

## ACCESS TO JUSTICE FOR CHILDREN: ANTIGUA AND BARBUDA

*This report was produced by White & Case LLP in December 2013 but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.*

### I. **What is the legal status of the Convention on the Rights of the Child (CRC)?**

#### A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Antigua and Barbuda ratified the CRC on 5 October 1993. In addition, Antigua and Barbuda has ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2002, but so far has not ratified the Optional Protocol on children in armed conflict or the Optional Protocol on a communications procedure.

This Constitution is the supreme law of Antigua and Barbuda and prevails over any other laws which come in conflict with it. Laws inconsistent with the Constitution are considered void to the extent of the inconsistency.<sup>1</sup>

Antigua and Barbuda has a dualist legal system with regard to the status of international treaties in the national legal system and international instruments require incorporation into national law in order to be directly applicable. The CRC has not been fully incorporated into Antigua and Barbuda's national legal system and therefore does not take precedence over national laws.

#### B. Does the CRC take precedence over national law?

As the CRC has not been fully incorporated into Antigua and Barbuda's national legal system it does not take precedence over national laws. Antigua and Barbuda's legal system follows the dualist tradition and therefore international instruments do not automatically take precedence over national law upon ratification.

#### C. Has the CRC been incorporated into national law?

The CRC has not been fully incorporated into national law. However, some provisions of the CRC have been implemented into legislation, especially by way of the Maintenance of and Access to Children Act (2008).<sup>2</sup> Other pieces of legislation have been adopted in an effort to enhance implementation of the Convention:

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<sup>1</sup> Constitution of Antigua and Barbuda (1981), section 2, available at: [http://www.ab.gov.ag/pdf/ab\\_constitution.pdf](http://www.ab.gov.ag/pdf/ab_constitution.pdf).

<sup>2</sup> Maintenance of and Access to Children Act (2008), Section 2, available at: [http://laws.gov.ag/bills/2008/Maintenance\\_of\\_and\\_Access\\_to\\_Children.pdf](http://laws.gov.ag/bills/2008/Maintenance_of_and_Access_to_Children.pdf).

- Sexual Offences Act (1995), protecting children from sexual abuse;
- Domestic Violence Act (1999), protecting the rights of children and women from domestic violence;
- Magistrates Code of Procedure (Amendment) Act (1993), ensuring adequate payment of child maintenance by absent fathers; and
- The Maintenance of and Access to Children Act (2008), ensuring children receive sufficient maintenance and protection.

In addition, Antigua and Barbuda has established a National Committee on the Rights of the Child to facilitate further implementation of the Convention.<sup>3</sup>

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

No, the CRC cannot be directly enforced in the courts. In a 2012 case heard by the Eastern Caribbean Supreme Court (ECSC),<sup>4</sup> the ECSC rejected an argument that the Convention on the Rights of the Child could be enforced directly domestically, commenting that "the Respondent is contending that the mere ratification of the United Nations Convention is sufficient to clothe it with the status of domestic law".<sup>5</sup> Nonetheless, the Court in the same judgment came to the conclusion that it had jurisdiction to determine the case based on the Inter-American Convention on the International Return of Children as the Inter-American could, according to the Court, be considered part of domestic law of Antigua and Barbuda as nothing in the domestic law conflicted with the treaty.<sup>6</sup>

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

The research undertaken did not produce any examples of domestic courts in Antigua and Barbuda using or applying the CRC, apart from the ECSC case mentioned in the above section in which the judge referred to the respondent's argument regarding the CRC, but did not decide whether the Convention could be applied directly in Antigua and Barbuda.<sup>7</sup>

I. **What is the legal status of the child?**

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<sup>3</sup> UN Committee on the Rights of the Child, *Concluding observations on the first periodic report of Antigua and Barbuda*, CRC/C/15/Add.247, 3 November 2004, para. 5, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.247&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.247&Lang=en).

<sup>4</sup> The Eastern Caribbean Supreme Court (ECSC) consists of a Court of Appeal and a High Court of Justice, both of which have such jurisdiction and powers as may be conferred on it by member states which includes Antigua and Barbuda. Judgments of the ECSC shall have full force and effect, and may be executed and enforced in any of the member states. See Sections 4 and 9 in particular of the Supreme Court Order, UK Statutory Instrument No. 223 of 1967. See: <http://www.eccourts.org/>.

<sup>5</sup> The Eastern Caribbean Supreme Court in the High Court of Justice, Antigua and Barbuda, *The Attorney General of Antigua and Barbuda v. Michael Moore*, Claim No. ANUHCv, 11 April 2012, para. 31, available at: <http://www.eccourts.org/the-attorney-general-of-antigua-and-barbuda-v-michael-moore/>.

<sup>6</sup> *Ibid.*, para. 28.

<sup>7</sup> *Ibid.*, paras. 108 and 112.

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Proceedings are considered to involve a child if the child is (i) the subject of the proceedings; (ii) a witness in court proceedings; (iii) a person aggrieved by or the victim of the alleged abuse or neglect in the proceedings.<sup>8</sup>

There is some controversy between the different laws of Antigua and Barbuda regarding the age of majority, but it appears that 18 is now regarded as the generally accepted legal age.<sup>9</sup>

Children are not permitted to bring a challenge in the courts by themselves. A legal challenge can be brought by the representative of the child concerned, or by the Childcare and Protection Agency, established by the Childcare Protection Act (2003).<sup>10</sup>

Challenges on behalf of children by their representatives can be brought to counter violations of children's fundamental rights enshrined in the Constitution which states that "every person in Antigua and Barbuda is entitled to the fundamental rights and freedoms of the individual", thereby including children.<sup>11</sup>

It is unclear whether children may also challenge criminal offences directly through their representatives, or if prosecutions may only be initiated by the Director of Public Prosecutions. Section 88 of the Constitution seems to suggest that private prosecutions are available in Antigua and Barbuda by stating that the "Director of Public Prosecutions shall [...] have power in any case in which he considers it proper to do so (a.) to institute and undertake criminal proceedings against any person before any court [...] in respect of any offence against any law; (b.) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority c. to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority".<sup>12</sup> Yet, the Criminal Procedure Act does not mention the possibility of private prosecutions.<sup>13</sup>

Complaints by children's representatives may also be lodged with the Ombudsman's office which is provided for by the Constitution.<sup>14</sup> The Ombudsman's mandate is "to impartially and efficiently investigating complaints of members of the public against unjust administrative decisions

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<sup>8</sup> Childcare Protection Act (2003), section 27(3), available at: <http://laws.gov.ag/acts/2003/a2003-29.pdf>.

<sup>9</sup> *Combined second, third and fourth periodic reports of Antigua and Barbuda to the UN Committee on the Rights of the Child*, CRC/C/ATG/2-4, 10 July 2014, paras. 38-39, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fATG%2f2-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fATG%2f2-4&Lang=en).

<sup>10</sup> Childcare Protection Act, section 3. Civil society participated in the consultations prior to the adoption of the bill.

<sup>11</sup> Constitution, section 3.

<sup>12</sup> Constitution, section 88(1).

<sup>13</sup> Criminal Procedure Act (1873), available at: <http://laws.gov.ag/acts/chapters/cap-117.pdf>.

<sup>14</sup> Constitution, section 66.

of officers of Government or Statutory Bodies with a view to righting wrongs and so contribute to good governance and the further development of the democratic process in the Country”.<sup>15</sup>

- B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

As noted above in section II.A., children under the age of 18 are not permitted to bring a case in court by themselves, but a legal challenge can be brought by the representative of the child concerned or by the Childcare and Protection Agency, established by the Childcare Protection Act (2003).<sup>16</sup>

Where authorised in writing by the Director of the Agency, the Director or an employee of the Agency may assist persons or authorities: (i) to file a case against any person involved in abuse or neglect of a child; (ii) for the purpose of placing a child affected by abuse or neglect in foster care or protective custody; (iii) in any case of imminent harm or injury or risk of abuse or neglect, by the removal of a child to a place of safety as may be ordered by a court or with the consent of the person having lawful custody of the child.<sup>17</sup> It is not clear whether such assistance would be either professional or financial, or if it could potentially be both. The Agency is also obligated to provide assistance to persons who report instances of child abuse or neglect.<sup>18</sup>

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

In the case of infants and young children, cases would typically be brought by the representative of the child, or by the Childcare and Protection Agency on the child's behalf, as described in section II.B. above.

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

According to the Legal Profession Act, the Antigua and Barbuda Law Association may provide representation as part of a legal aid programme to qualifying members of the public.<sup>19</sup> The Bar Association may do so either independently or in collaboration with the government.<sup>20</sup> More information on legal aid in Antigua and Barbuda is provided in response to sections IV.B. and IV.C. below.

- E. Are there any other conditions or limits on children or chosen legal

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<sup>15</sup> See Ombudsman's mission statement: <http://www.ombudsman.gov.ag/info.php?aid=13>; Ombudsman Act (1994), available at: <http://laws.gov.ag/acts/1994/a1994-5.pdf>.

<sup>16</sup> Childcare Protection Act, section 3. Civil society participated in the consultations prior to the adoption of the bill.

<sup>17</sup> Childcare Protection Act, section 12(a)-(b).

<sup>18</sup> Childcare Protection Act, section 16.

<sup>19</sup> Legal Profession Act (2008), section 5(g), available at: <http://laws.gov.ag/acts/2008/a2008-22.pdf>.

<sup>20</sup> Ibid.

representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

According to the Maintenance of and Access to Children Act, any Court hearing an application made pursuant to the Act, “shall consider the best interest of the child in all circumstances”.<sup>21</sup>

It does not appear that a child's parents or guardian would have to agree in order for a case to be brought on behalf of that child, though this is not stated expressly in the law. The Child Protection Agency is empowered to investigate abuse or neglect of a child, or a child's need for protection, whether or not an allegation, complaint or report has been made.<sup>22</sup> Furthermore, the Agency may take such other measures as will ensure the safety and welfare of the child.<sup>23</sup>

The UN Committee on the Rights of the Child in 2004 voiced concern over insufficient consideration given to the views of the child in administrative and judicial decisions in Antigua and Barbuda and recommended that legislation be amended so that the principle of respect for the views of the child is recognised and respected, inter alia, within custody disputes and other legal matters affecting children.<sup>24</sup>

### III. **How can children’s rights violations be challenged before national courts?**

#### A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Any parent or person who assumes responsibility for a child<sup>25</sup> must ensure that the child is protected from all forms of neglect, abuse and exploitation, and any contravention of this obligation may be prosecuted pursuant to Section 5 of the Juvenile Act,<sup>26</sup> and such cases would be filed by children’s representatives on behalf of the child in the Magistrate's Court. Any parent or person who assumes responsibility for a child may also apply to the Magistrate's Court for an order relating to child maintenance or access.<sup>27</sup>

Any person who alleges that a provision of the Constitution has been or is being contravened may, if he or she has a relevant interest, make an application to the High Court.<sup>28</sup> A person is regarded as having a relevant interest for the purpose of an application only if the contravention of the

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<sup>21</sup> Maintenance of and Access to Children Act, section 8.

<sup>22</sup> Childcare and Protection Act, section 12(a).

<sup>23</sup> Childcare and Protection Act, section 12(c).

<sup>24</sup> UN Committee on the Rights of the Child, *Concluding observations on the first periodic report of Antigua and Barbuda*, paras. 31-32.

<sup>25</sup> A person assumes responsibility for a child if he or she marries one of the parents of the child and that child resides with him or her and the parent that he or she marries, or if he or she has custody of or is the guardian of a child, whether by court order or otherwise, and whether temporarily or permanently. See Maintenance of and Access to Children Act, section 3(4).

<sup>26</sup> Maintenance of and Access to Children Act, section 3(2).

<sup>27</sup> Maintenance of and Access to Children Act, section 6(2).

<sup>28</sup> Constitution, section 119(1).

Constitution alleged by him or her directly affects his or her interest.<sup>29</sup> The rights conferred on a person to apply for a declaration and relief in respect of an alleged contravention of the Constitution are in addition to any other action in respect of the same matter that may be available to that person under any other law or any rule of law.<sup>30</sup> Where any question as to the interpretation of the Constitution arises in any court of law established for Antigua and Barbuda (other than the Court of Appeal, the High Court or a court-martial) and the court is of the opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the High Court.<sup>31</sup>

Children's representatives may also lodge a complaint against public bodies with the Ombudsman's office.<sup>32</sup> According to the Ombudsman's office, typical complaints include allegations of profiling and discrimination, conditions in detention, non-payment of child support, bias and lack of professionalism by public officers, police misconduct, and health hazards.<sup>33</sup>

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),<sup>34</sup> on their behalf or on behalf of third persons, regarding alleged violations of the American Declaration of the Rights and Duties of Man<sup>35</sup> and other Inter-American human rights instruments,<sup>36</sup> but not regarding the American Convention on Human Rights (ACHR) as Antigua and Barbuda has not ratified the ACHR.<sup>37</sup> A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.<sup>38</sup> The petition must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, the name(s) of the victim(s) if possible, and whether the petitioner wishes to remain anonymous and the respective reasons.<sup>39</sup> The victim may designate a lawyer or other person to represent him/her before

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<sup>29</sup> Ibid., section 119(5).

<sup>30</sup> Ibid., section 119(6).

<sup>31</sup> Ibid., section 120(1).

<sup>32</sup> Constitution, section 66.

<sup>33</sup> See: <http://www.ombudsman.gov.ag/complaints.php?aid=11>.

<sup>34</sup> The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a "dual role" as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at:

[http://www.oas.org/dil/treaties\\_A-41\\_Charter\\_of\\_the\\_Organization\\_of\\_American\\_States.htm](http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm); American Convention on Human Rights, 'Pact of San Jose, Costa Rica', Chapter VII, available at: [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

<sup>35</sup> Available at: <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>.

<sup>36</sup> Statute of the Inter-American Commission on Human Rights, Section IV, available at:

<http://www.oas.org/en/iachr/mandate/Basics/statuteiachr.asp>.

<sup>37</sup> American Convention on Human Rights, Signatories and Ratifications, available at:

[http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm).

<sup>38</sup> Rules of Procedure of the Inter-American Commission on Human Rights, Articles 31-32, available at:

<http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

<sup>39</sup> Ibid., Article 28.

the IACHR, but this is not compulsory.<sup>40</sup> When a petition is declared admissible, the IACHR attempts to reach a “Friendly Settlement” between the parties concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the human rights violations, making reparations, and/or making changes to the law.

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

Under the Juvenile Act, if any adult who has custody, charge, or care of any juvenile wilfully assaults, ill-treats, neglects, abandons or exposes such juvenile, or causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause that juvenile unnecessary suffering or injury to health, such adult shall be guilty of a misdemeanor and shall be liable as follows: (i) upon conviction such adult shall pay a fine not exceeding \$5000 or shall go to prison with hard labor for up to two years, or both; (ii) upon summary conviction such adult shall pay a fine not exceeding \$1500 or shall go to prison with hard labor for up to three months, or both. Where appropriate, adults will also be liable in accordance with general criminal laws contained in the Offences against the Persons Act.<sup>41</sup> Such orders would typically be handed down by the Juvenile Court which also has the power to make orders to protect the welfare of the affected child by committing him or her to the care of any other fit person willing to undertake his or her care, requiring his or her parents or guardian to enter into a recognizance to exercise proper care and guardianship or by placing him or her, under the supervision of a probation officer.<sup>42</sup> The Juvenile Court can also make any necessary interim order to protect the welfare of a child.<sup>43</sup>

The High Court has jurisdiction on an application of a person alleging a violation of the Constitution to determine whether any provision of the Constitution has been or is being contravened and to make a declaration accordingly.<sup>44</sup> In proceedings regarding violations of the fundamental rights enshrined in the Constitution where the High Court makes a declaration that a provision of the Constitution has been breached and if the person on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy as it considers appropriate, being a remedy available generally under any law in proceedings in the High Court.<sup>45</sup>

If the Ombudsman finds that the rights of the complainant have been violated, he must report his opinion, and his reasons therefore, to the appropriate government department, division or statutory body, and may make such recommendations as he thinks fit. He can request the government department to notify him, within a specified time, of the steps, if any, that it

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<sup>40</sup> Ibid., Article 23.

<sup>41</sup> Juvenile Act (1951), section 5, available at: <http://laws.gov.ag/acts/chapters/cap-229.pdf>.

<sup>42</sup> Ibid., section 9(1).

<sup>43</sup> Ibid., section 9(3).

<sup>44</sup> Ibid., section 119(2).

<sup>45</sup> Constitution, section 119(3).

proposes to take to give effect to his recommendations and the Ombudsman shall also send a copy of his report and recommendations to the Minister concerned.<sup>46</sup> If no action is taken by the addressee of the Ombudsman's report, he can complain to the Prime Minister, and if the Prime Minister does not respond, he can bring his report directly in front of parliament.<sup>47</sup> The Ombudsman cannot himself rectify any rights violation or bring the matter directly in front of the courts.

- C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

It does not appear to be envisaged in any of the laws of Antigua and Barbuda that a law would be challenged without naming a specific victim. Section 25 of the Magistrate's Code of Procedure provides that "[e]very complaint shall be for one *matter* only..." (emphasis added),<sup>48</sup> which would indicate that cases must pertain to a specific child and/or event.

Nonetheless, the privacy of children in legal proceedings is guaranteed by the Childcare and Protection Act which provides that "no person shall publish any information relating to the proceedings [...] in a manner that discloses [...] the name of the child or any information from which the identity of the child may be inferred".<sup>49</sup>

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

Collective or group action does not appear to be possible. Section 25 of the Magistrate's Code of Procedure provides that "[e]very complaint shall be for one matter only and not for two or more matters".<sup>50</sup> However, two or more complaints may be laid against the same person at the same time, and the Magistrate hearing the complaint may deal with such complaints either together or separately.<sup>51</sup>

- E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

It does not appear to be possible for NGOs to file challenges with respect to potential children's rights violations, given that there must be a "matter" before the court (see section III.C.). With respect to interventions by NGOs, there are no provisions relating to amicus briefs in the Magistrate's Code of Procedure, nor the court rules of the ECSC.

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<sup>46</sup> Ombudsman Act, section 12(3).

<sup>47</sup> Ibid., section 12(4).

<sup>48</sup> Magistrate's Code of Procedure (1892), section 25, available at: <http://laws.gov.ag/acts/chapters/cap-255.pdf>.

<sup>49</sup> Childcare and Protection Act, section 27(2).

<sup>50</sup> Magistrate's Code of Procedure, section 25.

<sup>51</sup> Ibid.



#### IV. Practical considerations.

- A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Cases involving alleged violations of the welfare of a child and cases seeking protective orders should be filed in the Juvenile Court.<sup>52</sup> Juvenile Courts must be held elsewhere than in the buildings used for the Magistrate's Court, but cases shall be heard by the local Magistrate and "assessors".<sup>53</sup> Where another court hears a case involving a juvenile, the court shall have all the powers of a Juvenile Court.<sup>54</sup> The filing process in the Magistrate's and Juvenile Court requires the submission of written briefs and argument.<sup>55</sup>

All complaints to the Ombudsman and requests for investigation must be made in writing.<sup>56</sup> Before bringing a complaint before the Ombudsman, children and their representatives must ensure that they have exhausted all available avenues for hearings and reviews by the public body whose misconduct is being alleged.<sup>57</sup>

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

One of the purposes of the Antigua and Barbuda Bar Association is the provision of a legal aid programme, either independently or with government, to qualifying members of the public.<sup>58</sup> Where an attorney consents to provide legal aid to a person who is unable to afford legal advice, the attorney must not other than for compelling reasons seek to be excused from undertaking that representation.<sup>59</sup>

The Antigua and Barbuda Bar Association is a member of the Organization of Eastern Caribbean States Bar (OECS) Association, which includes as one of its objectives "to encourage the establishment of schemes of legal aid."<sup>60</sup>

The Ministry of Legal Affairs is tasked with running a Legal Aid Advice Centre which connects persons seeking free legal advice with lawyers and paralegals.<sup>61</sup> Yet, we have been unable to locate any information regarding the functioning or efficiency of this scheme.

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<sup>52</sup> Juvenile Act, sections 8 & 9.

<sup>53</sup> Juvenile Courts Act (1948), section 2, available at: <http://laws.gov.ag/acts/chapters/cap-230.pdf>.

<sup>54</sup> Juvenile Act, section 30.

<sup>55</sup> Magistrate's Code of Procedure, section 24.

<sup>56</sup> Ombudsman Act, section 6(1).

<sup>57</sup> Ombudsman Act, section 5(4)(a).

<sup>58</sup> Legal Profession Act, section 5(g).

<sup>59</sup> Legal Profession Act, section 18.

<sup>60</sup> Official Website available at: <http://www.oecsbar.org/>.

<sup>61</sup> See: [http://www.ab.gov.ag/article\\_details.php?id=310&category=54](http://www.ab.gov.ag/article_details.php?id=310&category=54).

- C. **Pro bono / Financing.** If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

It is unclear whether the legal aid programme run by the Antigua and Barbuda Bar Association (see above section) could be qualified as strictly legal aid or rather the provision of pro bono legal representation by lawyers through the Antigua and Barbuda Bar Association. It is therefore advisable to read the above section in conjunction with this section.

It also appears that the Child Protection Agency would be able to assist persons or authorities to engage in court proceedings involving children's rights (see section II.A.).<sup>62</sup>

- D. **Timing.** How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

There do not appear to be any specific limitation periods for cases involving violations of children's rights.

A criminal case must be brought to the Magistrate's Courts within six months from the time when the matter of the charge arose in the case of criminal summary jurisdiction, unless otherwise provided in the Act or law relating to the particular case.<sup>63</sup>

The time limitation for civil proceedings is six years, unless there has been an acknowledgement or undertaking to pay or be bound by the responding party during those six years.<sup>64</sup> Under the Limitation Act, there is a three year limit imposed with respect to any claims for damages for negligence causing personal injury.<sup>65</sup> The period is three years from the date on which the cause of action accrued or the date of knowledge.<sup>66</sup> There are no provisions in the Criminal Procedure Act which would regulate limitation periods for criminal proceedings<sup>67</sup> and we were unable to locate a copy of the Criminal Law Act online.

- E. **Evidence.** What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

Generally, the usual rules of evidence, as contained in the Evidence Act, apply to proceedings involving children, for example regarding the taking of

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<sup>62</sup> Childcare and Protection Act, section 12.

<sup>63</sup> Magistrate's Code of Procedure Act, section 75.

<sup>64</sup> Ibid., section 149.

<sup>65</sup> Limitation Act (1997), section 13, available at: <http://laws.gov.ag/acts/1997/a1997-8.pdf>.

<sup>66</sup> Ibid.

<sup>67</sup> Criminal Procedure Act.

witness statements, party testimony and documentary evidence.<sup>68</sup> Yet some exceptions to these rules do exist and are provided by the Childcare and Protection Act, the Sexual Offences Act and the Maintenance of and Access to Children Act.

The Childcare and Protection Act guarantees the privacy of children in legal proceedings by providing that “no person shall publish any information relating to the proceedings [...] in a manner that discloses [...] the name of the child or any information from which the identity of the child may be inferred”.<sup>69</sup>

If a "child of tender years" is called as a witness and it appears to the court that the child does not understand the nature of an oath, his or her evidence may still be used if it is determined that he is of sufficient intelligence and understands the duty of speaking the truth.<sup>70</sup> Where such evidence is admitted by the prosecution, the accused may not be convicted of the relevant offence unless there is corroborating evidence.<sup>71</sup> In certain cases concerning decency or morality, if a child is called as a witness, the court may direct that all or any persons be excluded from the court while evidence is taken from the child.<sup>72</sup> A court may also take evidence via a written deposition if it is satisfied, based on the evidence of a medical practitioner, that attendance in court would seriously endanger the child's life or health.<sup>73</sup> Particular procedural rules also apply with respect to giving the accused notice of evidence given by a child via written deposition.<sup>74</sup>

The Maintenance of and Access to Children Act provides that the views of the child may be heard in private if the child is 13 years or older and the court decides to hear evidence from the child.<sup>75</sup>

The Sexual Offences Act contains special provisions with regard to child victims of sexual abuse giving evidence. Any proceedings in respect of an offence involving a child shall be heard in camera unless the court otherwise directs.<sup>76</sup> In addition, the identity of any complainant of a sexual offence must be kept from the public and may not be reported in the media.<sup>77</sup>

Every investigation by the Ombudsman must be conducted in private.<sup>78</sup>

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

The Childcare and Protection Act provides that in all matters relating to a

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<sup>68</sup> Evidence Act, available at: <http://www.laws.gov.ag/acts/chapters/cap-155.pdf>.

<sup>69</sup> Childcare and Protection Act, section 27(2).

<sup>70</sup> Juvenile Act, section 24(1).

<sup>71</sup> Juvenile Act, section 24(1).

<sup>72</sup> Juvenile Act, section 25(1).

<sup>73</sup> Juvenile Act, section 26(1).

<sup>74</sup> See, for example, Juvenile Courts Act, sections 27 and 28.

<sup>75</sup> Maintenance of and Access to Children Act, section 8(2).

<sup>76</sup> Sexual Offences Act (1995), section 26, available at: <http://laws.gov.ag/acts/1995/a1995-9.pdf>.

<sup>77</sup> Ibid., section 29(1).

<sup>78</sup> Ombudsman Act, section 7(2).

child, whether before a court or any other authority, "regard shall be had to the need to determine the matter without undue delay in order to ensure that the welfare of the child is not prejudiced or adversely affected by the delay."<sup>79</sup>

It might take a considerable amount of time to receive a decision by the Ombudsman's office as it has reportedly been lacking resources. According to some reports, the Ombudsman's office received greater resources during the year 2013 than prior years, but remained under resourced.<sup>80</sup>

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

Decisions by a Juvenile Court or Magistrate's Court<sup>81</sup> and decisions of the High Court relating to the enforcement of the fundamental rights and freedoms of the Constitution<sup>82</sup> can all be appealed to the Court of Appeal of the Eastern Caribbean Supreme Court (ECSC), which has unlimited jurisdiction to decide civil and criminal cases and hear appeals from parties to legal proceedings in Antigua and Barbuda. The ECSC consists of two divisions: a High Court in Antigua and Barbuda (and other members of the Organisation of Eastern Caribbean States), and a single Court of Appeal, headquartered in St Lucia. An appeal to the High Court is made by issuing a fixed date claim form with a grounds of appeal attached.<sup>83</sup> An appeal to the Court of Appeal from the High Court or the Magistrate's or District Court is made by filing a notice of appeal within 42 days of the date of the judgment or order.<sup>84</sup>

Finally, decisions can be appealed to the Judicial Committee of the Privy Council in the United Kingdom, which is the highest court of appeal for Antigua and Barbuda. Appeals are made to Her Majesty in Council by filing a notice of appeal within 56 days of the order or decision of the court below granting permission or final leave to appeal, or within 14 days of the grant by the Judicial Committee of permission to appeal, depending on the nature of the case.<sup>85</sup> In civil cases, the lower court will generally grant leave to appeal if the court is satisfied that the case raises a point of general public importance. In criminal cases, the lower court will generally grant leave only if the case raises questions of great and general importance, or there has been some grave violation of the principles of natural justice. In the absence of leave, permission to appeal must be granted by the Board (panel of judges hearing the case). In some cases there is an appeal as of right and a different

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<sup>79</sup> Childcare and Protection Act, section 25(2).

<sup>80</sup> US State Department, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Antigua and Barbuda*, section 5, available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220413#wrapper>.

<sup>81</sup> Magistrate's Code of Procedure Act, section 166.

<sup>82</sup> Constitution, section 121.

<sup>83</sup> Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Rule 60.2; for more information on the particular requirements, see Part 60.

<sup>84</sup> *Ibid.*, Rules 62.3, 62.6; for more information on the particular requirements, see Part 62.

<sup>85</sup> Judicial Committee (Appellate Jurisdiction) Rules 2009, Rules 17(1), 18(2), available at: <https://www.jcpc.uk/docs/judicial-committee-appellate-jurisdiction-rules-2009.pdf>.

procedure applies.<sup>86</sup>

- H. **Impact.** What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

As Antigua and Barbuda has a common law legal system based on the English model, legal decisions can become precedent and can thereby have long-term impact on future court decisions.

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

Court decisions are generally respected in Antigua and Barbuda and no particular challenges to enforcement of positive decisions should be expected. According to independent sources, civil rights and liberties are widely respected in the country and in recent years, the courts have increasingly asserted independence through controversial decisions against the government after several years of government manipulation of the nominally independent judicial system, which at the time was powerless to address corruption in the executive branch.<sup>87</sup>

- V. **Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Discrimination of certain groups of children is a persistent violation of children's rights in Antigua and Barbuda and may have negative effects on children's access to justice. The UN Committee on the Rights of the Child has noted that some groups of children, in particular girls, children with disabilities, children living in poverty, children born out of wedlock and informally adopted children, suffer from discriminatory attitudes and disparities in accessing basic services in Antigua and Barbuda.<sup>88</sup> While the Equal Opportunity Act bars discrimination on the basis of race, gender, class, political affinity, or place of origin, societal discrimination and violence against women remain problems, same-sex sexual activity remains criminalised under the Sexual Offences Act, and cases of excessive force and discrimination of people based on sexual orientation at the hands of the police have been reported.<sup>89</sup>

The UN Committee on the Rights of the Child has also voiced concern at the absence of an independent mechanism with a specific mandate to regularly monitor and evaluate progress in the implementation of the Convention, either within the Ombudsman's Office or as a separate institution, and which is empowered to receive and address individual complaints on behalf of, or from,

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<sup>86</sup> Judicial Committee of the Privy Council, 'Role of the JCPC', available at: <https://www.jcpc.uk/about/role-of-the-jcpc.html>.

<sup>87</sup> Freedom House, *Freedom in the World 2013: Antigua and Barbuda*, available at: [https://freedomhouse.org/report/freedom-world/2013/antigua-and-barbuda#\\_VUIS\\_tZcpKQ](https://freedomhouse.org/report/freedom-world/2013/antigua-and-barbuda#_VUIS_tZcpKQ).

<sup>88</sup> UN Committee on the Rights of the Child, *Concluding observations on the first periodic report of Antigua and Barbuda*, para. 16.

<sup>89</sup> Freedom House, *Freedom in the World 2013: Antigua and Barbuda*.

children directly.<sup>90</sup>

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

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<sup>90</sup> Ibid., paras. 26-27.