

# **ACCESS TO JUSTICE FOR CHILDREN:** **SAINT KITTS AND NEVIS**

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

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

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

The CRC was ratified in 1990, however, as Saint Kitts and Nevis' legal system is dualist, ratified international instruments do not automatically have the force of law, rather, they must be incorporated through implementing legislation.<sup>1</sup>

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

The CRC does not take precedence over national law.

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

The CRC has not been incorporated into national law. Incorporation is typically done in a subject-by-subject piecemeal manner and it is only necessary to enact new legislation in relation to those aspects of the Convention so far not covered by existing national legislation or English common law or equity.<sup>2</sup>

However, human rights related legislation includes the Probation and Child Welfare Board Act and the Domestic Violence Act.

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

The CRC cannot be directly enforced in the courts. Courts can look to the CRC and other treaties for interpretive guidance. The Privy Council, which holds appellate jurisdiction over the islands, interprets law in light of international obligations but would not set aside domestic legislation where there is a clear conflict with a treaty or a convention.

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

Examples of court application of the CRC or any other relevant international instruments could not be located within St. Kitts and Nevis. However, in *State v.*

---

<sup>1</sup> Rose-Marie Antoine, *Commonwealth Caribbean Law and Legal Systems* (2008, Routledge) at p. 217.

<sup>2</sup> See, e.g., Child Abduction Convention (International Civil Aspects Act), 2012 (declaring the Convention on the Civil Aspects of International Child Abduction to have the force of law in Saint Kitts and Nevis).

*Andrew Valmond*, the High Court of Criminal Justice at the Eastern Caribbean Supreme Court, which is a regional court with jurisdiction over SKN, considered the CRC in light of the sentencing of a man convicted of sexually abusing his stepdaughter in Dominica.<sup>3</sup> The Court also noted its concern with the incidence of sexual abuse by stepfathers and other family members in the Caribbean and Dominica, and further stated that it is the obligation of the courts to do everything possible to discourage the sexual exploitation of children in line with national laws and international instruments, including the Convention on the Rights of the Child.

## 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?

Although it is generally the Director of Public Prosecutions who institutes criminal proceedings,<sup>4</sup> the Magistrate's Code of Procedure Act provides that "it shall be lawful for any person to make a complaint against any person committing an offence punishable on summary conviction."<sup>5</sup> The Magistrate's Code of Procedure Act applies to any offence that, by the terms of the applicable statute, is authorised to be prosecuted summarily or is a civil matter as to which the debt may be recovered summarily.<sup>6</sup> Thus, to the extent that any act proscribing conduct prohibited under the CRC provides for summary conviction under the laws of Saint Kitts and Nevis, that act may be challenged in court by a private citizen.

Under the Civil Procedure Rules of the Eastern Caribbean Supreme Court, children and their representatives are entitled to bring civil cases in courts.<sup>7</sup> Reports of child abuse can be made to the Probation and Child Welfare Board, which may assign a guardian ad litem in proceedings to safeguard the interests of the child.<sup>8</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?

The Age of Majority Act provides that a person attains full legal capacity at 18.<sup>9</sup> Pursuant to this act, a minor "means a person who is not of full age and who

---

<sup>3</sup> Case summary available at: <http://www.crin.org/Law/instrument.asp?InstID=1519> and full judgement available at: [http://www.eccourts.org/judgments/decisions/2010/TheState\\_v\\_AndrewValmond.pdf#search=](http://www.eccourts.org/judgments/decisions/2010/TheState_v_AndrewValmond.pdf#search=).

<sup>4</sup> Laws of Saint Christopher and Nevis, Ch. 4.06 (Criminal Procedure Act), § 18.

<sup>5</sup> Laws of Saint Christopher and Nevis, Ch. 3.17 (Magistrate's Code of Procedure Act), § 18

<sup>6</sup> *Id.* at §250.

<sup>7</sup> Eastern Caribbean Supreme Court Civil Procedure Rules 2000, 23.2, available at: [http://eccourts.org/public\\_info/other/CivilProcedureRules2000.pdf](http://eccourts.org/public_info/other/CivilProcedureRules2000.pdf).

<sup>8</sup> Probation and Child Welfare Board Act (1994).

<sup>9</sup> Laws of Saint Christopher and Nevis, Ch. 12.02 (Age of Majority Act), § 3.

does not have legal capacity.”<sup>10</sup>

The general rule is that a minor must have a “next friend” to conduct proceedings on his or her behalf<sup>11</sup> unless the court has, on the application of a minor, made an order permitting them to conduct proceedings without a next friend.<sup>12</sup> Any person may act as a next friend if that person (a) can fairly and competently conduct proceedings on behalf of the minor or patient; and (b) has no interest adverse to that of the minor or patient.<sup>13</sup> The appointment of a minor’s next friend ceases when a minor reaches the age of majority (18 years old).<sup>14</sup>

Additionally, the Domestic Violence Act, Section 6(2) gives *locus standi* to a wide range of persons (but not children) to apply for any of the orders under the Act where the subject of domestic violence is a child or a dependent. Such persons include parents, guardians, and any person who, by reason of their profession, may have knowledge of circumstances in which acts of domestic violence are committed.<sup>15</sup>

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

There appears to be no difference in procedure based on age of the child, therefore, as explained in part II.B, the general rule is that a minor must have a next friend to conduct proceedings on his or her behalf.

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

The Ministry of Justice and Legal Affairs has an initiative to provide free legal services to indigent citizens to handle divorce, rent disputes, debt, adoption, domestic violence matters, personal injury, family matters, child maintenance and access, custody, succession matters, other civil matters, and more.<sup>16</sup> Prior to that time there was no legal aid provision in Saint Kitts and Nevis.<sup>17</sup> Research did not identify any information on additional legal aid resources.

If the offence is prosecutable, the state would institute and prosecute the case on behalf of the victim, therefore, a child or their representative would not need

---

<sup>10</sup> Id. at § 2.

<sup>11</sup> Eastern Caribbean Supreme Court Civil Procedure Rules 2000, 23.2(1).

<sup>12</sup> Eastern Caribbean Supreme Court Civil Procedure Rules 2000, 23.2(2).

<sup>13</sup> Eastern Caribbean Supreme Court Civil Procedure Rules 2000, 23.6.

<sup>14</sup> Eastern Caribbean Supreme Court Civil Procedure Rules 2000, 23.11.

<sup>15</sup> Women and Development Unit at The University of West Indies, *A Gender Analysis of the Domestic Violence Act of St Kitts and Nevis*, 2010, available at: <http://www.open.uwi.edu/sites/default/files/wanddomestic5.pdf>.

<sup>16</sup> St. Kitts and Nevis Observer, *Ministry of Justice Brings Legal Aid to Local Communities*, available at: <http://www.thestkittsnevisobserver.com/2011/09/23/legal-aid.html>.

<sup>17</sup> Graeme R. Newman, *et al.*, *Crime & Punishment Around the World*, ABC-CLIO 2010, at p. 294.

legal representation to institute such a case. Often in state prosecutions, women and children victims appear in court unrepresented to testify.<sup>18</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)?

We did not identify any conditions or limits on a child bringing a case in the national courts. The procedural rules of the Eastern Caribbean Supreme Court provide that a child's parent or guardian does not have to consent to the child or their next friend initiating legal proceedings.<sup>19</sup> However, any proposed settlement, compromise or payment with respect to a claim by or on behalf of a minor must be approved by the court.<sup>20</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?

A legal challenge may be brought in the High Court, family court, or magistrate court depending on the legal basis of the claim (i.e. the Constitution, the Domestic Violence Act, or Probation and Child Welfare Board Act).

The Constitution provides that if any person who considers that their constitutional rights have been violated, then without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the High Court for redress.<sup>21</sup>

The Domestic Violence Act also gives jurisdiction to the family court.<sup>22</sup> Neither the Domestic Violence Act nor the Guardianship of Infants Act explicitly gives a child standing to institute proceedings in their own name. It is not clear how a child would actually secure standing in his or her own name in a family court.

Also, under the Probation and Child Welfare Board Act, it is the duty of all doctors, nurses, social workers, police officers, teachers, childcare providers, child psychologists, and guidance counsellors to report to the Probation and Child Welfare Board (the "Board") all cases and suspected cases of child abuse brought to their attention.

---

<sup>18</sup> This practice note was provided by Keisha Spence of Kelsick Wilkin & Ferdinand, Attorneys-at-Law, Federation of St. Kitts & Nevis.

<sup>19</sup> Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Part 23.

<sup>20</sup> Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Part 23.

<sup>21</sup> Constitution of St Kitts and Nevis, Article 18, available at: <http://www.wipo.int/edocs/lexdocs/laws/en/kn/kn001en.pdf>.

<sup>22</sup> Domestic Violence Act 2000.

In child protection cases, the court appoints a social worker for the child. A Preliminary Inquiry at the Magistrate's court level is required before a case concerning child abuse is sent to High Court for trial.<sup>23</sup> In that connection, all depositions and evidence developed at the Magistrate's court level is delivered to the Director of Public Prosecutions.<sup>24</sup> The Director of Public Prosecutions enjoys considerable discretion in how the prosecution of the matter will (or will not) proceed. For example, the Director of Public Prosecutions may remit the matter to the Magistrate's court for further evidence;<sup>25</sup> remit the matter to the Magistrates court for summary disposition;<sup>26</sup> decline to prosecute;<sup>27</sup> or elect to proceed.<sup>28</sup> Where the Magistrate court declines to commit an accused for trial, the Director of Public Prosecutions may override the Magistrate court and direct that the accused be committed for trial.<sup>29</sup>

St Kitts and Nevis is a member of the Organization of American States, but has not ratified the American Convention on Human Rights. Nonetheless, individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),<sup>30</sup> on their behalf or on behalf of third persons, regarding alleged violations of the American Declaration of the Rights and Duties of Man<sup>31</sup> and other Inter-American human rights instruments<sup>32</sup>. A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.<sup>33</sup> 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

---

<sup>23</sup> The net result of this system is that victims must give their evidence twice. See UNICEF, *The Status of Child protection in St Kitts and Nevis: The need for a national reporting protocol*, December 2007, available at : [http://www.unicef.org/barbados/cao\\_unicefeco\\_child\\_protection\\_Skn.pdf](http://www.unicef.org/barbados/cao_unicefeco_child_protection_Skn.pdf).

<sup>24</sup> Laws of Saint Christopher and Nevis, Ch. 4.06 (Criminal Procedure Act), § 12.

<sup>25</sup> *Id.* at § 13.

<sup>26</sup> *Id.* at § 14.

<sup>27</sup> *Id.* at § 17.

<sup>28</sup> *Id.* at § 18.

<sup>29</sup> *Id.* at § 15.

<sup>30</sup> 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](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](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

<sup>31</sup> Available at: <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>.

<sup>32</sup> Statute of the Inter-American Commission on Human Rights, Section IV, available at:

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

<sup>33</sup> 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>.

petitioner wishes to remain anonymous and the respective reasons.<sup>34</sup> The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.<sup>35</sup> 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?**

Only the High Court can hear a matter seeking redress under the Constitution. It has the power to 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 any of the personal rights granted by the Constitution.<sup>36</sup>

Remedies under the Domestic Violence Act include an injunction, protection order or occupation order.<sup>37</sup> Applications for these remedies may be made to a court in the jurisdiction where a person is or is about to be subjected to domestic violence.<sup>38</sup> An occupation order gives the victim the right to live in the home and prevents the abusive person from living there. The court can also recommend that the victim, the abusive person, or both receive counselling.<sup>39</sup> The High Court, being the *parens patriae*, can also make any other orders that it deems fit in the circumstances of the particular case such as order the removal of the child from the household.

However, it is worth noting that a protection order under the Domestic Violence Act has reportedly never been utilised in St. Kitts and Nevis for the benefit of a child because domestic violence legislation is perceived as operating for the sole benefit of adult women who are in abusive relationships.<sup>40</sup>

The Magistrate’s Code of Procedure Act sets forth certain remedies available in “quasi-criminal” and civil matters generally. With respect to instances of cruelty to children, the parent of a child whose spouse has been convicted of such an offense, may apply for an order under the Act for separation, custody, maintenance, child support, and costs.<sup>41</sup>

**C. Would such a challenge have to directly involve one or more individual child**

---

<sup>34</sup> Ibid., Article 28.

<sup>35</sup> Ibid., Article 23.

<sup>36</sup> Constitution, Article 18(2).

<sup>37</sup> Laws of Saint Christopher and Nevis, Ch. 12.04 (Domestic Violence Act of 2000).

<sup>38</sup> Domestic Violence Act, Section 6.

<sup>39</sup> *Id.*

<sup>40</sup> UNICEF, *The Status of Child Protection in St Kitts and Nevis*, available at:

[http://www.unicef.org/barbados/cao\\_unicefeco\\_child\\_protection\\_Skn.pdf](http://www.unicef.org/barbados/cao_unicefeco_child_protection_Skn.pdf)

<sup>41</sup> Laws of Saint Christopher & Nevis, Ch. 3.17 (magistrate’s Code of Procedure Act), § 121(1)(e), (4).

victims, or is it possible to challenge a law or action without naming a specific victim?

One victim is sufficient to bring a legal challenge, however, they must be named.<sup>42</sup>

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

Collective group litigation or representative action is possible, however, the aggrieved persons must be named.<sup>43</sup> In group litigation before the Eastern Caribbean Supreme Court, it is possible to apply to the court to appoint a representative claimant.<sup>44</sup>

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

Non-governmental organisations are allowed to intervene once they can satisfy the Court, in accordance with the common law principle of *locus standi*, that they have a sufficient interest in the matter.<sup>45</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?

The Domestic Violence Act does not explicitly state that the Magistrate court has jurisdiction over domestic violence claims; however, the definition of court as being “a court of competent jurisdiction” indicates that the various applications under the Act may be made in that court because the Magistrate court is generally regarded as a court of competent jurisdiction.<sup>46</sup> The Act also gives jurisdiction to the family court in jurisdictions where one has been established.<sup>47</sup> Additionally, the High Court may hear applications made under

---

<sup>42</sup> This practice note was provided by Keisha Spence of Kelsick Wilkin & Ferdinand, Attorneys-at-Law, Federation of St. Kitts & Nevis; see also Laws of Saint Christopher & Nevis, Ch. 3:17 (magistrate’s Code of Procedure Act), § 56.

<sup>43</sup> The Magistrate’s Code of Procedure does not specifically address collective actions. Practice note provided by Keisha Spence of Kelsick Wilkin & Ferdinand, Attorneys-at-Law, Federation of St. Kitts & Nevis.

<sup>44</sup> Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Part 21.2.

<sup>45</sup> This practice note was provided by Keisha Spence of Kelsick Wilkin & Ferdinand, Attorneys-at-Law, Federation of St. Kitts & Nevis. See also *Nevis Island Administration v. La Copprorete du Navire*, No. Civ. App. 07 of 2005 (E. Caribbean Court of App. Dec. 29, 2005) (declining to review order dismissing lawsuit for lack of locus standi; explaining “A claimant who does not have the relevant nexus to the claim . . . is simply not permitted to litigate it.”).

<sup>46</sup> See <http://www.open.uwi.edu/sites/default/files/wanddomestic5.pdf>.

<sup>47</sup> *Id.*

the Act.<sup>48</sup>

To the extent that the Magistrate court has jurisdiction over a claim under the Domestic Violence Act, and to the extent that enforcement of the Act is not construed as being limited to a particular person or class of persons, the Magistrate's Code of Procedure Act provides that "[i]t shall be lawful or any person to make a complaint against any person committing an offence punishable on summary conviction..."<sup>49</sup> The Magistrate may, in his or her discretion, decline to issue a summons on the basis of the complaint.<sup>50</sup> If the Magistrate does so, the person applying for the summons is entitled to a certificate of refusal which the person may present to any judge of the High Court and request an order directing the Magistrate to issue the summons sought.<sup>51</sup>

At the Eastern Caribbean Supreme Court, the initial filing process requires the filing of (a) a claim form, (b) a statement of claim or (c) an affidavit or other document as required by any rule or practice direction.<sup>52</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?

The Constitutions of the Commonwealth Caribbean Countries do not confer a right to legal aid. They merely guarantee that a litigant should not be deprived of the right to seek or have legal representation. Any comprehensive provision of legal aid for persons with appeals to the Caribbean Court of Justice would require national legislation.<sup>53</sup>

The legal aid system in St. Kitts and Nevis is not well organised; the criteria for accessing legal aid is not clearly defined or known. It appeared that the government-sponsored Legal Aid Clinic has never moved the Court in relation to any important legal question pertaining to children or vulnerable groups in the society. As it relates to children, the clinic mainly handles matters relating to adoption.<sup>54</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

---

<sup>48</sup> See: <http://www.eclac.cl/mujer/noticias/noticias/4/10934/lccarg659.pdf>.

<sup>49</sup> Laws of Saint Christopher and Nevis, Ch. 3:17. (Magistrate's Code of Procedure Act), § 31(1).

<sup>50</sup> *Id.* at § 32.

<sup>51</sup> *Id.*

<sup>52</sup> Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Part 8.1.

<sup>53</sup> See: <http://ijchr.org/2012/01/01/the-caribbean-court-of-justice-and-access-to-justice>.

<sup>54</sup> This practice note was provided by Keisha Spence of Kelsick Wilkin & Ferdinand, Attorneys-at-Law, Federation of St. Kitts & Nevis.



an agreement that does not require the payment of legal fees up front?

No, such legal assistance is uncommon; many of the issues affecting children do not get the attention of lawyers.<sup>55</sup>

- 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?

No time limit exists under the Domestic Violence Act during which one must apply for an order or take action against domestic violence. However, the Magistrate's Code of Procedure Act provides a general six year statute of limitations to civil matters.<sup>56</sup> In some criminal matters, no time limit exists.<sup>57</sup>

In other civil cases, the statute of limitations to file a lawsuit begins to run when a minor reaches the age of majority.<sup>58</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?

Evidence may be heard under oath from children under 16 if the court determines that "the child is possessed of sufficient intelligence [...] and competent to know the nature and consequences of giving false evidence and to know that it is wrong to give false evidence".<sup>59</sup> If the court determines that is not the case, unsworn evidence may still be heard from the child,<sup>60</sup> however, in a trial by jury where such unsworn testimony is heard, the judge must warn the jury of the danger of relying on such uncorroborated evidence.<sup>61</sup>

The child or his or her representative must first establish the child's qualification to seek relief under the Domestic Violence Act 2000 by (1) proving that the child used to live with the abusive person (who is of the opposite sex) and (2) proving that the abusive person is engaging or is about to engage in domestic violence against the victim.<sup>62</sup> Section 22 of the Act also contemplates that where the party making the application is not the victim, it may be necessary to rely on otherwise inadmissible evidence, such as hearsay evidence.

---

<sup>55</sup> This practice note was provided by Keisha Spence of Kelsick Wilkin & Ferdinand, Attorneys-at-Law, Federation of St. Kitts & Nevis.

<sup>56</sup> Laws of Saint Christopher and Nevis, Ch. 3:17 (Magistrate's Code of Procedure Act), § 147.

<sup>57</sup> *Id.*; see, e.g., Laws of Saint Christopher and Nevis, Ch. 4:22 (Organized Crime (Prevention and Control) Act, 2002), § 12(2) (statute of limitations inapplicable to offences committed under the Act).

<sup>58</sup> This practice note was provided by Keisha Spence of Kelsick Wilkin & Ferdinand, Attorneys-at-Law, Federation of St. Kitts & Nevis. We were unable to identify the primary legislation providing for such tolling.

<sup>59</sup> Evidence Act 2011, Article 13(1), available at: <http://www.easterncaribbeanlaw.com/evidence-act-2011/>.

<sup>60</sup> Evidence Act 2011, Article 13(2).

<sup>61</sup> Evidence Act 2011, Article 13(3).

<sup>62</sup> See: <http://www.open.uwi.edu/sites/default/files/wanddomestic5.pdf>.

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

In many cases, the court makes a decision as to whether a violation occurred immediately after hearing the evidence.<sup>63</sup>

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

Decisions can be appealed to the Eastern Caribbean Supreme Court (ECSC), which has unlimited jurisdiction to decide civil and criminal cases and hear appeals from parties to legal proceedings in Saint Kitts and Nevis. The ECSC consists of two divisions: a High Court in Saint Kitts and Nevis (and other members of the Organisation of Eastern Caribbean States), and a single Court of Appeal, headquartered in St Lucia. An appeal to the High Court is made by issuing a fixed date claim form with a grounds of appeal attached.<sup>64</sup> An appeal to the Court of Appeal from the High Court or the Magistrate's or District Court is made by filing a notice of appeal within 42 days of the date of the judgment or order.<sup>65</sup>

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 Kitts and Nevis. 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.<sup>66</sup> In civil cases, the lower court will generally grant leave to appeal if the court is satisfied that the case raises a point of general public importance. In criminal cases, the lower court will generally grant leave only if the case raises questions of great and general importance, or there has been some grave violation of the principles of natural justice. In the absence of leave, permission to appeal must be granted by the Board (panel of judges hearing the case). In some cases there is an appeal as of right and a different procedure applies.<sup>67</sup>

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

The potential long and short term impact of a negative decision are feelings of

---

<sup>63</sup> Practice note provided by Keisha Spence of Kelsick Wilkin & Ferdinand, Attorneys-at-Law, Federation of St. Kitts & Nevis.

<sup>64</sup> Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Rule 60.2; for more information on the particular requirements, see Part 60.

<sup>65</sup> Ibid., Rules 62.3, 62.6; for more information on the particular requirements, see Part 62.

<sup>66</sup> 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>.

<sup>67</sup> Judicial Committee of the Privy Council, 'Role of the JCPC', available at: <https://www.jcpc.uk/about/role-of-the-jcpc.html>.

resentment toward and lack of confidence in the justice system as if an individual plaintiff or NGO expends effort prosecuting a meritorious cause of action but is unsuccessful in its endeavours, this may limit the appetite of similarly situated plaintiffs to pursue similar claims.<sup>68</sup>

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

There are no other relevant factors which need consideration.

- 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 other relevant laws or practices were identified.

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

---

<sup>68</sup> Practice note provided by Keisha Spence of Kelsick Wilkin & Ferdinand, Attorneys-at-Law, Federation of St. Kitts & Nevis.