

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

*This report was produced by White & Case LLP in April 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?**

Seychelles acceded to the CRC on 7 September 1990,<sup>1</sup> however international treaties are not binding in the national legal system unless they have been domestically ratified by an act or a resolution of the legislature,<sup>2</sup> which has not occurred with respect to the CRC.

The Republic of Seychelles is also a party to the Optional Protocols to the Convention on the Rights of the Child on armed conflict<sup>3</sup> and on sale and trafficking of children<sup>4</sup> and it has signed, but not ratified the third Optional Protocol on a communications procedure.<sup>5</sup>

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

The CRC does not take precedence over national law. However, the Constitution expressly provides for the inalienable protection of human rights and fundamental freedoms<sup>6</sup> and sets forth that they shall be interpreted in such a way so as not to be inconsistent with any international obligations of Seychelles relating to human rights and freedoms.<sup>7</sup>

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

The CRC has not been incorporated into national law. However, Seychelles has adopted a number of legislative and policy measures with a view toward implementing specific provisions of the Convention, for example The Education Act (2004),<sup>8</sup> The Seychelles Framework for Early Childhood Care and

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<sup>1</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en).

<sup>2</sup> Constitution of the Republic of Seychelles, Chapter VI, art. 64(4), available at: <http://greybook.seylii.org/se/CAP42>.

<sup>3</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en).

<sup>4</sup> [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>5</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-d&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en).

<sup>6</sup> Constitution, Chapter III - "Seychellois Charter of Fundamental Human Rights and Freedoms".

<sup>7</sup> Constitution, Chapter III, Part V, art. 48.

<sup>8</sup> Available at: <http://www.seylii.org/sc/legislation/act/2004/13>.

Education (2010),<sup>9</sup> The National Plan of Action for Children (2005-2009),<sup>10</sup> and others.<sup>11</sup> Furthermore, there have been different amendments made to the Children Act e.g. Children (Amendment) Act 2005, to introduce the National Commission for Child Protection.<sup>12</sup>

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

The CRC cannot be directly enforced in courts in Seychelles. However, courts are required by the Constitution to take judicial notice of international obligations of Seychelles relating to human rights and freedoms, including the views of international and regional bodies administering and enforcing such obligations and constitutions of other democratic states and decisions of their courts with respect to the same.<sup>13</sup>

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

According to a report submitted by the State to the UN Committee on the Rights of the Child, the Supreme Court of Seychelles has directly quoted the CRC in key decisions, for example *Durup v. Durup – Civil Appeal No. 1 of 2000*, reinforcing the principle of the “best interest of the child” as the paramount consideration in the courts’ and tribunals’ decision making process.<sup>14</sup> The best interest principle is also followed in proceedings before the Family Tribunal where the bulk of the cases are child related and include maintenance, access and custody.<sup>15</sup>

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

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<sup>9</sup> Available at:

[http://www.africanchildforum.org/clr/policy%20per%20country/seychelles/seychelles\\_earlychildhood\\_2011\\_en.pdf](http://www.africanchildforum.org/clr/policy%20per%20country/seychelles/seychelles_earlychildhood_2011_en.pdf).

<sup>10</sup> Available at:

[http://wbgfiles.worldbank.org/documents/hdn/ed/saber/supporting\\_doc/AFR/Seychelles/ECD/25%20Seychelles%20National%20Plan%20of%20Action%202009.pdf](http://wbgfiles.worldbank.org/documents/hdn/ed/saber/supporting_doc/AFR/Seychelles/ECD/25%20Seychelles%20National%20Plan%20of%20Action%202009.pdf).

<sup>11</sup> UN Committee on the Rights of the Child, *Concluding Observations to the combined second, third and fourth periodic reports of the Seychelles*, CRC/C/SYC/CO/2-4, 23 January 2012, paras 4-6, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/SYC/CO/2-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/SYC/CO/2-4&Lang=en).

<sup>12</sup> Children Act, Section 3A(1), available at: <http://greybook.seylli.org/se/CAP28>.

<sup>13</sup> Constitution, Chapter III, Part V, art. 48.

<sup>14</sup> *Combined second, third and fourth periodic reports of the Republic of Seychelles to the UN Committee on the Rights of the Child*, CRC/C/SYC/2-4, 27 April 2011, para. 76, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSYC%2f2-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSYC%2f2-4&Lang=en).

<sup>15</sup> Comment added by the Ministry of Social Affairs and Judiciary in Seychelles

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

Violations of children's rights can be challenged through civil actions in the courts by their parent or guardian.<sup>16</sup> With reference to criminal actions, the Attorney General has the right to prosecute all crimes and offenses over which the courts have jurisdiction.<sup>17</sup>

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?

Majority and full legal capacity is attained at the age of 18.<sup>18</sup> It appears that any cases must be brought on the child's behalf by a parent or guardian, with one exception. Children over the age of 14 may, with leave of the Family Tribunal, apply to the Tribunal by themselves for a protection order under the Family Violence (Protection of Victims) Act.<sup>19</sup> Such application may also be submitted by a parent or guardian, any person residing with the child or the DSS.<sup>20</sup>

The Civil Code also provides for the judicial appointment of a guardian *ad litem*, who shall have powers to bring cases or intervene in proceedings in name or on behalf of a child or young person. If no one else is appointed, the Attorney General shall represent the interest of the child.<sup>21</sup>

Under the Children Act, the Director of Social Services (the "DSS") is mandated to act on behalf of children.<sup>22</sup> Through her representatives (*i.e.*, either the senior legal officer or a social worker), the DSS takes matters of violence against children to the Family Tribunal for the appropriate protection orders. The DSS through her representative acts on behalf of children in matters in which children's rights have been and are being violated.<sup>23</sup>

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

As stated above, such cases would have to be brought by a parent or guardian or the DSS where the situation calls for it.

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<sup>16</sup> Civil Code, Title IX and Title XI, art. 488, available at:

[http://greybook.seylii.org/se/CAP33#!fragment/zoupio-\\_Toc399323991](http://greybook.seylii.org/se/CAP33#!fragment/zoupio-_Toc399323991).

<sup>17</sup> Code of Criminal Procedure, art. 60, available at: <http://greybook.seylii.org/se/CAP54>.

<sup>18</sup> Civil Code, Title X, art. 388.

<sup>19</sup> Family Violence (Protection of Victims) Act 2000, s. 3, available at: <http://greybook.seylii.org/se/2000-4>.

<sup>20</sup> *Ibid.*

<sup>21</sup> Civil Code, Title IX. See also Children Act, art 21, available at: <http://greybook.seylii.org/se/CAP28>.

<sup>22</sup> See Children Act, Section 107.

<sup>23</sup> *Reply of the Republic of Seychelles to the Questionnaire to Governments part of the UN Study on Violence Against Children, Questionnaire to Government*, 22 July 2005, available at:

<http://www.ohchr.org/Documents/HRBodies/CRC/StudyViolenceChildren/Responses/Seychelles.pdf>.

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

Legal aid in the form of representation is available to parties in civil and criminal cases. With reference to civil proceedings, legal aid is available to any person whose disposable income does not exceed certain levels (set forth in detail in the Social Security Act).<sup>24</sup> Similarly, with reference to criminal proceedings, legal aid is available to any person charged with an offence if he is unable to meet the expenses of the proceeding without undue hardship to himself or his dependents due to his financial situation.<sup>25</sup> No specific provisions are made for cases brought on behalf of children.

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 further limitations or conditions were identified.

### III. **How can children's rights violations be challenged before national courts?**

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

The Constitution is the supreme law of Seychelles and any other law found to be inconsistent with the Constitution is void.<sup>26</sup> Anyone claiming a violation of any constitutional provision, including any of the human rights and fundamental freedoms set forth in Charter III of the Constitution - the Seychellois Charter of Fundamental Human Rights and Freedoms, may bring a challenge at the Constitutional Court.<sup>27</sup> The Constitution provides that only the Supreme Court of Seychelles has jurisdiction in respect of matters relating to the application, contravention, enforcement or interpretation of the Constitution.<sup>28</sup> When a question of the constitutionality of a legal provision arises in other proceedings before a lower court, the court shall immediately halt the procedure and refer the question to the Constitutional Court.<sup>29</sup>

The Ombudsman of the Seychelles can investigate complaints by persons or bodies alleging an injustice or a violation of a right in the Seychellois Charter of

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<sup>24</sup> Legal Aid Act, Sections 3-4, available at: <http://greybook.seylii.org/se/CAP110>.

<sup>25</sup> Legal Aid Act, Sections 6-7.

<sup>26</sup> Constitution, Chapter I, art. 5.

<sup>27</sup> Constitution, arts. 46 and 130.

<sup>28</sup> Constitution, art. 130.

<sup>29</sup> Constitution, art. 46(7) and 130(6).

Fundamental Human Rights and Freedoms by an action of a public authority.<sup>30</sup> He may also assist a complainant in legal proceedings challenging a human rights violation, appear as party to proceedings concerning human rights violations with the court's permission and initiate proceedings relating to the constitutionality of a law or of the provisions of a law.<sup>31</sup>

Complaints of violations of a right in the Seychellois Charter of Fundamental Human Rights and Freedoms by another person may be submitted to the National Human Rights Commission.<sup>32</sup>

In addition, there are two regional mechanisms available to children complainants from Seychelles.

First, individuals, including child victims, their parents or legal representatives, groups, or NGOs recognised by the African Union may submit complaints (known as “communications”) to the African Committee of Experts on the Rights and Welfare of the Child (“African Committee”) about violations of the African Charter on the Rights and Welfare of the Child (“African Children’s Charter”).<sup>33</sup> All available domestic remedies must have been exhausted before bringing a case to the African Committee.<sup>34</sup> The complaint 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, and whether or not the complainant wishes to remain anonymous and the reasons for this.<sup>35</sup> The African Committee will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.<sup>36</sup>

Second, individuals, groups or NGOs may submit complaints (known as “communications”) to the African Commission on Human and Peoples’ Rights (“African Commission”) about violations of the African Charter on Human and Peoples’ Rights (“African Charter”).<sup>37</sup> All available domestic remedies must

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<sup>30</sup> Constitution, Schedule 5, s. 1.

<sup>31</sup> Ibid.

<sup>32</sup> Protection of Human Rights Act, s. 6, available at: <http://www.seylli.org/sc/legislation/act/2009/3>.

<sup>33</sup> African Charter on the Rights and Welfare of the Child (“African Children’s Charter”), Article 44, available at: <http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acerwc/acerwc-charter-full-text/>. For more information about communications, see: <http://acerwc.org/the-committees-work/communications/>.

<sup>34</sup> African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at: <http://acerwc.org/the-committees-work/communications/>.

<sup>35</sup> War Resisters’ International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Committee of Experts on the Rights and Welfare of the Child: communication procedure’, 2012, available at: <http://co-guide.org/mechanism/african-committee-experts-rights-and-welfare-child-communication-procedure>.

<sup>36</sup> Ibid.

<sup>37</sup> African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

have been exhausted before bringing a case to the African Commission.<sup>38</sup> The complaint 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; whether or not the complainant wishes to remain anonymous and the reasons for this; and the name of the victim, in a case where he/she is not the complainant.<sup>39</sup> The African Commission will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.<sup>40</sup> If the case relates to serious or massive human rights violations or if the Commission considers that the State is unwilling to comply with its recommendations in the case, the Commission may refer the complaint to the African Court on Human and Peoples' Rights.<sup>41</sup>

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

The civil and criminal courts and tribunals are empowered with various types of remedies. Courts may award damages in civil cases.<sup>42</sup> The provisions of the Penal Code dealing with offenses in matters of violence against children set forth various types of punishment, *e.g.* fines, payment of compensation, imprisonment, and police supervision.<sup>43</sup> The Family Tribunal may grant a protection order from domestic violence preventing a person from coming into contact with the child.<sup>44</sup>

Upon hearing a claim challenging the constitutionality of a law, the Constitutional Court may declare a law or a provision of such law which contravenes the Constitution void.<sup>45</sup> It may also grant declaratory relief and grant any other remedy available to the Supreme Court which it considers appropriate, including damages.<sup>46</sup>

The Ombudsman has the same power to investigate as a judge in the Supreme Court in respect of the attendance of a person before the Ombudsman, the

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<sup>38</sup> Ibid., Article 56(5).

<sup>39</sup> Rules of Procedure of the African Commission on Human and Peoples' Rights of 2010, Rule 93, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010/>.

<sup>40</sup> War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, 'African Commission on Human and Peoples' Rights: communication procedure', 2012, available at: <http://co-guide.org/mechanism/african-commission-human-and-peoples-rights-communication-procedure>.

<sup>41</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, Article 5, available at: <http://www.achpr.org/instruments/court-establishment>; Rules of Procedure of the African Commission on Human and Peoples' Rights of 2010, Rules 84(2) and 118, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010>.

<sup>42</sup> Code of Civil Procedure Act, s. 223, available at: <http://greybook.seylii.org/se/CAP213>.

<sup>43</sup> Penal Code, Part I, Chapter VI, Sections 25-26.

<sup>44</sup> Family Violence (Protection of Victims) Act, s. 4(2).

<sup>45</sup> Constitution, arts. 46(5) and 130(4).

<sup>46</sup> Ibid.

examination of any person in relation to an investigation, the production of a document or record relevant to an investigation and the inspection of premises relevant to an investigation.<sup>47</sup> If, after the conclusion of the investigation, the Ombudsman considers that there was an injustice or breach of human rights, he will prepare a report detailing his opinion and any recommendation on rectifying the injustice or breach, including a time limit for acting on the recommendations, and transmit that report to the public bodies concerned.<sup>48</sup> If no action or insufficient action is taken within the time period, the Ombudsman will submit the report to the President and the National Assembly.<sup>49</sup>

The National Human Rights Commission will try to resolve any complaint through a conciliatory procedure,<sup>50</sup> but where that attempt is unsuccessful and the Commission concludes that a rights violation has taken place, it can notify the Attorney General, if it appears that an offence has been committed, or another public authority, where disciplinary measures would suffice, and it can also make a recommendation to the President to grant appropriate relief.<sup>51</sup>

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

The Constitution provides that anyone who claims that a constitutional provision has been or is likely to be contravened with reference to himself or herself may apply to the Constitutional Court.<sup>52</sup>

With reference to other civil and criminal proceedings, it seems that no claim can be brought unless there is a specific victim. However there are provisions allowing that proceedings are held in private if necessary to protect (i) the privacy of the child victim, (ii) the witness from embarrassment or distress, (iii) the witness from being intimidated by the courtroom, and (iv) for any other reason.<sup>53</sup> Furthermore, all proceedings before the Family Tribunal and Juvenile Court are held in private.<sup>54</sup>

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

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<sup>47</sup> Constitution, Schedule 5, s. 5.

<sup>48</sup> Constitution, Schedule 5, s. 6.

<sup>49</sup> Constitution, Schedule 5, s. 6(4).

<sup>50</sup> Protection of Human Rights Act, s. 6(3).

<sup>51</sup> Protection of Human Rights Act, s. 6(4).

<sup>52</sup> Constitution, Chapter III, Part IV, art. 46.

<sup>53</sup> Evidence Act, s. 11, available at: <http://greybook.seylii.org/se/CAP74>.

<sup>54</sup> Children Act, s. 83 and 93.

Civil suits by several plaintiffs against the same defendant concerning the same matter may be consolidated into one by the court's own motion or on the request of one of the parties.<sup>55</sup>

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

Research did not identify any provisions allowing non-governmental organisations to initiate legal proceedings for the protection of children's rights.

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

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

The judiciary in Seychelles consists of the Court of Appeal, the Supreme Court and other subordinate courts.<sup>56</sup> There is a specialised Family Tribunal which hears all matters relating to the care, custody or maintenance of children and matters relating to children who may need compulsory measures of care and consent to medical dental or surgical treatment.<sup>57</sup> The Tribunal was established to ensure that the "best interest of the child" as the overriding principle and to improve access to justice for family matters by avoiding the complex formalities and delays in the regular court system.<sup>58</sup>

The Supreme Court has original jurisdiction in both civil and criminal matters.<sup>59</sup> The magistrates' courts only hear civil suits of a smaller value.<sup>60</sup> All other civil claims are instituted in the Supreme Court<sup>61</sup> by filing a plaint containing the names and places of residence of the parties, the nature of the action and the relief sought and signed by the plaintiff or their counsel.<sup>62</sup> Civil suits against the government are instituted against the Attorney General as a defendant also by filing a plaint.<sup>63</sup>

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<sup>55</sup> Code of Civil Procedure Act, s. 106.

<sup>56</sup> Constitution, art. 119.

<sup>57</sup> Children Act, Part VII – Compulsory Care, Sections 77 – 78B.

<sup>58</sup> *Combined second, third and fourth periodic reports of Seychelles*, para. 75.

<sup>59</sup> Constitution, art. 125 and Court Act, ss. 5 and 9, available at: <http://greybook.seylli.org/se/CAP52>.

<sup>60</sup> Courts Act, s. 38.

<sup>61</sup> Code of Civil Procedure Act, s. 22.

<sup>62</sup> Code of Civil Procedure Act, ss. 23-24 and 71.

<sup>63</sup> Code of Civil Procedure Act, s. 29.



Criminal offenses under the Penal Code or other specific crimes may be tried by the Attorney General before the Supreme Court or the magistrates courts.<sup>64</sup> Children accused of crime are tried by a specialised Juvenile Court.<sup>65</sup>

The Supreme Court of Seychelles also sits as a Constitutional Court and has the jurisdiction and powers of a constitutional court and such powers are exercised by not less than two judges of the Supreme Court.<sup>66</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?

For information on eligibility for legal aid, please refer to part II.D of this report.

In general, no civil proceedings can be instituted unless a fee is paid to the court.<sup>67</sup> Suits *in forma pauperis* i.e. without having to pay court fees or costs are allowed if the applicant demonstrates to the court that their financial assets amount to less than 300 Seychellois rupees (approx. £15).<sup>68</sup> Paupers are exempt from paying any court fees, but will be required to pay stamp duty, except if the court decides that the suit relates to public policy.<sup>69</sup> No costs are payable for actions seeking a protective order under the Family Violence (Protection of Victims) Act.<sup>70</sup> Research did not identify any other provisions excluding cases brought on behalf of children from payment of court costs. There is no fee attached to instating a case in the Family Tribunal.<sup>71</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?

Research did not identify any legal clinics or law firms providing legal services on a pro bono basis in the Seychelles.

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<sup>64</sup> Code of Criminal Procedure, art. 4.

<sup>65</sup> Children Act, s.93.

<sup>66</sup> Constitution, art. 129.

<sup>67</sup> Code of Civil Procedure Act, s. 28.

<sup>68</sup> Code of Civil Procedure Act, s. 208.

<sup>69</sup> Code of Civil Procedure Act, s. 210.

<sup>70</sup> Family Violence (Protection of Victims) Act 2000, s. 5.

<sup>71</sup> Comment added by the Ministry of Social Affairs and Judiciary in Seychelles

D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

The rules regarding limitation periods for bringing legal action vary. For instance, the prescription for civil actions could be twenty, ten or five years according to the specific provisions of the Civil Code.<sup>72</sup>

The Ombudsman will not consider complaint submitted over 12 months from the date of the action complained of, except if there is a reasonable cause for the delay.<sup>73</sup> The time limit for complaints to the Human Rights Commission is two years.<sup>74</sup>

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 Evidence Act permits evidence to be given by children at any trial unless it appears to the court that the child is incapable of introducing intelligible evidence.<sup>75</sup> Children under the age of 16 years, as well as a witness who is the alleged victim of a sexual offence, are considered to be vulnerable witnesses<sup>76</sup> and the court may decide to make special arrangements to protect such witness from embarrassment or distress or from being intimidated by the atmosphere of the courtroom.<sup>77</sup> The court may order that they be allowed to give evidence through a closed-circuit television or that their view of the accused is obstructed or that they are accompanied by a relative or a friend who might be able to provide emotional support.<sup>78</sup>

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

Practice directives of the Chief Justice of the Supreme Court state that cases involving children should be given some priority in court so as not to prejudice the well-being of the child.<sup>79</sup> In fact, one of the reasons for creating the Family Tribunal was the fact that delays in the ordinary legal system were placing an

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<sup>72</sup> Civil Code, Title XX.

<sup>73</sup> Constitution, Schedule 5, s. 1(3).

<sup>74</sup> Protection of Human Rights Act, s. 6(2).

<sup>75</sup> Evidence Act, art. 11A.

<sup>76</sup> Evidence Act, art. 11B(1).

<sup>77</sup> Evidence Act, art. 11B(2).

<sup>78</sup> Evidence Act, art. 11B(1).

<sup>79</sup> *Combined second, third and fourth periodic reports of Seychelles*, para. 78.

unnecessary stress on children.<sup>80</sup> The Family Tribunal does not follow procedure strictly in order to resolve cases more quickly.<sup>81</sup>

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

Although the Supreme Court has original jurisdiction to hear and decide suits, it also has supervisory jurisdiction over all the lower courts and tribunals and is usually the appellate court for such lower courts and tribunals, including the Family Tribunal.<sup>82</sup> Finally, litigants may appeal from the Supreme Court to the Court of Appeal, which is the final court of appeal.<sup>83</sup> The final stage of appeal from a Family Tribunal decision is to the Supreme Court.

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?

Seychelles has a mixed legal system where the civil law is governed by a Civil Code derived from the French Napoleonic Code, while criminal and procedural law are substantially based on English common law system.<sup>84</sup> There is no rule of precedent and judicial decisions of the higher courts are not binding, however they are generally respected in practice and can influence the lower courts and tribunals.<sup>85</sup>

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

With reference to civil suits, in cases in which the party found liable by the court fails to satisfy the judgment or to comply with the order of the court, application with the court may be made for the enforcement and execution of the judgment. Further, on grounds of urgent necessity, the court can direct that a judgment be enforced by execution immediately after judgment.<sup>86</sup>

V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

No further factors were identified.

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<sup>80</sup> *Combined second, third and fourth periodic reports of Seychelles*, para. 15.

<sup>81</sup> Seychelles Legal Environment website, available at:

<https://sites.google.com/site/theseychelleslegaleenvironment/tribunals-and-public-authorities/the-family-tribunal>.

<sup>82</sup> Court Act, s. 10.

<sup>83</sup> Constitution, art. 120 and Courts Act, s. 12.

<sup>84</sup> Globalex, *Finding the Law in Seychelles*, available at:

<http://www.nyulawglobal.org/globalex/Seychelles.htm>.

<sup>85</sup> *Ibid*.

<sup>86</sup> Code of Civil Procedure, Sections 225 *et seq*.

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