

ACCESS TO JUSTICE FOR CHILDREN: JAMAICA

This report was produced by White & Case LLP in February 2015 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?

Jamaica¹ ratified the CRC in 1991. However, ratified international instruments do not automatically have the force of law in Jamaica; rather they must be incorporated through implementing legislation.² International instruments that are not incorporated through implementing legislation are usually incorporated in a subject-by-subject piecemeal manner.

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law,³ although national law is interpreted where possible in a manner consistent with the CRC and other international human rights obligations.

C. Has the CRC been incorporated into national law?

The CRC has not to date been directly incorporated into national law. However, in 2004, Parliament promulgated the Child Care and Protection Act (CCPA), which clearly reflects many of the CRC's provisions and offers expansive protection of children's rights.⁴

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

The CRC cannot be directly enforced in Jamaican courts because it has not been incorporated into national law.⁵

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

Research did not reveal any domestic court opinions using or relying upon the CRC. As the law stands, judicial decisions do not directly refer to the

¹ Comments on this report provided by Tenesha Myrie, Attorney-at-Law, Jamaica, October 2015.

² *National Resources Conservation Authority v. DYC and Seafood and Ting*, 58 WIR 269 (1999) (holding that legislation is necessary to implement treaties).

³ *Ibid.*

⁴ Available at:

http://www.moj.gov.jm/sites/default/files/laws/Child%20Care%20and%20Protection%20Act_0.pdf

⁵ *Second periodic report of Jamaica to the UN Committee on the Rights of the Child*, CRC/C/70/Add.15 12 February 2003, para. 20. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f70%2fAdd.15&Lang=en

principles and provisions of the Convention.⁶

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?

Under the Civil Procedure Rules,⁷ children and their representatives are entitled to bring civil cases in Jamaican courts to challenge violations of their rights, as limited by the rules discussed in part II.B below.

Children through their representatives may bring legal proceedings to challenge violations of their rights under the Constitution, as well as judicial review proceedings with respect to administrative decisions (see part III.A below).

Private prosecutions by individuals are permitted, but only with the consent of the Department of Public Prosecutions (DPP). This is usually done by the DPP issuing a fiat, which allows a person to actively associate himself/herself with the prosecution.⁸

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?

The Civil Procedure Rules set out guidelines for the participation of children and other protected parties in civil court proceedings.⁹ Children are required to have a “next friend” to conduct proceedings on their behalf, unless the court grants a child’s application to conduct proceedings without a next friend.¹⁰

If no next friend has been appointed by the court, a person may act as a child’s next friend provided they can “fairly and competently conduct proceedings on behalf of the minor” and have “no interest adverse to that of the minor.”¹¹ The next friend must file a “certificate” stating that he or she is suitable.¹² Next friends may be changed by court order, and the appointment of a next friend automatically ceases when the child reaches the age of 18.¹³

The Office of the Children’s Advocate (OCA), a parliamentary commission created under the CCPA to protect and enforce the rights of children,¹⁴ may assist or act on behalf of a child in making a complaint to a government

⁶ Ibid., para. 21.

⁷ Civil Procedure Rules 2002, available at:

<http://www.moj.gov.jm/sites/default/files/pdf/JAMAICA.Civil%20Procedure%20Rules.2006.pdf>.

⁸ Office of the DPP, ‘The decision to prosecute: A Jamaican protocol’, 2012, available at:

<http://www.dpp.gov.jm/sites/default/files/pdf/Prosecution%20Protocol.pdf>.

⁹ Civil Procedure Rules 2002, Rule 23.1-23.13.

¹⁰ Ibid., Rule 23.2.

¹¹ Ibid., Rule 23.5.

¹² Ibid., Rule 23.7.

¹³ Ibid., Rule 23.9-23.11.

¹⁴ Child Care and Protection Act 2004, Section 4(1).

authority that the rights of the child have been infringed or the interests of the child have been adversely affected by any action taken by the authority. The OCA may also act on behalf of a child in any investigation or other proceedings conducted by a government authority pursuant to the complaint.¹⁵

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

In the cases of infants and young children, the child's parent or legal guardian would typically initiate a lawsuit on behalf of the child as a next friend, in the manner described in 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?

Under the Constitution, every person charged with a criminal offence is entitled to legal representation of his/her own choosing or, if he/she does not have sufficient means to pay for legal representation, to be given such assistance as is required in the interests of justice.¹⁶

The CCPA offers broad assistance in any legal proceedings in which a child is in need of legal representation.¹⁷ When the court deems a child is in need of legal representation, it can refer the case to the OCA or grant a legal aid certificate to the child.¹⁸ The court can also adjourn the case to allow the OCA to consider the case or for necessary arrangements to be made for the child's legal representation pursuant to the legal aid certificate.¹⁹

A child can apply to the OCA for assistance in relation to legal proceedings. The OCA may arrange for the provision of legal advice or representation and any other assistance which it deems appropriate (see part IV.B below).²⁰

Additionally, the Legal Aid Council, which is responsible for administering Jamaica's legal aid scheme,²¹ provides legal aid to children who are accused of committing criminal offences. According to the Legal Aid Council, every child who enters the justice system as an accused is entitled on request to access a duty counsel, a lawyer who represents a client from when they are in police custody through to their first court hearing. Furthermore, children who are brought to a court by their parents/guardians on the ground that they are "uncontrollable", where no criminal offence is alleged, are also entitled to legal representation.²² Matters involving children which come to the

¹⁵ Ibid., Schedule 1, Section 12(1)-(2).

¹⁶ Constitution of Jamaica, Section 16(6)(c), available at: http://moj.gov.jm/sites/default/files/laws/Ja%20%28Constitution%29%20Order%20in%20Council%201962_1.pdf.

¹⁷ Child Care and Protection Act 2004, Section 4(1).

¹⁸ Ibid., Section 4(3).

¹⁹ Ibid.

²⁰ Ibid., Schedule 1, Section 15(4).

²¹ Legal Aid Act, Section 4, available at: http://moj.gov.jm/sites/default/files/laws/Legal%20Aid%20Act_1.pdf.

²² Jamaica Observer, 'Legal aid for children said uncontrollable', 2013, available at:

attention of the Legal Aid Council are given priority (see part IV.B below).²³

Children can also seek subsidised legal advice and representation on civil or criminal matters from the following legal aid clinics, which are administered by the Legal Aid Council:²⁴

- Kingston Legal Aid Clinic;²⁵
- Montego Bay Legal Aid Clinic;²⁶
- Mandeville Manchester (mobile legal clinic);²⁷ and
- May Pen (mobile legal clinic).²⁸

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)?

Neither the Civil Procedure Rules nor the CCPA imposes any limitations on a child's right to bring a case besides those discussed in part II.B above.

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?

Children through their representatives may apply for redress in the Supreme Court for violations of their rights under Chapter III of the Constitution.²⁹ Furthermore, any person authorised by law, or, with the leave of the Supreme Court, a non-governmental organisation (NGO), may apply to the Court on behalf of a child for a declaration that any legislative or executive act violates the child's rights under Chapter III.³⁰ These rights include the right to life, liberty and security of the person, freedom of thought, expression, association and movement, freedom from discrimination, torture or inhuman or degrading treatment or punishment, and right to due process. Chapter III also contains specific provisions protecting the right of every child to protection and to publicly-funded education at the pre-primary and primary levels.³¹

Any child through his/her representative, group or body with sufficient interest in the subject matter may apply to the Supreme Court for judicial

http://www.jamaicaobserver.com/news/Legal-aid-for-children-said-uncontrollable_14888017.

²³ Shelly-Ann Irving, 'Legal Aid Council helping to protect the rights of children', 2014, available at: <http://jis.gov.jm/legal-aid-council-helping-protect-rights-children/>.

²⁴ Legal Aid Act, Section 4; Ministry of Justice, 'Legal Aid Clinic', available at: <http://www.moj.gov.jm/legal-aid-clinic>.

²⁵ Located at 131 Tower Street, downtown Kingston, telephone: 922-3792, 922-3761, or 922-3556.

²⁶ Located at 42B Union Street, Montego Bay, telephone: 952-2183.

²⁷ Located at the RADA Building.

²⁸ Located at the May Pen courthouse.

²⁹ Constitution of Jamaica, Section 19(1).

³⁰ Ibid., Section 19(2).

³¹ Ibid., Section 13.

review of an administrative decision.³² This includes any person who has been adversely affected by the administrative decision which is the subject of the application.³³ To apply for judicial review, an application for leave of the Supreme Court must first be made and granted.³⁴

Children through their representatives may also initiate civil or criminal proceedings in either the Supreme Court or Resident Magistrate's Court. The Supreme Court is a court of original jurisdiction over civil and criminal matters,³⁵ and can address serious offences such as rape and murder that the Resident Magistrate's Court does not have the jurisdiction to address.³⁶ For less serious civil or criminal matters, proceedings can be initiated in the Resident Magistrate's Court,³⁷ which includes specialised courts such as the Family Court and the Children's Court.

A child or his/her representative may make a complaint to the OCA that the child's rights have been infringed or the child's interests have been adversely affected by any action taken by a relevant authority. The complaint may be made orally or in writing by the child, his/her parent, guardian, next friend or person *in loco parentis* (person or organisation in the place of a parent). The OCA may investigate the complaint, except where the complainant has a right of appeal, complaint or review under any other law, or a remedy by way of proceedings in any court unless it is satisfied that, in the particular circumstances, it is not reasonable to expect the complainant to resort to the right or remedy.³⁸ If after conducting an investigation the OCA finds that a child's rights have been infringed, it can make recommendations to the government authority, including for review of the government action, alteration of an enactment, rule or regulation which infringes children's rights or has an adverse effect on the best interests of children, or compensation for the complainant.³⁹ The OCA may also bring non-criminal proceedings, intervene in or act as *amicus curiae* in any proceedings in any court or tribunal involving law or practice concerning the rights or best interests of children.⁴⁰

Alternatively, any person can file a complaint about a violation of children's rights with the Children's Registry.⁴¹ The Children's Registry is responsible for receiving complaints and forwarding them to the appropriate government agency, including the OCA, to assist the child or prosecute the party responsible for the violation.⁴²

³² Civil Procedure Rules 2002, Rule 56.2(1).

³³ *Ibid.*, Rule 56.2(2).

³⁴ *Ibid.*, Sections 56.3-56.4.

³⁵ Jeanne Slowe and Claudette Solomon, 'The Jamaican legal system and guide to legal research', 2012, available at: <http://www.nyulawglobal.org/Globalex/JAMAICA.htm>.

³⁶ Judicature (Supreme Court) Act; Jeanne Slowe and Claudette Solomon.

³⁷ Judicature (Resident Magistrates) Act 1928, available at: <http://www.moj.gov.jm/sites/default/files/laws/Judicature%20%28Resident%20Magistrates%29%20Act.pdf>.

³⁸ Child Care and Protection Act, Schedule 1, Section 13.

³⁹ *Ibid.*, Section 16(11).

⁴⁰ *Ibid.*, Section 14.

⁴¹ Child Care and Protection Act 2004, Section 6(1)-(9).

⁴² *Ibid.*, Section 6(1)-(9).

Regional mechanisms

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),⁴³ on their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights.⁴⁴ A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.⁴⁵ 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.⁴⁶ The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.⁴⁷ When a petition is declared admissible, the IACHR attempts to reach a “Friendly Settlement” between the parties concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the human rights violations, making reparations, and/or making changes to the law.

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

The Supreme Court has original jurisdiction to hear and determine any application made by any person for redress with respect to violations of their rights under Chapter III of the Constitution. The Court has wide powers, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing any of the provisions of Chapter III.⁴⁸ These include: an injunction; restitution or damages; or an order for the return of any property, real or personal.⁴⁹ Any law that is found to be unconstitutional is void to the extent of the inconsistency.⁵⁰

Under the Civil Procedure Rules, the Supreme Court may issue any of the following remedies in judicial review proceedings: certiorari, for quashing unlawful acts; prohibition, for prohibiting unlawful acts; or mandamus, for

⁴³ 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.

⁴⁴ American Convention on Human Rights, Article 44.

⁴⁵ 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>.

⁴⁶ *Ibid.*, Article 28.

⁴⁷ *Ibid.*, Article 23.

⁴⁸ Constitution of Jamaica, Section 19(3).

⁴⁹ Civil Procedure Rules 2002, Rule 56.1(4).

⁵⁰ Constitution of Jamaica, Section 2.

requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case.⁵¹

In civil cases, the Supreme Court has the power to award money damages, only limited by specific statutes, as well as injunctions.⁵² In the criminal context, the Supreme Court has the power to impose severe penalties (fines and imprisonment). The Resident Magistrate's Court has the power to award damages in civil cases and impose limited penalties in criminal cases.⁵³ The CCPA specifically empowers the Family Court to award significant monetary damages and penalties.

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?

Generally, cases require individual victims or claimants to be named. However, it is possible for judicial review proceedings to be brought by a group or body in the public interest, without naming an individual victim (see parts III.E and IV.A below).

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

Any group with sufficient interest in the subject matter may, with leave of the Supreme Court, apply for judicial review of an administrative decision. This includes any group acting at the request of a person(s) who has been adversely affected by the decision which is the subject of the application, or that can show that the matter is of public interest and that the group possesses expertise in the subject matter of the application.⁵⁴

The Civil Procedure Rules allow for representative claimants and defendants.⁵⁵ Where five or more persons have the same or similar interest in the proceeding, the court may appoint one 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."⁵⁶ A person or body may apply to the court at any time before or during the legal proceedings.⁵⁷ When the court has appointed a representative claimant, an order of the court binds everyone whom that claimant represents.⁵⁸

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

⁵¹ Civil Procedure Rules 2002, Rule 56.1(3).

⁵² Judicature (Supreme Court) Act 1880, available at: [http://moj.gov.jm/sites/default/files/laws/Judicature%20\(Supreme%20Court\)%20Act.pdf](http://moj.gov.jm/sites/default/files/laws/Judicature%20(Supreme%20Court)%20Act.pdf); Jeanne Slowe and Claudette Solomon.

⁵³ Judicature (Resident Magistrates) Act.

⁵⁴ Civil Procedure Rules 2002, Rule 56.2.

⁵⁵ Ibid., Rule 21.1.

⁵⁶ Ibid.

⁵⁷ Ibid., Rule 21.2.

⁵⁸ Ibid., Rule 21.3.

filed?

NGOs may, with leave of the Supreme Court, apply on behalf of a child for a declaration that any legislative or executive act violates the child's rights under Chapter III of the Constitution (see part III.A above).⁵⁹

Any body with sufficient interest in the subject matter may also, with leave of the Supreme Court, apply for judicial review of an administrative decision. This includes any body acting at the request of a person(s) who has been adversely affected by the decision which is the subject of the application, or that can show that the matter is of public interest and that the body possesses expertise in the subject matter of the application.⁶⁰

As noted in part III.D above, NGOs may apply to the court to be appointed as a representative claimant.⁶¹

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?

An application for relief under the Constitution must be made by way of a fixed date claim form filed with an affidavit, stating, amongst other things, the name and details of the claimant, and the provision of the Constitution which the claimant alleges has been, is being or is likely to be breached.⁶²

A person, group or body wishing to apply for judicial review must first file an application for leave to be considered by the Supreme Court. This application must contain, amongst other things, the name and details of the applicant, and whether the applicant is personally or directly affected by the decision about which the complaint is made, or, where the applicant is not personally or directly affected, what public or other interest the applicant has in the matter.⁶³

In civil or criminal matters, whether a party files a case in the Resident Magistrate's Court or the Supreme Court depends on the nature of the case and the parties involved. As a general rule, the Resident Magistrate's Court handles less serious civil⁶⁴ and criminal cases and has less authority to provide remedies while the Supreme Court is not similarly limited. In some cases, statutes dictate which venue is appropriate.⁶⁵ However, even though many statutes provide that both the Resident Magistrate's Court and the

⁵⁹ Constitution of Jamaica, Section 19(2).

⁶⁰ Civil Procedure Rules 2002, Rule 56.2.

⁶¹ *Ibid.*, Rule 21.2.

⁶² *Ibid.*, Rule 56.9.

⁶³ *Ibid.*, Rule 56.3.

⁶⁴ Civil jurisdiction is limited to amounts not exceeding \$1,000,000: Resident Magistrate's Courts, 'Jurisdiction', available at: <http://www.rmc.gov.jm/content/jurisdiction>.

⁶⁵ See Child Care and Protection Act 2004, Section 14(1).

Supreme Court may hear specific matters, in practice the Resident Magistrate's Court handles the vast majority of cases in the court system.⁶⁶ The Civil Procedure Rules provide guidance on how to initiate civil claims in the Supreme Court.⁶⁷

Depending on their age and the nature of the offence, cases involving children accused of committing criminal offences will either be heard in the Children's Court division of the Resident Magistrate's Court or the Supreme Court.

- 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?

See part II.D above.

The OCA will provide assistance to a child if: (1) the case raises a question of principle; (2) it would be unreasonable to expect the child to deal with the case without assistance because of its complexity, the child's position in relation to another person involved, or for some other reason; or (3) there are other special circumstances which make it appropriate for the OCA to provide assistance.⁶⁸ The OCA will not provide assistance unless it appears that no other person or body is likely to provide this assistance to the child.⁶⁹ If the OCA provides assistance to a child, it may recover its expenses from the child or the child's parent or guardian if it "thinks it reasonable in the circumstances".⁷⁰

If a child is charged with a criminal offence, the child or his/her parent, guardian or any other adult on his/her behalf can apply for legal aid by completing an application form from any Legal Aid Clinic, Court's Office or the Legal Aid Council. The child will qualify for legal aid if the court or any other person authorised by the Legal Aid Act decides that he/she is unable to afford legal representation. The decision is taken after a means test, and proof of income or savings, earnings and expenses may be required. If successful, the child will have an attorney assigned to the case who will attend court for the matter.⁷¹

In court proceedings for applications for constitutional redress, the general rule is that no order for costs may be made against an applicant unless the court considers that the applicant has acted unreasonably in making the

⁶⁶ US Department of State, 'Jamaica 2013 human rights report', 2013, available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220454#wrapper>.

⁶⁷ Civil Procedure Rules 2002, Rule 8.1.

⁶⁸ Child Care and Protection Act 2004, Schedule 1, Section 15(2).

⁶⁹ Ibid., Schedule 1, Section 15(3).

⁷⁰ Ibid., Schedule 1, Section 15(4).

⁷¹ Ministry of Justice, 'Legal aid in criminal matters', available at: <http://moj.gov.jm/sites/default/files/brochures/Legal%20Aid%20at%20The%20Court.pdf>.

application or in the conduct of the application.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 practicing 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 following NGOs provide legal assistance and representation in certain matters:

- Independent Jamaica Council for Human Rights (legal aid and assistance in cases involving physical abuse resulting in injury, unlawful detention, police abuse of power, and breaches of fundamental rights and freedoms);⁷³ and
- Jamaicans For Justice (legal representation for the families of victims of fatal police shootings at Coroner's Inquests through to the Supreme Court).⁷⁴

Individuals may also enquire with the Jamaican Bar Association⁷⁵ or the Jamaica General Legal Council⁷⁶ about the possibility of receiving pro bono legal assistance. Alternatively, pro bono assistance may be provided by attorneys on this list:

http://photos.state.gov/libraries/jamaica/465361/Professional-Additional%20Services/Attorney%20List%20_JAM%204-3-13_.pdf.

- 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?

Jamaica's Limitations of Actions Act states that applicable statutes of limitations for "actions on the case" in Jamaica is defined by a UK limitation of actions statute promulgated in 1623.⁷⁷ This statute states that all "actions on the case" must be filed within six years from the date the cause of action arose (i.e. when the damage is suffered).⁷⁸ Jamaican legislators have not seen fit to amend this statute and courts have adhered to its rigid limits.⁷⁹

The Limitations of Actions Act applies to torts, recovery of debts and matters concerned with land, among other matters, and does not apply to

⁷² Civil Procedure Rules 2002, Rule 56.15(5).

⁷³ http://www.dogoodjamaica.org/organizations/independent_jamaica_council_for_human_rights.

⁷⁴ <http://jamaicansforjustice.org/>.

⁷⁵ <http://www.jambar.org>.

⁷⁶ <http://generallegalcouncil.org/>.

⁷⁷ Limitation in Actions Act 1881, available at:

<http://www.moj.gov.jm/sites/default/files/laws/Limitation%20of%20Actions%20Act.pdf>. Section 46 of this statute explicitly adopts the UK Statute 21 James I. Cape 16, of 1623, titled An Act for Limitation of Actions and for Avoiding of Suits in Law. Thus, this statute from 1623 is still binding on all "actions on the case."

⁷⁸ UK Statute 21 James I. Cape 16, Section 111 (1623).

⁷⁹ See *Baker v. Brown and Scott-Smith*, JM 2010 SC 55 (3 May 2010) (finding that neither common law nor the Civil Procedure Rules allowed for discretionary extensions of the statute of limitations to a tort claim).

criminal cases. The statute of limitations does not apply to criminal matters.

⁸⁰

- 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?

Substantive and procedural laws governing evidence are primarily governed by the Evidence Act and its respective amendments which allow for special measures to protect vulnerable witnesses.⁸¹

The Civil Procedure Rules govern the standard evidence rules. The courts are granted relatively broad discretion in determining admissibility. A court may control the issues on which it requires evidence, the nature of evidence, and the way in which the evidence is placed before the court.⁸² The CCPA contains several provisions on evidence produced and presented by children that offer increased protection for children's privacy, safety, and well-being.

If attending court would pose a serious danger to a child's life or health, that child's deposition is admissible as evidence if there is proper notice and an opportunity for cross-examination.⁸³ When a child under 14-years-old does not understand the nature of an oath, that child's testimony as a witness can still be admissible if he/she is of "sufficient intelligence" to justify the reception of the evidence and "understands the duty of speaking the truth."⁸⁴ However, when such testimony is submitted in a criminal trial, it must be corroborated by "other material evidence" to convict the accused.⁸⁵ Additionally, when a child's presence is not essential to the just hearing of the case, the case may proceed and be determined in the absence of the child.⁸⁶ A child reserves the right to have a parent or guardian present while he/she is being questioned, is in an identification parade, or is appearing in court.⁸⁷

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

Research did not reveal the typical timeframe in which either the Resident Magistrate's Court or Supreme Court reaches decisions in cases of violations of children's rights. However, a 2014 report by Freedom House noted a "growing backlog of cases".⁸⁸ The US Department of State noted in 2013 that "trials in many cases were delayed for years, and other cases were dismissed because files could not be located or had been destroyed."⁸⁹ Furthermore, there is a persistent problem in seating jurors in criminal cases,

⁸⁰ Comments provided by Tenesha Myrie, Attorney-at-Law, Jamaica, August 2015.

⁸¹ Ibid.

⁸² Civil Procedure Rules 2002, Rule 29.1.

⁸³ Child Care and Protection Act 2004, Section 19.

⁸⁴ Ibid., Section 20.

⁸⁵ Ibid.

⁸⁶ Ibid., Section 17.

⁸⁷ Shelly-Ann Irving.

⁸⁸ Freedom House, 'Jamaica', 2014, available at: <https://freedomhouse.org/report/freedom-world/2014/jamaica#.VPcJafiP8xA>.

⁸⁹ US Department of State.

which created “extensive judicial backlog.”⁹⁰ However, the courts are employing measures to reduce the backlog of cases, including alternative dispute resolution and the operation of a night court at Resident Magistrate’s Courts.⁹¹

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

Decisions of both the Resident Magistrate’s Courts and the Supreme Court can be appealed to the Court of Appeal.⁹² Civil appeals require the permission of the court issuing the judgment in question before being heard by the Court of Appeal.⁹³ Furthermore, the appellant must serve the claim form and grounds of appeal within 28 days of notice of the decision.⁹⁴ The Court of Appeal has the power to amend, execute, and enforce any judgments and orders from the courts below it.⁹⁵ In criminal cases, convicted persons have 14 days from the date of conviction to give notice of appeal to the Court of Appeal, unless the court grants an extension.⁹⁶ Criminal convictions may be appealed (1) on questions of law alone, (2) with leave of the Court of Appeal or certification of a judge of the Supreme Court that it is a fit case for appeal because of a question of fact or mixed law and fact, or (3) with leave of the Court of Appeal against the sentence unless the sentence is one fixed by law.⁹⁷

Finally, Court of Appeal decisions can be reviewed by the Judicial Committee of the Privy Council in the United Kingdom, which is the highest court of appeal for Jamaica.⁹⁸ Appeals are made to Her Majesty in Council by filing a notice of appeal within 56 days of the order or decision of the court below granting permission or final leave to appeal, or within 14 days of the grant by the Judicial Committee of permission to appeal, depending on the nature of the case.⁹⁹ In civil cases, the lower court will generally grant leave to appeal if the court is satisfied that the case raises a point of general public importance. In criminal cases, the lower court will generally grant leave only if the case raises questions of great and general importance, or there has been some grave violation of the principles of natural justice. In the absence of leave, permission to appeal must be granted by the Board (panel of judges hearing the case). In some cases there is an appeal as of right and a different procedure applies.¹⁰⁰

H. Impact. What are the potential short-term and long-term impacts of a

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Judicature (Appellate Jurisdiction) Act 1962, Sections 10 and 12, available at: [http://moj.gov.jm/sites/default/files/laws/Judicature%20\(Appellate%20Jurisdiction\)%20Act.pdf](http://moj.gov.jm/sites/default/files/laws/Judicature%20(Appellate%20Jurisdiction)%20Act.pdf).

⁹³ Ibid., Section 11(1)(e).

⁹⁴ Civil Procedure Rules 2002, Rule 60.5.

⁹⁵ Judicature (Appellate Jurisdiction) Act, Section 10.

⁹⁶ Ibid., Section 16.

⁹⁷ Ibid., Section 13.

⁹⁸ Jeanne Slowe and Claudette Solomon.

⁹⁹ Judicial Committee (Appellate Jurisdiction) Rules 2009, Rules 17(1), 18(2), available at: <https://www.jcpc.uk/docs/judicial-committee-appellate-jurisdiction-rules-2009.pdf>.

¹⁰⁰ Judicial Committee of the Privy Council, ‘Role of the JCPC’, available at: <https://www.jcpc.uk/about/role-of-the-jcpc.html>.

negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Jamaica has a common law legal system in which courts are bound to follow judicial precedents, therefore negative decisions may have long-term impacts. The possibility of political backlash or repercussions would depend on the parties involved, the nature of the case, and other relevant circumstances. Although there is little information regarding actual repercussions from positive decisions, in some cases courts struggle to seat jurors because of their fear of retribution,¹⁰¹ suggesting that there may be some interference with the court system.

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

The enforcement of awards in civil proceedings is relatively straightforward and governed by the Civil Procedure Rules.¹⁰² However, it may be difficult to enforce judgments against government agencies or officials because the government often lacks the funds to pay these awards.¹⁰³

- 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.

When contemplating legal action to challenge violations of children's rights, advocates should consider contacting the Children's Registry or the OCA for assistance in navigating Jamaica's overburdened court system.

Despite the steps taken by Jamaica to help secure children's access to justice, child abuse and neglect remain rampant.¹⁰⁴ To effectively secure children's access to justice, it is imperative that the state: (a) strengthen the capacity of the offices working on issues concerned with children's access to justice; (b) re-educate the nation on issues concerned with child care, protection and sexual abuse in a manner that reaches persons at the individual, household and community levels and that is also supported within the formal education system; and (c) address the gaps and inconsistencies in the laws and policies governing child care, protection and sexual abuse.¹⁰⁵

Take, for example, the following inadequacy in the Sexual Offences Act, 2009. The Sexual Offences Act is the primary law governing sexual offences in Jamaica. The Act makes it an offence to have sexual intercourse with any person under the age of 16. However, it has a defence in section 10

¹⁰¹ US Department of State.

¹⁰² Civil Procedure Rules 2002, Rules 43.1-43.11.

¹⁰³ US Department of State.

¹⁰⁴ The Office of the Children's Registry recorded 44,782 reports of child neglect, abuse (physical, sexual, emotional) or otherwise in need of protection for the period 2007-2013. These statistics are alarming given the fact that such acts are generally underreported. Available at: <http://www.ocr.gov.jm/index.php/statistics>.

¹⁰⁵ Comments provided by Tenesha Myrie, Attorney-at-Law, Jamaica, October 2015.

(3), which provides that any person under 23 years of age charged with having sexual intercourse with a person under 16 has a defence if he is a first-time offender and he had reasonable cause to believe that the child was over 16. Of note is the fact that under the previous law (section 50 of the Offences against the Person Act, 1864), this defence was only available where the girl was above the age of 12 and under the age 16. Given the prevalence of child sexual abuse in Jamaica, it is quite disturbing that this defence can now apply where the victim is under the age of 12. Such a defence should not apply where the victim is under the age of 12.¹⁰⁶

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

¹⁰⁶ Ibid.