Memorandum

To: Redacted

CC: Elizabeth Brundige, Executive Director, Avon Global Center for Women and Justice

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Re: Domestication of the U.N. Convention on the Rights of the Child and the role of national courts

This memorandum describes several success stories from countries that have domesticated the Convention on the Rights of the Child into their national laws and also examines the role of the courts. In particular, this memorandum focuses on how Lithuania, Bangladesh and South Africa have implemented their laws and/or the role that the courts have played in preventing child abuse and exploitation.

1. Summary

In 2009, Tanzania passed the Law of the Child Act domesticating the UN Convention on the Rights of the Child (CRC), a convention it had ratified almost 19 years earlier (1991). The UNICEF representative to Tanzania, Heimo Laakkonen, hailed it as a “huge step forward” but went on to state that now “the real work begins” ¹ While the Law of the Child Act is a welcome development, legislation is only a first, albeit important, step. Legislative reform must be coupled with robust institutional reform and application of the laws in the courts. The institutions that are responsible for protecting and enforcing children’s rights must be strengthened and national institutions focusing exclusively on children’s rights must be developed. Furthermore, the courts have a valuable role in enforcing and upholding children’s rights as outlined in the Law of the Child Act and the CRC.

In Lithuania, which domesticated the CRC in its Law on fundamentals of protection of the rights of the child, the government has created several government agencies and programs to combat child abuse and exploitation. For example, the Ombudsmen for Children Rights in Lithuania has

been very effective at monitoring the government’s implementation of its children’s rights laws and has completed several investigations every year into complaints of children’s rights violations.

Although Bangladesh only recently integrated the CRC in its national laws, the courts have been very active in holding the government accountable for failing to protect children from child abuse and exploitation for many years. In the two key decisions outlined below, the courts created a series of recommendations for the government of Bangladesh to adopt in order to better protect children from abuse and exploitation as required by the CRC. For example, some of the recommendations include creating child specific courts, drafting guidelines for handling child sexual abuse cases, instituting sensitization trainings for various government officials, collaborating with local NGOs and reforming Bangladesh’s laws to conform with the CRC.

Finally, South Africa incorporated the provisions of the CRC into its domestic laws through its Constitution and several other acts including the Child Rights Act of 2005 and the Sexual Offences Act of 2007. As a country with high rates of sexual violence, the implementation of these laws has focused on identifying ways to eradicate sexual violence. For example, South Africa has a police unit specifically dedicated to child abuse and sexual violence. Additionally, South Africa also utilized specialized courts for sexual violence cases.

2. Application of children’s rights in other jurisdictions

Lithuania

Law

Lithuania, like most Eastern European countries, integrated the CRC into its national legal framework as it was establishing its new government in the 1990s. In 1996, the Law on fundamentals of protection of the rights of the child was enacted. It is expressly based on the CRC and sets out children’s fundamental rights, freedoms and obligations. Other rights outlined in the CRC are also codified in various other laws. Additionally, the CRC is considered a part of national law under “article 138(3) of the Constitution of the Republic of Lithuania[, which] states that international agreements ratified by the Lithuanian Parliament are a constituent part of Lithuania’s legal system, and Article 12 of the Law on International Treaties of the Republic of Lithuania[, which] declares that ratified international agreements have the same effect and force as national laws.”

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2 See EUROPEAN COMMISSION, RECOMMENDATIONS TO PREVENT SEX VIOLENCE AGAINST CHILDREN IN RESIDENTIAL INSTITUTIONS, 3 (2009-2010). “Since the restoration of independence of the state, the situation of the rights of the child underwent many significant and positive changes that reinforced the protection of children against any kind of violence and abuse.”

3 See e.g. The Code of Criminal Procedure (2002) (which designates provisions for juvenile offenders); Law on the controller for protection of the rights of the child of the Republic of Lithuania (2000) (which establishes the Ombudsmen for Children Rights); The Civil Code (2002) (which sets the minimum age of marriage at 18 and establishes a children’s right to life and to be cared for by parents, guardians or the government, among other things); and Law on child guardianship (1998) (which establishes procedures for foster care).

The government of Lithuania has updated its laws to ensure that they encompass all forms of abuse and exploitation, though it has been criticized for not enacting a law that prohibits corporal punishment by family members (schools and penal institutions are already prohibited).5

Application

The government of Lithuania has taken many different approaches to enact its many laws that protect the rights of children to be free from abuse and exploitation. Unfortunately, the government suffers from a lack of funds to fully implement all of its programs. However, some key program examples include:

- **Municipal Child Rights Protection Agencies** – In Lithuania, assistance to child victims of violence is provided by municipalities. Children receive consultations with psychologists and social workers are provided to the children and their families. As of 2008, a total of 612.5 posts for social workers were established in the municipalities. In addition to working with families, the social workers also “contribute to the social reintegration of a child who becomes a victim of any type of neglect, exploitation, abuse, and inhuman or degrading treatment.” Unfortunately, this assistance is mainly provided in urban areas where there are centers, NGOs and other agencies.6

- **Immediate assistance for children without establishing need** – Pursuant to Order No. A1-179 of the Minister of Social Security and Labour, a child who is “suffering physical or psychological violence” or “under imminent threat to his physical or emotional safety” may receive social services without establishing the need for social services that would involve additional bureaucratic steps and procedures.7

- **National Programme for Prevention of Violence against Children and for Assistance to Children for 2005-2007** – The objective of this “[p]rogramme is to provide for complex and coordinated actions as well as measures (prevention, intervention, postvention) aimed at eradicating violence.” It is coordinated by the Ministry of Social Security and Labour.8 From 2005-2007 around 1,500 children and their family members received fee-free complex social, medical, legal and psychological assistance.9 In addition, “[q]ualified experts provided training on how to recognise various forms of violence and select the mechanism of assistance to 649 specialists employed with various agencies – educational, child rights protection, social care, and law enforcement institutions.”10 As part of this Programme, the Ministry of Education and Science also “prepared five methodological guides for school administrators, teachers, children and parents.”11

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6 Consideration of Lithuania 3rd and 4th periodic report, supra note 5 ¶ 196.
7 Id. ¶ 208.
8 Id. ¶ 198.
9 See id.
10 Id.
11 Id. ¶ 213.
• **Free telephone hotline** – The Ministry of Social Security and Labour funds a psychological telephone assistance service called Child Line that is free for children to call and will provide children “guaranteed assistance in the case of crises.”

• **Plan of Measures for the Implementation of the Strategy of State Policy on Child Welfare** – In 2005, the government adopted the Plan, which “provides for measures related with the provision of assistance to a family with the aim to encourage taking of all the necessary measures to support parenting and creation of conditions necessary for positive parenting, increase of parental responsibility towards their children by orientation towards the development of positive parenting, i.e. teaching parents the culture of non-violent parenting.”

• **Plan on Reorganization of Child Care Facilities Network** – The Minister of Labour and Social Welfare adopted the Plan in 2007 with the goal of reorganizing alternative residential care facilities so that the number of children in each facility does not exceed 60 and the number of children in each foster family does not exceed 8. The government is still in the process of achieving this goal.

• **Ombudsmen for Children Rights** – The Institution of the Ombudsmen for Children Rights of the Republic of Lithuania’s main “goal is to make the legal preconditions, which . . . ensure the United Nations Convention on the Rights of the Child and other legal norms which concern children’s rights protection provisions’ implementation in Lithuania, as well as to control the State, municipalities, non-governmental institutions and organizations and private person’s activities that can violate child’s rights and his legitimate interests.” Often this directive takes the form of initiating investigations (upon receipt of complaint or its own initiative), establishing working groups and commissions for drafting legal acts and proposals and informing the President of the Republic, the Seimas (Parliament), the Government or the municipal council of an appropriate municipality and other agencies, enterprises or organisations about violations of legal acts or any shortcomings, contradictions or gaps in legal (administrative) acts. The Ombudsmen has performed several assessments every year on children’s rights violations throughout Lithuania and on the performance of different government agencies that work with children.

**Role of Courts**

There is a Constitutional Court in Lithuania, and the Ombudsman for Children Rights has the ability to ask the court “whether legal acts related to the protection of the rights of children

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13 Consideration of Lithuania 3rd and 4th periodic report, supra note 5 ¶ 209.


16 *See id.*
conform to the Constitution of the Republic of Lithuania and other laws.”17 While there are Constitutional Court and Supreme Court cases that enforce children’s rights, none of the cases available in English discuss provisions related to child abuse and exploitation. However, in addition to the Constitutional Court, the Supreme Courts and District Courts in Lithuania have the ability to decide whether a law conforms to the Constitution and also to apply children’s rights as outlined in the CRC in their decisions.18

**Bangladesh**

**Law**

In June 2013, Bangladesh adopted a law, the Children’s Act, that is based on the CRC.19 Among other provisions, it defines a child as anyone under the age of 18 and includes protections for child witnesses and victims, as well as for children in conflict with the law.20 The Act is not yet available in English.21 Even before the adoption of the new legislation, the government of Bangladesh has referenced many of the CRC’s provisions and recommended its incorporation into national law in its National Children Policy of 1994.22 Further, courts have cited the CRC in their decisions as a “source of interpretive guidance in legal proceedings that involve children's rights.”23

**Role of Courts**

Courts in Bangladesh have referenced the CRC in two opinions that concern child abuse and exploitation. In these decisions, the courts have held the state accountable for not preventing child abuse and for violating children’s rights that are protected in the Constitution of Bangladesh, the CRC and other legal human rights instruments. The court was also very creative in its judgments, ordering a variety of different actions to address the issues:

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18 The cases available in English that discuss children’s rights and/or the Convention on the Rights of the Child include: a decision that struck down a law that required a marriage contract to legally recognize a family (see Ruling on the Compliance of the Provisions of the State Family Policy Concept as Approved by Resolution of the Siemas of the Republic of Lithuania, Constitutional Court of Lithuania (2008)); a decisions regarding Lithuania’s adoption procedures (see S. R., V. R. v. Lithuania, Supreme Court of Lithuania (2009)); a decision that recognizes a child’s right to housing and care provided by both parents even when the child is born outside of marriage (see A.D. (R.Z.) v. V.D. (M.F.), Supreme Court of Lithuania (2008)); and a decision that recognizes a child’s right to legal family relations from a deceased father’s relatives (see IB v. RR, Supreme Court of Lithuania (2004)).


21 Information provided by Justice Imman Ali, Supreme Court of Bangladesh, during visit to Cornell Law School on September 30, 2013. The Act is currently being published for dissemination to all relevant government offices.


23 Id.
• **Bangladesh Legal Aid and Services Trust v. Secretary of the Ministry of Education and others** – In this case, a NGO sued the Ministry of Education alleging abuse and failure of the Government to comply with statutory and constitutional duties to investigate allegations of corporal punishment. Corporal punishment was widespread in schools in Bangladesh, both public and private, and had led to a few student deaths. While its decision was pending, the court directed the Ministry of Education to “(i) submit reports with regards to the measures taken to investigate, prosecute and punish those involved in the incidents of corporal punishment, (ii) issue a circular to all to refrain from imposing corporal punishment, (iii) take actions to eliminate corporal punishment, and (iv) monitor (in order to prevent) the imposition of corporal punishment by randomly visiting schools unannounced.”24 The court then issued a decision finding that corporal punishment was a violation of children’s right to be free “from torture or . . . cruel, inhuman or degrading punishment or treatment” as outlined in article 35 of the Constitution of Bangladesh and a violation of article 28 of the CRC, which requires that “States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.”25 The court then prohibited corporal punishment not only in schools, but across all settings. Specifically the court:

  o Directed the “Ministry of Education to ensure inclusion of a provision [against using corporal punishment] within the Service Rules of all teachers of public and private educational institutions of the country, by incorporating the imposition of corporal punishment upon any students within the definition of ‘misconduct’.” Therefore, any teacher accused of using corporal punishment would be subject to a disciplinary proceeding and also criminally liability.26

  o Directed “the government . . . to consider amending the Children Act, 1974 to make it an offence for parents and employers to impose corporal punishment upon children.”27

  o Directed the government to repeal all laws that call for whipping and caning of any children and other persons including provisions in “the Penal Code, Code of Criminal Procedure, Railways Act, Cantonment Pure Food Act, Whipping Act, Suppression of Immoral Traffic Act, and Children Rules, 1976.”28

• **State v. Secretary, Ministry of Law, Justice & Parliamentary Affairs and Others** – This case involved a 7 year-old rape victim who was taken from her parents and placed in a government institution while the police investigation into her rape was pending. The government took custody of her, even though her parents were capable of keeping her in their care, because of the slow response time of the medical examiner’s office to examine

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26 Id. at 32.
27 Id. at 33.
28 Id.
the girl. The court, in its decision, not only found that the police and magistrate judge involved in the case had violated the CRC for failing to keep in mind the best interests of the child by returning her to her parents, but also took the opportunity to reprimand the government of Bangladesh for failing to implement other portions of the CRC and recommendations from the Committee on the Rights of the Child. The court made 34 recommendations to the government. Specifically in terms of recommendations concerning child abuse and exploitation, the court:

- Called for government officials, including “officials of the relevant Ministries and officials of the concerned Government Departments, law enforcing agencies, the judiciary, personnel in the detention and penitentiary system as well as community leaders and local government officials,” to be “aware and sensitised to the needs of children in contact with the law.”

- Called for all future trainings of judges and magistrates to “include the concept and practice of Justice for children as a separate topic giving it proper importance” and for the Judicial Administration Training Institution to create special trainings on national and international laws and treaties that involve children’s rights.

- Called for the “[e]stablishment of child-specific courts in every district which will be dedicated to cases relating to children and will deal with cases involving children on a priority basis and other cases only if there is no outstanding case of a child.”

- Directed that police receive sensitivity trainings and additionally that each “Police Station shall have at least two officers, of whom one shall be a female, to deal with cases involving children in contact with the law.”

- Called for the creation of “Detailed separate Rules under the Children Act, 1974[,] . . . which will deal with victim children and will specifically determine the duties and responsibilities of police officers, probation officers, the Court and others concerned in dealing with them.”

- Called for the establishment of a Children’s Commission/Ombudsmen under the Constitution whose responsibility it would be to “issue directions and guidelines to the subordinate judiciary and other bodies regarding any issues relevant to justice for children.” These guidelines are to then be translated into the local language and disseminated to all relevant bodies including the police and other

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29 See generally State v. Secretary, Ministry of Law, Justice & Parliamentary Affairs and Others, Supreme Court of Bangladesh, High Court Division, 31 (Sep. 2009), available at http://www.crin.org/docs/FileManager/State_-versus-Secretary_Ministry_of_Law_Justice_and_Parliamentary_Affairs_and_others.pdf.
30 Id. at 19.
31 Id. at 19, 22.
32 Id. at 20.
33 Id.
34 Id.
35 Id.
law enforcement and social welfare institutions. Additionally, a summary of these guidelines are to be displayed in all police stations.36

- Called on police officers to “work in close cooperation with Probation Officers, the safe homes and NGOs working in the field in the local area so that protection, safety and well-being of a victim child can be provided without any delay.”37

- Directed that whenever a child victim is brought into a police station, the Probation officer must determine “whether the child needs medical treatment or examination and whether the child is safe with its parent or guardian.”38 Additionally, if a medical examination is called for then the child must be taken directly to a hospital. In cases where the parent or guardian may be a threat to the child, then the child should be questioned without the parent or guardian present and then it should be determined whether it is in the best interests of the child for him/her to be returned home.39

- Directed the government to provide a “sufficient number of places of safety, at least one in every district, so that such a place of safety is easily accessible from any part of the country.”40

- Called on the “Ministry of Women and Children Affairs and Ministry of Social Welfare . . . [to] provide training for their own officers as well as for Probation Officers, Managers and concerned staff employed in the safe homes.”41

- Directed the government to enact laws “for victim and witness protection in order to avoid harassment of the victim children and to ensure effective prosecution of offenders, keeping in mind the need to maintain confidentiality, privacy and dignity.”42

- Called on the government to “ensure training in good parenting and for awareness development in the community to establish child protection.”43

- Directed ministries of the government to “consider the need to formulate community based committees to develop child protection mechanisms, skill development training, and training in child rights” and strengthen already existing community based programs.44

- Called on the government to institute victim rehabilitation programs.45

- Called on the government to take “take immediate steps to amend the existing laws or formulate new laws in order to overcome the anomalies and procedural knots . . . as well as to enable implementation of the provisions of the

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36 See id.
37 Id. at 21.
38 Id.
39 See id.
40 Id.
41 Id. at 22.
42 Id. at 23.
43 Id. at 22.
44 Id. at 23.
45 See id.
international instruments which will undoubtedly be beneficial to the children of this nation, thus fulfilling [Bangladesh’s] obligations under international treaties and covenants."46

South Africa

Law

The Convention on the Rights of the Child was signed by South Africa in January, 1993 and ratified on 16 June 1995. The Constitution of the Republic of South Africa (the “Constitution”) has a dedicated section that deals with children’s rights (section 28).47 The provisions contained in the Bill of Rights are also equally applicable to children unless specifically excluded. Additionally, two other statutes, the Children’s Act of 2005 and the Sexual Offense Act of 2007, incorporate provisions of the CRC and make explicit reference to the CRC in their preambles.48

The Children’s Act of 2005 is the main statute dealing with children’s rights. It specifically prohibits certain rituals that are entrenched in South African customary practice including female virginity testing and male circumcision.49 It also prohibits trafficking in children and has a mandatory referral requirement for an “immigration official, police official, social worker, social service professional, medical practitioner or registered nurse who comes into contact with a child who is a victim of trafficking.”50 In addition, the statute creates various enforcement mechanisms to prevent physical and sexual abuse. The Children’s Court created Children’s Courts (discussed infra) and a National Child Protection Register to record and monitor instances of child abuse.51 People whose names appear on the Register are prohibited from working in certain jobs where they would come into contact with children.52

The Sexual Offenses Act of 2007 regulates the adjudication of sexual offenses and provides provisions aimed at preventing child sexual abuse including a provision against statutory rape.53 Provisions related to evidence in sexual assault cases include one against making any inference

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46 Id.
48 “AND WHEREAS the need to extend particular care to the child has been stated in . . . the Convention on the Rights of the Child.” Children’s Act 38 of 2005 (South Africa), preamble; and “WHEREAS several international legal instruments, including the . . . United Nations Convention on the Rights of the Child, 1989, place obligations on the Republic towards the combating and, ultimately, eradicating of abuse and violence against women and children.” Criminal Law (Sexual Offences and Related Matters) Amendment Act (South Africa), preamble.
49 See Children’s Act 38 of 2005 (South Africa), § 12.
50 Id. ch. 18 and § 288.
51 Specifically, the goals of the Register are to: “to (a) have a record of abuse or deliberate neglect inflicted on specific children; (b) to have a record of the circumstances surrounding the abuse or deliberate neglect inflicted on the children referred to in paragraph (a); (c) to use the information in the Register in order to protect these children from further abuse or neglect; (d) to monitor cases and services to such children; 5 (e) to share information between professionals that are part of the child protection team; (f) to determine patterns and trends of abuse or deliberate neglect of children; and (g) to use the information in the Register for planning and budgetary purposes to prevent the abuse and deliberate neglect of children and protect children on a national, provincial and municipal level.” Id. § 113.
52 See id. at § 123.
53 See Criminal Law (Sexual Offences and Related Matters) Amendment Act (South Africa), § 59.
from a victim’s delay in reporting and one that abolishes a rule that required the corroboration of a victim’s testimony in sexual violence cases. The Act also provides for the creation of a national registry of sex offenders and for mandatory reporting to the police for any person who knows that a sexual offense has been committed against a child. Finally, it provides for compulsory HIV testing of alleged sex offenders and the provision of post-exposure prophylactic medication to victims.

Application

- **Department of Women, Children and People with Disabilities** – The Department was established in 2009 to help streamline efforts to advance the rights of these groups. In relation to children, the goals of the Department are to promote the realization and protection of children’s rights; coordinate and partner with all government departments, civil society groups and the private sector and monitor and evaluate their performance; set norms and standards for the social, political and economic transformation necessary to achieve these goals; accelerate the implementation of international obligations on children’s rights; advance international cooperation for the promotion and protection of children’s rights; and initiate and facilitate the implementation of research and programs for the empowerment of children. The U.N. Human Rights Council has also suggested that the Department be “empowered to coordinate actions amongst various Government agencies to address the issue of gender-based violence” in the future.

- **Family Violence, Child Protection and Sexual Offences Unit (FCS)** – South Africa has specialized police units to handle domestic violence, child abuse and sexual abuse cases. The officers in these units received special training and have developed relationships with NGOs that provide supportive services on the ground. Although these units have gone through restructuring over the years, a study of 2,068 cases filed in 2003 suggests that the cases handled by the FCS units were much more likely to result in arrest and conviction than cases handled by regular police officers. Originally these units were in a victim-friendly location separate from police stations (except in rural areas), but were integrated into regular police stations in 2006. That change has now been reversed in the hopes that it will improve conviction rates for the types of cases that FCS units handle.

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54 See id. §§ 15 – 22.
55 Id. § 60.
56 Id. ch. 6.
57 A number of other African countries, including Botswana, Ghana, Mauritius, and Uganda, have also adopted laws that mandate reporting of child abuse. See Children’s Act No. 8 of 2009 (Botswana), §§ 25(2) & 43; Children’s Act of 1998 (Ghana), § 17; Child Protection Act No. 30 of 1994 (Mauritius), § 11 (applies to members of school staff and medical or paramedical professions); The Children’s Act, ch. 59 (Uganda), § 11.
58 See Criminal Law (Sexual Offences and Related Matters) Amendment Act (South Africa), ch. 5.
62 See id. at 5-6.
• **Thuthuzela Care Centres** – These centres are based at major hospitals throughout South Africa and are under the supervision of the National Prosecuting Authority’s Sexual Offence and Community Affairs Division. They centralize the reporting, examination, and counseling functions needed by victims of sexual assault. The Centres have also played an important role in monitoring cases and recording data, which has enabled justice system actors to receive feedback from victims and to track the progress of cases, which in turn has enabled the government to identify and address problems in the criminal justice process.

• **National Post-Exposure Prophylaxis Protocol** – In 2002, the government instituted a program to provide Post-Exposure Prophylaxis (PEP) drugs to sexual assault victims over the age of 14 (and in some places to sexual assault victims of all ages) to prevent their risk of contracting HIV. Unfortunately, there have been issues with the program’s implementation (e.g., requiring that victims report to the police first, not having enough centers across the country where the drugs are available, suffering from poor funding, etc.), but improvements have been made since the program started in 2002.

**Role of the Courts**

• **Sexual Offences Courts** – Sexual Offences Courts were established in 1993 and by the end of 2005 there were 74 specialized courts. Some of the courts were designated to work specifically with child victims and were considered child friendly. For example, the courts were equipped with closed-circuit TV facilities that allowed children to give their testimony in another room away from the accused; had separate waiting areas for the victim and the accused; had prosecutors trained to handle sexual assault cases; and hosted other support services for the victim and their family. One study of these courts found that they had improved access to justice in child sex abuse cases, with more expeditious proceedings and better conviction rates. The success of these courts led to
concerns that they had more resources and fewer caseloads than general courts. Yet at the same time, these courts often lacked the additional resources needed for trying sexual assault cases and the magistrates who presided over them were not given support and coping strategies for dealing with the traumatic effects of working on sexual assault cases. Additionally, magistrates felt that working solely on sexual assault cases did not give them exposure to other areas of the law and was career limiting. As a result of the many criticisms, the government closed some courts and directed others to hear cases other than sexual assault cases. However, following criticisms of their closures, the Department of Justice and Constitutional Development appointed a Task Team to examine the effects of dismantling the sexual offences courts. The Task Team’s report concluded that the courts were necessary to ensure an adequate response to the needs of sexual assault victims, and as a result the government of South Africa promised to reintroduce twenty-two Sexual Offences Courts by the end of 2014.

- **Children’s Courts** – As mentioned supra, the Children’s Act allows for the creation of Children’s Courts to adjudicate non-criminal matters relating to the support and well-being of children, including child abuse and neglect, adoption, custody and guardianship. Every magistrate court in South Africa is authorized to sit as a Children’s Court. The Act also outlines the court procedures for these Children’s Courts to ensure that the children are safe for the duration of the court proceedings and to protect children during testimony by using intermediaries and preventing children from being forced to give unnecessary testimony or from being harassed with unnecessary questions while on the witness stand. The Act directs magistrates to always find for the “best interest of the child” when deciding custody cases.

- **Christian Education South Africa v Minister of Education** – South Africa’s Constitutional Court has also been effective at protecting children’s rights and preventing child abuse

Authority over the past year found a 42% conviction rate for rape in all regional courts as compared with a 62% conviction rate in sexual offences courts. See also MINISTERIAL ADVISORY TASK TEAM ON THE ADJUDICATION OF SEXUAL OFFENCE MATTERS, REPORT ON THE RE-ESTABLISHMENT OF SEXUAL OFFENCES COURTS 24 (August 2013), available at http://www.info.gov.za/view/DownloadFileAction?id=196023.

68 For example, magistrates often allowed their own chambers to be used as waiting rooms for victims because the courthouses did not have enough room for separate waiting rooms for victims and the accused. The closed circuit televisions were also often dysfunctional because funds were not available for their upkeep and maintenance. See MINISTERIAL ADVISORY TASK TEAM ON THE ADJUDICATION OF SEXUAL OFFENCE MATTERS, supra note 67, at 68-69, 86-91.


70 See id.

71 See generally id.


73 See Children’s Act 38 of 2005 (South Africa), §§ 45 & 48 and see generally ch. 4.


75 See Children’s Act 38 of 2005 (South Africa), §§ 47, 60 & 61.

76 See id. §§ 22-29.
and exploitation. For example, in *Christian Education South Africa v Minister of Education*, religious schools had sued the government alleging that the government’s ban on corporal punishment against children in schools was an infringement of their religious rights. The Court in its decision:

- Determined that the Christian schools’ religious rights had been infringed on by the government, but that the infringement was allowed under the Constitution. The Court applied a balancing test where “limitations on constitutional rights can pass constitutional muster only if the Court concludes that, considering the nature and importance of the right and the extent to which it is limited, such limitation is justified in relation to the purpose, importance and effect of the provision which results in this limitation, taking into account the availability of less restrictive means to achieve this purpose.”

- Applied the balancing test and held that the government’s “prohibition of corporal punishment is part and parcel of a national programme to transform the education system to bring it into line with the letter and spirit of the Constitution,” and that “[t]he creation of uniform norms and standards for all schools, whether public or independent, is crucial for educational development.”

- Further held that the government has an additional obligation “to diminish the amount of public and private violence in society generally” and “undertook [a duty] to take all appropriate measures to protect the child from violence, injury or abuse” when it ratified the Convention on the Rights of the Child. The Constitution of South Africa requires the State to “take appropriate steps to reduce violence in public and private life. Coupled with its special duty towards children, this obligation represents a powerful requirement on the state to act.”

• **Roles of Non-specialized Courts** – Non-specialized courts in South Africa also play a role in protecting a child’s right to be free from abuse and neglect among other rights. Besides enforcing the various laws affecting children’s rights discussed supra, the high courts are the first to hear constitutional claims involving children’s rights. Also, in one important case, the Supreme Court of Appeal found that an adult victim was allowed to proceed with a civil claim against her sexual abuser thirty-two years after the incidents took place.

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78 *Christian Education South Africa v Minister of Education* 2000 CC at ¶ 31(S. Afr.).
79 *Id.* ¶ 39.
80 *Id.* ¶ 40.
81 *Id.* ¶ 47.
3. Conclusion

The countries discussed above have used a variety of mechanisms to implement the provisions of the CRC to protect children from abuse and exploitation. However, in every country, the courts have played a major role in ensuring that their governments uphold their obligations to protect and promote children’s rights.