

ACCESS TO JUSTICE FOR CHILDREN: BARBADOS

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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?

Barbados ratified the CRC in October 1990 and held a series of subsequent activities in order to assist in the publicising of the CRC.¹ However, international treaties, such as the CRC, do not form part of domestic law unless they have been expressly incorporated through further domestic legislation.² The CRC has not been expressly incorporated in this manner. However, the Constitutional Review Commission has recommended that the Constitution incorporate Barbados' international legal obligations into the domestic law.³

B. Does the CRC take precedence over national law?

The Constitution is the "supreme law" of Barbados,⁴ and the CRC has not been incorporated into national law in the manner described in part I.A above. Therefore, the CRC does not take precedence over national law.⁵

C. Has the CRC been incorporated into national law?

No. However, Chapter III of the Constitution of Barbados contains a number of rights provisions that apply to children as to any other person.⁶ There are also a few provisions throughout the Constitution that make specific reference to children.⁷ Additionally, there is no comprehensive or consolidated Children's Act in Barbadian law, but rather, relevant provisions are found in a number of Acts.⁸

¹ *Initial report of Barbados to the UN Committee on the Rights of the Child*, CRC/C/3/Add.45, 11 February 1997, para. 13. Available at: <http://www.refworld.org/docid/3ae6af434.html>.

² CRIN, 'Barbados: National laws', 13 April 2012, available at: <http://www.crin.org/resources/infodetail.asp?ID=28139>.

³ UN Human Rights Committee, *Concluding observations on the third periodic report of Barbados*, CCPR/C/BRB/CO/3, 11 May 2007, para. 5. Available at: <http://www.refworld.org/docid/465175d62.html>.

⁴ 1966 Constitution of Barbados, Ch. I, section 1(a), available at: <http://www.refworld.org/country/LEGAL,,BRB,,3ae6b5b68,0.html>, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64438/99628/F1454065056/BRB64438.pdf> (last amended 2003).

⁵ CRIN, 'Barbados: National laws'.

⁶ *Ibid.* (noting that Chapter III of the Constitution makes reference to children in several respects with regards to citizenship rights).

⁷ *Ibid.* (noting that Chapter II, section 18(10)(a) allows for the exclusion of the public from legal proceedings involving persons under 18 years of age; and Chapter VIII, Part 3, sections 103 and 104 make reference to children with regards to pension rights).

⁸ *Ibid.* (noting that relevant legislation is found in a number of Acts including, but by no means limited to: The Minors Act 1985 (Cap 215), The Child Protection Act 1990 (Cap. 146A), The Juvenile Offenders Act 1998 (Cap. 138), The Sexual Offences Act 1992 (Cap. 154), The Domestic Violence (Protection Orders) Act 1992 (Cap. 130A), The Family Law Act 1982 (Cap. 214), The Corporal Punishment Act 1899 (Cap. 125),

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

No. The CRC cannot be directly enforced in the Barbadian courts as it has not been incorporated into domestic law.⁹ Nonetheless, the CRC can be and has been cited for interpretive guidance by national and regional courts with jurisdiction over Barbados.

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

The Court of Appeal of Barbados cited the CRC in *Scantlebury v. The Queen* in the context of determining the constitutionality of indeterminate sentences under the control of the executive branch of government.¹⁰

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?

Yes. The Constitution provides that any person alleging a violation of human rights by the State may apply to the High Court for redress.¹¹ Civil and judicial review proceedings can also be brought to challenge violations of children's rights (see part III.A below for more information).

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

Under the Civil Procedure Rules of the Supreme Court (CPR), subject to certain exceptions, a minor must have a "next friend" in order to file an application or otherwise commence and conduct proceedings on his/her behalf.¹² Under rule 23.6, a person may act as a child's "next friend" where he/she "can fairly and competently conduct proceedings on behalf of the minor" and "has no interest adverse to that of the minor".¹³

However, the court may make an order permitting the minor to act on his/her own

The Magistrates' Courts Act 2001 (Cap. 116A), The Reformatory and Industrial Schools Act 1926 (Cap. 169), and The Education Act 1997 (Cap. 41)).

⁹ 'National Report of Barbados to the UN Human Rights Council Universal Periodic Review', December 2008, para. 12, available at:

http://bajan.files.wordpress.com/2008/09/barbados_national_report_to_the_upr.pdf.

¹⁰ CRIN, '*Scantlebury v. The Queen*', available at: <http://www.crin.org/law/instrument.asp?InstID=1442>; see also *Scantlebury v. The Queen*, 68 WIR 88 (2005).

¹¹ 1966 Constitution of Barbados, Ch. III, section 24(1); see also 'National Report of Barbados to the UN Human Rights Council Universal Periodic Review', para. 4 ("Every individual has the constitutional right to seek redress from the High Court in respect of any human rights violations by the State").

¹² Barbados Supreme Court (Civil Procedure) Rules 2008 (CPR), rules 23.2 and 23.3, available at: http://barbadosparliament-laws.com/en/ShowPdf/2008_66.pdf; see also Barbados Family Law Act 1981, Part V section 44, available at:

<http://www.cavehill.uwi.edu/LAWLIBRARY/getattachment/e62ddec9-96df-4201-967b-7c66addfdb8/FAMILY-LAW-ACT.aspx>.

¹³ CPR, rule 23.6.

behalf without a next friend, upon application by the minor and notice to the next friend, or where there is no next friend, such application can be made without notice unless the court deems otherwise.¹⁴

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

A next friend must bring cases on behalf of infants and young children, unless otherwise permitted by the court.¹⁵

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

Children may be entitled to free legal assistance from the Community Legal Services Commission of Barbados, which was established in 1981 to provide a system of free legal aid to persons of insufficient means.¹⁶

The Commission determines eligibility for a legal aid certificate based on the following two criteria: (1) the legal problem falls under a particular category, and (2) the applicant has insufficient means. Relevantly, all offences where the person charged is a minor, family law matters except divorce, applications for redress in the High Court alleging human rights violations by the State under section 24 of the Constitution, applications for writs of habeas corpus (to review the lawfulness of the imprisonment or detention of a person), and any other matters involving minors are categories that are covered by legal aid. Once this first criterion is satisfied, the applicant's ability to afford private counsel is assessed with regard to the applicant's income, assets and expenditure. There is no minimum or maximum income requirement; rather, if it appears that the applicant has insufficient disposable income left after the payment of his/her allowable expenses, a legal aid certificate will be issued.¹⁷ Legal aid may be provided where the person is a citizen, permanent resident or immigrant of Barbados, or where the director judges that the interests of justice demand that legal services be provided.¹⁸

A legal aid certificate entitles the recipient to such free legal services as the Director of the Commission specifies in the certificate. Where the determination has been made that the applicant is of insufficient means, legal aid is entirely free and the state pays all disbursements and legal fees for the recipient. If an applicant is considered financially able to do so, the Director may require the recipient of legal aid to pay a portion of those costs.

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)?

The next friend must act by an attorney-at-law unless otherwise ordered by the court,¹⁹

¹⁴ CPR, rules 23.2(2)-(3).

¹⁵ Ibid., rule 23.2.

¹⁶ A4ID, 'Legal aid guide', pp. 14-16, available at:

<http://www.a4id.org/sites/default/files/u3/A4ID%20Legal%20AID%20Guide.pdf>.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ CPR, rule 23.2(5).

and must sign a certificate of truth on behalf of the minor.²⁰ Also, if not appointed by the court, a next friend must apply to act in such capacity by filing a certificate that he or she satisfies the requirements of rule 23.6 of the CPR (see part II.B above).²¹ Provided that the next friend satisfies these requirements, the consent and agreement of the parent or guardian of the minor is not required.²² The court reserves the right and has the discretion to terminate an appointment of or substitute a next friend, as appropriate to best serve the interests of the minor.²³

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?

Under section 24 of the Constitution, any person can file an application with the High Court for redress for violations by the State of any of the fundamental rights provisions under sections 12 to 23.²⁴ These include the right to life and personal liberty, protection from slavery and forced labour, inhuman treatment and discrimination, and freedom of conscience, expression, association and movement.

Alternatively, an individual can seek redress for human rights violations through the civil system by filing a claim in the Magistrate's Court.²⁵

Under the Administrative Justice Act and the CPR, an application to the High Court for judicial review of an "administrative act or omission" may be made by "any person, group or body whose interests have been adversely affected by the decision which is the subject of the application" or "any other person, group or body who satisfies the court that an application is justifiable in the public interest and in the circumstances of the case".²⁶ Acts or omissions of "a Minister, public official, tribunal, board, committee or other authority of the Government of Barbados exercising, purporting to exercise or failing to exercise any power or duty conferred or imposed by the Constitution or by any enactment" can be subject to judicial review.²⁷

Additionally, under the Ombudsman Act, a violation of law or policy by the government or other administration can be brought to the attention of the Ombudsman. The Ombudsman is responsible for investigating and reporting "allegations of improper, unreasonable or inadequate administrative conduct".²⁸ The Ombudsman is charged with acting in accordance with his/her own independent judgment²⁹ and is safeguarded

²⁰ Ibid., rule 23.3(6).

²¹ Ibid., rule 23.7.

²² Ibid., rule 23.

²³ Ibid., rule 23.9.

²⁴ 'National Report of Barbados to the UN Human Rights Council Universal Periodic Review', para. 4 ("The High Court . . . serves as the effective domestic guardian of human rights in Barbados").

²⁵ US State Department, 'Barbados 2012 human rights report', 2012, section 1(e), available at: <http://www.state.gov/documents/organization/204637.pdf>.

²⁶ CPR, rule 56.2; Administrative Justice Act, Cap. 109B, sections 3(1) and 6, available at: <http://barbadosparliament-laws.com/en/ShowPdf/109B.pdf>.

²⁷ Administrative Justice Act, section 2.

²⁸ Barbados Ombudsman Act 1981, Ch. 8A, para. 2(1); see also 'National Report of Barbados to the UN Human Rights Council Universal Periodic Review', para. 14.

²⁹ Barbados Ombudsman Act, Ch. 8A, para. 2(2).

against arbitrary removal from office.³⁰

Finally, individuals may also bring their claims outside of the national legal system. There are currently three alternative avenues of appeal through which Barbadian citizens may bring their claims: (1) the Inter-American Commission on Human Rights, (2) the Inter-American Court on Human Rights, and (3) the Caribbean Court of Justice.

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Inter-American Commission on Human Rights

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),³² on their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights.³³ A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.³⁴ 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.³⁵ The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.³⁶ 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.

Inter-American Court of Human Rights

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).³⁷ Individuals do not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACtHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.³⁸ The Court’s judgments are legally binding on the State against which they are made.

³⁰ ‘National Report of Barbados to the UN Human Rights Council Universal Periodic Review’, para. 14.

³¹ *Ibid.* para. 10.

³² 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; 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.

³³ American Convention on Human Rights, Article 44.

³⁴ 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>.

³⁵ *Ibid.*, Article 28.

³⁶ *Ibid.*, Article 23.

³⁷ *Ibid.*, Article 45.

³⁸ American Convention on Human Rights, Article 63.

Caribbean Court of Justice (CCJ)

Finally, decisions in civil and criminal matters as well as decisions concerning fundamental rights under the Constitution can be appealed to the Caribbean Court of Justice (CCJ), which is the highest court of appeal for Barbados.³⁹ An appeal is commenced by filing a notice of appeal within 21 days of the grant of leave to appeal by the court below or special leave by the CCJ, depending on the nature of the case.⁴⁰ In all proceedings before the CCJ, a party must have an attorney-at-law on the record.⁴¹ An applicant who is a “poor person” may be exempt from providing security for costs or paying any court fees.⁴² Decisions of the CCJ are final and binding.⁴³

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

Under section 24 of the Constitution, the High Court has original jurisdiction to hear and determine any application made by any person for redress for violations by the State of any of the fundamental rights provisions under sections 12 to 23.⁴⁴ In terms of remedies, the High Court “may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 12 to 23”.⁴⁵ However, the High Court must exercise these powers “if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law”.⁴⁶

Civil courts have the power either to award money damages or to issue an injunction.⁴⁷

In criminal proceedings the courts can order imprisonment of convicted offenders.⁴⁸

Under the CPR, the High Court may issue any of the following remedies in judicial review proceedings: certiorari, for quashing unlawful acts; prohibition, for prohibiting unlawful acts; mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case; an injunction; a declaration; restitution or damages; or an order for the return of any property, real or personal.⁴⁹

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?

³⁹ Agreement Establishing the Caribbean Court of Justice, Article XXV, available at: http://www.caricom.org/jsp/secretariat/legal_instruments/agreement_ccj.pdf.

⁴⁰ Ibid.; Caribbean Court of Justice (Appellate Jurisdiction) (Amendment) Rules, 2008, Rules 10.1, 10.2, 11.1, available at: <http://www.caribbeancourtsofjustice.org/wp-content/uploads/2011/06/ccjapprules.pdf>.

⁴¹ Caribbean Court of Justice (Appellate Jurisdiction) (Amendment) Rules, 2008, Rule 4.1.

⁴² Ibid., Rule 10.17.

⁴³ Agreement Establishing the Caribbean Court of Justice, Article XXII.

⁴⁴ 1966 Constitution of Barbados, section 24(2).

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Barbados Family Law Act, Part V, Part XI, section 87 and Part XII, section 91; see also CPR, rule 23.12 (no settlement, compromise or payment and no acceptance of money shall be valid without approval of the court).

⁴⁸ Barbados Protection of Children Act 1990, section 9.

⁴⁹ CPR, rule 5; Administrative Justice Act, section 5.

A challenge involving a violation of children’s rights must directly involve one or more individual child victims; it is not possible to challenge a law or action without naming a specific victim.⁵⁰

However, privacy measures are in place to protect the identity of the child complainant in certain circumstances. For example, the Sexual Offences Act provides that the court must hear evidence of a child complainant *in camera* (i.e. in private) and publication or broadcast of matters likely to lead to public identification of the complainant is not permitted.⁵¹

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

Although specific victims must be named in order to challenge a law or action, representative proceedings are possible.⁵² According to the CPR, where five or more persons have “the same or a similar interest in the proceedings”, the court may appoint one or more of those persons, or “a body having a sufficient interest in the proceedings”, to represent all or some of the persons with the same or similar interest.⁵³ An application for an order appointing a representative party may be made at any time, including a time before proceedings have been started.⁵⁴ Such an application may be made by: (1) any party; (2) any person or body who wishes to be appointed as a representative party; or (3) any person or body who is likely to be a party to the proceedings.⁵⁵ It must identify every person to be represented, either individually or by description, if it is not practicable to identify a person individually.⁵⁶

There are no provisions in Barbadian law for other forms of collective action or group litigation such as class actions.

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?

Under the CPR, “a body having a sufficient interest in the proceedings” may apply for an order appointing it as a representative party.⁵⁷ Furthermore, these Rules provide that an application for judicial review of an administrative act or omission may be made by “(a) any person, group or body whose interests have been adversely affected by the decision which is the subject of the application; or (b) any other person, group or body who satisfies the court that an application is justifiable in the public interest and in the circumstances of the case.”⁵⁸ At the hearing of an application for an order of judicial review, “the judge may allow any person, group or body who appears to have a sufficient interest in the subject matter of the claim to make submissions, whether or not

⁵⁰ CPR, rule 23 (requiring a ‘next friend’ to represent the minor and such next friend must file a certificate of truth implying required identification of the minor claimant); see also CPR, rule 3.6(3) (requiring that documents filed at the Registry state the name of the party on whose behalf it is being filed).

⁵¹ Barbados Sexual Offences Act 2002, sections 30 and 35.

⁵² CPR, rule 21.

⁵³ *Ibid.*, rule 21.1.

⁵⁴ *Ibid.*, rule 21.2(1).

⁵⁵ *Ibid.*, rule 21.2(2).

⁵⁶ *Ibid.*, rule 21.2(3).

⁵⁷ *Ibid.*, rules 21.1-21.2.

⁵⁸ *Ibid.*, rule 56.2.

served with the application”.⁵⁹ These provisions suggest that it is possible for non-governmental organisations to file and intervene in cases concerning children’s rights violations.

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 Barbadian judicial branch is comprised of the Supreme Court - which is made up of the Court of Appeal and High Court - and Magistrate’s Courts. A case challenging a violation of children’s rights can be filed in the High Court or a Magistrate’s Court.

The High Court is made up of three divisions: the Civil Division, Criminal Division, and Family Division, each exercising separate jurisdiction.⁶⁰ Applications to the High Court for redress under section 24 of the Constitution for human rights violations may be made by: (1) notice of motion supported by affidavit, stating concisely the nature of the claim and the relief or remedy required; or (2) filing a writ of summons: (i) claiming a declaration, (ii) praying for an injunction, or (iii) claiming or praying for such other order as may be appropriate.⁶¹ These applications are heard by a single judge.⁶²

Applications for judicial review of an administrative act or omission must be filed in the Supreme Court Registry. The application must set out: (1) the name, address and description of the applicant and respondent; (2) the applicant’s address for service; (3) the grounds on which relief is sought (in accordance with section 4 of the Administrative Justice Act); (4) full particulars of the facts and matters relied on in support of the grounds; (5) the relief, including interim relief, sought; and (6) the name and address of the applicant’s attorney, where applicable.⁶³

The Magistrate’s Courts are courts of summary jurisdiction, and exercise original jurisdiction in criminal, civil, domestic, domestic violence, and juvenile matters. They are limited geographically and by value of the claim.⁶⁴ The civil division can hear tort or contract claims where the damages sought do not exceed \$10,000.⁶⁵ Civil actions in the Magistrate’s Courts are commenced by filing a plaint and summons, together with a statement of the particulars of the demand or cause of action.⁶⁶ Where a child is commencing the action, the plaint must contain the name, description and address of the child’s “next friend” and the defendant.⁶⁷

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be

⁵⁹ Ibid., rule 56.11(1).

⁶⁰ See Barbados Supreme Court, available at: <http://www.lawcourts.gov.bb/Aboutus.html>.

⁶¹ Supreme Court of Judicature (Constitutional Redress) Rules 1975, sections 3, 4(3), available at: http://barbadosparliament-laws.com/en/ShowPdf/1975_160.pdf.

⁶² Ibid., section 2.

⁶³ CPR, rule 56.3. See part 56 of the CPR for further requirements.

⁶⁴ See Barbados Supreme Court; Magistrates Court Act Cap.116A.

⁶⁵ See Barbados Supreme Court.

⁶⁶ Magistrates Courts (Civil Procedure) Rules 1958, Order 4, section 1; Order 5, section 1, available at: http://barbadosparliament-laws.com/en/ShowPdf/1958_51.pdf.

⁶⁷ Ibid., Order 4, sections 2, 6. See the Magistrates Courts (Civil Procedure) Rules for further requirements.

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?

See part II.D above.

Barbadian law makes no mention of special reprieves with regard to the obligation of a child to pay court costs.⁶⁸ Generally, in civil proceedings, the unsuccessful party must pay the costs of the successful party.⁶⁹ Nonetheless, the court has the discretion to make an order of costs, partial payment, or in exceptional cases, order a successful party to pay all or part of the costs of an unsuccessful party.⁷⁰ In doing so, the court will look to a variety of factors, including, among others, the conduct of the parties, whether it was reasonable to bring the claim or raise particular issues.⁷¹ Proceedings under the Family Law Act require each party to bear his or her own costs, subject to the discretion of the court.⁷²

- 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?

The Barbados Bar Association provides legal services through the state legal aid scheme administered by the Community Legal Services Commission. All attorneys are invited to join the panel of attorneys who participate in the scheme. At present there are about 130 attorneys on this panel. Legal services for recipients of legal aid may also be provided by law students under the supervision of attorneys.⁷³

- 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 of Actions Act provides an extension of the limitation periods for “persons under a disability”, which includes minors.⁷⁴ Under section 46(1), if on the date when any right of action for which a period of limitation is prescribed by this Act accrued, the person entitled to bring the action was a minor, the action may be brought at any time within six years from the date when he/she ceased to be a minor, notwithstanding that the period of limitation has expired. For certain actions, the period within which to bring an action is less than six years. For example, the period is three years for actions for damages for negligence, nuisance or breach of duty in respect of personal injuries.⁷⁵ Moreover, the court can exercise discretion to allow an action to

⁶⁸ CPR, rule 64.

⁶⁹ Ibid., rule 64.6.

⁷⁰ Ibid., rules 64.6(2)-(3).

⁷¹ Ibid., rules 64.4(4)-(5).

⁷² Barbados Family Law Act, Part V, Part XIV, section 94.

⁷³ For more information, see Barbados Bar Association, available at:

<http://www.barbadosbarassociation.com/index.cfm>.

⁷⁴ Limitation of Actions Act, sections 3 and 46, available at:

<http://barbadosparliament-laws.com/en/ShowPdf/231.pdf>.

⁷⁵ See Ibid., sections 20, 21, 22(3) and 46(6).

proceed despite the expiry of a limitation period, having regard to all the circumstances of the case.⁷⁶

- 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?

There are several procedural issues that present unique challenges for children under Barbadian law. For example, under the Sexual Offences Act, section 28 states that corroboration is not required for a conviction, yet the judge must still issue a warning that it would be unsafe to convict in its absence. The single exception to this rule provides that the witness testimony of a child “of tender years” who does not understand the nature of an oath can be admitted if it can be established that the child understood the duty to speak the truth. However, such evidence must be corroborated, thus holding children to the adult standard of sworn evidence.⁷⁷

Also, there are few to no special provisions for child victims with respect to the physical layout of the courtroom. Children are required, like all other victims to face their abusers in court.⁷⁸ Furthermore, the requirement of a preliminary inquiry often requires that child victims give oral evidence on two separate occasions. This is regarded as a serious problem and ranks high in the list of concerns about the criminal justice system.⁷⁹

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

It is unclear how long it might take to get a court decision as to whether there has been a violation. Respondents to the 2005 Child Vulnerability Study conducted by the government of Barbados with assistance from UNICEF cited “bureaucracy (long process, delays, overload, poor response time)” as the most important barrier, real or perceived, for children and their caregivers to access legal and judicial services.⁸⁰ A 2012 report by the US State Department finds that the civil judicial system continues to face “heavy backlogs.”⁸¹

However, in 2013, it was reported that “[j]udicial officials have initiated action to clear a backlog of civil court cases covering a 20 year period”.⁸² According to Chief Justice Sir Marston Gibson, the Backlog Reduction Project, which was started in 2006, will be recommenced to identify and determine the status of backlog cases, and take steps “to have ‘dead’ cases disposed of procedurally and ‘live’ cases put on track for trial or other determination”.⁸³

⁷⁶ See *Ibid.*, sections 52 and 53.

⁷⁷ UNICEF, ‘Child protection in Barbados: The need for a national reporting protocol’, 2007, p. 15, available at: http://www.unicef.org/barbados/cao_unicefeco_national_protocol_Barbados.pdf.

⁷⁸ However, the court may allow a witness to give evidence without being present in the courtroom, through a video link, by telephone, or by any other means: CPR, rule 29.3.

⁷⁹ UNICEF, ‘Child protection in Barbados: The need for a national reporting protocol’.

⁸⁰ UNICEF, ‘A study of child vulnerability in Barbados, St. Lucia and St. Vincent & the Grenadines’, 2005, available at: http://www.unicef.org/barbados/cao_resources_vulnerability.pdf.

⁸¹ US Department of State.

⁸² Barbados Today, ‘Move to ease court backlog’, 11 March 2013, available at: <http://www.babadostoday.bb/2013/03/11/move-to-ease-court-backlog/>.

⁸³ *Ibid.*

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

The Court of Appeal hears appeals from the decisions of the High Court and Magistrate's Courts and has both criminal and civil jurisdiction. Matters are heard by a full court comprising of three Justices of Appeal, or by a single Justice of Appeal sitting in Chambers.⁸⁴ The Caribbean Court of Justice is the final court of appeal from any decision given by the Court of Appeal.⁸⁵ Parties must appeal a verdict within 21 days of receiving the judgment.⁸⁶

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?

Fear has been cited as a factor in the decision by children or their caregivers to access legal services, with "the courts not seen as 'child friendly'".⁸⁷ In addition, there have been a significant number of reports of parents and guardians preventing cases of child abuse from reaching the justice system, with some attributing this to a perception that the system is "ineffective and cannot be relied upon for fair and meaningful dispensation of justice."⁸⁸ Further, the use of excessive force by the police was identified as a serious human rights issue.⁸⁹ Together, these factors may suggest a fear or concern of political or societal backlash if a certain decision is reached.

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

The enforcement of awards in civil proceedings is governed by and described in the CPR in detail.⁹⁰

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.

Barbados has not submitted a report to the Committee on the Rights of the Child since its initial report in 1997.⁹¹ During this review the Committee raised a number of inconsistencies between national law and the provisions of the CRC, particularly with regard to the definition of the child, the acceptability of certain forms of physical abuse, and juvenile justice.⁹²

While the Minors Act defined the age of majority at 18, the Sexual Offences Act

⁸⁴ See Barbados Supreme Court.

⁸⁵ 1966 Constitution of Barbados, Ch. VII, section 79B(c) ("Every individual has the constitutional right to seek redress from the High Court in respect of any human rights violations by the State").

⁸⁶ CPR, rule 62.2.

⁸⁷ UNICEF, 'A study of child vulnerability in Barbados, St. Lucia and St. Vincent & the Grenadines'.

⁸⁸ UNICEF, 'Child protection in Barbados: The need for a national reporting protocol', p.15.

⁸⁹ US Department of State.

⁹⁰ CPR, rules 43-45.

⁹¹ CRIN, 'Barbados: National laws'.

⁹² Ibid.; UN Committee on the Rights of the Child, *Concluding observations on the initial report of*

Barbados, CRC/C/15/Add.103, 24 August 1999. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.103&Lang=en.

provided no special protections to children over the age of 16, and limited protections to children between 14 and 16. Similarly, laws aimed at the prevention of cruelty to children contained limited protection for children over 16. The Committee recommended that the State "increase the level of protection accorded to all children under 18 years of age".⁹³

The Committee raised a number of concerns with regard to the physical and sexual abuse of children. Particular concerns revolved around the narrowly drawn legislation that applies in the area, specifically the Sexual Offences Act and the Domestic Violence (Protection Orders) Act. The Committee recommended that the State reassess its current measures to prevent abuse and ensure that the legal system does not serve to re-victimise children. The Committee was also critical of the legality of a "reasonable degree" of physical chastisement and the tolerance of corporal punishment in schools and in the home, and urged the State to eliminate corporal punishment as a means of combating child abuse more generally.⁹⁴

The Committee was critical of the low minimum age of criminal responsibility (11 years), the lack of flexibility in sentencing children and the potential to refer children to juvenile courts for behavioural offences that would not be criminal for adults, as well as the detention of children with adults and the limited criminal protections for children between the ages of 16 and 18. The Committee was also critical of the legality of flogging as a judicial penalty and disciplinary measure used against children in detention.⁹⁵ Research undertaken as part of CRIN's Inhuman Sentencing Campaign indicated that very limited reform has been made in this area.⁹⁶

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

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ CRIN, 'Barbados: National laws'.

⁹⁶ CRIN, 'Barbados: Inhuman sentencing of children', July 2010, available at: <https://www.crin.org/en/library/publications/barbados-inhuman-sentencing-children>.