

ACCESS TO JUSTICE FOR CHILDREN: SAINT LUCIA

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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?

Saint Lucia ratified the CRC on 16 June 1993,¹ and the Optional Protocols to the CRC on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, on 8 October 2013² and on 15 January 2014³ respectively.

The CRC is not formally part of national law. Saint Lucia, although a civil law territory, does not have a monist system of incorporation of treaties, but a dualist system which requires legislation for the incorporation of treaties into domestic law. In the absence of specific legislation incorporating the CRC, it does not take effect domestically and/or take precedence over national law.⁴

The Constitution is silent as to the ratification of treaties. Ratification in Saint Lucia is an executive act rather than a legislative act.⁵ Sources of law in Saint Lucia include acts adopted by Parliament, UK laws and regulations that were in effect immediately before 22 February 1979 and have not been repealed, and English common law.⁶

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law (see part I.A above). The Constitution of Saint Lucia 1978 provides that the Constitution is the supreme law of the country and that if any law is inconsistent with it, the Constitution shall prevail to the extent of the inconsistency.⁷

¹ United Nations Treaty Collection, Convention on the Rights of the Child. Available at:

http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en

² United Nations Treaty Collection, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Available at:

https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-c&chapter=4&lang=en

³ United Nations Treaty Collection, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Available at:

https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-b&chapter=4&lang=en

⁴ Comments provided by Rishi P.A. Dass, attorney at law, Victoria Chambers, Trinidad & Tobago, August 2015.

⁵ Appendix 3.2 Ratification Rules. Available at:

http://scholar.harvard.edu/files/bsimmons/files/APP_3.2_Ratification_rules.pdf

⁶ Ratification of EPAs: the process required in each ACP state. Available at:

<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CC4QFjAC&url=http%3A%2F%2Fwww.normangirvan.info%2Fwp-content%2Fuploads%2F2008%2F11%2Fratification-in-acp-countries.doc&ei=CYxMVAAPPNYa27gb7gYHQCA&usg=AFQjCNGSSCzbD857ww5qid34LnjduTJXBQ&bvm=bv.92765956.d.ZGU> p. 73

⁷ Saint Lucia Constitution, Section 120. Available at:

<http://pdba.georgetown.edu/Constitutions/Lucia/Luc78.html>

C. Has the CRC been incorporated into national law?

There is no specific legislation incorporating the CRC into Saint Lucia's national law (see part I.A above). Since ratification of the CRC, attempts have been made to incorporate parts of the CRC into domestic law. Saint Lucia has approved some new statutes as well as amended some of its child protection legislation to comply with the Convention.⁸

In the area of violence against children, the Children and Young Persons Act 1972 and the Criminal Code 1957, revised in 1992, are the two main legislative instruments.⁹ Moreover, some significant legislative measures following the ratification of the Convention were: The Family Court Act 1994, the Domestic Violence Act 1995, and the Attachment of Earnings Act 1996.¹⁰

However, many laws are still contrary to the principles of the CRC.¹¹ According to the Committee on the Rights of the Child, Saint Lucia is slow in amending its legislation to conform fully to the recommendations of the Committee as regards non-discrimination, corporal punishment and juvenile justice.¹²

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

International treaties, such as the CRC, must be incorporated into Saint Lucian law through further domestic legislation in order to create enforceable rights.¹³ Therefore, the CRC cannot be directly enforced in national courts. Nonetheless, the CRC can be and has been cited for interpretive guidance by national and regional courts with jurisdiction over Saint Lucia.¹⁴ The Court of Appeal has held it to be “well settled law that domestic provisions whether of the Constitution or statute law should as far as possible be interpreted so as to conform to the state's obligations under international law.”¹⁵

⁸ UN Secretary-General's Study on Violence Against Children: Questionnaire to Governments, Ministry of Health, Human Services, Family Affairs & Gender Relations, Saint Lucia, 03 August 2004. Available at: <http://www2.ohchr.org/english/bodies/CRC/docs/study/responses/SaintLucia.pdf>

⁹ Ibid., pp. 3-4.

¹⁰ *Initial report of Saint Lucia to the UN Committee on the Rights of the Child*, CRC/C/28/Add.23, 13 October 2004, p. 9. Available at: http://www.unicef.org/lac/spbarbados/Legal/national/St.Lucia/Reporting/CRC_initialreportSt.Lucia_2004.pdf

¹¹ Saint Lucia's 1st UN CRC NGO Report to UN Committee on the Rights of the Child on the State of Human Rights of Children and Youth in Response to June 2010 Combined 2nd, 3rd & 4th State Report by Road to Geneva Child Rights Research & Advocacy Project Team a NGO-Youth Coalition, September 2011. Available at: http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/LCA/INT_CRC_NGO_LCA_15754_E.pdf

¹² *Combined second to fourth periodic reports of Saint Lucia to the UN Committee on the Rights of the Child*, CRC/C/LCA/2-4, 20 June 2013, para. 42. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/LCA/2-4&Lang=en

¹³ Child Rights International Network, 'Saint Lucia: National Laws.' Available at: <https://www.crin.org/en/library/publications/saint-lucia-national-laws>

¹⁴ Ibid.

¹⁵ Criminal Appeal 14 of 1997 *Hughes v. Queen* per Byron CJ (as he then was) at paragraph [37], (upheld on appeal in *Hughes v. R* [2002] 2 A.C. 259); Comments provided by Rishi P.A. Dass, attorney at law, Victoria Chambers, Trinidad & Tobago, August 2015.

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

The High Court of Saint Lucia has made reference to the CRC with regard to the right of children to express their views in proceedings concerning them.¹⁶

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 Constitution ensures every person's right of access to an independent and impartial court or other authority, and right to a fair hearing within a reasonable time.¹⁷ Under the Civil Procedure Rules, children through their representatives are entitled to bring civil cases in the courts to challenge violations of their rights.¹⁸ They may also bring constitutional complaints or judicial review proceedings (see part III.A below). There is no child-specific procedure for filing individual complaints.¹⁹

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 minors and other protected parties in civil court proceedings.²⁰ Minors are required to have a "next friend" to conduct proceedings on their behalf, unless the court decides otherwise at the request of the minor involved.²¹ If a court determines at a later date that it would be "desirable" for a next friend to conduct the proceedings on behalf of the minor, a next friend may again be appointed to represent the minor.²²

If no next friend has been appointed by the court, a person may act as a minor's next friend without a court order by filing an authorisation or certificate with the court.²³ In order for this appointment to be successful, the requesting person must show that they can "fairly and competently" conduct proceedings on the minor's behalf and that they have no interest adverse to that of the minor.²⁴

Next friends may be changed by court order, and the appointment of a next friend ceases when the child reaches the age of 18.²⁵

According to the Criminal Code, any person who is in a position of trust or authority

¹⁶ *Grant v. Grant*, LC [2002] HC 30. Summary and full judgment available here: <http://www.crin.org/Law/instrument.asp?InstID=1441>.

¹⁷ Constitution, Section 8.

¹⁸ Eastern Caribbean Supreme Court Civil Procedure Rules 2000. Available at: <http://www.eccourts.org/wp-content/uploads/2014/02/CPR-2000-Revised-Edition-Feb-2014.pdf>.

¹⁹ Saint Lucia's 1st UN CRC NGO Report to UN Committee on the Rights of the Child.

²⁰ Eastern Caribbean Supreme Court Civil Procedure Rules, Part 23.

²¹ *Ibid.*, Rule 23.2.

²² *Ibid.*

²³ *Ibid.*, Rule 23.7.

²⁴ *Ibid.*, Rule 23.6.

²⁵ *Ibid.*, Rule 23.11.

towards a young person, who in the course of his or her duty becomes aware of any act of abuse committed against that young person, shall as soon as practicable report the case to any police officer or to the government department responsible for social services. This provision applies to a parent, guardian, teacher, medical practitioner, social worker, or any other person having authority over a young person. When such person without reasonable cause fails or refuses to make such a report to the police officer, he or she commits an offence. In this context “abuse” means unlawful sexual intercourse or connection with a young person, or unlawful use of force on a young person.²⁶

The Domestic Violence Act 1995 allows for a social worker to bring an application on behalf of a child under the age of 18 years.²⁷

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

In the case of infants and young children, the child’s parents or legal guardian would typically initiate a lawsuit on behalf of the child as a next friend in the manner described above.²⁸ Adults who do not hold parental responsibility may also seek the permission of the court to serve as a child’s next friend for the purposes of bringing a lawsuit, provided they meet the criteria established in the Civil Procedure Rules.²⁹

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

In 2007, the Legal Aid Act was enacted, which established a Legal Aid Authority (LAA) to administer the provision of legal aid for civil and criminal proceedings in the State. Any person who cannot afford legal services from a private attorney can apply to the authority for legal aid.³⁰ Legal aid will only be available where the applicant does not possess or is not entitled to disposable capital of a total value in excess of \$7,000 or the disposable income of the applicant does not exceed \$10,000 per year.³¹

However, according to the Committee on the Rights of the Child, there continues to be a general lack of legal representation for juveniles who are in conflict with the law. The responsibility for representation of children before the courts rests with the Department of Probation and Parole. Probation Officers usually prepare Pre Sentence Reports for juveniles which include the views of the child.³²

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)?

A child’s parents or guardian do not have to consent to that child or his or her next

²⁶ Criminal Code, Section 119. Available at: <http://www.rslpf.com/site/criminal%20code%202004.pdf>

²⁷ Comments provided by RISE (*St. Lucia*) Inc., August 2015.

²⁸ Eastern Caribbean Supreme Court Civil Procedure Rules, Part 23.

²⁹ *Ibid.*, Rule 23.6.

³⁰ Legal Aid Act, Sections 31 and 32. Available at: http://archive.stlucia.gov.lc/docs/legal_aid/LegalAidAct.pdf

³¹ *Ibid.*, Section 35(1).

³² *Combined second to fourth periodic reports of Saint Lucia to the UN Committee on the Rights of the Child*, para. 77.

friend initiating legal proceedings.³³

While it is not a limit on a child or chosen legal representative bringing a case, it is notable that any proposed settlement, compromise or payment with respect to a claim by or on behalf of a minor must be approved by the court.³⁴

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?

If any person, including a child, alleges that their fundamental rights under the Constitution has been, is being or is likely to be contravened, then that child or their representative may apply to the High Court for redress.³⁵ These constitutional rights, which are set out in sections 2 to 15 of the Constitution, include the right to life and personal liberty, freedom of conscience, expression, assembly and association, and protection from inhuman treatment and discrimination.

Children and their representatives may initiate private law legal proceedings in civil courts to challenge violations of their rights under domestic law, in accordance with the Civil Procedure Rules. Civil actions typically request compensation in the form of monetary damages, but may also seek an injunction ordering a party to carry out or cease a particular action.³⁶

Any person, group or body may make an application for judicial review in respect of a claim in public law if they have "sufficient interest" in the subject matter of the application. This includes any person who has been adversely affected by the decision which is the subject of the application.³⁷ Acts and decisions of public bodies, including the Cabinet, can be subject to judicial review.³⁸

In cases of criminal conduct, including child abuse, criminal proceedings can be brought against the perpetrator. Cases of child abuse are reported from the Division of Human Services to the Vulnerable Persons Unit of the police for investigation, and vice versa.³⁹ The initiation of criminal proceedings falls within the independent remit of the office of the Director of Public Prosecutions established under the Constitution.⁴⁰ Summary criminal proceedings before the Magistrate's court may be privately initiated, though this is rare,⁴¹ and such prosecutions may themselves be taken over and/or

³³ Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Part 23.

³⁴ Ibid., Rule 23.12(1).

³⁵ Constitution, Section 16(1).

³⁶ Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Part 23.

³⁷ Ibid., Rule 56.2,

³⁸ See, e.g., *Global Education Provider Ltd v. The Attorney General of Dominica*, Eastern Caribbean Supreme Court. Available at:

http://www.eccourts.org/wp-content/files_mf/1359641902_magicfields_pdf_file_upload_1_1.pdf

³⁹ Immigration Law Practitioners' Association (ILPA), *'Saint Lucia: Prevalence and forms of child abuse, including legislation, state protection, and availability of child-protection services (2009-October 2012)'*, 9 November 2012, LCA104228.E. Available at: <http://www.refworld.org/docid/50b4a7c62.html>

⁴⁰ Constitution, Section 73.

⁴¹ Dana Seetahal, *Commonwealth Caribbean Criminal Practice and Procedure*, 4th ed. Routledge (2014) at page 57.

discontinued by the Director of Public Prosecutions.⁴²

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),⁴³ on their behalf or on behalf of third persons, regarding alleged violations of the American Declaration of the Rights and Duties of Man⁴⁴ and other Inter-American human rights instruments.⁴⁵ A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.⁴⁶ 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.⁴⁷ The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.⁴⁸ 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 power of the court and available remedies depends on the nature of the alleged violations. In civil cases, the courts have full power to review violations and offer civil penalties, such as fines. In addition, the court in its equitable jurisdiction has the power to grant injunctive or other equitable relief where appropriate.⁴⁹ In criminal cases, the court has the power to review violations and order criminal penalties, such as imprisonment.⁵⁰ The Domestic Violence (Summary Proceedings) Act 1995 provides for

⁴² Constitution, Section 73 (2) (b) and (c); Comments provided by Rishi P.A. Dass, attorney at law, Victoria Chambers, Trinidad & Tobago, August 2015.

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

⁴⁵ Statute of the Inter-American Commission on Human Rights, Section IV, available at: <http://www.oas.org/en/iachr/mandate/Basics/statuteiachr.asp>.

⁴⁶ 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>.

⁴⁷ Ibid., Article 28.

⁴⁸ Ibid., Article 23.

⁴⁹ Comments provided by Rishi P.A. Dass, attorney at law, Victoria Chambers, Trinidad & Tobago, August 2015.

⁵⁰ Saint Lucia’s 1st UN CRC NGO Report to UN Committee on the Rights of the Child.

protection orders to be issued by courts.⁵¹

In cases of violations of constitutional rights, the High Court has original jurisdiction to hear and determine applications for redress, and determine any question regarding such violations that are referred by another court to the High Court for its opinion. The High Court “may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement” of constitutional rights.⁵²

Remedies in judicial review include: certiorari, for quashing 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; prohibition, for prohibiting unlawful acts; injunctions; orders for the return of any property, real or personal; and restitution or damages.⁵³

Laws which are found to be inconsistent with the Constitution are void to the extent of such inconsistency.⁵⁴

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?

As a general rule, both criminal and civil proceedings must be made by a named and publicly identified claimant or accuser. Absent specific statutory authority, there is no power at common law for a defendant to be deprived of the right to either confront his accuser⁵⁵ or to have the benefit of a public hearing.⁵⁶

Civil proceedings may be brought by a representative claimant, which can be a body with a “sufficient interest” in the proceedings.⁵⁷ However, every person to be represented must be either identified individually or by description (if it is not practicable to identify a person individually).⁵⁸

Similarly, an application for judicial review can be submitted by a group or body with “sufficient interest” in the subject matter of the application.⁵⁹ Such an application must state the name, address and description of the applicant and, if the applicant is not personally or directly affected, what public or other interest the applicant has in the matter.⁶⁰ However, there are no provisions requiring the naming of individual victims affected by the decision about which the complaint is made.

⁵¹ The Domestic Violence Act 1995, Section 4. Available at: <http://cyber.law.harvard.edu/population/domesticviolence/SAINTLUCIA.htm>

⁵² Constitution, Section 16.

⁵³ Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Rule 56.1.

⁵⁴ Constitution, Section 120.

⁵⁵ *R v Davis* [2008] 1 A.C. 1128; Comments provided by Rishi P.A. Dass, attorney at law, Victoria Chambers, Trinidad & Tobago, August 2015.

⁵⁶ *Al Rawi and Ors v Security Services and Ors* [2012] 1 A.C. 531; Comments provided by Rishi P.A. Dass, attorney at law, Victoria Chambers, Trinidad & Tobago, August 2015.

⁵⁷ Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Part 21.

⁵⁸ *Ibid.*, Rule 21.2(3).

⁵⁹ *Ibid.*, Rule 56.2.

⁶⁰ *Ibid.*, Rule 56.3(3).

In criminal proceedings relating to sexual offences the Criminal Code provides for measures to maintain the anonymity of the complainant and the accused during the trial.⁶¹

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

Group litigation by means of appointing a representative claimant is allowed under Part 21 of the Civil Procedure Rules. An application for an order appointing a representative party may be made at any time, and must be supported by affidavit evidence and identify every person to be represented either individually or by description, if it is not practicable to identify a person individually.⁶²

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?

In addition to persons, any group or body may make an application for judicial review if they have "sufficient interest" in the subject matter of the application. This includes: any body or group acting at the request of a person(s) who has been adversely affected by the decision which is the subject of the application; any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application; and any body or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application.⁶³ This suggests that it is possible for non-governmental organisations to file applications for judicial review.

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?

There are two levels of courts: courts of summary jurisdiction (magistrate's courts) and the High Court. The lower courts accept civil claims up to about \$1,900 (EC\$5,000) in value, and criminal cases generally classified as "petty."⁶⁴

The High Court has unlimited authority in both civil and criminal cases. Civil proceedings are commenced by filing a claim form and statement of claim in the court office, as well as an affidavit or other document where required by a rule or practice direction.⁶⁵ The claim form must: include a short description of the nature of the claim; specify any remedy that the claimant seeks; and give an address for service.⁶⁶ The claimant must include in the claim form or in the statement of claim a statement of all

⁶¹ Criminal Code, section 138; Comments provided by Rishi P.A. Dass, attorney at law, Victoria Chambers, Trinidad & Tobago, August 2015.

⁶² Ibid., Part 21.

⁶³ Ibid., Rule 56.2.

⁶⁴ US Department of State, 'Saint Lucia Country Report on Human Rights Practices for 1997'. Available at: http://www.state.gov/1997-2001-NOPDFS/global/human_rights/1997_hrp_report/stlucia.html

⁶⁵ Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Rule 8.1.

⁶⁶ Ibid., Rule 8.6.

the facts on which the claimant relies.⁶⁷ In a case of wrongful arrest or detention, the claimant should name the persons who are accused of having committed the unlawful act and include them as defendants.⁶⁸ Generally, proceedings may be commenced only in the court office for the Member State, Territory or circuit where either the cause of action arose, or the defendant resides or carries on business.⁶⁹

Any person who alleges a violation of his/her fundamental rights or freedoms under the Constitution may apply to the High Court for redress.⁷⁰

A person wishing to apply for judicial review must first obtain leave, and an application for such leave must be considered by a judge of the High Court.⁷¹ Rule 56.3(3) of the Civil Procedure Rules sets out the details that must be provided in the application.

There are also specialised courts/tribunals – namely juvenile, family, divorce, administrative, gun, revenue and industrial courts.⁷² The Family Court handles child custody, maintenance, support, domestic violence, juvenile affairs, and related matters.⁷³ An allegation of domestic violence would be made through an application for a protection order, occupation order or a tenancy order at the Magistrate’s Court or the Family Court. An attorney is not needed to make the application.⁷⁴

- 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.

- 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?

There are non-governmental organisations dedicated to providing legal aid to individuals unable to pay. The National Centre for Legal Aid and Human Rights Inc., a human rights advocacy NGO, provides free legal aid to persons in need, although not expressly to children.⁷⁵

- 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

⁶⁷ Ibid., Rule 8.7.

⁶⁸ *Shamal Charles v. Attorney General*, claim no. SLUHCV2009/1045, High Court of Justice.

⁶⁹ Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Rule 8.3.

⁷⁰ Constitution, Section 16.

⁷¹ Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Rule 56.3.

⁷² Dina, Yemisi, ‘Guide to Caribbean Law Research. Law and Technology Resources for Legal Professionals’, 18 November 2002. Available at: <http://www.llrx.com/features/caribbean.htm>

⁷³ US Department of State, ‘2008 Human Rights Report: Saint Lucia.’ Available at: <http://www.state.gov/j/drl/rls/hrrpt/2008/wha/119172.htm>

⁷⁴ UN Women, ‘Saint Lucia’. Available at:

<http://caribbean.unwomen.org/en/caribbean-gbv-law-portal/country-resources/saint-lucia>

⁷⁵ Saint Lucia’s 1st UN CRC NGO Report to UN Committee on the Rights of the Child.

that occurred when they were children?

This depends upon the type of violation alleged. According to the Criminal Code, where no time is prescribed by law for making a complaint with respect to any summary offence, the complaint must be made within six months from the time when the matter of the complaint arose. In the case of a continuous contravention, the complaint must be made within six months of the date of the last contravention.⁷⁶ There is no period of limitation in relation to any sexual offence involving a minor or murder.⁷⁷ Under the Civil Code, the limitation period for delicts (civil wrongs) is three years.⁷⁸ The limitation period concerning actions against public officers in respect of acts done by them in good faith and in respect of their public duties is six months.⁷⁹ There is no limitation period for claims for constitutional relief.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?

The Civil Procedure Rules set out the kinds of evidence that are admissible in civil proceedings, including documents, physical evidence, photographs or video recordings, and witness statements or testimony. The Rules also provide for the admission of expert testimony, which involves not only giving factual information, but also opinions based on that information.⁸¹

The Children and Young Persons Act 1972 makes provision for the right of the child to be heard in any judicial and administrative proceedings affecting the child. In criminal proceedings, juveniles are allowed to ask questions and to present any statement in his/her defence and in “extenuation or mitigation of the penalty or otherwise.”⁸² The Evidence Act 2002 contains provisions to recognise the views of the child in court proceedings. For example, section 15 makes provisions for a child 12 years old and over to give sworn testimony where competency is presumed. Under section 29, children under 12 years cannot give sworn testimony, but if the child states: “O I promise to tell the truth” that child’s unsworn testimony may be taken.⁸³ The Adoption Ordinance specifies that in deliberating an application for an Adoption Order, due consideration will be given to the “wishes of the infant, having regard to the age and understanding of the infant.”⁸⁴ There is a practice especially in the Family Court to ensure the right of the child to be heard is actively considered. For example, when there is an application

⁷⁶ Criminal Code, Section 671(1).

⁷⁷ Ibid., Section 671(2).

⁷⁸ *Bertha Francis v. First Caribbean International Bank LTD*, Claim No. 0583/1998, Para. 8. Available at:

http://www.eccourts.org/wp-content/files_mf/03.07.08berthafrancisvfirstcaribbeaninternationalbankcibc.pdf

⁷⁹ *Percival Sonson acting herein by his next friend Anastasie Sonson v. the Attorney General Garvey Hunte - PC 236*, Claim No. SLUHCV 2005/0695. para. 29. Available at:

http://www.eccourts.org/wp-content/files_mf/22.08.06percivalsonsonvattorneygeneral.pdf

⁸⁰ Ibid., para. 28.

⁸¹ Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Part 29.

⁸² Children and Young Persons Act, Section 23. Available at:

<http://www.cavehill.uwi.edu/LAWLIBRARY/getattachment/4281dcfd-a304-4678-84bd-458bc99ad417/C/CHILDREN-AND-YOUNG-PERSONS-ACT.aspx>

⁸³ *Combined second to fourth periodic reports of Saint Lucia to the UN Committee on the Rights of the Child*, para. 78.

⁸⁴ *Initial report of Saint Lucia to the UN Committee on the Rights of the Child*, para. 64.

before the magistrate for custody of a child from unmarried parents, the Social Support Section of the Family Court complies a custody report which must consider the views of the child.⁸⁵

The Children and Young Persons Act 1972 (Part VII 27(1), Part III 13(1)) and the Criminal Code (section 1105) speak to the protection of the privacy of a juvenile. Under sections “Establishment of Juvenile Courts” and “Evidence and Procedure” of the Children and Young Persons Act, provisions are made for the exclusion of the public from the courts. This Act further states that, in “any proceedings in relation to an offence against, or any conduct contrary to, decency or morality a person who, in the opinion of the court is a juvenile is called as a witness, the court may direct that all or any persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case be excluded from the court during the taking of the evidence of that witness.”⁸⁶ Respect for the privacy of the child is facilitated in other instances through this Act, which also disallows “any child, other than an infant in arms from being present in court during the trial of any other person charged with an offence or during any proceedings thereto, except during such time as his presence is required as a witness or otherwise for the purpose of justice.”⁸⁷

Under the Civil Procedure Rules, the court has powers generally to allow a witness to give evidence without being present in the courtroom, through a video link or by any other means.⁸⁸ A child under the age of 12 years who is a complainant in a sexual offence case can be afforded treatment as a vulnerable witness. In such cases the child may be allowed to testify while being screened off from the defendant, or testify from a location outside the courtroom.⁸⁹

Additionally, the introduction of video link technology following an amendment to the Evidence Act 2002 has proven essential in protecting children who have been victims of abuse. In 2008, video link in cases of child abuse was introduced by the Family Court and the Royal St Lucia Police Force in collaboration with other agencies such as Human Services, the Criminal Court, the Court of Appeal and Criminal Prosecutions Services. This was set up in the Castries area initially, but has now been introduced in the south of the island as well.⁹⁰ Prior to video link, the Family Court established a programme for children giving evidence in court, whereby the child is prepared for their role in court without discussing the evidence.⁹¹

However, children and young people in Saint Lucia expressed reluctance to report sexual violence due to the "insensitive and under-equipped justice system" and fears that bringing the case forward would undermine their privacy and self esteem.⁹²

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

⁸⁵ Comments provided by RISE (*St. Lucia*) Inc., August 2015.

⁸⁶ *Initial report of Saint Lucia to the UN Committee on the Rights of the Child*, para. 91.

⁸⁷ *Ibid.*, para. 92.

⁸⁸ Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Rule 29.3.

⁸⁹ ‘Saint Lucia: Prevalence and forms of child abuse, including legislation, state protection, and availability of child protection services (2009 - October 2012)’.

⁹⁰ Comments provided by RISE (*St. Lucia*) Inc., August 2015.

⁹¹ *Ibid.*

⁹² *Ibid.*

has been a violation?

The legal system is noted for being slow, leading to a backlog of cases in the court system and long stays of pre-trial detention.⁹³ A delay reduction programme has been in place since 2004 that aims to expedite certain cases, but there is little information on its results, and the backlog remains a serious issue.⁹⁴

Regarding family law cases, the Family Court usually gives at least an interim decision on the day of application.

⁹⁵

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

Decisions of inferior courts (magistrates courts, high courts and special courts) 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 Saint Lucia. The ECSC consists of two divisions: a High Court in Saint Lucia (and other members of the Organisation of Eastern Caribbean States), and a single Court of Appeal, headquartered in Saint Lucia. An appeal to the High Court is made by issuing a fixed date claim form with a grounds of appeal attached.⁹⁶ 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.⁹⁷

Finally, decisions can be appealed to the Judicial Committee of the Privy Council in the United Kingdom, which is the highest court of appeal for Saint Lucia. 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.⁹⁸ Leave to appeal shall lie only with the permission of the Judicial Committee of the Privy Council.⁹⁹ Leave will generally only be granted in civil cases where "an arguable point of law of general importance has been raised" or in criminal cases, "where there is a risk that a serious miscarriage of justice may have occurred".¹⁰⁰ An appeal lies as of right in civil proceedings relating to claims in excess of \$1500 or criminal or civil proceedings involving a question as to the interpretation of the Constitution.¹⁰¹ In the absence of leave, permission to appeal must be granted by the Board (panel of judges hearing the case).

⁹³ ISSAT, Saint Lucia Country Profile. Available at:

<http://issat.dcaf.ch/Learn/Resource-Library/Country-Profiles/Saint-Lucia-Country-Profile>

⁹⁴ Ibid.

⁹⁵ Comments provided by RISE (*St. Lucia*) Inc., August 2015.

⁹⁶ Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Rule 60.2; for more information on the particular requirements, see Part 60.

⁹⁷ Ibid., Rules 62.3, 62.6; for more information on the particular requirements, see Part 62.

⁹⁸ 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>

⁹⁹ Constitution, Section 108 (3); Comments provided by Rishi P.A. Dass, attorney at law, Victoria Chambers, Trinidad & Tobago, August 2015.

¹⁰⁰ Judicial Committee of the Privy Council, Practice Direction 3: Applications for Permission to Appeal; Comments provided by Rishi P.A. Dass, attorney at law, Victoria Chambers, Trinidad & Tobago, August 2015.

¹⁰¹ Constitution, Section 108 (1); Comments provided by Rishi P.A. Dass, attorney at law, Victoria Chambers, Trinidad & Tobago, August 2015.

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

The Constitution provides for an independent judiciary, and the government generally respected judicial independence in practice.¹⁰² Corruption does not appear to be a serious concern in the courts system and the US State Department has stated that the right to a fair trial is generally upheld.¹⁰³ Saint Lucia's legal system is based on British common law.¹⁰⁴ Therefore, negative decisions of high level courts may have a long-term effect.

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

There are reportedly challenges to enforcing protection orders in child abuse cases (see part V below).

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.

Saint Lucia currently defines juveniles as persons under the age of 16. This means that children aged 16 and 17 years old are not covered by child protection laws.¹⁰⁵

Despite the establishment of a special police unit to investigate and report on cases of child abuse (see part III.A above), there are still many investigations that are "not handled with the level of sensitivity required for such issues". The unit is "still not very effective" due to the high level of rotation among officers. Even though the police receive training, they are frequently replaced with others who have not received training.¹⁰⁶

Sources indicate that in cases of child abuse, the mother sometimes intervenes to have the case dropped, because the family is economically dependent on the abuser. Other sources indicate that the perpetrator sometimes pays the parents of the victim to drop the charges or not report the incident to the police. Even though such an arrangement is illegal, it still happens.¹⁰⁷ In January 2012, the Director of Public Prosecutions expressed alarm at the number of cases being withdrawn from the court, particularly in cases involving minors, and said that her office would take a "firm stand" against guardians who accept compensation in exchange for withdrawing the case from court.¹⁰⁸

Regarding enforcement in child abuse cases, there are examples of children being

¹⁰² US Department of State, 'Saint Lucia 2013 Human Rights Report'. Available at: <http://www.state.gov/documents/organization/220680.pdf>.

¹⁰³ ISSAT, Saint Lucia Country Profile.

¹⁰⁴ US Department of State, '2014 Investment Climate Statement - Saint Lucia'. Available at: <http://www.state.gov/e/eb/rls/othr/ics/2014/227234.htm>

¹⁰⁵ Saint Lucia's 1st UN CRC NGO Report to UN Committee on the Rights of the Child.

¹⁰⁶ Ibid.

¹⁰⁷ 'Saint Lucia: Prevalence and forms of child abuse, including legislation, state protection, and availability of child protection services (2009 - October 2012)'.

¹⁰⁸ Ibid.

granted a protection order but eventually ending up back with their abusive father because they had nowhere else to live. It is difficult to escape an abuser in Saint Lucia due to its very small size and the fact that "everyone knows everyone else".¹⁰⁹

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

¹⁰⁹ Ibid.