarily or permanently unable to live with their families.</p> <p>There are eight State Receiving Homes in Sri Lanka: Prajapathi in Panadura, Ruhunu in Galle, Sujatha in Bandarawela, Abaya in Anuradhapura, Tikiri in Peradeniya, Amilasevena in Migalewa, Paradise in Kuruwita, and the receiving home in Jaffna.</p>
Detention Homes	<p>Detention Homes are institutions established to rehabilitate destitute children over eight years of age.</p> <p>Currently there is only one Detention Home for such children in Sri Lanka located in Halpatota.</p>
National Training and Counselling Centres for Children	<p>This facility hosts children who have been sexually abused and raped, children in under-age marriages and children engaged in child labour. The facility also hosts children accused of theft, 'straying children', and 'disobedient children'.</p>
Approved Schools	<p>An Approved School in Maggona was established to shelter and provide psychological and physiological protection to orphaned, deserted, destitute, and abused children.</p>
Voluntary Children's Institutions	<p>Voluntary Children's Institutions form the majority of the CCIs in Sri Lanka. Though they are managed by non-governmental parties, they are monitored by the DPCCS.</p> <p>Originally it was not required by law to have a Court Order to accommodate a child in a Voluntary Children's Institution. However, in 2008 the law was amended to make it compulsory.</p>

Source: DPCCS, Ministry of Women and Child Affairs, and the National Institute of Social Development, Current status of Childcare institutions and institutionalised children in Sri Lanka: A Situational Analysis (2013).

provided in-house schooling for children in their care. However, it was stated that such schooling programmes were often administered in an ad hoc manner, and failed to meet the educational needs of the child.

Furthermore, KIs revealed that CCI rarely equipped children for a life after institutional care. It was stated that deficiencies in the quality of vocational training, and the failure to foster communication networks with parents and guardians impeded the reintegration of children in CCIs into their home and community environments.

In 2015, the DPCCS issued guidelines that concerned the setting up of Village Child Development Committees (VCDCs).¹¹⁹ These guidelines set out procedures to: (a) establish and maintain a system of VCDCs, and (b) find solutions to problems related to the protection and care of children through VCDCs. The implementation of such guidelines will ensure the increased likelihood of children being rehabilitated and reintegrated into their local communities.¹²⁰ The VCDCs can also play a role in reporting child protection violations, such as sexual violence. However, there is little understanding as to how such informal mechanisms will link with the formal structure dealing with justice for children.¹²¹

Adequate Resources to Perform Functions

In terms of the facilities available at CCIs, the Situational Analysis revealed that 90% of institutions had first aid facilities, while 70% of children had health records.¹²² Moreover, over 75% of institutions monitored the

nutritional level of children.¹²³ 75% of CCIs had library facilities with newspapers, whilst 84% of institutions provided reading and study rooms for children.¹²⁴ Furthermore, 86% of CCIs had separate toilets available for male and female children. However, the Analysis revealed that the quality of the sanitary facilities was inadequate. Out of the 281 CCI institutions surveyed, 68% of them claimed that each child was entitled to a sleeping space that averaged thirty-six square feet. This specification meets the minimum level of quality recommend by the DPCCS.

Human resource constraints remain the biggest challenge to the functioning of CCIs and the services rendered by POs. KIs revealed that the motivation among CCI staff members and POs was significantly low. This lack of motivation was attributed to the low salary scales granted to these officers, and their marginalisation within the justice system for children. Furthermore, the low salary scales have proved to be an impediment in the recruitment of adequately trained professionals.

Additionally, the inability to recruit sufficiently trained POs and CCI staff has resulted in a large number of vacancies in the Department. The lack of PO cadre has also weakened the ability for non-institutional approaches to play a significant role within the children's justice system. For example, a study conducted in 2016 revealed that there were 500 child protection cases in the Battaramulla courts, but only four POs to oversee them.¹²⁵ In contrast, the CRPOs

119. David Walker, Indunil Bandara, Shayamalie De Silva, *Child Protection System of Sri Lanka: Mapping Report – Final Draft*, 2016, p.41.

120. *Ibid.* p. 40.

121. *Ibid.* p.57.

122. *Ibid.* p.8.

123. *Ibid.* p.8.

124. *Ibid.* p.8.

125. *Ibid.* p.41.

were considered to be less overburdened. In 2015, there were 232 CRPOs and 157 Child Rights Promotional Assistants attached to 331 Divisional Secretariats island-wide.¹²⁶

Technical Competency

The lack of trained POs and staff within CCI has led to weaknesses in the quality of services provided by them. For instance, KIs noted that POs are required to prepare a Social Inquiry Report in relation to children that are produced before a Magistrate. Based on the recommendations in the Social Inquiry Report, Magistrates are able to make a decision in relation to the child's placement. However, KIs revealed that a number of POs either failed to prepare the Social Inquiry Report pertaining to the child, or prepared a generic report that did not assess the child's unique needs. These failures on the part of POs can be attributed, in part to the Magistrates' failure to exercise the necessary levels of scrutiny over the preparation of the Social Inquiry Report. According to a survey conducted by Save the Children in 2013, an average of 54% of the case files surveyed did not contain a Social Inquiry Report.¹²⁷

Additionally, KIs noted that POs often failed to inform children as to the developments of their case, or what to expect from the judicial process. According to KIs, this failure contributed to children being further traumatised and failing to participate during the proceedings, or pleading guilty for lack of information and understanding of their rights. Moreover, notwithstanding the requirements under the CYPO to report to the court on the well-being of the child in their care, KIs noted that most

POs failed to produce such a report unless specifically requested to do so by court.

POs often fail to exercise their supervisory and monitoring functions over CCIs. This failure has been remedied to some extent by a reported judgement by the Supreme Court in 2010¹²⁸ that required the Probation Department to appoint POs to supervise the remand home in Ranmuthugala. Although the case conferencing facility represents a progressive step for the protection of children in conflict with the law, NCPA and DPCC officers are routinely side-lined from such processes by paediatric staff.¹²⁹

The Situational Analysis revealed that only 44% of staff in the institutions surveyed were trained.¹³⁰ Furthermore, KIs noted that POs attached to Provincial Probation Departments were often recent graduates with minimal experience in child protection. Moreover, there is currently no licensing or accreditation system for CRPOs, which diminishes the quality of their services. Furthermore, the lack of training amongst CCI staff has adversely affected the counselling services available for children in their care. Additionally, KIs noted that these factors contributed to the increasing use of corporal punishment, and in some cases torture, to address behavioural issues pertaining to children in CCIs.

4.2.6 National Child Protection Authority

Institution of Child-Friendly Processes

The National Child Protection Authority Act, No. 50 of 1998 (NCPA Act) established the

126. *Ibid.* p.40.

127. Data collection from Magistrate's Courts of the judicial zone of Galle in consultation with save the children international (1st may 2013 – 31st July 2013), at 4.

128. S. C. (FR) App. No. 335/10.

129. *Ibid.* p. 56.

130. Current status of Childcare institutions and institutionalised children in Sri Lanka: A situational analysis, *op. cit.*, at 4.

National Child Protection Authority (NCPA). The NCPA is tasked with policymaking in relation to the prevention, protection, and treatment of child victims of abuse.¹³¹ Under section 17(j) of the NCPA Act, the Authority is mandated to take appropriate steps where necessary to secure the safety and protection of children involved in criminal investigations and criminal proceedings. Moreover, the Act authorises the NCPA to: (a) inspect and search premises of institutions where childcare services are provided, and (b) enter and inspect premises where it is believed that children are kept for the purpose of child abuse.¹³²

Under section 39 of the Act, child abuse is defined as an act or omission relating to a child that contravenes the relevant sections of the Penal Code, the Employment of Women, Young Persons and Children Act, the CYPO, or the regulations relating to compulsory education under the Education Ordinance. Moreover, under the NCPA Act, child abuse also includes the involvement of a child in armed conflict in a manner that is likely to endanger the child's life or is likely to harm such child physically or emotionally.

The NCPA has set up a number of mechanisms to assist children in the judicial process. For instance, it has instituted a '1929 Child Line' that operates as a helpline for children. The twenty four-hour helpline can be contacted at any day of the week from anywhere in the country, free of charge. Officers managing the helpline are trained in counselling services, and ensuring that complaints are referred for investigation. Moreover, the NCPA has also

instituted a system of 'Angel Networks', at the local level. These Networks are tasked with monitoring child protection in their communities.

Adequate Resources to Perform Functions

The NCPA has a Central Support Unit and two Divisional Level officers tasked with child protection and monitoring within the justice system. Officers attached to the NCPA also prepare children involved in child abuse cases for the impending judicial process. For instance, such officers assist in providing evidence through video recordings of a child's evidence-in-chief. Additionally, NCPA officers work closely with the SPU to ensure a child sensitive-approach to investigation.

However, it has been noted that there has been an overlap in responsibilities between the CRPOs and NCPA officers at the local level. In the absence of a proper coordination mechanism, such overlap has caused friction between and a duplication of functions by these officers.¹³³ To this end, a study conducted in 2016 recommended that the NCPA should begin to define its role in terms of monitoring children in the justice system, rather than the implementation of child protection interventions.¹³⁴

Technical Competence

Due to the lack of data and the dearth of trained officers, the role of the NCPA within the children's justice system has been compromised. For instance, KIs stated that the NCPA's role is often a reactive rather

131. National Child Protection Authority Act, No. 50 of 1998, section 14 (e).

132. *Ibid.* Section 34.

133. David Walker, Indunil Bandara, Shayamalie De Silva, Child Protection System of Sri Lanka: Mapping Report – Final Draft, 2016, p.42.

134. *Ibid.* p.10.

than a proactive one. Accordingly, there is no regularised system for informing an officer of the NCPA in the event a child is produced before a Magistrate or makes a complaint at a police station. Furthermore, at present, the NCPA has not been able to perform its monitoring role as there is no central database identifying children within the justice system. The lack of a central monitoring database has prevented NCPA from playing an active role in tracking children's cases, identifying undue delays and flagging repeat offenders.

Furthermore, it was noted that the NCPA's focus on prevention and early-interventions in relation to children at risk was weak. This lack of focus impeded the responsiveness of the Authority to the root-causes of victimisation and offensive behaviour.¹³⁵

In conclusion, the institutional assessment revealed certain challenges in relation to the administration of justice for children. They are: (a) the failure to prioritise the diversion of children away from the formal justice system; (b) the weak implementation of existing child-specific processes; (c) the lack of differential treatment afforded to children that are victims, and children in conflict with the law; (d) human resource constraints (i.e. attitudinal and capacity) prevailing in the children's justice system; (e) weak technical training and awareness on the application of the best interests of the child amongst professionals engaged in the justice sector; and (f) a lack of prioritisation on addressing the root-causes of offending behaviour and vulnerability in children.

135. *Ibid.* p.9.

5

Recommendations

This section proposes legislative and institutional recommendations to improve the quality of justice services for children in Sri Lanka.

Legislative Recommendations

1. *The passage of the Children (Judicial Protection) Bill*

The CJPB significantly improves the legal position of children within the justice system. Notable amendments include:

- a. A uniform definition of a child as a person under eighteen years of age;
- b. The right to legal representation for children in courtrooms;
- c. An improved process for assessing the psychosocial, mental and educational needs of children in the justice system;
- d. The promotion of non-institutional measures to sentencing (e.g. community correction orders); and

- e. Ensuring that the best interests of children are safeguarded in all matters concerning children in the justice system (e.g. appointment of judicial guardians and the enhanced role of POs).

Therefore, it is recommended that the CJPB is approved by Cabinet and tabled in Parliament. It is also recommended that the following amendments are introduced to the Bill before being tabled in Parliament:

- i. Section 7(3) of the CJPB provides that the person suspected of committing an offence against a child shall be permitted to be present at the sittings of the court. This provision can result in: (a) the

child suffering undue trauma during the courtroom process, (b) the testimony of the child being compromised, and (c) the alleged offender being able to gain access to information as to the child's whereabouts. Therefore, it is essential that this provision be amended to state that the alleged offender's entitlement to attend the proceedings against him or her should be on the condition that: (a) the child victim does not see the suspect (e.g. through the use of one way mirrors), and (b) the location of the child's whereabouts is not disclosed in open court.

- ii. The provisions dealing with placement orders for children in conflict with the law in section 35 of the CJPB, and the custody options for children in need of care and protection in section 19(4) of the CJPB do not state that institutionalisation should be a matter of last resort and for the shortest possible period of time. Moreover, the section does not mention the prioritisation of diverting children away from the formal justice system. Amending the relevant sections to reflect the above will address the tendency of courts to institutionalise children within the justice system.
- iii. At present, the CJPB does not detail the role of CRPOs in the context of justice administration for children. As such, the Bill should be amended to ensure that CRPOs are specifically mandated to: (a) monitor the well-being of children in both the formal and informal justice system, (b) list and regularly monitor alternative placement options for children (e.g. foster carers), and (c) monitor the well-being of children that are diverted from the justice system.

Data gathered should be supplied on a quarterly basis to relevant POs, and the NCPA. This practice will ensure that: (a) POs are able to better perform their role of child protection, and (b) the NCPA is able to conduct accurate nationwide monitoring of children in the justice system.

2. *Amendment to the Code of Criminal Procedure Act, No. 15 of 1979*

Mandatory citizen reporting of offences committed against children is likely to incentivise professionals and ordinary citizens to report instances of child abuse and exploitation. At present, the list of offences under section 21A of the CCPA that warrant mandatory citizen reporting does not cover penal offences committed against children. As such, section 21A should be amended to include offences committed by an adult against a child set out in sections 286A, 288, 288A, 288B, 308A, 360A, 360B, 360C, 363, 364, 365, 365A, and 365B of the Penal Code.

3. *Amendment to the Prevention of Crimes Ordinance, No. 2 of 1926*

The Prevention of Crimes Ordinance provides for the registration of offenders of crimes that are listed in section 18 of the Ordinance. This mechanism of registration can enable law enforcement authorities to identify and track repeat offenders in respect of particular crimes. Section 18 of the Prevention of Crimes Ordinance currently does not include offences committed by an adult against a child. Accordingly, section 18 of the Ordinance should be amended to include crimes against children set out in sections 286A, 288, 288A, 288B, 308A, 360A, 360B, 360C, 363, 364, 365, 365A, and 365B of the Penal Code.

4. *Amendment of the Evidence Ordinance, No. 14 of 1885*

Section 163A of the Evidence Ordinance permits a child witness to lead his or her evidence-in-chief by way of a pre-recorded video. However, this provision does not address the psychological trauma and anxiety caused to child witnesses during cross-examination. As such, it is recommended that section 163A be amended to permit child witnesses to be cross-examined *via* a closed-circuit television, thereby not requiring their presence in open court. This amendment will facilitate children to be cross-examined in a child-friendly environment.

5. *Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015*

Section 31 of the APVCW permits a victim or a witness of crime to record any evidence or a statement *via* contemporaneous audio-visual linkage between the Court, law enforcement and the location where he or she is testifying from. However, similar to the Evidence Ordinance, this provision does not absolve the child of having to be cross-examined in open court. Therefore, amending section 31 of the Act to permit a child to be cross-examined *via* contemporaneous audio-visual linkage will

reduce the trauma faced by children during trial stage.

6. *Amendment to the Penal Code No. 2 of 1883*

Under section 75 of the Penal Code, the minimum age of criminality is eight years of age. However, in accordance with the decision of the Cabinet of Ministers in November 2016 and the guidelines stipulated by the Committee on the Rights of the Child, it is recommended that the minimum age of criminality be increased to twelve years of age.

7. *Amendment to the Youthful Offenders Training Schools Ordinance No. 42 of 1994*

Section 16 of the YOTSO defines a youthful person as a person between the ages of sixteen years and twenty-two years. Therefore, children between the age of sixteen and eighteen years in training schools, are technically institutionalised with adults, and not afforded child protection services from the DPCCS. Therefore, it is recommended that section 16 of the YOTSO be amended, to define a 'youthful person' as a person between the ages of eighteen and twenty-two.

Institutional Recommendations

This section proposes recommendations to improve justice administration for children from an institutional standpoint. The recommendations will address: (a) specific institutional challenges vis-à-vis justice for children, and (b) cross-cutting issues within the justice system for children.

Law Enforcement

8. *Making police stations more child friendly*

At present, there are a limited number of plain-clothed police officers tasked with receiving complaints made by children, and overseeing children while they are in police

custody. As such, it is recommended that each police station be required to have at least one female plain-clothed officer on duty at any given time. This officer should be adequately trained on child protection and specifically tasked with overseeing the well-being and questioning of children in police stations. Such officers should also be able to inform a child of the complaint procedure and the judicial process in a language suitable to the age and maturity of the child. Additionally, these officers should also be tasked with informing the relevant PO as soon as the child is brought to the police station.

9. *Strengthening capacity of the Special Police Unit*

The SPU is tasked with investigating cases pertaining to children. However, KIs revealed that the effectiveness of the SPU was compromised due to the lack of expertise within this Unit to process cases requiring the use of advanced investigative techniques. Therefore, it is recommended that the SPU is better resourced and trained to: (a) conduct in-house DNA testing, and (b) utilise forensic science in its investigations. Moreover, the NCPA should work closely with the SPU to ensure the psychological well-being of children under investigation.

The SPU should function as a centrally located hub within Sri Lanka Police that seconds its officers to police stations island-wide to work on children's cases that require advanced investigative techniques. This structure will ensure the more efficient use of resources and increased specialisation within law enforcement.

10. *Diverting children from the criminal justice system*

Diverting children away from the criminal justice system is likely to significantly reduce vulnerabilities and psychological trauma faced by children within the system. Section 114 of the CCPA permits an officer in charge of a police station to release a person with or without sureties if he or she is of the opinion that there is no sufficient evidence or reasonable ground of suspicion to justify forwarding the accused's case file to the Magistrate's Court. This section should be utilised to divert children away from the criminal justice system. In accordance with the principle of the best interests of the child, entry into the formal justice system should be exercised as a matter of last resort.

Additionally, non-formal dispute resolution is recognised by the Mediation Boards Act, No.72 of 1988. Under this Act, some Penal Code offences must be referred to Mediation Boards for settlement prior to being prosecuted in a court of law. Moreover, under section 7 of the Act, cases of children under eighteen years that are accused of committing an offence under 367B and 368 of the Penal Code (e.g. theft that does not exceed a value of five thousand), are required to first be referred for Mediation prior to being produced before a Magistrate. As such, Mediation Boards can prove to be a useful tool for diverting children in conflict with the law away from the criminal justice system, thus ensuring that settlements take a family-oriented approach.

Accordingly, police officers should be given guidelines and training on the use and application of section 114 of the CCPA and the Mediation Boards Act to children in conflict with the law. Moreover, there should be a Circular issued by the Inspector General of Police mandating police officers to certify that: (a) Section 114 of the CPC does not apply to the case at hand, and (b) the offence does not fall under the scope of the Mediation Boards Act prior to producing a child before a Magistrate. A copy of this statement should be annexed to the child's case file.

In addition to the above, alternative methods of dispute resolution should be utilised in the event statutory rape is alleged in cases where the victim is over fifteen years of age, and the perpetrator under nineteen years of age. Such dispute resolution mechanisms should be designed to ensure that the best interests of both parties are of primary concern. These dispute resolution mechanisms should also be staffed with trained psychologists, in addition to legal counsel to ensure that the well-being of the parties are given due regard at every stage of the proceedings.

Attorney General's Department

11. *Building the capacity of the Child Protection Unit*

Delays in processing case files relating to children at the Attorney General's Department are largely attributed to the prevailing capacity gaps at the CPU. As such, it is recommended that the CPU be staffed with additional permanent cadre. Moreover, it is essential that this additional permanent cadre comprise a minimum of three senior officials who are adequately trained to process case files relating to children.

Additionally, in order to prevent further capacity gaps arising from officials of the CPU leaving the unit on the expiry of their short-term contracts, it is recommended that these officials are mandated to either complete or fully transfer the cases undertaken by them during their period of employment prior to leaving the Department.

Judicial Medical Officers

12. *Clinical Case Conferencing*

At present, Clinical Case Conferencing is initiated by JMOs in an *ad hoc* manner. This practice prevents uniformity in assessments of children that come into contact with the justice system. As such, it is recommended that a Circular be issued requiring all JMOs to initiate a Clinical Case Conference for children in conflict with the law and child victims of crime that are brought to a hospital. The Conference should be attended by the Specialist in Forensic Medicine, the Specialist Psychiatrist, Specialist Paediatrician and any other relevant clinician. The Conference should also be attended by a Probation Officer, and be referenced in the Social Inquiry Report. The outcome of this Clinical Case Conference should be annexed to the case record of the child.

Courts

13. *Child-friendly court procedures*

At present, the dearth of specialised children's courts has resulted in children being subject to ordinary criminal justice procedures. These procedures risk causing further trauma and victimisation of children within the justice system, and are unsuited to protecting the child's wellbeing.

Section 12(1) of the CYPO permits the Supreme Court to frame Rules regarding juvenile justice procedures. It is recommended that such Rules be drafted in order to guarantee that children are entitled to the minimum standards of juvenile justice administration under the CRC. For instance, the Rules could require the Court to ensure that: (a) the child has adequate legal representation, (b) the child has full knowledge of the nature of the proceedings, and (c) cases involving children are prioritised and monitored within the system. In addition, the JSC can devise guidelines for cross-examining children in the courtroom. For instance, courtrooms hearing cases involving children should be required to install a one-way glass so that children are unable to witness adult perpetrators.

14. *Deprivation of liberty as a last resort*

Magistrates have demonstrated a dispensation towards institutionalising children within the justice system. Such institutionalisation can impede the child's rehabilitation and reintegration into society. Furthermore, diverting children away from the formal justice system also decreases the rate of repeat offending and reduces the cost associated with administering justice services for children.

Therefore, it is recommended that the Judicial Services Commission issues a Circular instructing Magistrates and Judges to order the institutionalisation of a child only as a matter of last resort. The Circular also should require Magistrates to afford priority to the diversion of children away from the formal justice process, prior to the consideration of placement options for such children.

The Magistrate or Judge should be required to consider the option of placing the child in the custody of (a) a parent or a guardian, (b) a PO, (c) a fit and proper person, and (d) the imposition of a Community Correction Order, prior to ordering that the child be sent to a CCI. Accordingly, restorative, rather than punitive measures should govern the Magistrate's decision making in relation to a child in the justice system.

In the event a Community Correction Order is issued in relation to a child, a CRPO should be assigned to ensure reintegration of the child in the community, thereby reducing the risk of the child re-entering the formal justice system.

15. *Impounding records of proceedings*

The reintegration of a child in conflict with the law can be impeded if there is a lack of confidentiality surrounding justice proceedings against him or her. As such, it is recommended that the Judicial Services Commission issue a Circular that directs courts to impound the records of proceedings against children in conflict with the law. Furthermore, there should be strict limitations placed on the use of these case records in future proceedings against the child, and the prohibition of their use in future proceedings involving the child as an adult.

16. *Reducing case flow delays*

Currently, there are considerable case flow delays experienced in courtrooms. These delays adversely affect the well-being and development of children in the justice system. It is recommended that processes be instituted to advance case flow management within courtrooms. Measures to

increase the efficiency of case file processing should include:

- i. Issuing a Circular requiring the institution of pre-trial proceedings to admit facts or documents that are not in dispute by either party. While section 420 of the CCPA makes the above practice permissible, judges rarely utilise this power;
- ii. Appointing retired High Court Judges and Magistrates to process and clear the backlog in children's cases;
- iii. Requiring High Court Judges and Magistrates to conclude or handover the children's cases on their case roll, prior to transferring to another court.

Department of Probation and Childcare Services

17. *Improve the information supplied by Probation Officers to Court*

The failure to consider alternatives to institutionalisation in placement can be attributed in part to the lack of information available to Magistrates on the availability of foster carers. Therefore, CRPOs in every district should be mandated to compile a list of suitable foster carers. These foster carers should be subject to routine inspection by such officers.

Moreover, in the event alternatives to institutionalisation are not available, the lack of information available to Magistrates on the nature and quality of CCIs results in: (a) children being sent to institutions that are unsuited to their needs, and (b) child victims and children in conflict with the law being placed in the same institution. Accordingly, CRPOs should be required to

perform the following functions, in order to increase the reporting relating to CCIs:

- i. Map the CCIs in every province and designate institutions that will house child victims of crimes, and those that will house children in conflict with the law.
- ii. Rate CCIs on their functionality. Ratings should be based on factors such as: (a) availability of counselling services and trained childcare professionals, (b) institution of procedures that promote the rehabilitation and reintegration of children (e.g. vocational training relevant to marketable skills), and (c) linkages created between the child and his or her family. These ratings should be updated on a regular basis.
- iii. Compile Status Reports on children in their custody and children in CCIs within their jurisdiction. The Status Reports should be updated once a quarter and aim to detail the psychological, social, and educational well-being of the child.

The above information should be made available to POs, in order to improve their reporting to courts within the justice system for children.

18. *Ensuring a child's wellbeing within the criminal justice system*

The lack of information and counselling available to children disadvantages them during the criminal justice process. Accordingly, POs should be specifically mandated to be present and mediate on behalf of the child immediately after he or she is taken into police custody. POs should also function as the child's judicial guardian by

providing the necessary assistance and explanation throughout the pendency of the case. This function should take place notwithstanding the fact that the adult perpetrator's case has not been concluded in the High Court.

Moreover, CRPOs should be mandated to monitor the well-being of children that are produced before a Mediation Board. This function will reduce the risk of children re-entering the formal justice system, and strengthen the rehabilitation and reintegration of children in conflict with the law.

19. *Screening children in the justice system*

At present, the unique needs of children that come into contact with the justice system are not assessed. This practice impedes the rehabilitation of children within the system. As such, it is recommended that the Provincial Departments of Probation and Childcare Services, in collaboration with the Department of Health, establish a screening centre in every province that is tasked with assessing the psychological, social and educational needs of the child at the point of placement. This screening process will ensure that placement options are able to cater to the child's unique needs. The screening centre should be resourced with healthcare professionals, counsellors, psychologists and CRPOs.

20. *Transportation of children*

The transportation of children is currently undertaken by the Department of Prisons, which results in children being transported alongside adult prisoners to and from courts. As such, it is recommended that each Provincial Probation Department be allocated sufficient funds in order to

facilitate the transportation of children. These funds can be utilised to purchase vehicles and pay transportation staff.

Cross-Cutting Recommendations

This report identifies three cross-cutting challenges in justice administration for children. They are: (a) the failure to separate adults from children within the criminal justice process, (b) the lack of oversight and monitoring of children and their wellbeing within the justice system, and (c) human resource challenges that impede children's justice service delivery. The following recommendations ought to be considered in overcoming these challenges.

21. *Separating children from adults within criminal justice institutions*

Criminal justice institutions routinely fail to separate adults from children. This practice adversely affects the welfare of children, especially girls, within the criminal justice system. It is recommended that all criminal justice institutions be required to have a separate area for children. This area should be designed in a child-friendly manner and be overseen by plain-clothed officers.

22. *Child-friendly documentation*

The criminal justice system has limited child-specific documentation. For instance, existing forms that are used to document children's cases classifies children as being either offenders or suspects. Moreover, due to poor classification systems, children's case files are not easily searchable within courtrooms. Therefore, it is recommended that:

- i. Child-specific forms are used to record children's cases. These forms should classify children as either victims or children in conflict with the law.

- ii. Yellow files are used for all cases pertaining to children. This measure will make children's cases easily distinguishable among court records.
- iii. All documents relating to children in the justice system are available in Sinhala, English and Tamil; and are framed using language and visual aids that are appropriate for children.

23. *Ensuring the oversight of children's cases within the criminal justice system*

Justice institutions currently do not have processes for tracking the well-being of children within the penal chain. Furthermore, missing documents (e.g. Medico-Legal Reports and B Reports) have resulted in significant delays in processing children's cases. Therefore, it is recommended that each case file relating to children contains:

- i. A Well-being Index that requires each criminal justice institution to assess the status of the child's psychological, social, and educational condition. The well-being of the child can be identified as being high, medium or low risk.
- ii. A Standardised Check List that accompanies case files relating to children. The List should contain all the necessary documentary outputs to process a case file (e.g. B Report and Medico-Legal Report). Each criminal justice institution should be required to certify and sign off that the case file contains the documentary output under its purview.

24. *Monitoring cases involving children*

Under the NCPA Act, the NCPA is specifically mandated to monitor children in the justice system across the country. However, there is currently no mechanism to

comprehensively monitor children across the justice system. The absence of such a mechanism has resulted in a number of cases being deprioritised within the system, and the role of the NCPA as a monitoring body being diminished.

In this context, it is recommended that a database be developed to track and monitor children within the justice system. This database should be maintained and operated by the NCPA. A unique classification number should be generated for each child at the point they come into contact with law enforcement. This classification number should be used to create a record relating to the child on the database. The record should: (a) classify the child as either a victim or a child in conflict with the law, and (b) track the chronological progress of the child through the criminal justice system, and the final order in terms of custody. Progress should be updated periodically at each criminal justice institution by the Judicial Guardian or PO assigned to the child. This database can be used by the NCPA to identify children who are repeatedly in conflict with the law, and flag undue delays with regard to case processing.

In the interests of ensuring the safety of the child, information on the child should only be accessible to the Judicial Guardian or PO that is assigned to him or her. Moreover, the entirety of the database should be encrypted, and only be made accessible to the Chairperson of the NCPA.

25. *Incentivising the performance of juvenile justice officials*

At present, the lack of performance-based incentives and training among juvenile justice officials result in significant challenges to effective justice administration for

children. Therefore, it is recommended that in-service training programmes be initiated for identified officials within the juvenile justice system (e.g. police officers, POs, Magistrates, and officers working in CCI). These long-term training programmes should be designed to address the prevailing gaps in technical competencies within each juvenile justice institution. For instance, the training programme for officers of the SPU should aim to increase their ability to conduct DNA testing and collect forensic evidence. Moreover, Magistrates should be trained in the use and application of Community Correction Orders for children who are in conflict with the law.

Selection to long-term training programmes should be based on objective criteria. International organisations can partner with the government in the administration of these training programmes, and supplement the income of the selected participants. Moreover, these organisations should assist the government in tracking the impact of these programmes on the participant's technical competencies over time.

Additionally, in order to increase the status of officers assigned to the juvenile justice administration, institutions can ensure the appointment of high-ranking officials to process children's cases. This practice should encourage the perception that being assigned to the juvenile justice administration is a method of career advancement, rather than a demotion.

26. Promoting multi-sectoral coordination

At present, there is a limited understanding of the roles and responsibilities of

institutions involved in providing justice for children. Therefore, it is recommended that the NCPA convene bi-annual meetings with key institutions (e.g. DPCCS, JMO, AG's Department, CRPOs, Magistrates, and Sri Lanka Police) to both reaffirm their roles and responsibilities, and address prevailing challenges the children's justice system. Moreover, the NCPA should present broad trends in relation to children in the justice system based on its monitoring efforts. Civil society can facilitate and support such coordinating meetings.

27. Ensuring the recruitment of support staff to juvenile justice institutions

There are prevailing weaknesses in the management of juvenile justice institutions. This is largely attributed to the dearth of support staff specifically responsible for ensuring the efficient processing of cases relating to children, and the cumbersome manual processes associated with case dispensation. Therefore, it is recommended that additional clerical staff be recruited to manage the processing of case files relating to children within the criminal justice system. These clerical staff can include court clerks, typists and paralegals stationed at institutions such as the CPU, Juvenile Courts and the SPU. These clerical staff should be trained in the digitisation of documents relating to children, and the development of standardised forms and templates for issues concerning children.

5.1 Summary of Recommendations

	No.	Recommendation
Legislative Interventions	1.	The passage of the Children (Judicial Protection) Bill (CJPB), subject to certain amendments.
	2.	Amendment to the Code of Criminal Procedure Act, No.15 of 1979 to mandate professionals and ordinary citizens to report instances of crimes against children.
	3.	Amendment to the Prevention of Crimes Ordinance No.2 of 1926 to provide for the registration of offenders that commit crimes against children.
	4.	Amendment of the Evidence Ordinance No.14 of 1885 to permit child witnesses to be cross-examined via closed-circuit television.
	5.	Amendment to Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015 to permit a child victim or witness of crime to be cross-examined via contemporaneous audio-visual linkage.
	6.	Amendment to the Penal Code No.2 of 1883 to increase the minimum age of criminality to twelve years of age.
	7.	Amendment to the Youthful Offenders Training Schools Ordinance No. 42 of 1994 to define a 'youthful person' as a person between the ages of eighteen and twenty-two.
Institutional Interventions		
Law Enforcement	8.	Police stations should be made more child friendly. Police stations should be staffed with at-least one female plain clothed officer that is adequately trained in child protection.
	9.	Strengthening the capacity of the Special Police Unit (SPU) to function as a centrally located hub within the Sri Lanka Police. The SPU should be resourced to conduct in-house DNA testing and forensic evidence gathering.
	10.	Diverting children from the criminal justice system using Section 114 of the Code of Criminal Procedure Code Act No. 15 of 1979, and the Mediation Boards Act No. 72 of 1988. Alternative dispute resolution methods should also be used in instances where in the context of alleged statutory rape the victim is over fifteen years of age, and the perpetrator is under nineteen years of age.
Attorney General's Department	11.	Staffing the Child Protection Unit with additional permanent cadre and mandating existing officials to either complete or transfer their case files prior to the termination of their contracts.
Judicial Medical Officers	12.	A Circular should be issued that mandates all JMOs to initiate a clinical case conference in cases involving children
Courts	13.	The Supreme Court should issue Rules regarding juvenile justice procedures. These procedures should guarantee that children are entitled to basic rights and standards in the context of juvenile justice administration.
	14.	A circular should be issued by the Judicial Services Commission that instructs Magistrates and judges to order the institutionalisation of a child as a matter of last resort. Diversion of children from the formal justice process should be made a priority.

	No.	Recommendation
	15.	A Circular should be issued by the Judicial Services Commission that directs courts to impound the records of proceedings against children in conflict with the law.
	16.	Courts should introduce measures to increase the efficiency of case file processing.
Department of Probation and Child Care Services	17.	Probation Officers should work with Child Rights Promotion Officers to identify suitable placement options for children in the justice system. For instance, these officers can document a list of fit persons at district and divisional level, and map the quality of child care institutions.
	18.	Probation Officers should be specifically mandated to be present and mediate on behalf of child after he or she is taken into police custody. Child Rights Promotion Officers should be mandated to monitor the wellbeing of children that are produced before the Mediation Boards.
	19.	The Provincial Departments of Probation and Childcare Services, in collaboration with the Department of Health, should establish a screening centre in every province that is tasked with assessing the psychological, social and educational needs of the child at the point of placement.
	20.	Each Provincial Probation Department should be allocated sufficient resources in order to facilitate the transportation of children to and from the courtroom.
Cross cutting interventions	21.	All criminal justice institutions should be required to have a separate area for children which is designed in a child friendly manner and is overseen by plain-clothed officers.
	22.	Child friendly documentation should be developed across the justice system for children. This should include the use of child-specific forms, and the use of language appropriate for children.
	23.	The wellbeing of children should be tracked in the penal chain. This should involve the institution of a Wellbeing Index that monitors the child's psychological, social and educational condition
	24.	A database should be developed to track and monitor children within the justice system. This database should be maintained and operated by the NCPA.
	25.	In-service training programmes should be initiated for identified officials within the juvenile justice system (e.g. police officers, POs, Magistrates and officers working in CCIs).
	26.	The NCPA should convene bi-annual meetings with key institutions (e.g. DPCCS, JMO, AG's Department, CRPOs, Magistrates, and Sri Lanka Police) to both reaffirm their roles and responsibilities and address prevailing challenges the children's justice system.
	27.	Additional clerical staff should be recruited to manage the processing of case files relating to children within the criminal justice system. These clerical staff should include court clerks, typists and paralegals stationed at institutions such as the CPU, Juvenile Courts and the SPU.

6

Intervention Mapping

The following figures maps the above recommendations according to their impact and solvability. The impact axis assesses the extent to which the particular intervention advances the wellbeing of children within the justice system. Interventions that have a greater likelihood of securing the wellbeing of children are classified as being

'high impact'. The solvability axis estimates the relative time and complexity associated with the implementation of an intervention. Interventions that require a significant amount of resources, and legislative reform are likely to be less solvable than interventions that involve the introduction of an administrative process.

FIGURE 1
Legislative Interventions

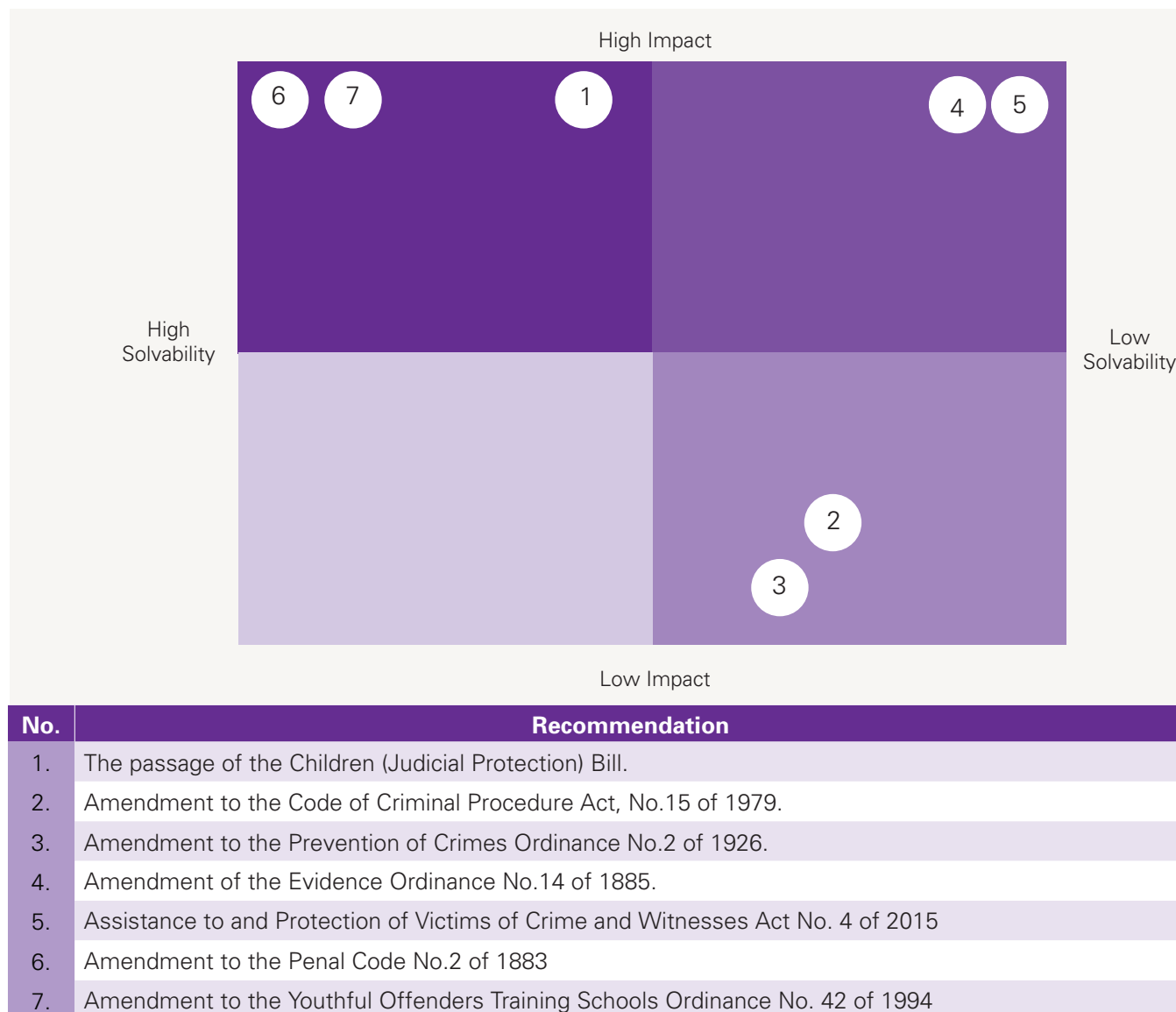
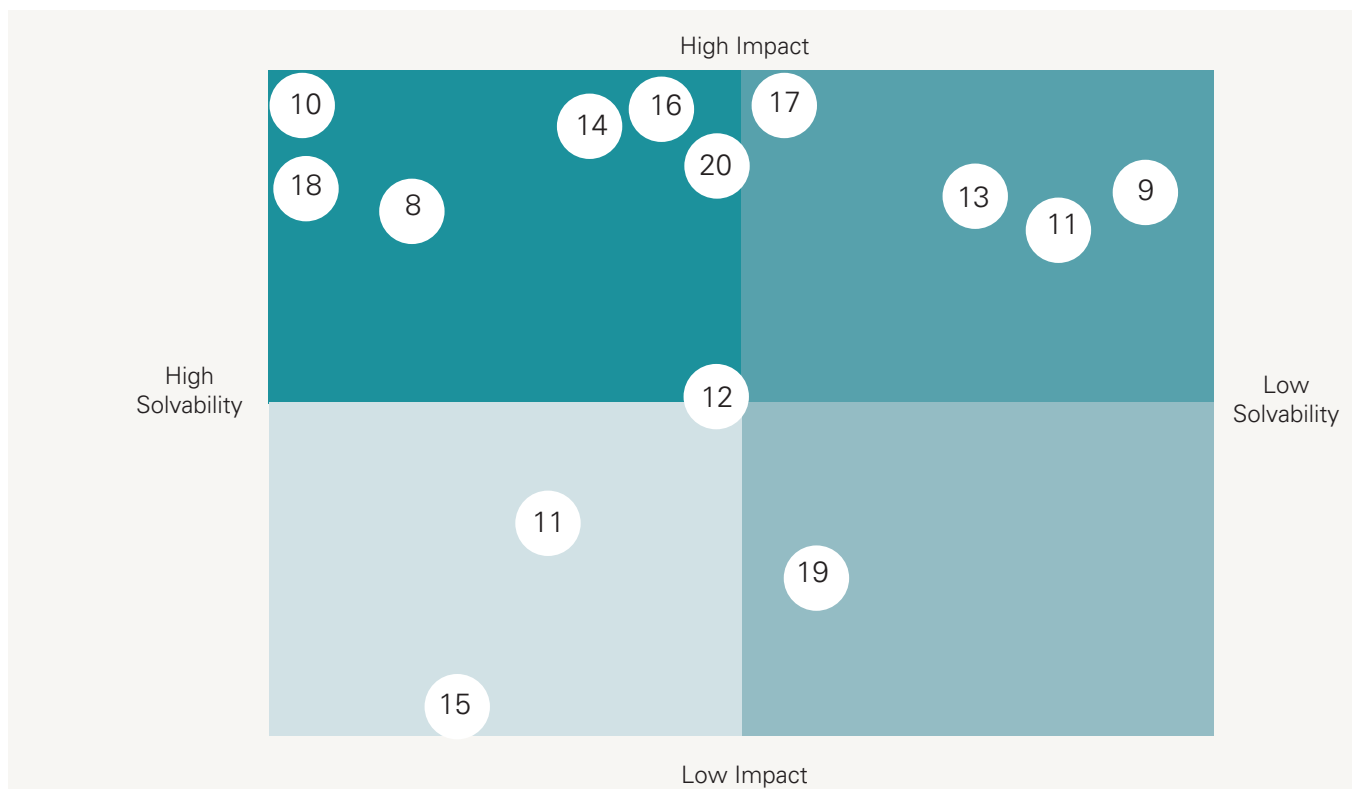


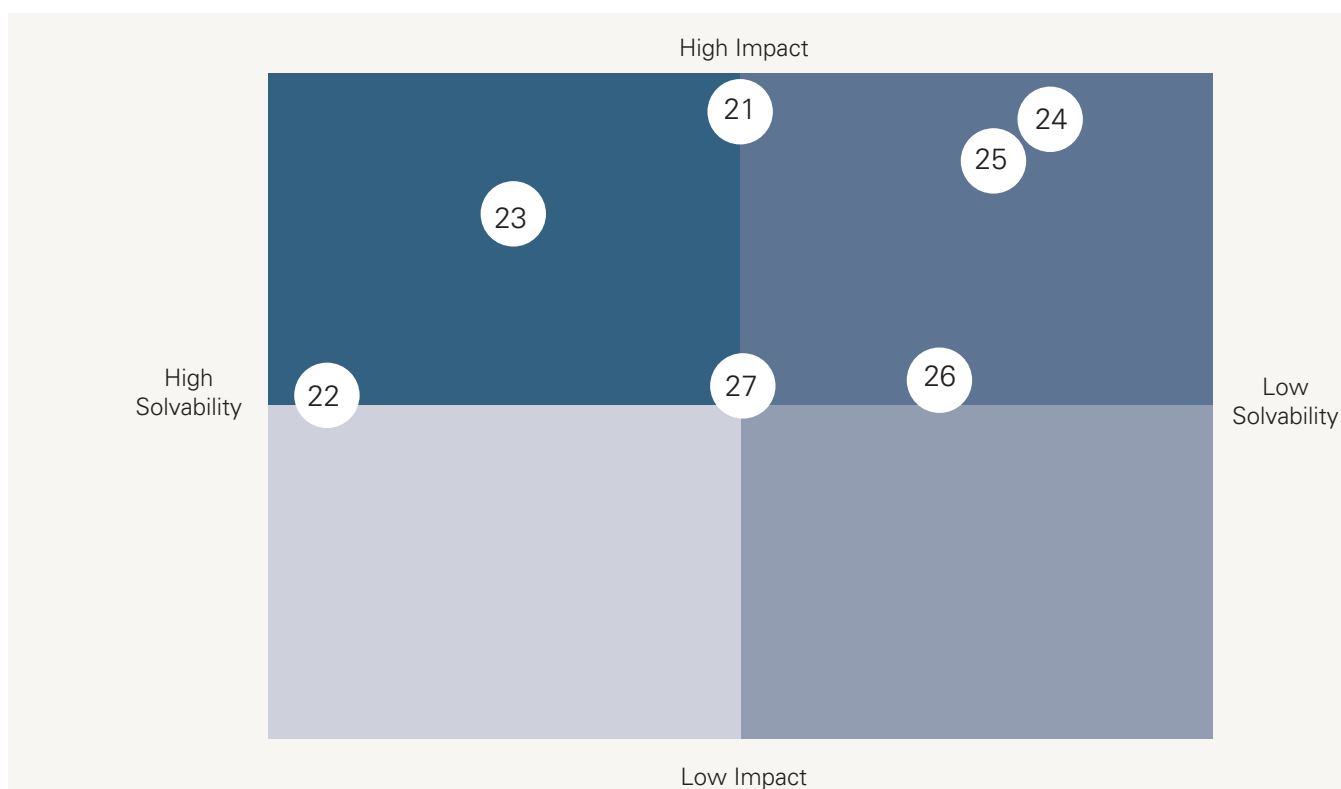
FIGURE 2
Institutional Interventions



No.	Recommendation
8.	Making Police Stations More Child Friendly
9.	Strengthening Capacity of the Special Police Unit
10.	Diverting children from the criminal justice system
11.	Building the Capacity of the Child Protection Unit
12.	Clinical Case Conferencing
13.	Child-Friendly Court Procedures
14.	Deprivation of liberty as a last resort
15.	Impounding Records of Proceedings
16.	Reducing Case Flow Delays
17.	Improve the Information Supplied by Probation Officers to Court
18.	Ensuring a Child's Well-Being within the criminal justice system
19.	Screening Children in the Juvenile Justice System
20.	Transportation of Children

FIGURE 3

Cross cutting Interventions



No.	Recommendation
21.	Separating children from adults within criminal justice institutions.
22.	Child friendly documentation.
23.	Ensuring the oversight of children’s cases within the criminal justice system.
24.	Monitoring cases involving children.
25.	Incentivising the performance of juvenile justice officials.
26.	Promoting multi-sectoral coordination
27.	Ensuring the recruitment of support staff to juvenile justice institutions.

