

ACCESS TO JUSTICE FOR CHILDREN: SAINT VINCENT AND THE GRENADINES

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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?

International¹ treaties such as the CRC must be incorporated into law through domestic legislation to have legal force. The CRC has not been directly incorporated yet.² St. Vincent and the Grenadines signed the CRC on 20 September 1993 and ratified it on 26 October 1993.³

Additionally, St. Vincent and the Grenadines ratified the Optional Protocol to the CRC on the involvement of children in armed conflict on 29 March 2011.⁴ St. Vincent and the Grenadines also ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography on 15 September 2005.⁵ Implementing legislation for each of these conventions has been enacted.

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law. As the CRC has not been incorporated it therefore does not prevail over national law.

C. Has the CRC been incorporated into national law?

The CRC has not been incorporated into national law. Subject matter covered by the CRC is primarily found in domestic laws, which give partial effect to the Convention. There is no comprehensive Children's Act in the laws of St. Vincent and the Grenadines, though there are thematic laws that cover some areas of the law relating to children, such as the Juveniles Act⁶ or the Status of Children Act.⁷

A major revision of the laws of St. Vincent and the Grenadines was completed in

¹ Comments on this report provided by Paula David, Saunders & Huggins, Barristers-at-Law and Solicitors, Saint Vincent and the Grenadines, September 2015.

² Child Rights International Network, *St. Vincent & the Grenadines: National Laws*, 1 May 2012, available at: <http://www.crin.org/node/31511>.

³ United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

⁴ Ibid, see: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en#EndDec.

⁵ Ibid.

⁶ Juveniles Act 1952, available at: <http://www.cavehill.uwi.edu/lawlibrary/getattachment/7f801c7e-1d7c-48e6-b3b4-1dbecb5ef54e/JUVENILES-ACT.aspx>.

⁷ Status of Children Act 1980, available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96178/113592/F1217694407/VCT96178.pdf>.

1990 before the treaty was signed and ratified,⁸ and more recently in 2009.⁹ According to a 2001 report by the Committee on the Rights of the Child, there is still the need for specific legislation to be passed which comprehensively addresses the provisions of the CRC.¹⁰

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

The provisions of the CRC can only be enforced to the extent that specific legislation has been enacted in the national laws of St. Vincent and the Grenadines and thus far the CRC has not been incorporated. The Privy Council - the final court of appeal for St. Vincent and the Grenadines - has discussed international human rights treaties in its case law and may be willing to consider direct enforcement of the Convention on the Rights of the Child, though it has not done so to date.¹¹

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

No cases citing the CRC could be found on the website run by the Eastern Caribbean Supreme Court.¹² Case law generated by the Magistrate's Court and the Family Court is not readily available online. The CRC can and has been cited for interpretive guidance by regional courts with jurisdiction over St. Vincent and the Grenadines, such as the Judicial Committee of the Privy Council.¹³

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?

Children and their representatives can bring cases in the domestic courts to challenge rights violations. According to the Age of Majority Act, children are defined as all persons under the age of 18.¹⁴ The Rules of Civil Procedure set forth the requirements for bringing a case in the High Court.¹⁵ For Family Court matters, "any victim of domestic violence can apply for a protection or occupation order," and "any member of the victim's family, whether part of his or her household or not, can also apply for a protection or occupation order on

⁸ *Initial report of St. Vincent & the Grenadines to the UN Committee on the Rights of the Child*, CRC/C/28/Add.18, 10 October 2001, para. 12, available at: [http://www.unhchr.ch/tbs/doc.nsf/7ceec89369c43a6dfc1256a2a0027ba2a/233cbd03c45af4fec1256b490053e099/\\$FILE/G0145063.pdf](http://www.unhchr.ch/tbs/doc.nsf/7ceec89369c43a6dfc1256a2a0027ba2a/233cbd03c45af4fec1256b490053e099/$FILE/G0145063.pdf).

⁹ <http://svgfsa.com/laws.html>.

¹⁰ *Ibid.*

¹¹ See Privy Council case law collection at: <http://www.bailii.org/uk/cases/UKPC/>.

¹² See eccourts.org.

¹³ See, for example: *Fisher v. The Minister of Public Safety and Immigration and Others* (Bahamas) [1998] UKPC 40, available at: <http://www.bailii.org/uk/cases/UKPC/1998/40.html>; *Naidike & Ors v. Attorney General of Trinidad and Tobago* (Trinidad and Tobago) [2004] UKPC 49, available at: <http://www.bailii.org/uk/cases/UKPC/2004/49.html>.

¹⁴ Age of Majority Act 1987, section 2(1), available at: <http://www.cavehill.uwi.edu/lawlibrary/getattachment/eae25d0d-9925-410e-88ef-06bda1f5a3a6/AGE-OF-MAJORITY-ACT.aspx>.

¹⁵ Eastern Caribbean Supreme Court Civil Procedure Rules 2000, section 8, available at: <http://www.eccourts.org/wp-content/uploads/2014/11/CPR-2000-Revised-Edition-May-2014.pdf>.

behalf of the victim.”¹⁶ Additionally, specific laws such as the Domestic Violence Act provide further guidance on filing a claim and set forth limitations for child representation.¹⁷

Chapter I of the Constitution St. Vincent and the Grenadines¹⁸ contains several rights provisions that apply regardless of age, but also a small number that make specific reference to the rights of children alongside further provisions throughout the rest of the Constitution that address children:

- Section 3: allows for exceptions to the prohibition on the deprivation of personal liberty, so far as authorised by law, with parental consent or the order of a court, for the education and welfare of a person under 18;
- Section 6: provides for an exception to the prohibition on compulsory possession of the property of a person under the age of 18 as provided for in law for the purpose of its administration for the benefit of persons entitled to the beneficial interest in that property;
- Section 8: allows for legal proceedings involving persons under 18 to be heard in private;
- Section 9: contains provisions that allow for parents to provide consent to their children's religious education in places of education and other institutions;
- Sections 88 and 89: make reference to children with regards to pension rights;
- Section 93(2)(d): makes reference to children with regards to citizenship rights;
- Section 95(1): provides guidance to interpreting the word "father", specifically that the term applies regardless of the marital status of a biological father.

The protective provisions of Chapter I of the Constitution can be challenged in the courts of St. Vincent and the Grenadines by children and their representatives if they allege that any of the provisions of sections 2 to 15 of the Constitution have been, are being or are likely to be violated with regard to the child.¹⁹

In terms of criminal proceedings, it appears possible to bring private prosecutions where the Director of Public Prosecutions has declined to bring a case.²⁰ The Constitution provides that the Director of Public Prosecutions may “take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority”²¹ thereby suggesting that private prosecutions may be brought by any person and could therefore be used by

¹⁶ Immigration and Refugee Board of Canada, *Saint Vincent and the Grenadines: Domestic violence; the role of the Family Court; procedure for applying for a protection or occupation order; police authority and attitude regarding domestic violence; shelters for abused women*, 31 October 2006, VCT101993.FE, available at: <http://www.refworld.org/docid/45f147c134.html>.

¹⁷ Domestic Violence (Summary Proceedings) Act 1995, available at: <http://www.hsph.harvard.edu/population/domesticviolence/SAINTVINCENTANDTHEGRENADINES.htm>.

¹⁸ Constitution of St. Vincent and the Grenadines 1979, sections 1-18, available at: <http://pdba.georgetown.edu/Constitutions/Vincent/stvincent79.html>.

¹⁹ Constitution, section 16(1).

²⁰ Criminal Procedure Code of the Laws of Saint Vincent and the Grenadines Revised Edition 2009. sections 69-70.

²¹ Constitution, section 64(2)(b).

children and their representatives to challenge offences against children.

There is no independent body in St. Vincent and the Grenadines with a mandate which would cover complaints by children regarding violations of their rights, such as an Ombudsman. In 2002, the UN Committee on the Rights of the Child recommended that the State party establishes “an independent structure to receive complaints of violations of children’s rights which has the authority and capacity to receive and investigate individual complaints in a child-sensitive manner and address them effectively”,²² but it appears that such structures are still lacking. A 2009 constitutional referendum which endeavoured to insert provisions establishing an Ombudsman and Independent Human Rights Commission into the Constitution was not successful.²³

The domestic human rights group St. Vincent and the Grenadines Human Rights Association (SVGHRA) is said to generally operate “without government restriction, investigating and publishing its findings on human rights cases” and that government officials are “somewhat receptive to its views”.²⁴ Yet, the SVGHRA at the time of research did not have an online presence and it was therefore not possible to verify the scope of the work of the organisation, including its independence and powers to decide individual complaints by children.

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?

Children generally require a representative to bring cases in court. There are some exceptions. In Family Courts “any victim of domestic violence can apply for a protection or occupation order,” and “any member of the victim’s family, whether part of his or her household or not, can also apply for a protection or occupation order on behalf of the victim.”²⁵ A child may also personally apply for a financial provision order if he/she is over the age of 14.²⁶

No other laws which apply to children in St. Vincent and Grenadines provide for the possibility of a child bringing a challenge in court by him or herself.²⁷ According to the Civil Procedure Rules, a child must have a next friend in order to issue a claim except where, on the application of a child, the court has made

²² UN Committee on the Rights of the Child, *Concluding observations on the initial report of St. Vincent and the Grenadines*, CRC/C/15/Add.184, 13 June 2002, para. 10, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.184&Lang=en.

²³ For more information, see: <http://www.svgconstitution.com/tag/independent-ombudsman/>; For details of the proposed new Constitution: <http://www.hsph.harvard.edu/population/womenrights/stvincent.constitution.09.pdf>.

²⁴ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013, Saint Vincent and the Grenadines*, section 5.

²⁵ Immigration and Refugee Board of Canada, *Saint Vincent and the Grenadines: Domestic violence; the role of the Family Court; procedure for applying for a protection or occupation order; police authority and attitude regarding domestic violence; shelters for abused women*.

²⁶ The Maintenance Act Chapter 234 of the Laws of Saint Vincent and the Grenadines Revised Edition 2009, section 4(2)(e).

²⁷ See Juveniles Act, Law of Minors Act, Maintenance Act, Status of Children Act etc.

an order permitting the child to conduct proceedings without a next friend.²⁸ As national legislation in the countries served by the Eastern Caribbean Supreme Court gives rule-making authority to the Chief Justice of the Eastern Caribbean Supreme Court also in relation to matters outside the Court of Appeal and the High Court, the Civil Procedure Rules may be applied widely across the courts of St. Vincent and the Grenadines as well as all other member states of the Organisation of Eastern Caribbean States.²⁹

Rules of representation are addressed by specific laws, such as the Law of Minors Act³⁰ and the Domestic Violence Act. The Law of Minors Act provides that the Court may “consult the wishes of the minor in considering what order ought to be made or diminish the right which any minor possesses to the exercise of its own free choice”,³¹ thereby suggesting that a representative brings the challenge. The Domestic Violence Act provides that representation for cases where the alleged conduct involves a child ought to be carried out by:

- a person with whom the child or dependant normally resides or resides on a regular basis or any other member of the household;
- a parent or guardian of the child or dependant;
- where the dependant is not mentally disabled, the dependant; or
- a person experienced or qualified in social welfare approved by the Minister in writing; or
- a police officer; or
- a person holding the office or performing the duties of a probation officer or medical social worker; or
- the Solicitor General.³²

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

Cases are likely to be brought by a parent or other representative as outlined above. Additionally, the Family Services Division (FSD) of the Social Development Ministry is tasked with monitoring and protecting the welfare of children.³³ The FSD refers all reports of child abuse to the police for action and provides assistance in cases where children apply for protection orders with the Family Court.³⁴

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

There are no legal aid services offered by the government of St. Vincent and the Grenadines. It is therefore extremely difficult for children and their

²⁸ Eastern Caribbean Supreme Court Civil Procedure Rules, sections 23.2(2) and 23.3(1).

²⁹ See, e.g.: <http://www.oecs.org/about-the-oecs/institutions/eastern-caribbean-supreme-court-ecsc>.

³⁰ Law of Minors Act 1987, available at: <http://www.cavehill.uwi.edu/lawlibrary/getattachment/ed6e3b83-20ae-4a14-827f-dc51c0d6a4f8/LAW-OF-MINORS-ACT.aspx>.

³¹ Law of Minors Act, section 31.

³² Domestic Violence (Summary Proceedings) Act 1995, section 3(1)(d).

³³ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013, Saint Vincent and the Grenadines*, section 6, available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220471#wrapper>.

³⁴ Ibid.

representatives to receive free legal advice if they lack the necessary funds for a legal challenge. The primary avenues of free legal assistance are the Family Services Division and non-governmental organisations (see also sections IV.B. and IV.C. on legal aid and pro bono services below). Note, however, a direct reference is made to a juvenile's legal practitioner in the Juveniles Act.³⁵

The UN Committee on the Rights of the Child has observed that with only very limited exceptions, there is no provision of legal assistance to children in St. Vincent and the Grenadines, and that children from disadvantaged backgrounds are frequently left without legal support.³⁶

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)?

Several limits on children or representatives bringing cases exist in St. Vincent and the Grenadines. There is no general law that sets forth representation procedures for children, but some specific laws such as the Domestic Violence Act and the Law of Minors Act contain representation limitations. One of the primary methods of representation is by the child's parents even though the child can be represented - with or without the consent of the parents - by the government in criminal prosecutions and certain domestic violations.³⁷ The Law of Minors Act, for example, provides that the courts have the power to appoint a guardian where a child has no parent or guardian. The High Court may also, in its discretion, remove a guardian and appoint another guardian for the child if it is satisfied that it is necessary for the welfare of the child.³⁸

Parental representation may in some situations be problematic due to stringent paternity requirements under the Maintenance Act which includes a statute of limitations that bars paternity applications made more than five years after the birth of the child or the last time the alleged father paid money for the child's maintenance.³⁹ Additionally, the court cannot make a finding of paternity unless the mother is alive and can offer some corroborating evidence.⁴⁰ For children without parents, the Family Services Division can provide some assistance, but services are limited to reporting child abuse to the police and providing assistance in cases where children apply for protection orders with the Family Court.⁴¹

³⁵ Juveniles Act Chapter 231 of the Laws of Saint Vincent and the Grenadines, section 18(4).

³⁶ UN Committee on the Rights of the Child, *Concluding observations on the initial report of St. Vincent and the Grenadines*, para. 52.

³⁷ See, e.g.: Domestic Violence (Summary Proceedings) Act, section 3(1).

³⁸ Law of Minors Act, sections 8-10.

³⁹ Jacqueline Sealy-Burke, *Protecting Children Affected by AIDS in the Caribbean, Recommendations for Legal Reform in St. Vincent & the Grenadines*, World Bank Global HIV/AIDS Programme, 2006, p. 6, available at: <http://siteresources.worldbank.org/INTHIVAIDS/Resources/375798-1132695455908/LegalReformRecom-OVC-St.VincentAugust3.pdf>.

⁴⁰ *Ibid.* The stringent requirement is limited to an application for an affiliation order under section 16 of the Maintenance Act. The Status of Children Act 2011 contains much wider and more liberal provisions for the making of an order of paternity or a parentage order.

⁴¹ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013, Saint Vincent and the Grenadines*, section 6.

The best interests principle has been included in various pieces of legislation.⁴² Several pieces of legislation also provide for the participation of the child and for the child's view to be heard.⁴³

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?

Family Court matters are initiated through an application by the victim him or herself who can apply for a protection or occupation order, or any member of the victim's family.⁴⁴

Any other legal challenge can be brought by a child's representative as outlined above. Additionally, the Family Services Division of the Social Development Ministry is tasked with monitoring and protecting the welfare of children.⁴⁵ The FSD refers all reports of child abuse to the police and provides assistance in cases where children apply for protection orders with the Family Court.⁴⁶

Children and their representatives can apply to the High Court for redress if their rights under Chapter I of the Constitution have been, are being or are likely to be contravened in relation to the child.⁴⁷ If a question arises as to the contravention of any of the provisions of under Chapter I of the Constitution in proceedings in front of a lower court, the person presiding in that court may, and shall if any party to the proceedings requests, refer the matter to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.⁴⁸

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),⁴⁹ on

⁴² See, e.g., the Adoption and Domestic Violence Acts, the Status of Children Act at section 9(2)(b) and section 10(1), the Juveniles Act at section 21(1), and the Law of Minors Act, Chapter 232 of the Laws of Saint Vincent and the Grenadines Revised Edition 2009 at section 5.

⁴³ See, e.g., the Children (Care and Adoption) Act at sections 9, 13, 17(4)(c), 17(6)(b), 18, 19(2)(b), 22(2), 30(3), 34, 38(2), 50(2), 53(c), 54(b), 57(4)(a), 59(4), 62(2)(d), 72(8)(b), 84, 102(1)(e), 104(1)(a), 106(2), 107(4), 108(2), 123(2) and 123(4); the Status of Children Act at section 9(2)(a)(ii); the Law of Minors Act at section 5; and the Juveniles Act at section 18(4).

⁴⁴ Immigration and Refugee Board of Canada, *Saint Vincent and the Grenadines: Domestic violence; the role of the Family Court; procedure for applying for a protection or occupation order; police authority and attitude regarding domestic violence; shelters for abused women*.

⁴⁵ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013, Saint Vincent and the Grenadines*, section 6.

⁴⁶ *Ibid.*

⁴⁷ Constitution, section 16(1).

⁴⁸ *Ibid.*, section 16 (3).

⁴⁹ The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a "dual role" as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at: http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm; American Convention on Human Rights, 'Pact of San Jose, Costa Rica', Chapter VII, available at:

their behalf or on behalf of third persons, regarding alleged violations of the American Declaration of the Rights and Duties of Man⁵⁰ and other Inter-American human rights instruments⁵¹ as St. Vincent and the Grenadines has not ratified the American Convention on Human Rights.⁵² A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.⁵³ The petition must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, the name(s) of the victim(s) if possible, and whether the petitioner wishes to remain anonymous and the respective reasons.⁵⁴ The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.⁵⁵ 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?

For violations against children that implicate criminal laws, the incident can be reported and adjudicated in the criminal courts. Civil lawsuits seeking damages for violations are also an option.⁵⁶ Domestic violence remedies include eviction from the home, protective orders, and maintenance payments.⁵⁷ Financial remedies and subsistence payments for children can be ordered by the courts according to the Maintenance Act.⁵⁸

The High Court has original jurisdiction to hear and determine any application made by any person in pursuance of their rights and freedoms under the Constitution and to determine any question arising in the case of any person which is referred to it by a lower court. The High Court can 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 fundamental rights and freedoms provided for in sections 2 to 15 of the Constitution⁵⁹

http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

⁵⁰ Available at: <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>.

⁵¹ Statute of the Inter-American Commission on Human Rights, Section IV, available at:

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

⁵² American Convention on Human Rights, ‘Pact of San Jose, Costa Rica’, Signatories and Ratifications, available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm.

⁵³ 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>.

⁵⁴ *Ibid.*, Article 28.

⁵⁵ *Ibid.*, Article 23.

⁵⁶ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013, Saint Vincent and the Grenadines*, section 1(e).

⁵⁷ See, e.g.: Domestic Violence (Summary Proceedings) Act, sections 4-6.

⁵⁸ Maintenance Act 1989, available at: <http://www.cavehill.uwi.edu/lawlibrary/getattachment/2e513dec-bbf0-405c-aa8f-759f826ca6f8/MAINTENANCE-ACT.aspx>.

⁵⁹ Constitution, section 16(2).

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 challenge has to involve a child victim, but measures can be applied to protect the child's identity in the Family Court, although proceedings are not entirely anonymous. The applicant is first "interviewed by the Legal Clerk of the Court, i.e. to obtain details of the type of violence, date of incident, place of work or address where Respondent can be reached, etc."⁶⁰ The applicant is then "given the option to have the matter settled through counseling or through mediation."⁶¹ If the applicant is not interested in either of those services, "he/she is free to proceed with application for the Order."⁶² However, an application for an order requires the victim or the victim's representative to show identification and sign the application.⁶³

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

The Civil Procedure Rules allow for group proceedings by "five or more persons" with the "same or a similar interest".⁶⁴ The Court may appoint a "body having a sufficient interest in the proceedings" or "one or more of those persons to represent all or some of the persons with the same or similar interest." Such group litigation must be initiated by filing an application for an order to appoint a representative claimant.⁶⁵ The court "may appoint one or more persons to represent any person or class of persons (including an unborn person or persons) who is or may be interested in or affected by the proceedings (whether presently or for any future, contingent or unascertained interest) where (a) the person, or the class or some member of it, cannot be ascertained or cannot readily be ascertained; (b) the person, or the class or some member of it, though ascertained cannot be found; or (c) it is expedient to do so for any other reason".⁶⁶ The Civil Procedure Rules do not contain any provisions about whether group litigation is permissible without naming individual victims.

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?

There are no provisions in the domestic laws of St. Vincent and the Grenadines or the Civil Procedure Rules allowing for non-governmental organisations to file legal challenges or to intervene. The only provision taking into account the possibility of a claim being brought by a wider entity can be found in the Civil Procedure Rules which state that the Court may appoint a "body having a sufficient interest in the proceedings [...] to represent all or some of the persons with the same or similar interest" which may allow for a non-governmental

⁶⁰ Immigration and Refugee Board of Canada, *Saint Vincent and the Grenadines: Domestic violence; the role of the Family Court; procedure for applying for a protection or occupation order; police authority and attitude regarding domestic violence; shelters for abused women.*

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Eastern Caribbean Supreme Court Civil Procedure Rules, section 21.1.

⁶⁵ Ibid., section 21.2.

⁶⁶ Ibid., section 21.4.

organisation to be appointed as claimant (see also section III.D. above).⁶⁷

IV. Practical considerations.

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

St. Vincent and the Grenadines' judicial system is part of a system serving nine eastern Caribbean states known as the Organization of Eastern Caribbean States (OECS).⁶⁸ The OECS maintains the judiciary body for these nine states.⁶⁹ The primary court of first instance for St. Vincent and the Grenadines is the High Court of Justice.⁷⁰ Family related matters are dealt with primarily by the local Family Courts, including matters such as domestic violence, child subsistence payments, care and protection of children, juvenile offenders, sexual offences, and child abuse.⁷¹ The Family Court has only one branch, which is located in Kingstown. Matters outside the jurisdiction of the Family Court are referred to the High Court, unless they fall within the limited civil or criminal jurisdiction of the Magisterial District Courts.⁷² The High Court also deals with all applications under the Status of Children Act and the Children (Care and Adoption) Act. Indictable sexual offences are dealt with by the High Court.

The Civil Procedure Rules provide how and where to file a civil claim.⁷³ A claimant starts a proceeding by filing in the court office the original and one copy of the claim form and the statement of claim; or, if required by another rule or practice direction, an affidavit or other document.⁷⁴ Any proceeding other than those related to land "may be commenced only in the court office for the Member State, Territory or circuit where either the (a) cause of action arose; or (b) defendant resides or carries on business".⁷⁵

For Family Court matters, a victim or family representative can apply for a protection or occupation order.⁷⁶ The applicant is first "interviewed by the Legal Clerk of the Court, i.e. to obtain details of the type of violence, date of incident,

⁶⁷ Ibid., section 21.2.

⁶⁸ Brief History of the Court, Eastern Caribbean Supreme Court, available at: <http://www.eccourts.org/brief-history-of-the-court/>.

⁶⁹ About the OECS, Organisation of Eastern Caribbean States, available at: <http://www.oecs.org/about-the-oecs/who-we-are/about-oecs>.

⁷⁰ Structure of the Court, Eastern Caribbean Supreme Court, available at: <http://www.eccourts.org/structure-of-the-court/>.

⁷¹ International Women's Rights Action Watch, University of Minnesota, *St. Vincent & the Grenadines*, 2003, available at: http://www1.umn.edu/humanrts/iwraw/publications/countries/st_vincent_and_grenadines.htm; Stetson University College of Law, Institute for Caribbean Law & Policy, *St. Vincent & the Grenadines*, slide 11, available at: <http://www.stetson.edu/law/international/caribbean/home/media/ACLI-st-vincent.pdf>.

⁷² Stetson University College of Law, *St. Vincent & the Grenadines*, slide 5.

⁷³ Note, however, that these Rules do not apply to the lower courts such as the Family Court and the Magistrate's Court or family proceedings in the High Court and Court of Appeal: see Preamble and Rule 2.2(3) of the Civil Procedure Rules.

⁷⁴ Eastern Caribbean Supreme Court Civil Procedure Rules, section 8(1).

⁷⁵ Ibid., section 8(3).

⁷⁶ Immigration and Refugee Board of Canada, *Saint Vincent and the Grenadines: Domestic violence; the role of the Family Court; procedure for applying for a protection or occupation order; police authority and attitude regarding domestic violence; shelters for abused women*.

place of work or address where Respondent can be reached, etc”.⁷⁷ The applicant is then “given the option to have the matter settled through counseling or through mediation”.⁷⁸ If the applicant is not interested in either of those services, “he/she is free to proceed with application for the Order”.⁷⁹

- 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?

There are no legal aid services offered by the government of St. Vincent and the Grenadines. It is therefore extremely difficult for children and their representatives to receive free legal advice if they lack the necessary funds for a legal challenge.⁸⁰ The primary avenues of free legal assistance are the Family Services Division and non-governmental organisations.

- 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?

St. Vincent and the Grenadines Human Rights Association (SVGHRA) is said to be available to provide legal assistance to victims of human rights violations,⁸¹ but as indicated above (section II.A.) it is unclear what the scope and powers of the SVGHRA are due to a lack of an online presence or further supplementary information. The NGO Marion House provides guidance to children through its pro bono legal counselors who have professional training.⁸²

Two bar associations operate in the region and cover St. Vincent and the Grenadines, the Organization of Commonwealth Caribbean Bar Associations (OCCBA) based in Barbados⁸³ and the Organization of Eastern Caribbean States Bar Association (OECS Bar Association) based in Grenada.⁸⁴ There also appears to be a local Bar Association in St. Vincent and the Grenadines which is not governed by legislation, where individual lawyers provide pro bono services on an ad hoc basis.⁸⁵ Yet it is unclear for all of these bar associations in how far they might support and offer pro bono services. A list of law firms in St. Vincent and the Grenadines, some of which offer free legal assistance, is available

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ See, e.g.: International Women’s Rights Action Watch, University of Minnesota, *St. Vincent & the Grenadines*.

⁸¹ Stetson University College of Law, Institute for Caribbean Law & Policy, *St. Vincent & the Grenadines*, slide 43.

⁸² Yale Law School, *St. Vincent & the Grenadines*. Marion House is referred to in various secondary sources, but research suggests they do not have their own online presence.

⁸³ See: <http://www.caricomlaw.org/barassociationsofcaricom.aspx>.

⁸⁴ See: <http://www.oecsbar.org/index.php/en/>. Stetson University College of Law, Institute for Caribbean Law & Policy, *St. Vincent & the Grenadines*, slides 15-17.

⁸⁵ See: <http://svgbar.com/Default.aspx>.

through the British High Commission in Barbados.⁸⁶

- 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?

Limitation provisions vary between the different laws of St. Vincent and the Grenadines. The Maintenance Act, for example, provides for time limits for affiliation proceedings.⁸⁷

Research suggests that there are no special provisions that would allow young adults to bring cases about violations of their rights that occurred when they were children. Yet there may be a possibility for young adults to apply to the courts for special relief and to thereby have their cases heard in court. According to the Civil Procedure Rules, when considering whether to refuse leave or to grant relief because of a delay the judge must consider whether the granting of leave or relief would be likely to be detrimental to good administration or cause substantial hardship to or substantially prejudice the rights of any person.⁸⁸

When deciding whether to hear an appeal, the courts may also extend any time limits for bringing the appeal.⁸⁹

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The Civil Procedure Rules address evidentiary procedures and limitations which include witness statements,⁹⁰ affidavits,⁹¹ and other modes of evidence such as plans and photographs.⁹² Additionally the preamble of the Evidence Act describes it as “An Act to consolidate the law relating to evidence in criminal, civil and other proceedings”.⁹³ The Evidence Act applies to all courts and tribunals.

The Witness (Special Measures) Act provides for witness anonymity and special measures for giving evidence, such as transmission of evidence by live link, video recording or given in private.⁹⁴ The Juveniles Act provides for the exclusion of the public in proceedings concerning juveniles.⁹⁵ Where evidence is given by a child of tender years, the Act provides that where the witness does not in the opinion of the court understand the nature of an oath, his evidence may still be received and not given upon oath, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of the evidence and

⁸⁶ See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413305/St_Vincent_and_the_Grenadines_Lawyers_List.pdf.

⁸⁷ Maintenance Act, section 17.

⁸⁸ Eastern Caribbean Supreme Court Civil Procedure Rules, section 56.5(2).

⁸⁹ *Ibid.*, section 62.5(3).

⁹⁰ *Ibid.*, section 29.

⁹¹ *Ibid.*, rule 30.

⁹² *Ibid.*, rule 31.

⁹³ Chapter 220 of the Laws of Saint Vincent and the Grenadines Revised Edition 2009.

⁹⁴ Witness (Special Measures) Act 2013, parts II & III, available at: <http://www.easterncaribbeanlaw.com/witness-special-measures-act/>.

⁹⁵ Juveniles Act, sections 7 & 32.

understands the duty of speaking the truth.⁹⁶

Practical limitations exist with respect to witness testimony. Police and human rights groups have reported payoffs to survivors of rape or sexual assault in exchange for not pressing charges.⁹⁷ Witnesses have also been said to have refused to testify for fear of retaliation.⁹⁸

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

According to the Chief Justice of the Eastern Caribbean Supreme Court, civil litigation “has placed a tremendous burden on the court process in the High Court”.⁹⁹ Many claims of low monetary value have been said to get tied up in lengthy litigation and costs frequently exceed the value of the claim.¹⁰⁰ This causes long judicial delays and a large backlog of cases in the courts which have also been said to be due to personnel shortages in the local judiciary.¹⁰¹ Consequently, the need to increase the magistrate jurisdiction in civil matters is being examined across the region.¹⁰²

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

Decisions of the local Magistrate and Family Courts can be appealed to the Eastern Caribbean Supreme Court (ECSC), which has unlimited jurisdiction to decide civil and criminal cases and hear appeals from parties to legal proceedings in St. Vincent and the Grenadines. The ECSC consists of two divisions: a High Court in St. Vincent and the Grenadines (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.¹⁰³ 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.¹⁰⁴

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 St. Vincent and the Grenadines. Appeals are made to Her Majesty in Council by

⁹⁶ Ibid., section 31.

⁹⁷ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013, Saint Vincent and the Grenadines*, section 6.

⁹⁸ Ibid.

⁹⁹ *The Role of the Court in the Region’s Socio-Economic Development*, Address by The Hon. Dame Janice M. Pereira, DBE, Chief Justice to Mark the Opening of the Law Year 2013/2014, Eastern Caribbean Supreme Court, p. 17.

¹⁰⁰ Ibid.

¹⁰¹ Freedom House, *Freedom in the World 2014: St. Vincent and the Grenadines*, available at: <https://freedomhouse.org/report/freedom-world/2014/st-vincent-and-grenadines#VUjdfZcpKQ>.

¹⁰² *The Role of the Court in the Region’s Socio-Economic Development*, Address by The Hon. Dame Janice M. Pereira, DBE, Chief Justice to Mark the Opening of the Law Year 2013/2014, Eastern Caribbean Supreme Court, p. 17.

¹⁰³ Eastern Caribbean Supreme Court Civil Procedure Rules 2000, section 60.2; for more information on the particular requirements, see Part 60.

¹⁰⁴ Ibid., sections 62.3, 62.6; for more information on the particular requirements, see Part 62.

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.¹⁰⁵ 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.¹⁰⁶

- 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?

St. Vincent and the Grenadines' judicial system is based on British common law and judicial decisions generally set precedent. Court decisions can therefore have long-lasting effects, especially those by the Court of Appeal and the Judicial Committee of the Privy Council as the courts of last resort.

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

In spite of the delays and large backlogs of cases in the courts, the government of St. Vincent and the Grenadines is generally perceived to be respectful of judicial independence.¹⁰⁷ Independent research suggests that the rule of law remains strong and corruption is not pervasive. There have been some allegations of money laundering through the banks and drug-related corruption within the government and police, but the government has taken action to prosecute such crimes.¹⁰⁸ No major further challenges in enforcing positive decisions should therefore be anticipated.

- 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 additional factors were identified.

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

¹⁰⁵ 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>.

¹⁰⁶ Judicial Committee of the Privy Council, 'Role of the JCPC', available at: <https://www.jcpc.uk/about/role-of-the-jcpc.html>.

¹⁰⁷ Freedom House, *Freedom in the World 2014: St. Vincent and the Grenadines*.

¹⁰⁸ 2015 Index of Economic Freedom, *St. Vincent & the Grenadines*, available at: <http://www.heritage.org/index/country/saintvincentgrenadines>.