

# ACCESS TO JUSTICE FOR CHILDREN: NAURU

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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?**

Nauru<sup>1</sup> ratified the CRC on 27 July 1994.<sup>2</sup> As at June 2015, Nauru has not ratified any of the Optional Protocols to the CRC.

According to the Supreme Court of Nauru, conventions do not form part of domestic law unless incorporated into local law by statute.<sup>3</sup>

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

No. The Supreme Court's approach in *In re adoption of BR* demonstrates that national law takes precedence over the CRC.<sup>4</sup>

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

As stated in part I.A above, conventions do not form part of domestic law unless incorporated into local law by statute. As at the date of this report, there is no law which directly incorporates the entire CRC into national law.

There is no comprehensive or consolidated Children's Act in national law, rather provisions relevant to children can be found in the Constitution of Nauru<sup>5</sup> as well as a number of Acts and Regulations. Legislation of particular relevance to children includes:

- The Criminal Justice Act 1999
- The Criminal Code 1899
- The Criminal Procedure Act 1972
- The Education Act 2011
- The Adoption of Children Act 1965
- The Guardianship of Children Act 1975
- The Family Court Act 1973
- The Matrimonial Causes Act 1973

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<sup>1</sup> Comments on this report provided by Dr Sue Farran, Professor of Laws, Northumbria University, Adjunct Professor at the University of the South Pacific and Associate of the Centre for Pacific Studies, St Andrews University, October 2015.

<sup>2</sup> OHCHR, 'Ratification status for Nauru', available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=121&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=121&Lang=EN).

<sup>3</sup> *In re adoption of BR* [2013] NRSC 11, CRIN summary available at: <https://www.crin.org/en/library/legal-database/re-adoption-br>.

<sup>4</sup> In this case, the Supreme Court held that the provisions of the Adoption of Children Ordinance prevail over the CRC.

<sup>5</sup> See, e.g., Articles 5(1)(d), 8(2)(b), 10(11)(a), 11(3), and 11(4)(c), available at: [http://www.paclii.org/nr/legis/num\\_act/con256/](http://www.paclii.org/nr/legis/num_act/con256/).

- The Maintenance Orders (Reciprocal Enforcement) Act 1973
- The Births, deaths and Marriages Act 1957
- The Immigration Act 1999
- The Illicit Drugs Control Act 2004
- The Liquor Act 1967.<sup>6</sup>

Notably, the Asylum Seekers (Regional Processing Centre) Act 2012 directly refers to the CRC in section 14 when legislating on the protection of children. The courts must now give regard to the CRC when deciding upon cases brought under this Act.<sup>7</sup>

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

The CRC cannot be directly enforced in the courts. However, under the Interpretation Act, treaties may be used to interpret legislation to resolve ambiguity, confirm or displace the apparent meaning of a law or to find the meaning of a law when its apparent meaning leads to a result that is clearly absurd or unreasonable.<sup>8</sup> Similarly, in *In re adoption of BR*, the Supreme Court held that national law will only be interpreted by reference to the Convention where there is ambiguity, so as to adopt an interpretation which conforms with the Convention.

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

The CRC has been cited before national courts, notably in the Supreme Court, as a source of interpretative guidance for existing national law. For example, in *In re Lorna Gleeson*, Millhouse CJ stated: “Whether [the CRC] has become part of the domestic law of Nauru is a moot point. Whether it is or is not part of our domestic law, I feel able to take the Convention into account in considering the cases stated.”<sup>9</sup> The Supreme Court also discussed the CRC in *In re Adoption of BR*, as well as the Convention on the Elimination of All Forms of Racial Discrimination.

## 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?

Civil proceedings under the Civil Procedure Rules 1972,<sup>10</sup> actions to enforce fundamental rights under the Constitution, and judicial review proceedings (see part III.A below) may be brought in Nauru to challenge violations of children’s rights.

<sup>6</sup> CRIN, ‘Nauru: national laws’, 27 September 2013, available at: <https://www.crin.org/en/library/publications/nauru-national-laws>.

<sup>7</sup> Available at:

[http://www.paclii.org/cgi-bin/sinodisp/nr/legis/num\\_act/aspca2012428/aspca2012428.html](http://www.paclii.org/cgi-bin/sinodisp/nr/legis/num_act/aspca2012428/aspca2012428.html).

<sup>8</sup> Interpretation Act 2011, sections 51 and 52, available at:

[http://www.paclii.org/nr/legis/num\\_act/ia2011191/](http://www.paclii.org/nr/legis/num_act/ia2011191/).

<sup>9</sup> *In re Lorna Gleeson* [2006] NRSC 8; Miscellaneous Cause No 4 of 2006 (15 December 2006), CRIN summary available at: <https://www.crin.org/en/library/legal-database/re-lorna-gleeson>.

<sup>10</sup> Available at:

[http://www.paclii.org/nr/rules/CP\\_Rules1972/Nauru%20-%20Civil%20Procedure%20Rules%201972.html](http://www.paclii.org/nr/rules/CP_Rules1972/Nauru%20-%20Civil%20Procedure%20Rules%201972.html).

Private prosecutions are permitted under the Criminal Procedure Act.<sup>11</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?

According to the Interpretation Act 2011, in all written laws, a “child” is any person who is not an adult, and an “adult” is an individual who is at least 18 years old.<sup>12</sup> The Civil Procedure Rules 1972 state that a “next friend” or guardian must bring proceedings on behalf of a “person under disability”, which includes an “infant”, though this term is not defined. However, it seems to be typical for children, including older children, to be represented.<sup>13</sup>

The Supreme Court has the discretion to appoint a guardian *ad litem* for a child involved in any proceedings, as per section 9(2) of the Guardianship of Children Act.<sup>14</sup> The Guardianship of Children Act also provides children with the right to express their opinions in matters affecting them. The statute requires the Court to ascertain the child’s wishes and weigh them in accordance with his/her age and maturity when taking account of these in proceedings, indicating that the child can have a role in proceedings if capable.

Where a child over the age of 16 is affected by a decision or refusal of consent by a parent or guardian in an important matter (unless under the guardianship of the Supreme Court), the child may apply to the Family Court under section 15(1) of the Guardianship of Children Act to have the decision or refusal reviewed. Although this does not necessarily directly relate to violations of the rights of the child, it does show that children of a specific age are able to bring cases themselves in particular instances.

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

Typically, it seems that legal representatives and guardians would bring cases on behalf of infants and young children.

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

Article 10(3) of the Constitution provides that persons charged with an offence shall have a legal representative assigned to them in a case where the interests of justice so require and without payment by them if, in the opinion of the court, the defendant does not have sufficient means to pay for the costs incurred.

Section 31 of the Guardianship of Children Act states that, in the event that the court appoints a barrister and solicitor or pleader to assist or represent a child who is party to

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<sup>11</sup> See Criminal Procedure Act, section 49, available at: [http://www.paclii.org/nr/legis/num\\_act/cpa1972188/](http://www.paclii.org/nr/legis/num_act/cpa1972188/).

<sup>12</sup> Interpretation Act, section 65.

<sup>13</sup> See, for example, *Demaunga v. Nauru*, in which the child’s guardian brought the case on behalf of the child who would have been 14 or 15 at the time. Available at: <http://www.paclii.org/cgi-bin/sinodisp/nr/cases/NRSC/2012/17.html>.

<sup>14</sup> Available at: [http://www.paclii.org/nr/legis/num\\_act/goca1975220/](http://www.paclii.org/nr/legis/num_act/goca1975220/).

proceedings under the Act, the fees and expenses of the barrister and solicitor or pleader shall be paid by “such other party or parties to those proceedings as the Court shall order or, if the Court so decides, shall be a charge upon the Treasury Fund”.

According to a report submitted by Nauru for the Universal Periodic Review, until very recently, it was common for accused persons to be unrepresented. This was due to the scarcity of legal practitioners, inability to afford legal representation, and lack of awareness of the implications of being unrepresented. The Nauru Government has recently created the publicly funded position of Public Defender, so that accused persons who would otherwise be unrepresented can secure free of charge the services of a pleader to act on their behalf. Other than the availability of the Public Defender, there is no budget provision for legal aid in criminal or civil matters.<sup>15</sup>

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)?

Under the Civil Procedure Rules, except where appointed by the Court, the next friend or guardian *ad litem* must, within seven days of issuing the writ of summons or originating summons to initiate a lawsuit, apply for approval to act in the suit as next friend or guardian *ad litem*. The Registrar or the resident magistrate will have regard to all facts relevant to the suitability of the applicant to act, in particular, to the child's wishes, and to whether the interests of the applicant conflict in any way with the interests of the child. However, it may, “for good reason”, grant approval notwithstanding that the child does not wish the applicant to act or that there is a conflict of interests.<sup>16</sup>

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

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

Under the Constitution, a legal challenge can be brought in the Supreme Court if there is a potential violation of a fundamental right or freedom in Part II of the Constitution. The constitutional rights and freedoms include the right to life and personal liberty, protection from inhuman treatment, and freedom of conscience and expression, assembly and association. The lawsuit may be brought by “a person having an interest in the enforcement of that right or freedom”.<sup>17</sup>

Proceedings for judicial review of acts or inaction of public bodies may also be brought. There is no special procedure provided for judicial review in Nauru under the civil procedure rules, so proceedings for judicial review are brought like other civil proceedings (see part IV.A below).<sup>18</sup>

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<sup>15</sup> National report of Nauru to the Human Rights Council Working Group of the Universal Periodic Review, A/HRC/WG.6/10/NRU/1, 5 November 2010, para. 77. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/NRSession10.aspx>.

<sup>16</sup> Civil Procedure Rules, O. 52, r. 3.

<sup>17</sup> Constitution, Article 14.

<sup>18</sup> Corrin & Paterson, *Introduction to South Pacific Law* (2013), p. 136.

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

The Supreme Court has unlimited original civil and criminal jurisdiction. The District Court, on the contrary, hears and determines all civil cases involving not more than A\$3,000.<sup>19</sup> It can only impose a penalty of up to a maximum of three years' imprisonment or sentence of a fine not exceeding A\$3,000 for one offence and compensation for injuries or damage sustained after conviction from a criminal offence of up to A\$10,000.<sup>20</sup>

The Supreme Court, to the exclusion of any other court, has original jurisdiction to determine any question arising under or involving the interpretation or effect of any provision of the Constitution.<sup>21</sup> Where in any proceedings before another court a question arises that involves the interpretation or effect of any provision of the Constitution, the Supreme Court will determine how the case should be dealt with. The Court "may make all such orders and declarations as are necessary and appropriate" for the purposes of enforcing a right or freedom conferred by Part II of the Constitution.<sup>22</sup> A law inconsistent with the Constitution is, to the extent of the inconsistency, void.<sup>23</sup>

Available remedies in judicial review proceedings include issuing a "writ of certiorari" (order to quash or set aside an invalid decision), "writ of prohibition" (order not to proceed to make or to enforce an invalid decision); "writ of mandamus" (order to perform a public duty); injunction (order to restrain a breach of duty);<sup>24</sup> and "habeas corpus" (order to release a person unlawfully detained).

The Family Court has specific jurisdiction under the Family Court Act 1973,<sup>25</sup> and concurrent jurisdiction with the Supreme Court in matters concerning adoption of children under the Adoption of Children Ordinance 1965-1967,<sup>26</sup> maintenance under the Maintenance Ordinance 1959-1967, and guardianship under the Guardianship Act 1975.<sup>27</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?

Typically, it appears that parties to claims are named.

Although victims may still need to be named, the proceedings of the Family Court are not open to the public, which may assist with concerns over protection of the child's privacy. Where a case is heard in the Family Court, no person is entitled to be at the proceedings except as permitted under section 18 of the Family Court Act – examples

<sup>19</sup> See Courts Act 1972, available at: [http://www.paclii.org/nr/legis/num\\_act/ca1972111/](http://www.paclii.org/nr/legis/num_act/ca1972111/).

<sup>20</sup> 'Judiciary Annual Report 2009-2010', available at: <http://www.paclii.org/nr/court-annual-reports/2009-2010.htm>.

<sup>21</sup> Constitution, Article 54.

<sup>22</sup> Ibid., Article 14(2).

<sup>23</sup> Ibid., Article 2(2).

<sup>24</sup> See Corrin & Paterson, p. 141.

<sup>25</sup> Available at: [http://www.paclii.org/nr/legis/num\\_act/fca1973153/](http://www.paclii.org/nr/legis/num_act/fca1973153/).

<sup>26</sup> Available at: <http://www.paclii.org/nr/courts.html>.

<sup>27</sup> Available at: [http://www.paclii.org/nr/legis/num\\_act/goca1975220.pdf](http://www.paclii.org/nr/legis/num_act/goca1975220.pdf).

of permitted attendees include the parents or guardian of any children in respect of whom the proceedings are taken. Except with special leave of the Court, it is not lawful for any person to publish a report of any proceedings of the Family Court or the names or any identifying information of the parties in such proceedings.<sup>28</sup>

Furthermore, Article 10(11)(a) of the Constitution permits a court or other authority to exclude the public from a hearing for the welfare of persons under the age of 20 years.

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

Collective litigation is possible either through joint or representative proceedings. Under the Civil Procedure Rules, two or more persons may be joined together in one suit as plaintiffs with the leave of the court or where, if separate suits were brought by each of them, some common question of law or fact would arise.<sup>29</sup> Where numerous persons have the same interest in any suit, the suit may be commenced by one or more of them in representative proceedings.<sup>30</sup>

In certain cases and under certain conditions specified in the Civil Procedure Rules, the court may appoint one or more persons to represent any person or class who is or may be interested in the lawsuit.<sup>31</sup> It does not, however, appear to be possible to bring a class action outside of these conditions.

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

Under Article 14(1) of the Constitution, a right or freedom is enforceable by the Supreme Court “at the suit of a person having an interest in the enforcement of that right or freedom”. If read widely, this could mean that those with an interest in the proceedings, such as NGOs (whether or not a direct victim), could bring a claim or assist in bringing a claim. There is no case law yet to confirm whether this is possible.

It may be possible for NGOs to submit applications to the court to be heard as *amicus curiae* in proceedings. However, to date, there does not appear to have been a successful application made to a Nauruan court by an NGO.<sup>32</sup>

**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?

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<sup>28</sup> Family Court Act, section 18(2).

<sup>29</sup> Civil Procedure Rules, O. 12, r. 5.

<sup>30</sup> Ibid., O. 12, r. 13.

<sup>31</sup> See Ibid., O. 12, r. 14.

<sup>32</sup> See, for example, *AG v. Secretary of Justice* [2013] NRSC 10 (18 June 2013), in which Amnesty International and Refugee Advice and Casework Service (Australia) unsuccessfully sought to intervene as *amicus curiae* in a constitutional action brought for the release of asylum seekers from detention. Available at: <http://www.paclii.org/cgi-bin/sinodisp/nr/cases/NRSC/2013/10.html>.



Civil proceedings may be brought in either the Supreme Court or District Court, depending on the amount of the claim. The Supreme Court has unlimited civil jurisdiction while the District Court hears and determines all civil cases involving not more than A\$3,000. Civil proceedings in the Supreme Court and District Court must be commenced by a writ of summons.<sup>33</sup>

A lawsuit regarding the enforcement of fundamental rights under the Constitution may be brought to the Supreme Court.

As there is no special procedure provided for judicial review, proceedings are commenced by way of writ of summons and statement of claim for certiorari, prohibition, mandamus or injunction.<sup>34</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?

See part II.D above.

The criteria for receiving legal aid by a party to an appeal are contained in the Appeals to the High Court (Legal Aid) Rules 1977.<sup>35</sup> According to Eames CJ in the case of *Diehm v. Director of Public Prosecutions*,<sup>36</sup> it must be desirable in the interest of justice that a party should receive legal aid, having regard to his/her financial means, the nature of the cause and the grounds of the appeal or the application. The likelihood of success of the case does not appear to play a part in the decision of the court to grant legal aid.

- 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?

Following the increased number of asylum seekers in Nauru and an absence of sufficient local capacity to provide free legal representation, the Law Council of Australia provided Australian lawyers to assist with giving asylum seekers a fair trial in Nauru. The current focus for pro bono work appears to be on asylum seekers, rather than assisting with children's rights violations. There is a lack of information regarding access to free legal representation in Nauru, but there are reports that the current budget for free legal advice is not enough to cover both local residents and increased numbers of asylum seekers.<sup>37</sup>

- D. Timing. How soon after a violation would a case have to be brought? Are there any

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<sup>33</sup> Civil Procedure Rules, O. 4, r. 1.

<sup>34</sup> Corrin & Paterson, p. 141.

<sup>35</sup> Available at: [http://www.paclii.org/nr/legis/sub\\_leg/aa1972atthcar1977423/](http://www.paclii.org/nr/legis/sub_leg/aa1972atthcar1977423/).

<sup>36</sup> Available at: <http://www.paclii.org/cgi-bin/sinodisp/nr/cases/NRSC/2013/12.html>.

<sup>37</sup> Law Council, 'Q&A on access to legal advice on Nauru', available at: [http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/QA\\_on\\_Legal\\_advice\\_for\\_Asyllum\\_Seekers\\_on\\_Nauru.pdf](http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/QA_on_Legal_advice_for_Asyllum_Seekers_on_Nauru.pdf).

special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

The Limitation Act 1963 of England is applied in Nauru by virtue of Order 62 of the Civil Procedure Rules, so civil claims should generally be brought within six years. However, the Act enables the court to grant leave to extend the time limit for certain actions.

Eames CJ notes in *Tamakin v. Ronphos*<sup>38</sup> that an application to strike out an action would be granted only where there is a plain and obvious case; the case is unarguable; or where an absence of a cause of action is clearly demonstrated. If an adult were to bring a case about a violation of their rights which occurred when they were a child, it would likely be for the judge to decide if the grounds to demonstrate a case is statute-barred.

- 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 (Confidential Information) Act 1976 sets out what needs to be disclosed as evidence in court proceedings. Section 4 of the Act details confidential information which does not need to be disclosed in proceedings in Nauru, but there are certain exceptions to this. The Civil Evidence Act 1972<sup>39</sup> deals with the admissibility of hearsay evidence and past convictions. Neither Act specifically refers to the giving of evidence by children or other vulnerable witnesses.

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

Article 10(9) of the Constitution states that a determination of the existence or extent of a civil right must be made “within a reasonable time”. There are no recent statistics available to indicate the average time it takes to receive a decision from the courts.

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

Final decisions of the District Court in civil and criminal matters can be appealed to the Supreme Court. Appeals from the Supreme Court of Nauru to the High Court of Australia can be made in both civil and criminal cases only.<sup>40</sup> The Supreme Court has final jurisdiction in constitutional matters.

- 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?

Nauru has a common law system.<sup>41</sup> Courts are bound by their own and higher courts’

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<sup>38</sup> Available at: <http://www.paclii.org/cgi-bin/sinodisp/nr/cases/NRSC/2012/9.html>.

<sup>39</sup> Available at: [http://www.paclii.org/nr/legis/num\\_act/cea1972130/](http://www.paclii.org/nr/legis/num_act/cea1972130/).

<sup>40</sup> Nauru (High Court Appeals) Act 1976, available at: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/ncaa1976254/sch1.html](http://www.austlii.edu.au/au/legis/cth/consol_act/ncaa1976254/sch1.html).

<sup>41</sup> See Custom and Adopted Laws Act 1971, section 4.



decisions under the doctrine of *stare decisis*. This means a negative or positive decision could potentially have a lasting impact for years. Its impact will depend on whether it was a lower court or a higher court that decided the case as a higher court's decision will take precedence over the decisions of a lower court.

The Nauru Government has been known to disregard judicial decisions and interfere with the judiciary on occasion. In 2014, the Nauru Government purportedly dismissed its Resident Magistrate and deported him in defiance of an injunction issued by its Chief Justice. The Government then refused a visa to the Chief Justice to re-enter Nauru, effectively preventing him from discharging his duties. The Chief Justice later resigned from his position, citing concerns over breaches of the rule of law.<sup>42</sup>

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

See part IV.H above.

- 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.

#### *Relevant laws*

There is no Children's Act in Nauruan law, only references to children in various legislation (see part I.C above). This means that the relevant law must be consulted in order to determine when a child may bring a case to challenge a violation of their rights.

Examples of where children and their representatives have brought cases in domestic courts are the cases on inheritance rights for adopted children. See *Demaunga v. Nauru Lands Committee*<sup>43</sup> and similar cases which have been brought to the Supreme Court to determine inheritance rights disputes.

#### *Customary law and other sources of law*

Under section 4 of the Custom and Adopted Laws Act 1971,<sup>44</sup> the common law and the statutes of general application, including all rules, regulations and orders of general application which were in force in England on 31 January 1968, are adopted as laws of Nauru. The principles and rules of equity which were in force in England on 31 January 1968 are adopted as the principles and rules of equity in Nauru. However, English common law applies only insofar as it is "not repugnant to or inconsistent with the provisions" of any statute law applied in Nauru.<sup>45</sup>

In addition, customary law is recognised in Nauru. Under section 3 of the Custom and Adopted Laws Act, the institutions, customs and usages of the Nauruans shall be

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<sup>42</sup> Jane Lee, 'Nauru chief justice quits, citing rule of law breach', 12 March 2014, available at: <http://www.smh.com.au/federal-politics/political-news/nauru-chief-justice-quits-citing-rule-of-law-breach-20140312-34n3c.html>.

<sup>43</sup> Available at: <http://www.paclii.org/cgi-bin/sinodisp/nr/cases/NRSC/2012/17.html>.

<sup>44</sup> Available at: [http://www.paclii.org/nr/legis/num\\_act/caala1971231/](http://www.paclii.org/nr/legis/num_act/caala1971231/).

<sup>45</sup> *Ibid.*, section 5.

accorded recognition by every court and have full force and effect of law to regulate the following matters:

- (a) title to, and interests in, land, except leasehold;
- (b) disposition of property; and
- (d) any matter affecting Nauruans only.

The case of *Demaure v. Adumo* is an example of the application of customary law in Nauru concerning children's rights. In this case, the Nauru Lands Committee, which is the statutory successor to the chiefs of Nauru, held that a child who was adopted by a man from outside his family did not have the same rights to succeed to land, in custom, as natural children. The Supreme Court, however, held that any adopted child, whether from within the family or outside, had the same rights of succession as a natural child.<sup>46</sup>

### *Enforcement of fundamental rights*

Following the decision in *In re the Constitution, Jeremiah v. Nauru Local Government Council*, the Articles in Part II of the Constitution are to be read literally, not widely in conjunction with any Conventions, which limits the enforcement of fundamental rights in Nauru. This case concerned the application of a Nauruan man to marry a non-Nauruan woman, based on an interpretation of the Constitution and the rights it confers. In the judgment, Thompson CJ stated: "It is clear that there was no acceptance by the Constitutional Convention of the whole of the Universal Declaration of Human Rights as establishing a substructure of legally enforceable rights more extensive than those spelled out in Articles 4 to 13 of the Constitution."

A constitutional referendum was held in February 2010, which, notably, would have amended the Constitution to strengthen human rights protections, including children's rights, such as the right to receive education and health. The constitutional amendments were rejected by voters, which meant that the additional human rights protections were not brought into national law.<sup>47</sup>

### *Other obstacles to access to justice*

Several factors may impede access to justice for children in Nauru:

- Nauru is a tiny (21 square-kilometers) isolated island in the South Pacific with a population of approximately 13,000. There is a lack of trained lawyers qualified to bring cases. Instead, the country relies largely on lay pleaders.<sup>48</sup>
- Although parties can seek leave to appeal from a decision of the Supreme Court of Nauru to the High Court of Australia, due to the prohibitive expense, this seldom happens.<sup>49</sup>
- Although Nauru has ratified the CRC, it has not yet submitted any reports to the Committee on the Rights of the Child due to resource and capacity constraints.<sup>50</sup>
- There have been calls for an independent national human rights institution to

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<sup>46</sup> Corrin & Paterson, p. 48.

<sup>47</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Nauru*, A/HRC/17/3, 8 March 2011, para. 6. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/NRSession10.aspx>.

<sup>48</sup> *National report of Nauru to the Human Rights Council Working Group of the Universal Periodic Review*, para. 76.

<sup>49</sup> *Ibid.*, para. 75.

<sup>50</sup> CRIN, 'Nauru: national laws'; Human Rights Council, para. 44.

ensure that children are afforded proper protection of their rights. It is reported that the biggest obstacle towards establishing such an institution was resources and expertise.<sup>51</sup> An Ombudsman Bill was put before Parliament on 1 March 2013,<sup>52</sup> but there is no record of these discussions or their outcome available on Nauru's Hansard archives. In any case, it is not known whether the Ombudsman would have any ability to address children's rights specifically, or intervene or file challenges to potential children's rights violations.

- Most recently, an amendment in May 2015 to the Nauru Criminal Code could mean that political opponents and protesters could be jailed for up to seven years under the new section 244A, making it difficult for people to challenge the government.<sup>53</sup>
- There is concern about the plight of children held in detention centres for asylum seekers on Nauru.<sup>54</sup>

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

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<sup>51</sup> Human Rights Council, para. 35.

<sup>52</sup> Parliament of Nauru, '20th Parliament No. 28 Notice Paper', 1 March 2013, available at: <http://naurugov.nr/media/22734/20thparlnoticepaper28.pdf>.

<sup>53</sup> Paul Farrell, 'Nauru asylum seekers could face jail for protesting conditions under new law', 13 May 2015, available at: <http://www.theguardian.com/world/2015/may/13/nauru-asylum-seekers-could-face-jail-for-protesting-conditions-under-new-law>.

<sup>54</sup> Senate Committee Report, Parliament of Australia, 'Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru', 31 August 2015. See BBC News, 'Nauru migrant centre "unsafe" for children – senate report', 1 September 2015; ABC News, 'Nauru detention centre not safe for children, says Senate committee calling for full audit into abuse claims', 31 August 2015, [www.abc.net.au](http://www.abc.net.au).