

## ACCESS TO JUSTICE FOR CHILDREN: GRENADA

*This report was produced by White & Case LLP in July 2014 but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.*

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

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

Grenada ratified the CRC on 5 November 1990.<sup>1</sup> In addition, it ratified the Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography on February 6, 2012.<sup>2</sup> Grenada also ratified the Worst Forms of Child Labour Convention,<sup>3</sup> and the Minimum Age Convention<sup>4</sup>, both on 14 May 2003.

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

No. As a Commonwealth country, the legal system in Grenada is based on the British Common law. Therefore, the CRC would only take precedence over national law if it had been incorporated by specific domestic legislation, which is not the case.

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

As mentioned above, in part I.B, the CRC has not been incorporated into national law. However, the age of majority is 18 in accordance with the Convention, and several Acts which relate to children's rights exist,<sup>5</sup> although certain are yet to be passed into law.<sup>6</sup>

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<sup>1</sup> Convention on the Rights of the Child, Chapter IV. Available at:

[https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en)

<sup>2</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography. Chapter IV. Available at:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-c&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en)

<sup>3</sup> Worst Forms of Child Labour Convention, No. 182. Ratifications. Available at:

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312327:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO)

<sup>4</sup> Minimum Age Convention, (No. 138). Ratifications. Available at:

[http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312283](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283)

<sup>5</sup> For example, Domestic Violence Act 2010. Available at:

<http://classic.mylexisnexis.co.za/grenada/default.asp?qlfub/0m7jc/1m7jc/2m7jc/3m7jc/t8dkc/2fc4c/3fc4c#0>

See also Child (Protection and Adoption) Act 2010. Available at:

<http://classic.mylexisnexis.co.za/grenada/default.asp?qlfub/0m7jc/1m7jc/2m7jc/3m7jc/s8dkc/98b4c/a9b4c#3>

<sup>6</sup> For example, Juvenile Justice Bill 2012 and Status of the Children Bill 2010. See UN Committee on the Rights of the Child, *Concluding Observations: Grenada*, CRC/C/GRD/CO/2, 22 June 2010, paras. 7-8.

Available at: [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GRD.CO.2\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GRD.CO.2_en.pdf)

The UN Committee on the Rights of the Child noted in 2010 that although children's issues are included in the country's National Development Plan and in Departmental Plans, there is no comprehensive and specific plan to ensure that all of the rights enshrined in the Convention are implemented.<sup>7</sup>

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

As the CRC has not been incorporated into national law in Grenada, it is not likely that it will be directly enforced in the courts.

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

No case could be found in which Grenadian courts applied the CRC. However, in a recent case heard by the Eastern Caribbean Supreme Court (ECSC)<sup>8</sup> involving Antigua and Barbuda, the Court rejected an argument that the Convention on the Rights of the Child could be enforced domestically, commenting that "the Respondent is contending that the mere ratification of the United Nations Convention is sufficient to clothe it with the status of domestic law."<sup>9</sup>

Although this case concerned the law of Antigua and Barbuda, given that the ECSC is the regional Supreme Court, the same approach would likely be taken with respect to Grenada, unless Grenada were to incorporate the Convention into domestic law directly.

## 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?

The Child Protection Act 1998 at section 14 stated that a court "may permit a child to have legal representation at any stage of the hearing" for a protection order. This may indicate that a child could have brought a case in a domestic court without legal representation. The Act also stated that where a child does not have legal representation, the court may order that representation be put in place.

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<sup>7</sup> Ibid. para. 11.

<sup>8</sup> The Eastern Caribbean Supreme Court (ECSC) consists of a Court of Appeal and a High Court of Justice, both of which have such jurisdiction and powers as may be conferred on them by the Organisation of Eastern Caribbean States' (OECS) members (which include Antigua and Barbuda, and Grenada). Judgments of the ECSC shall have full force and effect, and may be executed and enforced in any of the member states.

See Sections 4 and 9 in particular of the Supreme Court Order, UK Statutory Instrument No. 223 of 1967, available at:

<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.laws.gov.ag%2Ffacts%2Fchapters%2Fcap-422A.pdf&ei=F71sVODJH8PgatiMgJAC&usq=AFQjCNF5DJ7AUJfGt4eja8nvuuvitwXc7w&bvm=bv.80120444.d.d2s&cad=rja>

See also Official Website of the ECSC. Available at: <http://www.eccourts.org/>

<sup>9</sup> The Eastern Caribbean Supreme Court in the High Court of Justice, Antigua and Barbuda, The Attorney General of Antigua and Barbuda v. Michael Moore, Claim No. ANUHCv (April 11, 2012), at para. 31, available at: <http://www.eccourts.org/the-attorney-general-of-antigua-and-barbuda-v-michael-moore/>.

However, the Child (Protection and Adoption) Act 2010, which repealed the 1998 law, does not have an equivalent provision.

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

It seems that a child may only bring a case with the assistance of a representative. However, where a child is allegedly being abused or neglected, a child may initiate a case on their own behalf with the assistance of the Director of the Child Protection Authority.<sup>10</sup>

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

See part II.B above.

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

It appears that lawyers may provide representation in qualifying cases, as part of a legal aid programme. Those qualifying cases appear to be only those concerning civil, family and criminal matters.<sup>11</sup> The Grenada Bar Association is a member of the Organisation of Eastern Caribbean States (OECS) Bar Association, which has as one of its objectives “to encourage the establishment of schemes of legal aid.”<sup>12</sup> Further information on any legal aid schemes in Grenada could not be found.

- 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)?

No one is required to give their consent in order for the Director of the Child Protection Authority to conduct an initial investigation and assessment of the circumstances concerning a child.<sup>13</sup> Furthermore, the Child Protection Authority<sup>14</sup> is empowered to investigate abuse or neglect of a child, or a child's need for protection. The Authority may apply to court to put in place

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<sup>10</sup> Child (Protection and Adoption) Act 2010, section 26(1).

<sup>11</sup> Newman, Graeme. *Crime and Punishment Around the World*. Greenwood Press, 2010, page 167.

<sup>12</sup> Official Website of the OECS Bar Association. Available at:

<http://www.oecsbar.org/index.php/en/about-us/about-oecs-bar/aims-objectives>

<sup>13</sup> Child (Protection and Adoption) Act 2010, section 30(1).

<sup>14</sup> The Child Protection Authority is constituted by a minimum of 13 persons, appointed by the Minister responsible for social welfare (the Permanent Secretary responsible for Social Development, the Director, a police officer not below the rank of inspector, a police officer in charge of the immigration department, the Solicitor-General or his nominee, a social worker, an attorney at law, of not less than five years standing, a medical practitioner appointed pursuant to the provisions of the Health Practitioners Act, three persons appointed from non-governmental organisations concerned with the welfare and safety of children, and a person with a financial background). The Director is appointed by the rest of the Board. The Board may then appoint employees and committees as necessary. Child (Protection and Adoption) Act 2010, sections 10, 16, 18, 19 and 20.

an emergency protection order for a child considered to be “in need of care and protection.”<sup>15</sup>

The legislative definition indicates that no parent or guardian’s permission would be necessary in order for a child’s rights to be protected. Moreover, if the Director of the Child Protection Authority is of the opinion that the safety, welfare or well-being of the child is in jeopardy, he or she may have the child brought before a court.<sup>16</sup> Where the court is satisfied that it is in the best interests of the child, the court may place the child under the supervision of the Director or some other appointed person for a period not exceeding two years, or order that the child be placed in care.<sup>17</sup>

There is also a system of mandatory reporting to the Child Protection Authority by various professionals, including health practitioners, teachers, social workers, and counsellors, amongst others, if it is suspected that a child may be in need of care and protection.<sup>18</sup> Persons who make such reports are subject to extensive protections, and reports may also be anonymous.<sup>19</sup> These reports are admissible in any proceedings relating to the care and protection of a child.<sup>20</sup> These aspects of the child protection apparatus also indicate that permission is not needed in order to bring a claim on behalf of a child.

### **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?**

A child may apply to a court for a protection order if he or she has been subjected to domestic violence.<sup>21</sup> In these circumstances, a child may apply for a protection order through, a person with whom he or she ordinarily or periodically resides, or re-sided with, or is reliant upon for his or her welfare, or any adult member of his or her household, or a parent or guardian, or a person who is in loco parentis to him or her, or the Director of Social Services, or any other person who has parental responsibility for him or her.<sup>22</sup>

In addition, an application for a protection order may be made on behalf of a child by any other person “who has a material interest in the well being” of that child. Such persons include police officers, the Director of Social Services, probation officers, and approved social workers.<sup>23</sup> Typically, the application must be brought with the consent of the person on whose behalf

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<sup>15</sup> Child (Protection and Adoption Act) 2010, section 40.

<sup>16</sup> Ibid, section 26(4).

<sup>17</sup> Ibid, section 26(5).

<sup>18</sup> Ibid, section 27.

<sup>19</sup> Ibid, section 29 (1) .

<sup>20</sup> Section 29(2) of the Child (Protection and Adoption) Act 2010.

<sup>21</sup> Domestic Violence Act 2010, section 5(2).

<sup>22</sup> Ibid, section 5(4).

<sup>23</sup> Ibid, section 5(3).

it is made, but this is not necessary where the application is on behalf of a child.

The Director of the Child Protection Authority may make an application to court for a care order, specifying the particular care order sought and the grounds.<sup>24</sup>

Prior to making an application to court to have the child taken into care, the Director of the Child Protection Authority shall consider the use of alternative dispute resolution procedures in order to resolve problems at an early stage, develop a care plan, reduce the likelihood of an application to court, lessen the incidence of parent-child relationship breakdown, and work towards better child-oriented decision-making.<sup>25</sup> Participation in this mode of dispute resolution is voluntary.

Grenada also has an Ombudsperson to oversee the protection of human rights, but it is not clear that their mandate also covers children's rights, including receiving and investigating individual complaints from, and on behalf of, children on violations of their rights.<sup>26</sup>

With regard to regional mechanisms, there is the Caribbean Court of Justice (CCJ), an itinerant court of final appeal created by the Agreement Establishing the Caribbean Court of Justice in 2001, of which Grenada is a signatory.<sup>27</sup> However, the CCJ did not become operative until 2005 when it was inaugurated in Port of Spain, Trinidad and Tobago.

The CCJ has an original jurisdiction and an appellate jurisdiction. The former is the basis of the CARICOM Single Market and Economy, which has its mandate in the Revised Treaty of Chaguaramas.<sup>28</sup> The latter concerns the jurisdiction of the CCJ to hear appeals from the countries that have signed the 2001 Agreement in civil and criminal matters.

However, as Grenada has not made the CCJ its final Court of Appeal, and still uses the Privy Council for this purpose,<sup>29</sup> there is no possibility of recourse to the CCJ in its appellate capacity, following a violation of children's rights.

There is also the Eastern Caribbean Supreme Court (ECSC), a superior court of record for the nine members of the Organisation of Eastern Caribbean States (OECS), of which Grenada is a member. The ECSC was established in

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<sup>24</sup>Child (Protection and Adoption) Act 2010, section 49.

<sup>25</sup> Ibid, section 35.

<sup>26</sup> Official Website of the Office of Ombudsman, St George's, Grenada. Available at: <http://www.ombudsman.gd/what-we-cannot-do/>

<sup>27</sup> Agreement Establishing the Caribbean Court of Justice. Available at: <http://www.sice.oas.org/trade/ccme/ccj1.asp>

<sup>28</sup> Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy. Available at: [http://caricom.org/jsp/community/revised\\_treaty-text.pdf](http://caricom.org/jsp/community/revised_treaty-text.pdf)

<sup>29</sup> Official Website of the Caribbean Court of Justice. Available at: <http://www.caribbeancourtsofjustice.org/about-the-ccj/faqs>. See also, "Dominica Accepts CCJ as Final Court of Appeal." Caribbean Elections Today, July 2 2014. Available at: <http://www.caribbeanelections.com/blog/?p=4219>

1967,<sup>30</sup> and consists of two divisions: a Court of Appeal, and a High Court.<sup>31</sup>

The ECSC has unlimited jurisdiction in all of the OECS Member States, in accordance with their respective Supreme Court Acts,<sup>32</sup> and its decisions are binding.<sup>33</sup>

There is no explicit provision that prevents children from making complaints before the ECSC. However, the requirements of the petition process are such that it is unlikely that a child could satisfy them without adult assistance.<sup>34</sup> The civil procedural rules are silent on the possible intervention of NGOs, on behalf of individuals before the ECSC.

Another regional mechanism is the Inter-American Commission on Human Rights (The Commission/IACHR), a body within the Organisation of American States (OAS), of which Grenada is a member, for the promotion and protection of human rights.

The Commission benefits from a “dual role” as its mandate is found both in the Charter of the Organization of American States,<sup>35</sup> and in the American Convention on Human Rights (ACHR).<sup>36</sup> As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States, and as an organ of the Convention, its functions are applicable only to States that have ratified the ACHR. As Grenada has ratified the ACHR, this instrument can form the basis of a petition before the Commission.

Individuals, groups, and NGOs may submit petitions to the IACHR regarding alleged human rights violations.<sup>37</sup> Petitions may be made directly by the victim, or on their behalf by third parties. The victim may designate a lawyer or other person to represent them before the Commission, but this is not compulsory.<sup>38</sup> Given that any individual may bring a petition on their own behalf, there is no legal restriction on children making direct petitions to the IACHR.

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<sup>30</sup>West Indies Associated States Supreme Court Order No. 223 of 1967. Available at:

<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.laws.gov.ag%2Ffacts%2Fchapters%2Fcap-422A.pdf&ei=F71sVODJH8PgatiMgJAC&usg=AFQjCNF5DJ7AUJfGt4eja8nvuuvitwXc7w&bvm=bv.80120444.d.d2s&cad=rja>

<sup>31</sup> Official Website of the Eastern Caribbean Supreme Court. Structure of the Court. Available at:

<http://www.eccourts.org/structure-of-the-court/>

<sup>32</sup> Official Website of the Organisation of Eastern Caribbean States. Available at:

<http://www.oecs.org/about-the-oecs/institutions/eastern-caribbean-supreme-court-ecsc>

<sup>33</sup> West Indies Associated States Supreme Court Order, section 9(3).

<sup>34</sup> Eastern Caribbean Supreme Court Civil Procedure (Amendment) Rules, Rule 61. Available at:

[http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCMQFjAA&url=http%3A%2F%2Fwww.eccourts.org%2Fwp-content%2Fuploads%2F2014%2F02%2FSLU-S.I.-18-of-2014.pdf&ei=gkGHVKbSBIv1Uo74grgP&usg=AFQjCNE\\_Nb2xWISmSqOscS5SSWMC90lfBQ&bvm=bv.81449611.d.d24](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCMQFjAA&url=http%3A%2F%2Fwww.eccourts.org%2Fwp-content%2Fuploads%2F2014%2F02%2FSLU-S.I.-18-of-2014.pdf&ei=gkGHVKbSBIv1Uo74grgP&usg=AFQjCNE_Nb2xWISmSqOscS5SSWMC90lfBQ&bvm=bv.81449611.d.d24)

<sup>35</sup> Charter of the Organization of American States, Chapter XV, available at:

[http://www.oas.org/dil/treaties\\_A-41\\_Charter\\_of\\_the\\_Organization\\_of\\_American\\_States.htm](http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm)

<sup>36</sup> American Convention on Human Rights, “Pact of San Jose, Costa Rica”, Chapter VII, available at:

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

<sup>37</sup> American Convention on Human Rights “Pact of San Jose, Costa Rica”, Article 44.

<sup>38</sup> Rules of Procedure of the Inter-American Commission on Human Rights, Article 23. Available at:

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

However, the numerous requirements for the submission of a petition make it unlikely that a child will do so independently, without the assistance of an adult. For example, a petition can only be lodged after domestic remedies have been exhausted, and normally has to be lodged within six months after the final judgment.<sup>39</sup>

When a petition is declared admissible, the Commission 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.

Finally, in serious and urgent situations, the Commission may, on its own initiative, or at the request of a party, call on a State to adopt precautionary measures to prevent irreparable harm to persons, or to the subject matter of the proceedings, in connection with a pending petition or case.<sup>40</sup>

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

A Magistrates’ Court has the power to review applications relating to a child or young person. When hearing any summary application, proceeding or offence concerning a child or young person, the Magistrate must sit as a Juvenile and Family Court.<sup>41</sup> For matters relating to the Child (Protection and Adoption) Act 2010, applications should be made to the Magistrates’ Court.<sup>42</sup> Where an appeal against a decision of the Magistrates’ Court is made, it should be directed to the High Court, or the Court of Appeal, which together make up the Supreme Court of Grenada.<sup>43</sup>

The Criminal Code<sup>44</sup> provides for penalties ranging from 5 to 15 years’ imprisonment for those convicted of child abuse.<sup>45</sup> Where the child abused is of “tender years”, the penalty shall not be less than ten years.<sup>46</sup>

The High Court may require further evidence by affidavit or oral evidence when assessing an application for a protection order.<sup>47</sup> If the Court is satisfied that the respondent is committing, or has committed, or is likely to engage in conduct that would constitute an act of domestic violence, it may issue an interim protection order pending the hearing and determination of the proceedings for a protection order, if it appears necessary or appropriate

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<sup>39</sup> Ibid, Article 32.

<sup>40</sup> Rules of Procedure of the Inter-American Commission on Human Rights, Article 25.

<sup>41</sup> Magistrates Act (amended 1996), section 40(2)-(3). Available at: <http://www.easterncaribbeanlaw.com/magistrates-act-chapter-177/>

<sup>42</sup> Child (Protection and Adoption Act) 2010, see generally.

<sup>43</sup> Ibid, sections 87(1) and 147.

<sup>44</sup> Criminal Code (amended 2012). Available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=253233](http://www.wipo.int/wipolex/en/text.jsp?file_id=253233)

<sup>45</sup> See Criminal Code, in particular provisions related to child abuse in Book III, Part VII, Title XVI (Rape and Similar Offences); and in Book III, Part VII, Title XVII (Criminal Homicide and Similar Offences).

<sup>46</sup> Criminal Code, section 203A.

<sup>47</sup> Domestic Violence Act 2010, section 5(10).

to do so, in order to ensure the safety and protection of the applicant.<sup>48</sup> An interim order may last for no longer than 28 days.<sup>49</sup>

The court will make a permanent protection order in order to prohibit the respondent from (i) committing any act of domestic violence; (ii) enlisting the help of any person to commit any act of domestic violence; (iii) entering the shared household, except that the Court shall only impose this prohibition if it appears to be in the interests of the applicant or any child or dependant; (iv) entering a specified part of the shared household; (v) entering the residence of the applicant; (vi) entering the place of employment or education of the applicant; (vii) preventing the applicant, any child or dependant, who ordinarily resides, or has resided in the shared household, from entering or remaining in the shared household, or a specified part of the shared household; (viii) taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interest in, or is reasonably used by the applicant as the case may be; (ix) approaching the applicant within a specified distance; (x) or committing any other act as specified in the order.<sup>50</sup>

The court may also refuse the respondent any contact with the child.<sup>51</sup> In making any protection order, the court must consider the welfare of any children involved.<sup>52</sup> A protection order must not last longer than three years.<sup>53</sup>

If an application for a care order is made by the Child Protection Authority, a court may make an interim care order before the application is finally determined, if it is considered appropriate for the welfare, safety and well-being of the child.<sup>54</sup> In response to a care application, the court may grant (i) a supervision care order, which places a child under the supervision of the Director, while remaining in the care of his or her parents, or any other persons so designated; (ii) a care order placing a child in the care of the Director; (iii) a care order placing the child in the custody of the State, where the parents of the child are unable to provide for the care and protection of the child, and where no other alternative measures are available.<sup>55</sup>

The court may make a care order if it is satisfied that (i) there is no parent available to care for the child as a result of death or incapacity, or for any other reason; (ii) the parents acknowledge that they have serious difficulties in caring for the child; (iii) the child has been, or is likely to be abused; (iv) the basic physical, psychological, emotional or educational needs of the child are not being met, or are not likely to be met by his parents (this cannot be based solely on the grounds of a parent being disabled or based on poverty);

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<sup>48</sup> Ibid, sections 6(1) and 6(2).

<sup>49</sup> Ibid, section 6(6).

<sup>50</sup> Ibid, section 7(1).

<sup>51</sup> Ibid, section 7(5)(a).

<sup>52</sup> Ibid, section 8(c).

<sup>53</sup> Ibid, section 7(10).

<sup>54</sup> Child (Protection and Adoption) Act 2010, section 54.

<sup>55</sup> Ibid, section 56.



(v) the child is suffering or is likely to suffer serious developmental impairment or serious psychological harm, as a consequence of the domestic environment in which the child is living; (vi) the child has exhibited sexually abusive behaviour, and an order of the Court is necessary to ensure his or her access to, or attendance at an appropriate therapeutic service; or (vii) the child is the subject of a care and protection order of another State that is not being enforced.<sup>56</sup>

A care order shall be up to a maximum of three years or until the child reaches 18, whichever is earlier.<sup>57</sup> The order must be reviewed every 90 days by the Director, or any person designated by the Director.<sup>58</sup>

A court may also make a “contact order,” affecting the amount and nature of contact between a child and his or her parent, relative or other persons of significance.<sup>59</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?

Although no specific provision was found, it seems that it is possible to challenge a law or action without naming a specific victim.

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

It was not possible to confirm whether collective action or group litigation is possible, as it does not appear to be expressly covered in the laws governing civil procedure, or in the Magistrates Act.<sup>60</sup>

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

It was not possible to confirm whether NGOs are able to file challenges with respect to potential children's rights violations, as this is not expressly covered by the laws governing civil procedure.

**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?

Two days per week are designated as family court days in the Magistrates'

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<sup>56</sup> Ibid, section 57.

<sup>57</sup> Ibid, section 58(1).

<sup>58</sup> Ibid, section 58(2).

<sup>59</sup> Ibid, section 78.

<sup>60</sup> Magistrates Act (amended 1996).

Court and the High Court. There is no full-time family court with judges and lawyers specialised in child rights.<sup>61</sup>

In the Magistrates' Court, when hearing any summary application, proceeding or offence concerning a child or young person, the Magistrate must sit as a Juvenile and Family Court.<sup>62</sup> This requires the hearing to be held in a different building or room from that in which the ordinary sittings of the Court are held, or in the same building or room on different days or at different times to ordinary sittings.<sup>63</sup> In a Juvenile and Family Court, only the Magistrate, Officers of the Court, parties to the case, their counsel, and any bona fide representatives of a newspaper, or other persons directly concerned, shall be allowed to attend.<sup>64</sup>

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

In all actions by or against the Government, costs may be awarded in the same manner as in actions between private parties.<sup>65</sup> Any "poor person" may apply to the Court by petition for leave to sue or defend as a "pauper", and will be admitted by the court to sue or defend as appropriate, providing that a barrister confirms that the person has a good cause of action or defence.<sup>66</sup> The "pauper" must also file in Court an affidavit, containing a full statement of all the material facts, to the best of his or her belief.<sup>67</sup> The Court may also appoint a barrister or solicitor to appear for that individual, and no fees shall be paid unless the action is successful and costs are awarded.<sup>68</sup>

Furthermore, in care proceedings, the High Court shall not make an order for costs unless there are exceptional circumstances that justify the Court in doing so.<sup>69</sup>

- 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?

As previously mentioned in part II.D, the Grenada Bar Association is a

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<sup>61</sup>UN Committee on the Rights of the Child, *Concluding Observations: Grenada*, CRC/C/GRD/CO/2, 22 June 2010, para. 59.

<sup>62</sup> Magistrates Act (amended 1996), section 40(2A).

<sup>63</sup> *Ibid*, section 40(2).

<sup>64</sup> *Ibid*, section 40(3).

<sup>65</sup> Civil Procedure Act, section 72.

<sup>66</sup> *Ibid*, section 73.

<sup>67</sup> *Ibid*, section 74.

<sup>68</sup> *Ibid*, section 76.

<sup>69</sup> Child (Protection and Adoption) Act 2010, section 84.

member of the Organisation of Eastern Caribbean States (OECS) Bar Association, which has as one of its objectives “to encourage the establishment of schemes of legal aid.”<sup>70</sup> No further information is available regarding any official schemes that have been established with respect to children.

It appears that the Child Protection Authority could assist children to engage in court proceedings involving violations of their rights, though this would not constitute legal representation. See part II.B above.

- 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?

It does not appear that there is any specific time limit for the purpose of bringing a case against instances of violations of children’s rights. Additionally, Grenadian law is silent on the issue of whether young adults may bring cases regarding violations of their rights that occurred when they were children.

- 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?

When the Child Protection Authority applies to the court to have a child taken into care, the Authority has a duty to carry out an investigation as necessary and appropriate, and the application to the court must be accompanied by reports as required by the court.<sup>71</sup> The same applies in the case of an application for an emergency protection order.<sup>72</sup>

Where a child “of tender years” acts as a witness in court and understands the nature of an oath, the evidence of the child may still be admitted if the child has sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.<sup>73</sup>

It would appear that there are few protections for children in official court proceedings. In 2010, the UN Committee on the Rights of the Child recommended that Grenada ensure that all children victims and/or witnesses of crimes, *e.g.*, children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking, and witnesses of such crimes, are provided with the protection required by the Convention, and that it take fully into account the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime.<sup>74</sup>

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<sup>70</sup> Official Website of the OECS Bar Association. Available at:

<http://www.oecsbar.org/index.php/en/about-us/about-oecs-bar/aims-objectives>

<sup>71</sup> Child (Protection and Adoption) Act 2010, section 37.

<sup>72</sup> Child (Protection and Adoption) Act 2010, section 40.

<sup>73</sup> Criminal Code (amended 2007), section 203(1).

<sup>74</sup> UN Committee on the Rights of the Child, *Concluding Observations: Grenada*, CRC/C/GRD/CO/2, 22 June 2010, para. 61. Available at:

[http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GRD.CO.2\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GRD.CO.2_en.pdf)

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

No information on this matter could be found.

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

Any decision by the Magistrate's Court may be appealed to the High Court by any parent of the child, or the Director of the Child Protection Authority.<sup>75</sup>

#### *Eastern Caribbean Supreme Court (ECSC)*

Decisions can be appealed to the Eastern Caribbean Supreme Court (ECSC), which has unlimited jurisdiction to decide civil and criminal cases and hear appeals from parties to legal proceedings in Grenada. The ECSC consists of two divisions: a High Court in Grenada (and other members of the Organisation of Eastern Caribbean States), and a single Court of Appeal, headquartered in St Lucia. An appeal to the High Court is made by issuing a fixed date claim form with a grounds of appeal attached.<sup>76</sup> An appeal to the Court of Appeal from the High Court or the Magistrate's or District Court is made by filing a notice of appeal within 42 days of the date of the judgment or order.<sup>77</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?

In the short-term, it is unlikely that a negative decision would have much impact beyond the victims directly concerned by it. However, as citizens in Grenada enjoy several political rights and civil liberties, such as a high level of freedom of expression,<sup>78</sup> there could be some political backlash in the long-term, if several decisions concerning violations of children's rights were negative. There could also be political repercussions from a positive decision, if it meant that the perpetrator(s) of children's human rights abuses, successfully appealed the decision of a lower court. This is particularly the case given the general belief in Grenada that there is not a culture of impunity.<sup>79</sup>

I. Follow up. What other concerns or challenges might be anticipated in

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<sup>75</sup> Child (Protection and Adoption) Act 2010, section 87(1).

<sup>76</sup> Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Rule 60.2; for more information on the particular requirements, see Part 60.

<sup>77</sup> *Ibid.*, Rules 62.3, 62.6; for more information on the particular requirements, see Part 62.

<sup>78</sup> Freedom House. Freedom in the World 2014. Grenada. Available at: <https://freedomhouse.org/report/freedom-world/2014/grenada-0#.V1edlcalnFI>

<sup>79</sup> Grenada 2012 Human Rights Report. Executive Summary. Available at: <http://www.state.gov/documents/organization/204662.pdf>

enforcing a positive decision?

No further challenges were identified.

**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 found.

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