

ACCESS TO JUSTICE FOR CHILDREN: SURINAME

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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?

The CRC has the force of law in Suriname. Article 105 of the Constitution states that international agreements shall become effective on promulgation.¹ Suriname ratified the CRC on 1 March 1993² and promulgated it in its Official Gazette of November 1999.³

B. Does the CRC take precedence over national law?

It appears that the CRC takes precedence over national law provisions except for those of the Constitution.⁴

C. Has the CRC been incorporated into national law?

According to Article 105 of the Constitution promulgated international agreements are automatically incorporated into national law.

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

Although no specific information was identified to confirm this, it follows from the status of the Convention in national law that it should be directly enforced in the courts.

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

Research did not identify any cases in which the national courts cite the CRC.

II. What is the legal status of the child?

¹ Constitution of the Republic of Suriname, available at: http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/suriname/Surin_Const_Eng.htm.

² United Nations, *Ratification Status for Suriname*, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=166&Lang=en.

³ *Second periodic report of Suriname to the UN Committee on the Rights of the Child*, CRC/C/SUR/2, 22 August 2005, para 12, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSUR%2f2&Lang=en.

⁴ Amazon Cooperation Treaty Organisation, *Legal system of Suriname*, available at: http://otca.info/gef/uploads/documento/b2e77-Ativ-I.2.2_Legal-system-SurinameProduto01.pdf.

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

Civil challenges can be brought with help from the Office of the Registry (*Griffie der Kantongerechten*).⁵

Complaints regarding violations of children's rights which amount to a criminal offence can be submitted to the Office of Public Prosecution or to the police by any citizen, including a child, after which the Office of Public Prosecution will initiate an investigation in preparation for a criminal case.⁶ The Public Prosecutor's Office is to the exclusion of all other organs responsible for the investigation and is charged with the prosecution of all punishable acts.⁷ Stakeholders might challenge before the Court of Justice a refusal by the Public Prosecutor's Office to pursue the case and the Court of Justice can order the Public Prosecutor's Office to pursue the case.⁸

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 in Suriname is 21 years, however, majority may be obtained earlier in certain cases such as marriage.⁹

In general, in civil cases, minors (i.e. persons that have not reached the age of 21)¹⁰ need the assistance of a legal representative in order to bring a case.

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

Research did not identify any particular rules concerning infants or young children other than those mentioned in part II.B above.

⁵ Ministry of Justice website, available at:

<http://www.gov.sr/ministerie-van-juspol/over-justitie-en-politie/departementen/hoofdafdeling-rechtsaangelegenheden/griffie-der-kantongerechten.aspx>.

⁶ *Second periodic report of Suriname*, at para. 78.

⁷ Constitution, Article 145.

⁸ Criminal Procedure Code, Article 4, available in Dutch at:

<http://www.dna.sr/wetgeving/surinaamse-wetten/geldende-teksten-tm-2005/wetboek-van-strafovordering/>.

⁹ Civil Code, Article 382, available in Dutch at: http://www.dna.sr/media/19726/burgerlijk_wetboek.pdf.

A proposed amendment to the Civil Code could lower the age of majority to 18 years old - see *Combined third and fourth periodic report of Suriname to the UN Committee on the Rights of the Child*, CRC/C/SUR/3-4, 16 January 2014, at paras. 56-57, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSUR%2f3-4&Lang=en.

¹⁰ Civil Code, Article 382-262. In some circumstances (e.g. marriage, criminally prosecuted), different age threshold are applied to determine whether a person is minor or not.

¹¹ Ministry of Justice website, available at:

<http://www.gov.sr/ministerie-van-juspol/over-justitie-en-politie/departementen/hoofdafdeling-rechtsaangelegenheden/griffie-der-kantongerechten.aspx>.

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

According to the Constitution, “the law shall provide regulations with regard to legal aid for the financially weak”¹² and the State has an obligation to make “the services of legal aid institutions accessible to those looking for justice.”¹³

Legal aid is available through the Legal Aid Bureau in relation to both criminal and civil matters and allocated on the basis of a means test.¹⁴

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

No particular conditions or limits were identified.

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

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

According to the Constitution, “everyone has the right to legal assistance before the courts”.¹⁵ According to a report on human rights practices, “[t]here are separate procedures for civil processes, and there is a court to consider lawsuits seeking damages for, or cessation of, a human rights violation”,¹⁶ however, research could not identify which court would be the appropriate venue for challenging violations of children's rights.

The Department of Youth Affairs of the Ministry of Justice and Police contains a mechanism to investigate complaints of police brutality against children living or working in the streets and training on children’s rights is part of the curricula of the Suriname Police Academy.¹⁷

According to the Constitution, the Constitutional Court examines the compatibility of legislative provisions with the Constitution and international

¹² Constitution, Article 12.

¹³ Constitution, Article 51.

¹⁴ UNDP, *A comparative study on the availability of legal aid and assistance services for victims of gender violence in Belize, Haiti, Jamaica, Suriname and Trinidad and Tobago - Legal Aid for Women Victims of Gender Violence in the Caribbean: Identifying Gaps and Programmatic Responses* at p. 117, available at:

http://www.tt.undp.org/content/dam/trinidad_tobago/docs/DemocraticGovernance/Publications/Legal%20Aid%20and%20Gender%20Violence%20Study.%20UNDP%20RBLAC.%20JAN.%202014.pdf.

¹⁵ Constitution, article 12.

¹⁶ United States Department of State Bureau of Democracy, Human Rights and Labor, *Suriname 2012 Human Rights Report*, at p. 7, available at: <http://www.state.gov/documents/organization/204691.pdf>.

¹⁷ UN Committee on the Rights of the Child, *Concluding Observations on the second periodic report of Suriname*, CRC/C/SUR/CO/2, 18 June 2007, at para. 34, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSUR%2fCO%2f2&Lang=en.

treaties.¹⁸ However, although a bill to establish the Constitutional Court was tabled in Parliament in 2013,¹⁹ such court has not been established yet.²⁰

Furthermore, Suriname has not established an Ombudsperson or other human rights institution with mandate to receive complaints alleging violations of children's rights, despite the recommendation of the UN Committee on the Rights of the Child “that the State party establish as soon as possible an ombudsperson, or other independent body, for monitoring the implementation of the [CRC].”²¹

However, individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),²² on their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights.²³ A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.²⁴ 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.²⁵ The victim may designate a lawyer or other person to represent them before the IACHR, but this is not compulsory.²⁶ 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.

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).²⁷ Individuals do not have direct recourse to the Court, and must

¹⁸ Constitution, Article 144.

¹⁹ DevSur, Suriname news in English website, ‘Draft law on Constitutional Court to be tabled’, available at: <http://www.devsur.com/draft-law-on-constitutional-court-to-be-tabled/2013/08/08/>.

²⁰ Freedom House, *Freedom in the World 2014: Suriname*, available at:

<https://freedomhouse.org/report/freedom-world/2014/suriname-0#.VMDlra1CHtQ>.

²¹ *Concluding Observations on the second periodic report of Suriname*, at para. 15.

²² The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a “dual role” as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at: http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm; American Convention on Human Rights, ‘Pact of San Jose, Costa Rica’, Chapter VII, available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

²³ American Convention on Human Rights, Article 44.

²⁴ 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>.

²⁵ *Ibid.*, Article 28.

²⁶ *Ibid.*, Article 23.

²⁷ *Ibid.*, Article 45.

submit their petitions to the IACHR. The IACtHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.²⁸ The Court's judgments are legally binding on the State against which they are made.

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

Research did not identify what remedies are available to the courts.

In respect of a challenge before the Constitutional Court, “[i]n case the Constitutional Court decides that a contradiction exists with one or more provisions of the Constitution or an international treaty, the Act or parts thereof, or those decisions of the government institutions shall not be considered binding.”²⁹ However, as such Court has not been established, it is known whether any other court has the power to invalidate legislation.

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?

Research did not identify an answer to this question. However, hearings may be held with closed doors upon request of a party or a witness or on the court's own motion if that is in the interests of public order or morality.³⁰

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

Research did not identify any provisions allowing collective action.

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

Research did not identify any provisions of national law allowing NGOs to bring or intervene in court cases, however, as noted above they may submit petitions to the IACHR.

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?

Suriname's judicial system comprises the Court of Justice, District Courts,

²⁸ American Convention on Human Rights, Article 63.

²⁹ Constitution, Article 144.

³⁰ Criminal Procedure Code, Article 265.

and several other lower courts.³¹ It appears there are no specialised courts with jurisdiction over matters concerning children. The Court of Justice is the highest court. The District Courts have jurisdiction over civil or criminal cases from the three geographic districts (cantons) of Suriname.³² As mentioned above, Suriname has yet to establish a Constitutional Court.

Research did not identify provisions detailing the procedure for initiating a proceedings in the civil courts.

In criminal cases, the court having jurisdiction is the court of the district in which the offense was committed, the court of the district in which the suspect is residing or the court of the district in which the suspect was arrested.³³

- 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?

Research did not identify any additional information about the availability of legal aid, other than that in part II.D, nor whether children are exempt from paying court costs.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Research did not determine with certainty the extent of pro bono practice in the country. However, at least one law firm provides “affordable legal assistance to the private individual [...] and a personal approach to improve the lifestyle and living conditions of the low income and encourage self-sufficiency”.³⁴

- 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?

Research did not identify the period of limitations to bring civil proceedings or any provision suspending this period in relation to violations of the rights

³¹ UN Department of Economic and Social Affairs (DESA), Division for Public Administration and Development Management (DPADM), *Republic of Suriname: Public Administration Country Profile*, December 2004, at p. 7, available at:

<http://unpan1.un.org/intradoc/groups/public/documents/un/unpan023204.pdf>.

³² The First District Court tries only civil cases in the districts of Paramaribo, Wanica, Para, Bokopondo, Commewijne, and Saramacca; the Second Cantonal Court tries only criminal cases in any jurisdiction except Paramaribo and Commewijne; and the Third Cantonal Court tries both civil and criminal cases from districts not covered by the other two courts.

³³ Criminal Procedure Code, Article 2-1.

³⁴ Legal Aid Advocatenkantoor, website available at: <http://www.legalaidadvocaten.com/en/>.

of a child.

In general, the statutory limitation periods for criminal matters are as follows: (i) 2 years in case of an offense, (ii) 6 years in case of a misdemeanour punishable by an imprisonment of no more than 3 years and (iii) 12 years for a crime punishable by an imprisonment of more than 3 years of imprisonment.³⁵

- 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 Hearing Children in Judicial Proceedings Bill was adopted by Parliament in 2008.³⁶ “This bill stipulates that in all matters concerning custody, legal provisions to protect children, visitation after divorce and appointment of guardians, the judge has to consider the viewpoint of the child(ren) involved, in the decision making. The judge is compelled to hear children from the age of 12 and up whilst hearing children below the age of 12 is left to the judge’s discretion, depending on the case circumstances. For instance, in a divorce case involving children aged 13 and 10 years, the judge may decide to hear both children.”

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

There are reports of a backlog problem in the courts in Suriname with civil cases typically taking three to four years from the first hearing in court to be resolved.³⁷

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

Decisions in civil and criminal matters as well as decisions concerning fundamental rights under the Constitution can be appealed to the Caribbean Court of Justice (CCJ), which is the highest court of appeal for Suriname.³⁸ An appeal is commenced by filing a notice of appeal within 21 days of the grant of leave to appeal by the lower court or special leave by the CCJ, depending on the nature of the case.³⁹ In all proceedings before the CCJ, a party must have an attorney-at-law on the record.⁴⁰ An applicant who is a “poor person” may be exempt from providing security for costs or paying any court fees.⁴¹ Decisions of the CCJ are final and binding.⁴²

³⁵ Criminal Code, Article 96, available in Dutch at:

<http://www.wipo.int/edocs/lexdocs/laws/nl/sr/sr010nl.pdf>.

³⁶ *Combined third and fourth periodic report of Suriname to the UN Committee on the Rights of the Child*, at para. 62-65.

³⁷ *Suriname 2012 Human Rights Report*, at p. 7.

³⁸ Agreement Establishing the Caribbean Court of Justice, Article XXV, available at:

http://www.caricom.org/jsp/secretariat/legal_instruments/agreement_ccj.pdf.

³⁹ *Ibid.*; Caribbean Court of Justice (Appellate Jurisdiction) (Amendment) Rules, 2008, Rules 10.1, 10.2, 11.1, available at: <http://www.caribbeancourtsofjustice.org/wp-content/uploads/2011/06/ccjapprules.pdf>.

⁴⁰ Caribbean Court of Justice (Appellate Jurisdiction) (Amendment) Rules, 2008, Rule 4.1.

⁴¹ *Ibid.*, Rule 10.17.

⁴² Agreement Establishing the Caribbean Court of Justice, Article XXII.

- 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?

Suriname's legal system is of the civil law type⁴³ and does not use the doctrine of precedent, meaning that a negative decision will be not binding on lower courts.

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

Research did not identify the provisions for enforcement of judgements. However, it can be noted that a major concern is that the judiciary is susceptible to political influence and there is wide reaching corruption of state officials.⁴⁴

Furthermore, the government of Suriname has not fully implemented decisions by international human rights tribunals in the past, including an IACtHR ruling which recognised the collective land rights of Maroon tribes and another which held the government liable for the murder of 39 Maroon persons.⁴⁵

- 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.

Some disputes concerning children's rights may be decided under Maroon customary law by tribal councils, headed by elders.⁴⁶ However, since Maroon law is based on unwritten rules, research could not determine what would be the status of the child in such proceedings.

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

⁴³ Amazon Cooperation Treaty Organisation, *Legal system of Suriname*, available at: http://otca.info/gef/uploads/documento/b2e77-Ativ-1.2.2_Legal-system-SurinameProduto01.pdf.

⁴⁴ *Suriname 2012 Human Rights Report*, at p. 11.

⁴⁵ *Suriname 2012 Human Rights Report*, at p. 8.

⁴⁶ H. R. M. Libretto, *The Political Organization of Maroon Cultures in Suriname*, available at: http://www.folklife.si.edu/resources/maroon/educational_guide/42.htm.