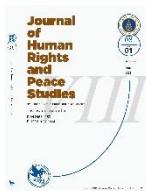




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# Law Enforcement and Court Proceedings: Child in Conflict with the Law in Sri Lanka

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### ABSTRACT

Based on research findings, this paper examines whether the practices and national legislation of Sri Lanka are maintaining the child-friendly law enforcement and juvenile justice practices according to international and regional standards. Sri Lanka has a long history of implementation of juvenile justice. As a sophisticated nature of a child, juvenile administration needs to uphold separate arrangements in every step of children's life as per their maturity to understand the situation and to protect and promote a child's rights during law enforcement and juvenile court proceedings. To explore Sri Lanka's experience, this descriptive research utilized secondary sources as well as primary information from stakeholders, experts, and a Juvenile Court observation. The domestic practices and legislature are evaluated and discussed concerning relevant principles of child rights such as the right to be heard, right to privacy, right to non-discrimination, the best interest of the child and principle of detention as last resort according to the Convention of the Rights of the Child 1989. Similarly, the role of police, probation officers, judicial medical officers, and juvenile court administrations are the main stakeholders to implement the national legislation concerning a child offender. The research identified most of the domestic legislature of Sri Lanka is in line with international standards of child rights. Further, this paper concluded with the research findings of the ineffective existing practice and provided arrangements during law enforcement, and juvenile justice proceedings to protect and promote child rights in Sri Lanka.

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## Introduction

The socialization process of children is very crucial to set their behaviors. The new social order, such as changes in the socio-cultural pattern as well as the growth of cities, with high mobility of the over-crowded-heterogeneous population, is stimulating a new way of life (Bhattacharyya, 1981). The changes in norms and values have been creating some sheer concerns all over the world. Along with other changes, the increasing number of criminal activities has affected the children a lot. Consequently, they cannot distinguish right from wrong. These children have equal rights to protect themselves, which are inherent and inalienable in every situation of their life. To protect and promote the rights of a child there are national, international, and regional mechanisms of juvenile justice to promote and protect child's rights. Each state party is liable to follow provisions and guidelines of the 1989 United Nations Convention on the Rights of the Child to ensure the rights of the child in any situation as per their request and need through formal and informal institutions at the domestic level. Sri Lanka also has its domestic practices and legal provisions of law enforcement and court proceedings reference to existing international standards.

This paper is based on interviews and available secondary data supplemented by the field observation in the first half of 2018<sup>2</sup>. The research was conducted for a Master's thesis "An analysis of juvenile court proceedings in Colombo, Sri Lanka with special reference to

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<sup>2</sup> The research embraced the descriptive research design and the case study research strategy as a significant leading methodology of this research. The used qualitative study comprises primary information, legislature, and secondary sources of data. There are two Juveniles Courts in Sri Lanka; one is in Battarmulla, Colombo, and another is in Jaffna. Initially, the Juvenile Magistrate Court, Battarmulla was selected for the court observation. The court situated on the second floor of a building along with other offices on other floors. The researcher attempted to visit the court (on 30 May and 20 June 2018), but the administration did not provide the permission, which is a subject of approval from the Judicial Service Commission. The Judicial Service Commission did not provide permission up to one-month from the application registration in its secretariat. Then, the Mt. Lavinia Magistrate Court (According to CYPO Section one, this court also proceeds juvenile cases sitting as a juvenile court) was selected for the research to observe the physical arrangement in the courtroom and court proceedings. Along with court observation, seven in-depth interviews with experts and stakeholders who are working to promote and protect child rights as primary data. The court observation provides context as well as cross-verification of the information. Besides the primary data, the research heavily depended on secondary information. Categorization and sequencing, as well as triangulation, were adopted to analyze the findings of observation, interview, and documentary research.

Juvenile offenders." The interviews were conducted with seven experts who are working for a long time to ensure and promote child rights at governmental, civil society, and individual levels in Colombo. The article aims to answer a question: How do the law enforcement and juvenile court proceedings ensure a child-friendly justice system during the court proceeding of a child offender in Sri Lanka? To search for answer, the article begins with the background of the legislation concerning to child. The following section delves into specific rights such as non-discrimination, the best interest of the child, the right to be heard, right to privacy of the child. Likewise, available services of legal aid, police cells as well as the principle of detention as of last resort, and court proceedings and practices are discussed through the spectacles of child-friendly mechanisms in the rear part of this article.

Before jumping into the question, Juvenile Justice — a terminology, needs to be introduced for this article. It means protecting children from punishment system and correction in the future. Martin defines juvenile justice as "a fair handling and treatment of youths under the law." It is a philosophy that recognizes the rights of young people to due process of protection when they are in trouble, and personal protection when they are in need. The juvenile justice process refers to distinct procedures established to assure the fair administration of youths under the law. These procedures are carried out in accordance with institutions designed for the administration of justice in general, and juvenile justice in particular. The juvenile justice system is composed of institutions that have been organized to manage established procedures as a way to achieve justice for all juveniles. These institutions include the police, juvenile courts, juvenile corrections and community-based agencies and programs" (Martin, 2005, p.4).

## Background of Legislation

Sri Lanka has promulgated the current Constitution in 1978 as the second republican Constitution after its independence in 1948. During the period of colonization, to deal with both deprived and delinquent children, Sri Lanka enacted Children and Young Persons Ordinance (hereafter CYPO) 1939, which came into force in the early 1950s (Gamlath, 2008).

As per the provision of the CYPO, there are two Juvenile Courts and Magistrate Court sitting as Juvenile Court is in function. It indicates Sri Lanka has taken the issue of a child seriously from an early period. Sri Lanka acceded to the International Covenant on Civil and Political Rights (hereafter ICCPR) 1966 on 11th June 1980, and in line with that, formulated the ICCPR Act in 2007. It is also a state party of the United Nations Convention on the Rights of the Child (hereafter CRC) 1989 and bound to follow this international mechanism. Similarly, in 2018 Sri Lanka amended the penal law, raised the minimum age of criminal liability of the child from 10 to 12 years old, and established it as a profound country in the South Asian Region. Additionally, to promote and protect the rights of children United Nations Standard Minimum Rules for the Administration of Juvenile Justice (hereafter The Beijing Rules) 1985, United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 and other persuasive guidelines are in existence.

### **Specific Rights to the Child in Sri Lanka**

All the children have specific rights such as non-discrimination, minimum age of criminal responsibility, the best interest of the child, right to privacy, right to be heard and so on, as their entitlement. A child in conflict with the law is the victim of a circumstance, not by her/his will. National Legislation of Sri Lanka has ensured equal protection and non-discrimination to all children regardless of race, caste, sex, religion, or other grounds (Constitution of Democratic Socialist Republic of Sri Lanka, Article 12 (1) and (2), CYPO, Penal Code, etc.). However, the existing infrastructure, accessibility, resources, languages, and practices in the court are hindering the provision of a child-friendly justice system in Sri Lanka. During the observation in the Mt. Lavinia Magistrate Court, the researcher identified the court heavily using the Sinhala language and scripts for instruction, and partially using the English language during the conversation. Sri Lanka is a common residence of different language-

speaking ethnic populations.<sup>3</sup> The CRC Article 2.2 compels all state parties to provide translation facilities for the child in their language during the law enforcement and court proceedings, which is not seen in practice. In many instances, volunteer lawyers provide the translation in the court (Ms. Poonam, personal communication, June 26, 2018). Likewise, in the multilingual society, the use of terminologies such as 'Nisabda', 'Sakshi' indicate keep silent, witness-box respectively, and other cues in Sinhala script indicates the use of Sinhala language is high in court. Similarly, as per the ratio of the diversified population in the city, the number of police personnel with different religious and linguistic backgrounds is negligible for those who are directly involved in law enforcement with a child in conflict with the law. In the same way, poverty is another crucial factor of the child offender, which limits access to justice. People from wealthy families hire lawyers to deal with their cases, but parents of poor backgrounds are unable to deal with the cases appropriately.

Sri Lanka has introduced legal aid and alternative dispute resolution mechanism which are not accessible to all the children in conflict with the law. The above situation teaches us the prevailing scenario of unintentional discrimination in the court system to deal with a child offender in Sri Lanka.

According to the CRC, a human being below 18 is called a child, and the child's evolving capacity helps us to allocate the minimum age of criminal responsibility. However, the economic, political, and cultural diversity often defines the minimum age of criminal responsibility of a child in a particular place (Marasinghe, 2002, p.19). The Beijing Rules 4.1 further emphasize that the assumption of facts of intellectual, emotional and mental maturity is the basis of the minimum age of criminal responsibility. In line with the comments of the UN Committee on the Rights of the Child (2007, para. 32), Sri Lanka amended the Penal Code 1985 in 2018 from eight to twelve years for the minimum age of criminal responsibility of a child. It provides an exemption to the child between twelve to fourteen years for any offense as per their sufficient maturity to understand. Additionally, children above 14 years shall be

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<sup>3</sup> For example, Colombo is a common residence of 2,309,820 populations: Sinhalese 76.68 percent, Sri Lankan Tamil 10.01 percent, Indian Tamil 1.18 percent, Sri Lanka Moor 10.50 percent, Burgher 0.57 percent, Malay 0.53 percent, Sri Lanka Chetty 0.05 percent, Bharath 0.03 percent and Other 0.40 percent (Department of Census and Statistics, 2011).

charged criminal liability as per their maturity, but the CYPO is silent about dealing with persons above 16 years old as a child. The Sri Lankan court has considered a person below 18 years of age as a child through its verdict regardless of the provision of CYPO. Ampara justice Dr. Sumudu Premachandra refused to impose imprisonment on a girl below 18 years of age in an appeal judgment of the case HCJ D.M. Ruchika Kuwindya Swarnamali, Galearawa, Kandaudapanguwa, Nonaragal verses 1) Officer in Charge, Police Station Damana 2) Hon. Attorney General Colombo, 12 (EP/HC/AMP/APP/416/2015) at Criminal Appellate High Court of the Eastern Province Holden. It indicates the minimum age of criminal responsibility adopted the correctional approach to favor a child for their best interest.

Promotion and care of a child's well-being via the legislative and administrative measures as per their desire is in the child's best interest. Sri Lanka has been trying to uphold the principle of the best interest of the child through its national legislative and administrative action. Children have more physical, emotional, and psychological needs than adults. The ICCPR Act 2007, 5.2 of Sri Lanka provides paramount importance to the best interest of the child in all spheres: "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 juvenile justice system provides primary consideration to a child through a restorative justice and rehabilitation process. Sri Lanka provides primary consideration to a child and restricts access to the public (except relevant to the case) when the child is in court (CYPO Section 19). Age and maturity are the main factors in treating a child for criminal offenses. The cases of child victims receive more priority than those of child offenders in Sri Lanka (Ms. Geetha, personal communication, June 22, 2018). Likewise, a report concerning 'Child on the Street' reveals children in conflict with the law and who need both care and protection are treated with negative attitudes by police (Centre for the Study of Human Rights, 2004, pp.70-71). Most cases of child offenders involve adults and it takes a long time when these cases are being proceeded without separation. The duration of the lengthy court case process reduces the possibility of the correction of a child offender. The Child Protection Unit (CPU) of the Attorney General's Department is not functioning properly, where more than 40 percent of the backlog of

children's cases because of the lengthy administrative process and a short-term contract of attorney-at-law by the Attorney General's Department, is impacting on children's psychology (Verité Research, 2017, p.23).

The CYPO Section 23 adopted both institutional and community correctional mechanisms instead of imprisoning a child for any offenses. Department of Probation and Child Care administers correctional institutions in the entire nine provinces of Sri Lanka. A child under 16 years of age is often sent to remand home and a person from 16 to under 18 years of age could be sent to remand home as per the court's decision. These correctional homes provide vocational skills such as carpentry, mechanical, masonry and electrical works for males and handicrafts and home science training for females (Niriella, 2011, p. 506). However, the provided institutional correctional system cannot overcome the socio-psychological challenges of the offender. Eventually, to expedite the children's case, Sri Lanka used 'Yellow Color File', Yellow-colored stationery in court administration (Mr. Mahendra, personal communication June 27, 2018) and 'CH' coding to classify children's cases in Attorney General's Department (Verité Research, 2017, p.22).

A child's privacy is recognized by most international and regional instruments as fundamental human rights. It demands protection and guidance to a child on one hand and distinct autonomy on another (Marasinghe, 2007, pp. xxii-xxiii). For a child, the right to the protection from arbitrary interference of privacy (UDHR 1948, Article 12), recognition of dignity (American Convention on Human Rights 1969, Article 11), and right to respect for private and family life (European Convention on Human Rights 1950, Article 8) and private matters including family, house, relationship, and property (Cairo Declaration on Human Rights in Islam, 1990, Article 18) need to be respected in all situation. Likewise, the Beijing Rules 8.1 prohibits disclosing identification information in all stages of juvenile justice administration, CYPO of Sri Lanka also protects the privacy of a child offender in all court proceedings (CYPO, Section 11). The provision of avoiding unauthorized persons during the court proceedings, the different limits for people's presence in the court, and the restriction to publish the information about the child, demonstrates a high level of privacy maintained in Sri Lanka. However, hiding the name and address will not protect a child's privacy. Media are getting information through

courts (mostly from Magistrate Courts, when proceedings are conducted in presence of the public) and publishing details except for name and address. Likewise, the child offenders are being transported in the prison's van, which is creating 'fears of public exposure' for these children (Webb, 2016, p. 185). Similarly, presenting a child in the witness box, inquiry-box for cross-examination, and questioning in public may impact children's psychology. A child's privacy cannot only be protected through well-established legislation, but this notion also needs to be embraced by people's social norms and cultures.

The right to be heard directly through an appropriate body or via representative is a fundamental aspect of child rights that is applicable in all stages of investigation and court proceedings. A state is responsible to create a conducive environment to realize the rights to be heard of a child offender through assuring all the measures as well as legal procedures. The Constitution of Sri Lanka (Article 13.3) and the CYPO (Section 9.5.a) ensure to provide an opportunity for a child or young person to be heard during the court proceedings, however, the existing straightforward cross-examination (use of legal terminology/dictating with heavy words), language barriers (use of inappropriate languages to the child), and lack of suitable environment (lack of separate court with the child-friendly environment/use of video-television or other supportive instruments) are hindering to the protection of the right to be heard for a child offender. During a conversation with a probation officer Mr. Rustam (personal communication, June 6, 2018), we can understand that the probation officers consider the best interest of the child through child-friendly behavior. However, they do not follow certain established legal procedures to uphold child-friendly behavior.

## **Support System**

Regarding the domestic legislation and international guidelines, Sri Lanka established a support system to deal with a child in conflict with the law. Profoundly, the establishment of the Department of Probation and Child Care Services to protect and support children, Legal Aid facilities for the financially needy people for the case prosecution, and special arrangements in the police department (Sri Lanka Police, Children and Women Bureau, Police

Cell, provision of protection mother-Aarakshyan Maata), Judicial Medical Officer, National Child Protection Authority, etc. are providing support to the child offender. Correspondingly, the Sri Lankan court has been promoting and protecting a child offender through an interpretation of the domestic legislation concerning the international standard in its verdict is always remarkable.

The Department of Probation and Child Care Services provides correctional and support services to needy children in all provinces. The Child Rights Promotion Officer and Probation Officers are responsible to provide care as an alternative means of protection to a child offender through the institution (Verité Research, 2017, p. 27). The department holds various institutions as per the need and children's ages. Six Remand Homes are established to care for children during pre-trial detention, and five Certified Schools are in existence to provide systematic vocational training. Likewise, Safe Houses in each state provide accommodation as well as care facilities to those children when court cases are in pending status. Through the eight Receiving Homes, the department is providing the necessary safety and protection to all the children who are unable to live together with their families temporarily or permanently. Mostly, children who have been under age-marriage, raped and sexually abused, and participated in child labor along with those accused of straying children, disobedient children, and theft are hosted in National Training and Counselling Centers. Similarly, Approval Schools, Voluntary Children's institutions, and Detention Homes are in a function to provide care to the children.

Furthermore, the probation officers are liable to ensure protection as well as to prepare a summary report as per the notice delivered by the police through telephone and email when a child conflicts with the law (Mr. Rustam, personal communication, June 6, 2018). According to Mr. Herath, the summary report was produced without detailed investigation and submitted before the competent authority for the first hearing. The basic report helps the judge to reach an immediate conclusion.

Likewise, before reaching the final verdict of the case, the judge also reviews the detailed reports provided by the probation officer. The comprehensive report includes behaviors, family background, academic performance, and the environment in the home of

the child offender (CYPO Section 17). During the period, the probation officer will ask the child about their stay in the safe house or if they are with their parents/guardian, will ask about their behavior and also provide suggestions to deal with such situations (Mr. Rustam, personal communication, June 6, 2018). Based on the report, the judge will decide whether the child offender sends to the appropriate protection and care institutions or the parent's custody as a conclusion. The probation officer will follow/monitor the child up to the age of 18 as per the directives provided by the court.

As providing Legal Aid services to the public is a state's obligation to meet the provision of the ICCPR, Sri Lanka introduced ICCPR Act No. 56. in 2007 which provides legal assistance for criminal proceedings too at the state's expense to every child (ICCPR Act 56, Section 5.d). Through the Legal Aid Commission, Sri Lanka is providing free legal aid services to those whose monthly income is below Rs. 18,000 per month (a pamphlet publicly distributed by the commission shows the amount Rs. 15,000) (Legal Aid Commission Sri Lanka, n.d.). The Legal Aid Commission of Sri Lanka is facing a scarcity of resources in many legal aid service centers because the Commission is not fully supported by the government. UNDP and various organizations are providing funding for the Legal Aid Commission; it can be understood that the legal aid is not sustainable and unable to establish legal aid as people's right. Likewise, the lack of awareness among the people of remote about the accessibility of legal aid services is questioning the function of the Legal Aid Commission.

### **Detention as a Last Resort**

The CRC's Concluding Observation highlights that the detention should only be implemented as a last option: "[...] is used as a measure of last resort only and for the shortest possible period of time and that it is reviewed on a regular basis with a view to its withdrawal, and ensure that detention is not used for petty offenses" (UN Committee on the Rights of the Child, 2018, para 46.g). The domestic mechanism of Sri Lanka also ensured the detention of a child before and during the trial was only acceptable as a last resort for a possible shortest duration through established legal procedures (Constitution of Democratic Socialist Republic

of Sri Lanka, 1978, Article 13(1)). Similarly, the immediate notification of the causes of arrest to the child, her/his family in their convenient language (CRC, Article 40.2.b.ii), and the child-justice system (ICCPR, Article 9.4) is mandatory. Sri Lanka has quite lengthy pre-trial detention processes in a bad manner, and also kept the child with an adult offender is common, and this process might be victimizing a child offender (UN Committee on the Rights of the Child, 2018, para 45(c)). Furthermore, a report of the Special Rapporteur after the Sri Lanka visit also draws attention to separating a child from an adult as per the provision of ICCPR Article 10(2)b and the CYPO Section 10 (UN Human Rights Council, 2016). The research further educates the implementation of the provisions of the CYPO such as the protection mother,<sup>4</sup> various safe homes, and the mandatory presence of women officers in the police cell is not adequate. Many police officers participate in the National Police Academy and Police College of Police Department's basic training mandatorily; however, these trainings are not sufficient to provide education for child-friendly manners. A statement by a senior official of Police's Children and Women Bureau regarding the child arrest process reveals that "some of us wear the uniform and some of us are not wearing but it does not affect the children" (Ms. Ranju, personal communication, June 25, 2018). This finding supports us in understanding the pattern of how the police officers present themselves to the children during the arrest as the police uniform might affect the child's psychology during the custody.

Similarly, the officers use the prison department's vehicle to transport the child offender from prisons and various protection institutions each morning to the courthouse along with other adult prisoners, suspects, and offenders. A Colombo-based lawyer and child rights activist Ms. Poonam (personal communication, June 26, 2018) shared her experience regarding a child offender's transportation practice:

*"I, too, traveled on the bus with children just to see how they are treated. Without being handcuffed, I went to the prison's bus in a particular case [...], starting at four o'clock in the morning to go to*

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<sup>4</sup> The protection mother (Arakshyan Maata) is a woman who visits the police office on-call basis and responds to care for the child offender.

*courthouses. Later, they gathered all the children and divided for buses that go to different courthouses with other adult offenders, handcuffed crowds, adult offenders, men and women including children transported on the same bus.”*

According to a senior official in one of the Provincial Probation Departments, her office is ready to purchase the department's vehicles for the transportation of children. However, the office wants to hand over the vehicle to the police department for the supervision because it is difficult for the civilian staff to handle the unruly child (Ms. Chandra, personal communication, May 30, 2018). The department can organize training for the staff and facilitate the department to control the child offender rather than collaborate with the prison department. It may help to separate a child from adult prisoners, suspects, and offenders as well as to be supervised by the civilian staff.

The Probation Officer is responsible to prepare a summary report when the child is in custody before producing to the authority for a hearing. As per the guidelines of CYPO, Section 17, the Probation Officer will include the child offender's school records, health, character and home surrounding after the information provided by the officer-in-charge of the police officer. Likewise, the child offender is supposed to get appropriate counseling to cope with the situation during the period of detention and it is the responsibility of the child offender.

In cases of minor offenses, a police officer-in-charge is eligible to grant bail instead of detention and criminal court proceedings, but the provision of the release of a child offender on bail is not utilized in practice (Samaraweera, 1997, p. 68). Similarly, the coordination between intra-governmental institutions such as the Department of Probation and Child Care Services, Police Department, Department of Prison, Judicial Medical Officer, and Court Administration is not appropriate. Lack of proper adjustment to create a child-friendly environment during the law enforcement and juvenile court proceedings for a child offender is the facing challenges. For example, while children are producing to the court through various centers (remand home, receiving homes, etc.), they will not get proper care, including food. A senior official of UNICEF is convinced that the coordination within the police department is

significant, but not between other intra-governmental institutions (Mr. Mahindra, personal communication, June 27, 2018).

Thus, to improve the child-friendly procedure for a child offender in the detention, the Concluding Observation of CRC highlighted the setting up of a complaint mechanism in a police station, prison, and also in a remand home for monitoring by the Human Rights Commission of Sri Lanka in a regular basis (UN Committee on the Rights of the Child, 2018, para 22(d)).

### **Juvenile Court Proceedings**

To provide and protect the rights of a child, a juvenile court system plays a vital role in Sri Lanka. The child who infringes the penal law is considered innocent until proven guilty by the law. The CRC article 40.2 (b) provides basic features of the judicial body such as a speedy fair hearing before a competent judicial body without delay, circulation of appropriate information to the parents or legal guardians after the arrest of a child, and free assistance of an interpreter with full respect of privacy in all stages of proceedings. The behavior of probation officers, lawyers, judges, police and concerned staff as well as the environment of the court may affect a child's psychology concerned with juvenile court administration and proceedings.

To deal with child cases, Sri Lanka established juvenile courts and magistrate courts sitting as juvenile courts as per the provision of part one of CYPO. Throughout the island, there are only two juvenile courts — in Battarmulla, Colombo, and Jaffna. Besides these juvenile courts, all the magistrate courts are liable to proceed with the juvenile cases. According to the CRC Committee's Concluding Observation 2018, para. 45 (d), the need for an appropriate number of juvenile courts and trained staff as well as child-friendly approaches for the specialized juvenile justice system is high in Sri Lanka.

The police staff is exposing weapons and uniforms during the children's visit to the Court. It is very important to maintain security in the court but it affects child psychology while entering for her/his proceedings in court. Likewise, the use of a complex lexicon for the

children during court proceedings may not help to realize and understand the proper meaning of their words. Additionally, the straightforward way of questioning methods adopted by the court system is not an appropriate way for child-friendly cross-examination. Inquiry of children in front of many people with heavy words, inadequate translation facilities, and lack of multi-language labeling for instruction are the very common factors in Sri Lankan judiciary that limit the appropriate environment for the right to be heard and the right to privacy of a child offender.

"Expeditorily establish specialized juvenile court facilities and procedures, with adequate human, technical and financial resources, appoint specialized judges for children and ensure that they receive appropriate training" (UN Committee on the Rights of the Child, 2018, p.13, para 46.d).

The above statement of the CRC committee indicated that Sri Lanka needs to ensure judges specialized for children, specialized juvenile court facilities and strengthened juvenile justice with ample resources. Further, the provided training to judicial and non-judicial staff and the police need to continue and be implemented to properly deal with child offenders. However, the Sri Lanka Judges' Institute provides a different kind of training to judges on a compulsory and voluntary basis; the compulsory training for in-service judges comprises access to justice, legal aid, and juvenile justice in Sri Lanka which is not appropriate to deal with the case of the child offenders (Sri Lanka Judges' Institute, 2015, p. 27).

A witness Ms. Poonam (personal communication, June 26, 2018) shared her experience during the case proceedings of a child offender: "many people can be found seated until lawyers seek judges' decision to present the child's cases in his/her chamber. In most instances, Magistrate courts sittings as juvenile courts proceed with the cases of a child in presence of many people, the environment is not child-friendly to secure the rights to privacy and rights to be heard of the child." Likewise, the child offenders with the age of between 16-18 years are not eligible to proceed the case of a child to be heard in juvenile court (Youthful Offenders Training School Ordinance no. 28, 1939). The Evidence (Special Provisions) Act No. 32 of 1992

Section 2 of Sri Lanka accepts the pre-recorded video statement by a witness child, which is not being in practice; this practice might be helpful to minimize the stress of exposure to a child.

As Prof. Goonesekere (1990) explained: "What we lack is effective law enforcement and social mobilization strategies that can translate theoretical legal rights into everyday realities that will touch the lives of our child population" (p. 7). Sri Lanka has good legislation but the practice is questionable.

## Conclusion

Regardless of age, sex, color, geography, race, and religion, all children should be treated equally before the law. However, the socio-psychological and cultural aspects play the main role in the formulation of a child's behavior. Persons below 18 years are considered as a child; in case of an offense, they are treated as per their maturity of understanding of the situation. Sri Lanka has a long history of juvenile justice to prohibit a child from a punishment system. With reference to the research question, this article has focused to trace the situation of law enforcement and court proceedings for a child offender, whether juvenile justice is child friendly or not, concerning the established international standards.

Firstly, the paper concludes that Sri Lankan legislation is in line with international standards but there is a gap in the practices. The definition of a child below 18 years is not well accepted in many legislations, but the court incorporated below 18 years as a child through its verdict. For example, a person above 16 years is not subject to the juvenile court as per the CYPO. Sri Lanka amend its penal code in 2018 and set 12 years as the minimum age of criminal responsibility. The Juvenile Court and Magistrate Court sitting as Juvenile Court are producing cases of juveniles for proceedings, which are unintentionally discriminating against children based on language, wealth, infrastructure, ethnicity and so on. Officials are trying to maintain a child-friendly environment to follow the best interest of the child, right to be heard and right to privacy principle during law enforcement and court proceeding; however, it seems that they are following their own approaches rather than following certain

established procedures. Providing protection and correctional services through probation and child care services department, police cell, Police Children and Women Bureau, Legal Aid is less sensitive to follow the spirit of the child-friendly procedures and practices. For example, detention by a police officer with a uniform might be inappropriate for a child. Detention as a last resort is highly emphasized in the documents as per the international provision; however, practices are questionable.

Secondly, the establishment of the courtroom, the physical arrangement, used languages, translation facilities, and practices are hindrances to juvenile justice in Sri Lanka. The only two juvenile courts on the island, the court hearings and case presentations in presence of the public, and the lack of sensitivity towards the implementation of laws are obstacles to protecting and promoting the rights of child offenders.

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#### **List of Interviewees with Pseudonyms, Date and Place of Interview**

1. Ms. Chandra (Officer, Department of Probation and Child Care Services), 30 May 2018, Battarmulla
2. Mr. Rustam (Probation officer) 6 June 2018, Dehiwala
3. Ms. Rukmai (Lawyer), 20 June, 2018, Juvenile Magistrate Court, Battarmulla
4. Ms. Geetha (Child rights expert, Former board members of National Child Protection Authority), 22 June 2018, Colombo
5. Ms. Ranju (Police officer, Children and Women Bureau), 25 June 2018, Colombo
6. Ms. Poonam (Lawyer/ Child protection activist), 26 June 2018, Colombo
7. Mr. Mahindra (INGO staff), 27 June 2018, Colombo