

# **ACCESS TO JUSTICE FOR CHILDREN: BAHAMAS**

*This report was produced by White & Case LLP in July 2014 but may have been subsequently edited by Child Rights International Network (CRIN).<sup>1</sup> 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?**

The Bahamas ratified the CRC in February 1991 and it entered into force in March 1991. However, ratified treaties, such as the CRC, are not automatically incorporated into national law in the Bahamas unless subsequently incorporated through implementing legislation.<sup>2</sup>

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

The CRC has not been directly incorporated into national law. As a result, it does not have direct effect in the Bahamas and cannot take precedence over national law. The supreme law in the Bahamas is the Constitution of the Commonwealth of the Bahamas (“The Constitution”) and as such it prevails over other inconsistent laws.<sup>3</sup>

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

The CRC has not yet been incorporated into Bahamian law.<sup>4</sup> The Child Protection Act 2007, however, was specifically guided and influenced by the CRC.<sup>5</sup> Section 4(c) of this Act provides that children have the right “to exercise, in addition to all the rights stated in this Act, all the rights set out in the [CRC] subject to any reservations that apply to the Bahamas and with appropriate modifications to suit the circumstances that exist in the Bahamas with due regard to its law.”<sup>6</sup>

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

The CRC is not directly enforceable in the Bahamas because it is not incorporated into Bahamian law. However, national courts could look to the

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<sup>1</sup> This report has been reviewed and comments provided by Attorney Tavarrie D. Smith from Bostwick and Bostwick.

<sup>2</sup> For further information, see: <http://www.crin.org/resources/infodetail.asp?ID=27860>.

<sup>3</sup> The Constitution of the Commonwealth of the Bahamas, Article 2 “this Constitution is the supreme law of...the Bahamas, and...if any other law is inconsistent with this Constitution, this Constitution shall prevail.”, available here:

<http://www.bahamas.gov.bs/wps/portal/public/About%20The%20Bahamas/Constitution>.

<sup>4</sup> For further information, see: <http://www.crin.org/resources/infodetail.asp?ID=27860>.

<sup>5</sup> An Act to provide for the Care and Protection of Children and for Related and Consequential Matters 2007, available here: [http://www.oas.org/dil/The\\_Child\\_Protection\\_Act\\_Bahamas.pdf](http://www.oas.org/dil/The_Child_Protection_Act_Bahamas.pdf). Hereinafter: Child Protection Act 2007.

<sup>6</sup> Child Protection Act 2007, section 4(c).

CRC and other international treaties for interpretive guidance and the Judicial Committee of the Privy Council (the “Privy Council”), which is the highest appellate court in the Bahamas, also interprets law in the light of international obligations.

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

Magistrate Courts do not have stenographers and rarely give written rulings. However, according to information provided by local counsel, Magistrate Constance Delancy, Juvenile Court Magistrate, routinely cites the CRC and the Child Protection Act 2007 in her decisions.<sup>7</sup>

## II. What is the legal status of the child?

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

Children are able to bring civil lawsuits in domestic courts to challenge violations of their rights, however, according to the Supreme Court Rules, children are considered in law “person[s] under a disability” and must therefore make claims through a “next friend” or “guardian ad litem”.<sup>8</sup> A child is also unable to defend, make a counterclaim, intervene, or appear in any proceedings without a “guardian *ad litem*”.<sup>9</sup> The next friend or guardian *ad litem* must then act through an attorney to bring or defend a case.<sup>10</sup> As described in parts II.B and C below, the next friend or guardian *ad litem* will typically be the child’s parent or legal guardian.

The Child Protection Act makes an exception for proceedings in relation to contract law matters, in which a child has the right to and may pursue legal proceedings to recover any sum of money which may be due to him in the same manner as if he were of full age.<sup>11</sup>

Only children aged 10 years and older can be held criminally liable, in line with the Child Protection Act.<sup>12</sup> The Criminal Procedure Code of the Bahamas<sup>13</sup> does not make any special provision for complaints made by children or for private prosecutions to be conducted on behalf of children.

- B. If so, are children of any age permitted to bring these cases by themselves in

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<sup>7</sup> Comment provided by Attorney Tavarrie D. Smith.

<sup>8</sup> “Next friend” is the term used in the Bahamas for a person who voluntarily helps a minor or an incompetent person in legal matters, also known as “litigation friend” or “tutor” in other common law jurisdictions. Rules of the Supreme Court, Order 70, “Disability”, rule 2(1), available here: [http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/1978/1978-0046/RulesoftheSupremeCourt\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/1978/1978-0046/RulesoftheSupremeCourt_1.pdf)

<sup>9</sup> Ibid, Order 70 rule 2.

<sup>10</sup> Ibid, Order 70, rule 2(3).

<sup>11</sup> Child Protection Act 2007, section 13(1).

<sup>12</sup> Ibid, section 109(a).

<sup>13</sup> Criminal Procedure Code, available here:

[http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1968/1968-0038/CriminalProcedureCodeAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1968/1968-0038/CriminalProcedureCodeAct_1.pdf).

their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

As already mentioned, children are permitted to bring cases in the Bahamas through a “next friend,” a competent adult, usually the child’s legal guardian or someone appointed by the court. The next friend serves as the child’s legal representative throughout subsequent proceedings, including in any appeals.<sup>14</sup> However, the court may appoint a new next friend at any time, if it believes it is in the best interests of the child.<sup>15</sup>

The Child Protection Act provides that “where in any proceedings a child is brought before the court and it appears...that the child is in need of legal representation...the court shall...refer the case to the Minors Advocate.”<sup>16</sup> The Minors Advocate could then act as the child’s legal representative if the child consents, either directly or through their parent or guardian.<sup>17</sup> The Minors Advocate is empowered to institute or carry on any proceedings when there is reason to believe the rights and freedoms of the child, as protected under Chapter III of the Constitution,<sup>18</sup> have been contravened.<sup>19</sup> However, according to comments by local counsel, this provision of the Act has never been enforced, despite the fact that the majority of juveniles appear in court unrepresented.<sup>20</sup>

Section 132 also provides that a party to any proceedings in Juvenile Court may be represented by counsel other than the Minors Advocate.

Where a child is charged before a court and does not have legal representation, having declined the option to use the Minors Advocate, the court is obliged to ensure the defence of the child, and to assist the child or the child’s parent or guardian in putting necessary questions to any witnesses.<sup>21</sup>

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

The child’s parent or legal guardian would typically instigate proceedings on their behalf, as the child’s next friend.

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

Currently there is no statutory legal aid program in operation in the Bahamas. Free legal advice provided by the government is only available when a person, who is considered “destitute”, is charged with a capital crime

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<sup>14</sup> Rules of the Supreme Court, Order 70, rule 3(3).

<sup>15</sup> Ibid.

<sup>16</sup> Child Protection Act, section 105(2).

<sup>17</sup> Ibid, section 105(3)(a).

<sup>18</sup> The Constitution, Article 28.

<sup>19</sup> Child Protection Act, section 105(3)(b).

<sup>20</sup> Comment provided by Attorney Tavarrie D. Smith.

<sup>21</sup> Ibid., section 115(3).

to be tried in the Supreme Court.<sup>22</sup> In these cases, the judge will appoint a representative lawyer from a list of lawyers willing to take cases pro bono. Even in these circumstances, however, the legal aid is only available after the person has been arraigned, and is not available during detention or questioning.<sup>23</sup>

The government's 2007 election manifesto stated that a statutory legal aid programme would be implemented in the Bahamas, however, as of 2013 this has not happened. The Attorney-General, John Delaney,<sup>24</sup> has reportedly said this was due to the "prevailing economic climate," and that the position "may be reviewed when revenue permits".<sup>25</sup>

In 2005 a Legal Aid Commission was formed<sup>26</sup> to assess and report on the legal aid situation in the Bahamas. However, as of 2013 the Legal Aid Commission's report has not been published, allegedly due to disagreements between the Legal Aid Commission's members about what conclusions the report should make.<sup>27</sup>

There are a few of independent organisations offering legal aid or pro bono services in the Bahamas, discussed below in part IV.C. Foremost among these is the Legal Aid Clinic at Eugene Dupuch Law School, where university law students take on cases pro bono. It has been reported that "social services, the police, Members of Parliament...all send people to the Clinic for help," and "each student regularly takes on up to 20 cases".<sup>28</sup> In addition, although they don't themselves provide legal representation, other organisations may provide funding for hiring a lawyer.<sup>29</sup>

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

There is a requirement that a person must provide their written consent before they are able to act as the next friend or guardian *ad litem* for a child in legal proceedings,<sup>30</sup> however filing such a simple document is not likely to be a big obstacle. Consent from the child or from the child's parent or guardian (in the event that the parent or guardian is not acting as next friend

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<sup>22</sup> See the 2003 US Department of State Report on Human Rights Practices in the Bahamas, <http://www.state.gov/j/drl/rls/hrrpt/2003/27884.htm>, and current information on the website of the US Embassy to the Bahamas: [http://nassau.usembassy.gov/arrest\\_detention.html](http://nassau.usembassy.gov/arrest_detention.html).

<sup>23</sup> See a report on legal aid in The Bahamas, in the Bahamas Tribune; the article is no longer available on the newspaper's website, but is available here: <http://political-bahamas.blogspot.hk/2010/04/cost-of-justice-in-bahamas.html>.

<sup>24</sup> John Delaney was Attorney-General and Minister of Legal Affairs in the Bahamas between 2010 and May 2012.

<sup>25</sup> For further information, see: <http://political-bahamas.blogspot.hk/2010/04/cost-of-justice-in-bahamas.html>.

<sup>26</sup> For further information, see: <http://bahamasb2b.com/news/wmview.php?ArtID=4675>.

<sup>27</sup> For further information, see: <http://political-bahamas.blogspot.hk/2010/04/cost-of-justice-in-bahamas.html>.

<sup>28</sup> *Ibid.*

<sup>29</sup> Comment provided by Attorney Tavarrie D. Smith.

<sup>30</sup> Rules of the Supreme Court, Order 70, sections 5 and 6.

themselves) will not be required.

### 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?

The Constitution of the Bahamas states that if any person considers that his fundamental rights and freedoms, as contained in Chapter III of the Constitution, have been or are likely to be violated, that person may apply to the Supreme Court for redress.<sup>31</sup>

Civil proceedings may be initiated in the Magistrates' Courts by application to a magistrate for a summons,<sup>32</sup> the procedures laid out elsewhere in the Magistrates Court Rules must be followed.<sup>33</sup> If a claim is seeking monetary compensation over \$5,000 dollars, then the claim must be brought in The Supreme Court, in which case, the relevant court rules would be the Supreme Court Rules.<sup>34</sup>

The Attorney-General has the power to institute and undertake or discontinue criminal proceedings against any person before any court regarding any offence against the law of the Bahamas, through the Department of Public Prosecutions.<sup>35</sup> The Attorney-General may also take over and continue criminal proceedings initiated by another person, and discontinue criminal proceedings instituted by any person.<sup>36</sup>

The principle of judicial review operates in the Bahamas to challenge the decisions of public bodies. The procedure for judicial review is outlined in the Supreme Court Act<sup>37</sup>, and tends to follow the principles of the English law case *Council of Civil Service Union v Minister of the Civil Service*, where judicial review was stated to be based on the grounds of illegality, irrationality or procedural impropriety.<sup>38</sup> The court must grant leave for an applicant to apply for judicial review.<sup>39</sup>

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<sup>31</sup> Ibid, Article 28(1).

<sup>32</sup> Magistrates Act, Schedule 1, "Magistrates' Rules of Court 1934", Part 1, 1. Available here: [http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1896/1896-0027/MagistratesAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1896/1896-0027/MagistratesAct_1.pdf).

<sup>33</sup> Ibid, Schedule 1.

<sup>34</sup> Comment provided by Attorney Tavarrie D. Smith.

<sup>35</sup> See

[http://www.bahamas.gov.bs/wps/wcm/connect/mof\\_content/internet/all+contacts/agencies/government+departments/department+of+public+prosecutions](http://www.bahamas.gov.bs/wps/wcm/connect/mof_content/internet/all+contacts/agencies/government+departments/department+of+public+prosecutions).

<sup>36</sup> The Constitution of The Bahamas, Article 78(1)(a)-(c).

<sup>37</sup> Supreme Court Act 1996, section 19. Available here:

[http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1996/1996-0015/SupremeCourtAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1996/1996-0015/SupremeCourtAct_1.pdf).

<sup>38</sup> *In Re The Council of Civil Service Unions and Others* (England) (1985) AC 374, available here: <http://www.bailii.org/uk/cases/UKHL/1983/6.html>.

<sup>39</sup> Supreme Court Act, section 19(3).

The Bahamas became a Member State of the Organisation of American States (the “OAS”) in 1982. Thereafter, the American Declaration of the Rights and Duties of Man [the “Declaration”] became a source of applicable legal norms by in the Bahamas. The Commission also has authority in the Bahamas to hear alleged violations of the Declaration.<sup>40</sup> Petitions to the Commission must be filed within six months of the final ruling in a case.<sup>41</sup>

In relation to the rights contained in the American Convention on Human Rights (“ACHR”) or in the Declaration, individuals and NGOs may also file a petition with the Inter-American Commission on Human Rights (the “Commission”) on their own behalf or on the behalf of a third party once all domestic remedies available, including recourse to the Privy Council, have been exhausted.<sup>42</sup> The Commission may then choose to pursue legal action at the Inter-American Court of Human Rights (the “IACHR”), which is a part-time, non-permanent judicial body established by the ACHR.<sup>43</sup> Article 61(1) of the ACHR provides that only a State Party and the Commission have the right to submit a case to the IACHR;<sup>44</sup> individuals are able to submit cases to the Commission, but cannot submit cases directly to the IACHR.<sup>45</sup>

Although a petition to the Commission may technically be possible, ultimately any finding by the Commission may not be enforced by a national court because the Bahamas has not signed the ACHR, and does not recognise the jurisdiction of the IACHR.<sup>46</sup> Such route may therefore not lead to a satisfactory remedy for a petitioner in the Bahamas.<sup>47</sup>

## B. What powers would courts have to review these violations, and what

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<sup>40</sup> Charter of the Organisation of American States, available here:

[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); Statute of the Commission, Article 20, available here:

<http://www.cidh.org/Basicos/English/Basic17.Statute%20of%20the%20Commission.htm>; Regulations of the Commission, Article 26(1).

<sup>41</sup> Ibid, Article 38(1).

<sup>42</sup> Regulations of the Inter-American Commission on Human Rights, Article 26. Available here:

<http://www1.umn.edu/humanrts/oasinstr/zoas5cmr.htm>.

<sup>43</sup> For further information, see: <http://www.corteidh.or.cr/index.php/en/about-us>.

<sup>44</sup> ACHR, Article 61. Available here:

[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>45</sup> See the information brochure for complainants to the Commission, available here:

<https://www.oas.org/en/iachr/docs/pdf/HowTo.pdf>.

<sup>46</sup> See: <http://cidh.oas.org/basicos/english/basic4.amer.conv.ratif.htm>.

<sup>47</sup> See, for instance, *Chad Roger Goodman v Bahamas*, Case 12.265, report No. 78/07, Inter-Am C.H.R. OEA/Ser.L/V/II.130 Doc.22, rev.1 (2007), available here:

<http://www1.umn.edu/humanrts/cases/78-07.html>. Also

<http://www.deathpenaltyproject.org/where-we-operate/caribbean/bahamas/>, as well as academic discussion in Lea Sheaver, “The Inter-American Human Rights System: An Effective Institution for Regional Rights Protection?”, in Washington University Global Studies Law Review, Vol. 9, Issue 4., available at:

<http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1059&context=globalstudies>. For a full discussion on issues relating to the competence of the Commission in countries not party to the ACHR, see the following article (note that although this is in reference to Trinidad and Tobago, much of the discussion is also relevant to the situation in The Bahamas): Natasha Parassram Concepcion, “The Legal Implications of Trinidad & Tobago’s Withdrawal from the American Convention on Human Rights”, particularly pp 858-862, available at: <http://www.auilr.org/pdf/16/16-3-4.pdf>.

remedies could they offer?

Civil lawsuits may seek redress in the form of money damages<sup>48</sup> or an injunction,<sup>49</sup> which orders a party to undertake or refrain from a course of action. To be granted an injunction, “[a plaintiff] must show that he has a legal right which is threatened or has been infringed.”<sup>50</sup> Also available are orders of mandamus, prohibition or certiorari and declarations.

A criminal sentence is possible where violations of children’s rights have taken place; the type of sentence available will depend on the type and severity of the crime committed. The judge will decide which sentence should be issued.<sup>51</sup> In cases where the defendant is under 18 years, there are restrictions on certain penalties, such as the death penalty, which according to the Child Protection Act provides will not apply to juveniles.<sup>52</sup> Children convicted of murder may be sentenced to a minimum of 20 years’ imprisonment; however, the Child Protection Act provides that no child will be sentenced to imprisonment if alternatives can be found.<sup>53</sup> Judicial review of criminal matters is carried out by the Director of Public Prosecutions.

The Supreme Court Act outlines the procedure to be followed in judicial review in the Bahamas. The court will usually award damages if the applicant has joined a claim for damages arising from a related matter with the application for judicial review,<sup>54</sup> and may issue an “order of *certiorari*” quashing the decision to which the application relates, directing the defending public body to reconsider its decision in accordance with the court’s judgment (rather than actively revising the decision and enforcing the new decision).<sup>55</sup>

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?

The Rules of the Supreme Court stipulate that every pleading must state the name and address of the plaintiff.<sup>56</sup> However, provisions are made for cases to be heard in private if appropriate. The Domestic Violence (Protection Orders) Act 2007 states that the court has the power to hear proceedings “in camera” (i.e. in private).<sup>57</sup> The court may exclude all persons who are not members or officers of the court or directly concerned in the case during the

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<sup>48</sup> See the Supreme Court Act, Part VII “Judgments”.

<sup>49</sup> See the Supreme Court Act 1996, sections 18 and 21.

<sup>50</sup> The Bahamas Supreme Court in *Turnquest v The Parliamentary Registrar* CLS No. 365 of 1982. Available here:

<http://www.courts.gov.bs/cms/wp-content/uploads/BCPOU-BCPMU-v-BATELCO-AG-doc.pdf> .

<sup>51</sup> See “Government > Judiciary” at: <http://www.bahamas.gov.bs> .

<sup>52</sup> Child Protection Act, Article 126.

<sup>53</sup> *Ibid*, Article 126(5).

<sup>54</sup> Supreme Court Act, section 19(4).

<sup>55</sup> *Ibid*, section 19(5).

<sup>56</sup> Supreme Court Rules, Order 18, rule 5(4)(a).

<sup>57</sup> Domestic Violence (Protection Orders) Act 2007, section 24. Available here:

[http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2007/2007-0024/DomesticViolenceProtectionOrdersAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2007/2007-0024/DomesticViolenceProtectionOrdersAct_1.pdf) .

taking of evidence.<sup>58</sup> In addition, the Act provides several restrictions on the publication of any information from which the identity of a party may be readily ascertained.<sup>59</sup>

Furthermore, the Child Protection Act states that it is an offence to publish material which is likely to identify any children involved in court proceedings, whether they are a witness or a defendant.<sup>60</sup> Nonetheless, according to information provided by local counsel, these provisions are seldom observed, especially by members of the media in relation to criminal cases involving juveniles.<sup>61</sup>

Criminal cases will not name victims directly, as the Attorney-General will prosecute on behalf of the Crown rather than on behalf of individuals.<sup>62</sup>

Individual victims do not need to be identified for judicial review proceedings. Proceedings may be brought by parties with a “sufficient interest”.<sup>63</sup>

In divorce proceedings, the identity of the child is often protected in judgments as well. The Courts will use the child's initials when given orders relating to maintenance and custody orders.<sup>64</sup>

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

It is possible for two or more persons to be joined together in one legal action as plaintiffs or as defendants in the Bahamas. This requires the leave of the court, and there must be “some common question of law or fact” arising in each of the cases if they were tried separately.<sup>65</sup> All rights to relief claimed should be in respect of, or arise out of, the same transaction or series of transactions.<sup>66</sup> All persons involved must give their consent to being joined as a plaintiff,<sup>67</sup> however, the court may order that a party be joined to the proceedings as defendant without that party’s consent.<sup>68</sup> The court may at any stage of the proceedings order separate trials if it deems this would be more effective, or order a person to cease to be a party.<sup>69</sup>

As noted in part III.C, the Child Protection Act provides it is an offence to publish material which is likely to identify any child involved in court proceedings; therefore in any group action taken, the identity of any children involved in the proceedings is protected.

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid, section 23.

<sup>60</sup> Child Protection Act, 2007, section 147(1).

<sup>61</sup> Comment provided by Attorney Tavarrie D. Smith.

<sup>62</sup> For further information, see the Attorney General’s Office website at [www.bahamas.gov.bs](http://www.bahamas.gov.bs) .

<sup>63</sup> Supreme Court Act, section 19(3).

<sup>64</sup> Comment provided by Attorney Tavarrie D. Smith.

<sup>65</sup> Rules of the Supreme Court, Order 15, rule 4(1)(a).

<sup>66</sup> Ibid, Order 15, rule 4(1)(b).

<sup>67</sup> Ibid, Order 15, rule 4.

<sup>68</sup> Comment provided by Attorney Tavarrie D. Smith.

<sup>69</sup> Ibid, Order 15, rules 5 and 6.

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?

There is limited provision for non-governmental organisations (“NGOs”) to file cases on behalf of others in domestic courts in the Bahamas. An NGO may be able to file for judicial review if it can prove that it possesses “sufficient interest” in the case.<sup>70</sup> Case law in the Bahamas has also provided that for a plaintiff to have proper standing to bring an action for relief, the plaintiff must be able to establish that he would be affected by the determination of the issue before the court.<sup>71</sup>

Certain NGOs provide legal assistance and may seek to intervene in existing legal matters in which they have a strong interest. The Bahamas Human Rights Network, for instance states that it “seeks ways to remedy abuses of human rights, whether through the Courts...or otherwise, as the case requires”.<sup>72</sup> There are no clear provisions in legislation or court rules governing these types of interventions, but it seems reasonable to assume that the Bahamian courts would consider applications for intervention by non-governmental organisations which appear to have an interest in the case, in line with the stance in other common law jurisdictions.<sup>73</sup>

**IV. Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

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

The lowest courts in operation in the Bahamas are the magistrates’ courts, which will be the courts of first instance for most cases, but there are also family island courts.<sup>74</sup> The Stipendiary and Circuit Magistrates’ Courts are the primary courts for most civil and criminal cases. Magistrates’ courts have jurisdiction to try all summary offences, investigate all indictable offences, and to hear any civil matter when the amount at issue does not exceed \$5000, unless a statute provides a higher amount.<sup>75</sup>

The Court of Appeal has jurisdiction to hear appeals from judgments and sentences made by the Supreme Court. The Court may also hear appeals from the Magistrates’ Courts if the decision of the magistrate is found to

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<sup>70</sup> Supreme Court Act, section 19(3).

<sup>71</sup> See *Zion United Baptist Convention v Reverend Terrance G. Morrison*, Supreme Court, 2009/CLE/GEN/01306, at 15. Available here: [http://www.courts.gov.bs/cms/wp-content/uploads/Zion-United-Baptist-Convention-vs-Reverend-Terrance-G-Morrison\\_00000.pdf](http://www.courts.gov.bs/cms/wp-content/uploads/Zion-United-Baptist-Convention-vs-Reverend-Terrance-G-Morrison_00000.pdf).

<sup>72</sup> <http://www.ngocaribbean.org/index.php/the-bahamas-human-rights-network/>.

<sup>73</sup> See, for instance, the following report on Third Party Interventions in the UK: <http://www.justice.org.uk/data/files/resources/32/To-Assist-the-Court-26-October-2009.pdf>.

<sup>74</sup> Comment provided by Attorney Tavarrie D. Smith.

<sup>75</sup> Magistrates Act, section 18(1).

exceed the court's jurisdiction, was unreasonable, or was based on a wrong principle or point of law.

The Supreme Court is the highest court in The Bahamas; it has unlimited original jurisdiction in civil and criminal causes, as well as appellate jurisdiction over cases from the Magistrates' Courts, as provided in the Supreme Court Act 1996.<sup>76</sup>

If domestic remedies have been exhausted, appeal can be taken to the Judicial Committee of the Privy Council in London, England. The Privy Council consists of several of the judges of the Supreme Court of England and Wales, the highest court in the United Kingdom, and determines appellate cases from current and former Commonwealth countries, as well as UK overseas territories and crown dependencies.<sup>77</sup>

There are also juvenile courts in the Bahamas. The Child Protection Act governs a number of the provisions relating to these. The juvenile courts typically take the place of a magistrate's court<sup>78</sup> and the magistrate will have all necessary powers available to him or her under the Magistrates Act and the Criminal Procedure Act.<sup>79</sup> The Juvenile Court is a court of summary jurisdiction (at magistrate level) and is established pursuant to PART XII of the Child Protection Act.

For certain indictable offences, the child, upon consultation with his or her parent or guardian, has the option of deciding whether the case is tried by the juvenile court or by a jury.<sup>80</sup> However, for homicide or other indictable offences mentioned in Schedule 5 of the Child Protection Act, the case will be tried in accordance with the provisions of the Magistrates Act, the Penal Code, and the Criminal Procedure Code Act, not at the juvenile court.<sup>81</sup>

The Magistrates Rules of Court 1934 set out the procedure for commencing civil proceedings in the Magistrates' Courts.<sup>82</sup> The initial filing process for civil matters in the Supreme Court is outlined in the Rules of the Supreme Court.<sup>83</sup> Procedure for judicial review in the Bahamas is outlined in the Supreme Court Act.<sup>84</sup>

Criminal matters are generally prosecuted by the Attorney-General of the Bahamas on behalf of the Crown, so filing requirements are not outlined anywhere for individuals.<sup>85</sup>

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<sup>76</sup> Supreme Court Act, Part III "Jurisdiction of the Court", in particular section 7.

<sup>77</sup> <http://www.jcpc.gov.uk/about/role-of-the-jcpc.html> .

<sup>78</sup> Child Protection Act 2007, section 116(2)-(3).

<sup>79</sup> Ibid, section 117(1).

<sup>80</sup> Ibid, section 120(4).

<sup>81</sup> Ibid, section 120(5).

<sup>82</sup> Magistrates Act 1896, Schedule 1 – Court Rules, available here:

[http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1896/1896-0027/MagistratesAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1896/1896-0027/MagistratesAct_1.pdf) .

<sup>83</sup> Rules of the Supreme Court, Orders 5-11.

<sup>84</sup> Supreme Court Act 1996, section 19.

<sup>85</sup> See the Bahamian Penal Code,

[http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1873/1873-0015/PenalCode\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1873/1873-0015/PenalCode_1.pdf)

- 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?

As discussed in part II.D above, legal aid is rarely available in the Bahamas. The government only provides free legal representation to destitute suspects charged with capital crimes. As a result, large numbers of citizens do not have access to adequate legal representation while independent institutions, such as the Legal Aid Clinic at the Eugene Dupuch Law School are inundated with applicants.<sup>86</sup> This is of particular concern for defendants in criminal proceedings.<sup>87</sup> The US State Department has commented that the resulting potential for “lack of representation risk[s] hasty convictions on the basis of unchallenged evidence, particularly in the case of poor or illiterate defendants.”<sup>88</sup>

Court fees in Civil Appeals at the Court of Appeal are set out on the Court website.<sup>89</sup> Provisions as to court fees for the Privy Council are set out in rules 43-52 of the Judicial Committee (Appellate Jurisdiction) Rules 2009,<sup>90</sup> and in Practice Direction 8.<sup>91</sup> Court fees can be prohibitively expensive for the typical Bahamian.<sup>92</sup> In a 2010 report on Legal Aid in the Bahamas, the Tribune newspaper said, “we are today no closer to ensuring that the average Bahamian...has as much ability to see their rights protected as a top earning Bahamian.”<sup>93</sup> As of 2013, this still appears to be the case, since no major reforms in legal aid have been introduced.

- 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?

A number of organisations in the Bahamas offer free or subsidised legal assistance. The most prominent is The Council of Legal Education at Eugene Dupuch Law School in Nassau, which operates a Legal Aid Clinic, open to

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<sup>86</sup> See the following article on legal aid in the Bahamas in the Tribune newspaper (the article is no longer available on the newspaper's website, but is available here):

<http://political-bahamas.blogspot.hk/2010/04/cost-of-justice-in-bahamas.html> .

<sup>87</sup> See further discussion at: [http://nassau.usembassy.gov/arrest\\_detention.html](http://nassau.usembassy.gov/arrest_detention.html) .

<sup>88</sup> US State Department Bureau of Democracy Human Rights, and Labor, Report on The Bahamas, 2005, available at: <http://www.state.gov/j/drl/rls/hrrpt/2005/61714.htm> .

<sup>89</sup> <http://www.courtsofappeal.org.bs/fees.php> .

<sup>90</sup> Available here: <http://www.jcpc.gov.uk/docs/judicial-committee-appellate-jurisdiction-rules-2009.pdf> .

<sup>91</sup> Available here: <http://www.jcpc.gov.uk/docs/practice-direction-08.pdf> .

<sup>92</sup> For further information, see:

<http://political-bahamas.blogspot.hk/2010/04/cost-of-justice-in-bahamas.html>.

<sup>93</sup> For further information, see:

<http://political-bahamas.blogspot.hk/2010/04/cost-of-justice-in-bahamas.html>

members of the public; cases are selected by the Director, and, as the clinic operates through an educational establishment, applicants are selected particularly with regard to matters of educational interest and value to the students<sup>94</sup>.

Other organisations offering free or subsidised legal assistance, including advice and advocacy, include the Bahamas Crisis Centre (particularly for children who have experienced abuse)<sup>95</sup> and the Grand Bahama Human Rights Association. Some local law firms host free legal clinics, however, it is unclear whether they provide legal assistance or advice to children.

The President of the Bar Association of the Bahamas in 2013 “welcomed” the Prime Minister’s challenge that “lawyers of five years standing or more should undertake to do no less than 18 hours of pro bono...on an annual basis”, and that “Queen’s Counsel should undertake to act as leading counsel in pro bono cases within their areas of specialisation at least twice per year.”<sup>96</sup> The Prime Minister has also recently noted, “I am gratified to learn that...some system of pro bono work by the Inner Bar may already be under active consideration.”<sup>97</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?

The Limitation Act sets out the timing requirements for bringing cases in the Bahamas.<sup>98</sup> Simple contract or tort actions should be brought no later than six years from the date on which the cause of action accrued.<sup>99</sup> However, these periods are extended for children, so they may bring an action at any time within six years from the date when the child ceases to be under a “disability” at law (i.e. reaches the age of majority).<sup>100</sup>

There is no time limit on the Attorney-General bringing criminal charges for indictable offences such as allegations of historic child sexual abuse, but only in relation to offences committed against children under the age of 14.

<sup>101</sup> If the offence is committed against a minor aged 14 to 16, a six month

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<sup>94</sup> For further information, see: <http://www.edls.edu.bs/contact.php> .

<sup>95</sup> <http://www.bahamascrisiscentre.org/>.

<sup>96</sup> See: <http://www.thebahamasinvestor.com/2013/pm-remarks-on-bar-associations-new-complex/> .

<sup>97</sup> Ibid.

<sup>98</sup> Limitation Act, 1995. Available here:

[http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1995/1995-0009/LimitationAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1995/1995-0009/LimitationAct_1.pdf)

<sup>99</sup> Limitation Act, Part II, section 5(1)(a).

<sup>100</sup> In The Bahamas this is generally considered to be eighteen years old. See, for instance, the Adoption of Children Act 1954, “definitions”, where it is stated “‘infant’ means a person under the age of eighteen”. Available at:

[http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1954/1954-0052/AdoptionofChildrenAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1954/1954-0052/AdoptionofChildrenAct_1.pdf) .

<sup>101</sup> Sexual Offences and Domestic Violence Act, Article 10, available at:

[http://www.oas.org/dil/Sexual\\_Offences\\_and\\_Domestic\\_Violence\\_Act\\_Bahamas.pdf](http://www.oas.org/dil/Sexual_Offences_and_Domestic_Violence_Act_Bahamas.pdf). One example of such prosecution is the Birbal case, see <http://www.courtsofappeal.org.bs/download/037973000.pdf> and <http://jonesbahamas.com/birbal-guilty-acquitted-of-four-charges/>.

limitation period applies.<sup>102</sup>

Judges in the Bahamas, like in other common law jurisdictions, have discretion regarding excessively long delays, particularly if it is felt that the delay may have affected the memory of the defendant, or if key witnesses are no longer available to give evidence.

- 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?

General provisions relating to evidence in the Bahamas are set out in the Evidence Act.<sup>103</sup> Amongst other things, this act allows for the presentation of documents (including public records), expert opinion, and witness testimony as evidence in court.<sup>104</sup>

In family proceedings (defined in the Child Protection Act as “any proceedings relating to adoption...custody or control of a child [etc.],” or “any matrimonial proceedings or proceedings ancillary thereto”),<sup>105</sup> a child may give evidence if the court is of the opinion that the child “understands that it is his duty to speak the truth” and that “he has sufficient understanding to justify his evidence being heard.”<sup>106</sup> Where a magistrate does not believe the child is able to attend before the court by reason of the child’s physical or mental condition, or is “kept away from such proceedings by threats or fear of bodily harm,” the magistrate may allow the child to give evidence through an “approved recording device” in line with the Rules of the Court under section 76 of the Supreme Court Act.<sup>107</sup>

The Evidence (Amendment) Bill 2011 amended section 78 of the Evidence Act to make special provisions for children. In criminal proceedings, where the court is satisfied that the witness is “a child” (i.e. a person below the age of eighteen years),<sup>108</sup> the witness may give evidence “by way of a live television link.”<sup>109</sup>

Video-recorded (i.e. non-live) testimony from child witnesses may also be given in evidence, although this will not be possible where it “appears the child witness will not be available for cross examination,” where “any rules of court requiring the disclosure of the circumstances in which the recording was made have not been complied with”, or where “the court is of the

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<sup>102</sup> Sexual Offences and Domestic Violence Act, Article 11. Comment provided by Attorney Tavarrie D. Smith.

<sup>103</sup> Evidence Act 1996. Available online here: [http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1996/1996-0004/EvidenceAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1996/1996-0004/EvidenceAct_1.pdf).

<sup>104</sup> Ibid.

<sup>105</sup> Child Protection Act, 2007, section 100(4)(a)-(b).

<sup>106</sup> Ibid, section 100(2)(a)-(b).

<sup>107</sup> Ibid, section 101(1).

<sup>108</sup> Evidence (Amendment) Bill, 2011, section 78D(8). Available at:

[http://www.bahamas.gov.bs/wps/wcm/connect/6735749b-e8f4-4a01-9f9c-838f5d3a98c9/Evidence\(Amendment\)+Bill,+2011+-+Copy+laid+in+House+5th+October,+2011.pdf?MOD=AJPERES](http://www.bahamas.gov.bs/wps/wcm/connect/6735749b-e8f4-4a01-9f9c-838f5d3a98c9/Evidence(Amendment)+Bill,+2011+-+Copy+laid+in+House+5th+October,+2011.pdf?MOD=AJPERES).

<sup>109</sup> Ibid, sections 78A (a) – (e), and 78B (1) (c)..

opinion...that in the interest of justice the recording ought not to be admitted.”<sup>110</sup> Where the party wishes to adduce the evidence of a child witness in a case, the party must notify the court of its intention, and serve the video recorded evidence on the court officer and each other party in the case.<sup>111</sup>

The Child Protection Act 2007 makes specific provisions for evidence of a “child of tender years” (defined as “a child under the age of fourteen years”).<sup>112</sup> These provisions state that the evidence of a child of tender years called as a witness will not be given upon oath, “as it is the opinion of the court the child does not understand the nature of an oath.”<sup>113</sup> However, evidence may still be received from young children when the court deems “the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.”<sup>114</sup> If the evidence is reduced into writing, it can still be deemed to be a deposition within the meaning of the Criminal Procedure Code and the Evidence Act.<sup>115</sup>

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

The Supreme Court Act stipulates that the court has a duty to “actively manage cases.”<sup>116</sup> This duty may include “setting time standards or otherwise controlling the progress of the case,”<sup>117</sup> and “giving directions to ensure that the trial of the case proceeds quickly and efficiently.”<sup>118</sup> However, since the court has the discretion to determine timings on a case-by-case basis, there are no specific time periods outlined in the Supreme Court Act or elsewhere outlining precisely how quickly a case should be resolved.

Anecdotal evidence from media sources suggests that court cases are not dealt with particularly quickly in the Bahamas, although efforts are apparently underway to improve the situation. The US Department of State in a 2012 report on human rights practices in the Bahamas voiced concerns that among “the most serious human rights problems... [was] a poorly functioning judicial system, leading to delays in trials [and] lengthy pretrial detention.”<sup>119</sup> “Poor court infrastructure” (examples included malfunctioning air conditioning systems and a leaking court roof) has also been cited as contributing to a buildup of cases.<sup>120</sup> In the US Department of State’s 2003 report, it was noted that “the judicial system had a large backlog of cases,

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<sup>110</sup> Ibid, section 78D(2).

<sup>111</sup> Ibid, “Schedule”, Part II, section 10.

<sup>112</sup> Child Protection Act, section 102(5).

<sup>113</sup> Ibid, section 100(1).

<sup>114</sup> Ibid, section 102(1)(a).

<sup>115</sup> Ibid, section 102(1)(b).

<sup>116</sup> Supreme Court Act, Order 31A “Case Management by Court”, Part I.

<sup>117</sup> Ibid, Order 31A, Part I, 1(g).

<sup>118</sup> Ibid, Order 31A, Part I, 1(l).

<sup>119</sup> Report available here:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dldid=204424#wrapper> .

<sup>120</sup> For further information, see:

[http://www.bahamaslocal.com/newsitem/85272/Bar\\_president\\_Poor\\_court\\_infrastructure\\_contributing\\_to\\_case\\_backlog.html](http://www.bahamaslocal.com/newsitem/85272/Bar_president_Poor_court_infrastructure_contributing_to_case_backlog.html) .

and delays reportedly lasted as long as two years.”<sup>121</sup> An article in the Bahama Journal – a national newspaper – from October 2013, stated that “as it stands now court cases, big or small, in [the Bahamas] all drag through the judicial system causing a near decades-long backlog”.<sup>122</sup>

Attorney-General Allyson Maynard-Gibson, however, announced that in January 2014 the government intends to open ten new criminal courts to help decrease the backlog and improve the efficiency of the courts.<sup>123</sup> The Bahama Journal article quotes the Attorney-General on the length of time it takes cases to be prosecuted, stating that,

“between October and December 2012, the days went down to 122 days...[and] between January and May 2013, the days were down to 73 days. So from October to May, because of the initiative of getting prosecutor involved at the earliest stage the presentation went down from 344 days to 73.”<sup>124</sup>

The Attorney-General also stated “it is our objective to get this down even further to not more than 30 days.”<sup>125</sup>

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

It is possible to appeal from a decision from a Stipendary Magistrate to the Chief Magistrate, but civil appeals from the Magistrates’ Courts usually run to the Supreme Court, and from the Supreme Court to the Court of Appeal.<sup>126</sup> Following this, further appeal may be possible to the Privy Council.

The procedure for civil appeals from the Magistrates’ Courts to the Supreme Court is set out in the Magistrates Act: the appellant should serve a notice of his intention to appeal, in writing within seven days of the day following the decision of the Magistrates’ Courts, on both the magistrate and the other party.<sup>127</sup>

Civil appeals (including for judicial review cases) from the Supreme Court to the Court of Appeal are governed by the Court of Appeal Rules. Notice of appeal should be filed and copies served upon all parties to the proceedings in the court below within six weeks, for all cases other than appeals from interlocutory orders (in which case, the time limit is fourteen days).<sup>128</sup>

Criminal appeals from the Supreme Court, Magistrates’ Courts and Courts-Martial are also governed by the Court of Appeal Rules. If a person

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<sup>121</sup> The report is available here: <http://www.state.gov/j/drl/rls/hrrpt/2003/27884.htm> .

<sup>122</sup> For further information, see: <http://jonesbahamas.com/10-new-criminal-courts-in-january/> .

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Comment provided by Attorney Tavarrie D. Smith.

<sup>127</sup> Magistrates Act, part IV, “Appeals”, section 56.

<sup>128</sup> Court of Appeal Rules 2005, section 11 (1). Available here: <http://www.courtofappeal.org.bs/download/rules2005Final.pdf> . The procedure for appeal of civil matters to the Court of Appeal is summarised in the following chart: [http://www.courtofappeal.org.bs/download\\_static/civil.pdf](http://www.courtofappeal.org.bs/download_static/civil.pdf) .

is tried and convicted in the Magistrate's Court, they may appeal to the Supreme Court or to the Court of Appeal, depending on the nature of the offence. They may be able to further appeal from the Court of Appeal to the Privy Council. A Notice of Appeal in a criminal matter must be filed within 21 days from the date of conviction.<sup>129</sup>

Appeals from any juvenile court will lie to the Supreme Court, with the provisions of the Criminal Procedure Code and any relevant rules of court applying to such appeal in the same way that they apply to regular appeals from a magistrates' court in criminal proceedings.<sup>130</sup> Appeals from the Juvenile Court have also went directly to the Court of Appeals, particularly where it involves an issue of custodial sentencing.<sup>131</sup>

The final route of appeal in the Bahamian legal system is to the Privy Council, as provided for in Article 104(2) of the Constitution.<sup>132</sup> Appeals must be filed within two months.<sup>133</sup> There is scope for extension, and some further leeway may be given to applicants from Caribbean countries such as the Bahamas, as illustrated particularly by a recent news release from the Board of the Privy Council, which noted that "very limited legal aid, and some reluctance by local lawyers to undertake pro bono work, means that prisoners in the Caribbean region in particular will often struggle to file their application within the two months indicated by the [Privy Council]'s time limit." The news release comments that "the Board has always sought to reflect this by bearing in mind this context when deciding on how strictly to apply time limits."<sup>134</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?

The Bahamas places a great deal of importance on judicial precedent because it is a jurisdiction with a common law legal system based on that of England.<sup>135</sup> Bahamian courts are bound by the decisions of higher courts, and by those of the Privy Council, so a decision by a high-level court which is seen to compromise child rights could potentially have far-reaching effects over many years.

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<sup>129</sup> See <http://www.courtsofappeal.org.bs/faq.php#q27> .

<sup>130</sup> Child Protection Act 2007, section 149.

<sup>131</sup> Comment provided by Attorney Tavarrie D. Smith.

<sup>132</sup> The Constitution of the Bahamas, Article 104(2), "An appeal shall lie as of right to the Judicial Committee of Her Majesty's Privy Council or such other court as may be prescribed by Parliament under Article 105(3) of this Constitution".

<sup>133</sup> Precisely this is 56 days, as noted in the Judicial Committee (Appellate Jurisdiction) Rules - Practice Direction 4.3.1 – "a notice of appeal must be filed in the Registry within 56 days of the date of the order or decision of the court below granting permission or final leave to appeal. Available here: <http://www.jcpc.gov.uk/procedures/practice-direction-04.html> . Further information on timings is found in Practice Direction 2, available here: <http://www.jcpc.gov.uk/procedures/practice-direction-02.html> .

<sup>134</sup> The News Release is available here: <http://www.jcpc.gov.uk/docs/news-release-121025.pdf> . The full judgment of the Privy Council in *Carlos Hamilton and Jason Lewis v The Queen*, which relates to time extension criteria, can be found at: <http://www.jcpc.gov.uk/decided-cases/index.html> .

<sup>135</sup> For a discussion of the doctrine of precedent in the Bahamas, see: "Legal Sources: Judicial Precedent and Legislation", in a publication by the University of the West Indies Faculty of Law, available here: <http://www.oocities.org/uwicobllb/Topics45678910.pdf> .

There has been some controversy in relation to certain decisions of the Privy Council in recent years. Arguments have focused on whether the tendency of the Privy Council to look to decisions of the UK House of Lords (now the Supreme Court) is incompatible or “out of touch” with the reality and way of thinking in Caribbean legal systems over which the Privy Council continues to have jurisdiction.<sup>136</sup> There continue to be arguments for the abolition of the Privy Council as a route of criminal appeals from courts in the Bahamas,<sup>137</sup> particularly following a ruling by the Privy Council in 2006 which held that the mandatory death sentence in the Bahamas was unconstitutional and refused to implement the mandatory death sentence pursuant to the Bahamas’ Penal Code.<sup>138</sup>

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

Execution provisions for civil cases are governed by the respective court rules and generally there are few issues with the enforcement of civil judgments in the Bahamas.<sup>139</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.

No additional factors were identified.

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

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<sup>136</sup> Ibid.

<sup>137</sup> See, e.g. the following article which discusses the complications that would be inherent in any move to abolish the Privy Council:

<http://www.ilntoday.com/files/2012/06/Abolish-The-Privy-Council-by-D-Rolle.pdf> .

<sup>138</sup> *Bowe (Junior) & Anor v R Rev I (Bahamas)* [2006] UKPC 10. Available here:

<http://www.bailii.org/uk/cases/UKPC/2006/10.html> . Penal Code, sections 290 and 291.

<sup>139</sup> See, e.g., Magistrates Act, Part III, and Supreme Court Act, Part VII, and the Rules of the Supreme Court.