

ACCESS TO JUSTICE FOR CHILDREN:

TRINIDAD AND TOBAGO

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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 Republic of Trinidad and Tobago (“T&T”) signed the CRC in September 1990 and ratified it in December 1991.¹ The CRC entered into force in T&T in January 1992.² However, treaties such as the CRC are not automatically incorporated into national law and require implementation through additional legislation.³

After ratification of the CRC, the Government of T&T prepared and approved a National Plan of Action for Children in order to enshrine into national law the rights of children contained in the CRC. However, this action plan has still not been implemented, despite the Committee on Rights of the Child recommending in 2006 that it be “urgently” adopted by the Government.⁴

T&T is a party to the 1980 Hague Convention on International Child Abduction, which has been incorporated into domestic law through the International Child Abduction Act 2008.⁵

T&T has so far not ratified any of the three Optional Protocols to the CRC.

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law. The primary national law in T&T is the Constitution of the Republic of Trinidad and Tobago (the “Constitution”). Article 2 of the Constitution states that it is the “supreme

¹ Status of ratification of the CRC, available at: http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en.

² UN Committee on the Rights of the Child, *Committee on the Rights of the Child considers report of Trinidad and Tobago*, 16 January 2006, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=3438&LangID=E>.

³ For a general overview of the laws of T&T, see CRIN, *Trinidad and Tobago: National Laws*, 25 November 2013, available at: <http://www.crin.org/resources/infodetail.asp?id=32144>.

⁴ UN Committee on the Rights of the Child, *Concluding observations on the second periodic reports of Trinidad and Tobago*, CRC/C/TTO/CO/2, 17 March 2006, para. 13, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTTO%2fCO%2f2&Lang=en; Sheila Rampersad, *Trinidad Express Newspapers, How it can be done*, 5 December 2013, available at: <http://www.trinidadexpress.com/commentaries/How-it-can-be-done-234676651.html>.

⁵ Republic of Trinidad and Tobago, Act No. 8 of 2008, available at: <http://www.ttparliament.org/legislations/a2008-08.pdf>.

law of Trinidad and Tobago”, and any law that is inconsistent with the Constitution is “void to the extent of the inconsistency”.⁶

C. Has the CRC been incorporated into national law?

The CRC has not yet been incorporated into the national law of T&T.⁷ The approach of T&T’s legislators has been to harmonise national law with the requirements of the CRC, rather than legislating to ensure that the CRC is directly enforceable.⁸ It has been said that the CRC’s “spirit is reflected in numerous specific laws relating to children” in T&T.⁹

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

As stated above, the CRC cannot be directly enforced in T&T unless and until it is incorporated into national law, but certain national laws have been harmonised in order to fulfil the requirements of the CRC. The CRC and other international treaties are also used as interpretive guidance by national courts, which take into account the need for consistency with “international treaty obligations” when interpreting legislation.¹⁰

The United Kingdom’s Judicial Committee of the Privy Council (the “Privy Council”), which acts as the highest appellate court of T&T, also interprets domestic law in light of international obligations and has cited the CRC in decisions regarding T&T.¹¹ However, where there is a clear and direct conflict between international law and domestic legislation, the Privy Council will apply domestic law.¹²

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

There do not appear to be any cases where the CRC has been cited by domestic courts in T&T. However, the Privy Council has cited the CRC in a case addressing the role of children’s rights and best interests in parental deportation proceedings.¹³

⁶ The Constitution of the Republic of Trinidad and Tobago, Article 2, available at: <http://www.ttparliament.org/documents/1048.pdf>.

⁷ CRIN, *Trinidad and Tobago: National Laws*.

⁸ See, for instance, the “set of legislation” adopted in 2000 which the Committee on the Rights of the Child has welcomed in: UN Committee on the Rights of the Child, *Concluding observations on the second periodic reports of Trinidad and Tobago*, para. 3.

⁹ The Judicial Committee of the Privy Council, *Naidike & Ors v. Attorney General of Trinidad and Tobago*, UKPC 49, 12 October 2004, Privy Council Appeal No. 10 of 2003, para. 72, available at: <http://www.bailii.org/uk/cases/UKPC/2004/49.html>; a summary of the judgement is available at: <https://www.crin.org/en/library/legal-database/naidike-v-attorney-general-trinidad-and-tobago>.

¹⁰ See, e.g., Trinidad and Tobago High Court of Justice, *Susan Jackson & Jordan Leiba v. The Chief Immigration Officer & The Minister of National Security*, Claim No. CV2010- 05104, 7 June 2011, para. 35, available at: http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/rajkumar/2010/cv_10_05104DD07jun2011.pdf.

¹¹ *Naidike v. Attorney General of Trinidad and Tobago*, para 68 onwards.

¹² CRIN, *Bahamas: National Laws*, 9 March 2012, available at: <http://www.crin.org/resources/infodetail.asp?ID=27860>.

¹³ *Naidike v. Attorney General of Trinidad and Tobago*, para 68 onwards.

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 can bring civil lawsuits in domestic courts to challenge violations of their rights, although the Civil Proceedings Rules 1998 (the “Rules”) provide that a child (defined under the Rules as a person under 18 years of age) must generally have a “next friend” to conduct proceedings on the child’s behalf.¹⁴ However, a child claimant may apply for an order of the court stipulating that the proceedings may be conducted without a next friend.¹⁵

The same rules apply to a child’s defense and counterclaim. Unless a child makes a successful application to the contrary, the child must be represented by a next friend to defend and/or make a counterclaim on his or her behalf.¹⁶ Before a next friend is appointed, a person may not make any application against the child, apart from serving a claim form on the child or applying for the appointment of a next friend for the child.¹⁷

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?

As outlined above, children are permitted to bring civil cases in T&T through a next friend. The next friend must be someone who can “fairly and competently conduct proceedings on behalf of the minor” and who “has no interest adverse to that of the minor”.¹⁸ However, a child may apply for an order of the court allowing the child to conduct proceedings without the use of a next friend until and unless the court deems it “desirable” for a next friend to be appointed.¹⁹ Additionally, if no next friend has been appointed by court order, a person may act as a next friend by filing a certificate with the court certifying that such person complies with the requirements for a next friend detailed above.²⁰ The appointment of the next friend will cease if and when the minor reaches 18 years of age or by court order.²¹

Similar rules exist in relation to the appointment of a next friend in family court proceedings involving a child.²² However, if the court finds that a child requires “separate representation” in family proceedings in addition to a next friend, a “guardian ad litem” may be appointed - and must be appointed in the case of any application for a “variation of a settlement order”, unless the

¹⁴ Civil Proceedings Rules 1998, Rule 23.2(1), available at: <http://www.ttlawcourts.org/index.php/component/attachments/download/2332>.

¹⁵ Civil Proceedings Rules 1998, Rule 23.2(2).

¹⁶ Ibid, Rule 23.2.

¹⁷ Ibid, Rule 23.3(2).

¹⁸ Ibid, Rule 23.6(2).

¹⁹ Ibid, Rules 23.2(2) and 23.2(4)(b).

²⁰ Ibid, Rule 23.7(3).

²¹ Ibid, Rules 23.11(1) and 23.9(1).

²² Family Proceedings Rules 1998, Rule 5, available at: <http://www.ttlawcourts.org/index.php/component/attachments/download/177>.

court is satisfied that the proposed variation will not “adversely affect the rights or interest” of the child.²³

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

The child’s parent or legal guardian would normally bring a lawsuit as a next friend in accordance with the provisions outlined above. However, there is no requirement that a child’s next friend be his or her parent or guardian. Rather, a next friend is defined simply as a “person appointed by the court”.

²⁴

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

The Legal Aid and Advisory Authority (the “Authority”) provides legal aid in T&T, including for children, as provided under the Legal Aid and Advice Act.²⁵ If an applicant for legal aid is a child, the application must be made on his or her behalf by a legal guardian.²⁶

In civil matters, applicants must apply to the Director of Legal Aid for a certificate granting legal aid. Applicants are typically interviewed by a Legal Officer of the Authority to determine their eligibility, and must pass a means test showing that they do not have disposable capital of more than TT\$20,000 or disposable annual income of more than TT\$36,000.²⁷ Further, the Authority must be satisfied that the applicant has “reasonable grounds for taking, defending, continuing or being a party” to proceedings.²⁸ Legal representation will then be provided to the applicant, subject to a contribution that may be demanded from the applicant.²⁹

However, where there are “extenuating circumstances”, the Director of Legal Aid has discretion to grant legal aid even if the applicant does not meet the above requirements.³⁰ Further, the Director of Legal Aid has discretion to refuse legal aid where it appears to be “unreasonable...in the particular circumstances of the case.”³¹

In addition, any resident of T&T is entitled to free verbal advice on legal

²³ Ibid, Rule 5.14.

²⁴ Ibid, Rule 23.4(1).

²⁵ Parliament of Trinidad and Tobago, *Improved Legal Aid Services: Duty Counsel System to be implemented soon*, 17 Nov 2011, available at: <http://www.ttparliament.org/about.php?mid=36&id=mr95B718>; Legal Aid and Advice Act 1976 (as amended), Section 21(1), available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/7.07.pdf.

²⁶ Legal Aid and Advice Act, Section 21(2).

²⁷ Legal Aid and Advice Act, Section 23(2)(b).

²⁸ Ibid, Section 23(2)(a).

²⁹ Ibid, Section 26; see also the following explanations by the Government of Trinidad and Tobago at: http://www.ttconnect.gov.tt/gortt/portal/ttconnect/Cit_disableDetail/?WCM_GLOBAL_CONTEXT=/gortt/wcm/connect/gortt+web+content/TTConnect/Citizen/Role/APersonwithaDisability/SocialServices/Legal+Aid.

³⁰ Legal Aid and Advice Act, Section 24(1).

³¹ Ibid, Section 25(3).

questions and assistance with legal aid applications from the Director of Legal Aid or an Attorney-at-law (which attorneys serve on a panel set up to, among other things, “investigate, report and give an opinion upon applications for the grant of legal aid”).³² However, applicants for this service must still satisfy the Director of Legal Aid that they cannot afford “to obtain [the advice] in the ordinary way”, and may be required to pay a TT\$10.00 fee.³³

There are also certain situations in which children specifically are entitled to legal aid or representation. A child who is detained on suspicion of having committed an offence must be provided with legal representation “as soon as possible” after such detention.³⁴ A minor who is charged with an offence before a court of summary conviction may apply to the court for legal aid.³⁵ And if a child seeks to appeal to the Court of Appeal, the Court of Appeal may order that that child is entitled to legal aid.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)?

There is no need for consent of a parent or guardian for a case to be brought by, or on behalf of, a child. However, where a child’s next friend is not his or her parent or guardian, the application to act as her next friend must be served on her parent or guardian, as well as on the relevant court.³⁷ As an additional protection, any “settlement, compromise or payment” in connection with a monetary claim brought by a child is subject to approval of the court.³⁸

The Children’s Act and the Sexual Offences Act do not equally protect girls and boys which is likely to cause girls to be limited in the types of cases they can bring before the courts.³⁹

While noting that the Family Court protects the best interests of the child, the Committee on the Rights of the Child has voiced concern that principles laid down in article 3 of the Convention are not fully applied and systematically integrated into the policies and programmes of T&T. The Committee encouraged the State party to pursue its efforts with the Family Court project and ensure that the principle of the best interests of the child is reflected and implemented in all administrative and judicial decisions, policies and programmes relating to children.⁴⁰

³² Ibid, Section 4(1) and Section 37(2).

³³ Ibid, Section 37(4).

³⁴ Ibid, Section 4A(i)(a).

³⁵ Ibid, Section 16(3)(a).

³⁶ Ibid, Section 16(4).

³⁷ Civil Proceedings Rules 1998, Section 23.10(1).

³⁸ Ibid, Section 23.12(1).

³⁹ UN Committee on the Rights of the Child, *Concluding observations on the second periodic reports of Trinidad and Tobago*, para. 28, 29.

⁴⁰ Ibid, para. 31, 32.

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?

Chapter I of the Constitution addresses the recognition and protection of fundamental human rights and freedoms. Article 14(1) of the Constitution states that anyone may allege that a provision in Chapter I “has been, is being or is likely to be contravened in relation to him” and may apply to the High Court for redress by way of a so-called “originating motion”.⁴¹ In the case of a potential violation of the Constitution by the State, such proceedings can be brought against the Attorney-General.⁴² The High Court then has jurisdiction to “make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing...any of the provisions” of Chapter I.⁴³ Any person who is aggrieved by a determination of the High Court may appeal to the Court of Appeal.⁴⁴ As detailed below, a child or a next friend may initiate such proceedings.

Potential violations can also be addressed through criminal proceedings. The Director of Public Prosecutions (“DPP”) has the power to institute criminal proceedings against any person before any court in respect of any offence in T&T and to “take over and continue any such criminal proceedings that may have been instituted by any other person”.⁴⁵ Criminal proceedings can also be initiated against the State.⁴⁶

If the potential violation is related to the decision of a “public authority or a person acting in the exercise of a public duty”, judicial review proceedings can be initiated to challenge the decision.⁴⁷ Relief may be granted to a child if his or her interests were “adversely affected” by such a decision or if the application for relief is “justifiable in the public interest.”⁴⁸ Such proceedings must be initiated “promptly and in any event within three months from the date the grounds for the application first arose”.⁴⁹

Regional mechanisms

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),⁵⁰ on their behalf or on behalf of third persons, regarding alleged

⁴¹ The Constitution, Article 14(1).

⁴² Ibid, Article 76(2)(a).

⁴³ Ibid, Article 14(2).

⁴⁴ Ibid, Article 14(5).

⁴⁵ Ibid, Article 90(3).

⁴⁶ Ibid, Article 76(2)(b).

⁴⁷ Judicial Review Act 2000, Section 5(1), available at: http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/7.08.pdf.

⁴⁸ Ibid, Section 5(2).

⁴⁹ Ibid, Section 11(1).

⁵⁰ 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

violations of the American Declaration of the Rights and Duties of Man⁵¹ and other Inter-American human rights instruments.⁵² For all OAS Member States which have ratified the American Charter of Human Rights (ACHR), this instrument can form the basis of a petition before the Commission. For those OAS Member States which have not ratified the ACHR, or have denounced it as is the case in T&T,⁵³ only other inter-American human rights instruments, such as the American Declaration of the Rights and Duties of Man,⁵⁴ may form the basis of a petition.⁵⁵

A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.⁵⁶ 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.⁵⁷ The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.⁵⁸ 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 a State does not comply with these recommendations, the Commission may refer the case to the Inter-American Court of Human Rights, provided that the State has accepted the Court's jurisdiction.⁵⁹ T&T has not accepted the general jurisdiction of the IACtHR and can therefore only accept the Court's contentious jurisdiction for particular cases.⁶⁰

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.

⁵¹ Available at: <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>.

⁵² Statute of the Inter-American Commission on Human Rights, Section IV, available at:

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

⁵³ For more information, see Natasha Parassram Concepcion, *The Legal Implications of Trinidad & Tobago's Withdrawal from the American Convention on Human Rights*, American University International Law Review (2001), particularly pp. 858-862, available at

<http://www.auilr.org/pdf/16/16-3-4.pdf>.

⁵⁴ Available at: <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>.

⁵⁵ Statute of the Inter-American Commission on Human Rights, Section IV, available at:

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

⁵⁶ 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>.

⁵⁷ Ibid., Article 28.

⁵⁸ Ibid., Article 23.

⁵⁹ “Inter-American Commission on Human Rights: Petition Procedure.” A Conscientious Objector’s Guide to the International Human Rights System, available at: <http://co-guide.org/mechanism/inter-american-commission-human-rights-petition-procedure>.

⁶⁰ Jurisprudence of the IACtHR regarding Trinidad and Tobago, available at: <http://www.corteidh.or.cr/index.php/en/mapa-interactivo>.

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

Civil courts in T&T have the power to award monetary damages, injunctions or orders of “mandamus” (i.e. an order compelling a public body to perform an action that it is legally obligated to perform, but has failed to do so).⁶¹ An injunction may be granted where it appears “just or convenient”.⁶²

In respect of judicial review proceedings, the court may award damages if the applicant sought damages in the matter being reviewed and the court is satisfied that the applicant could have been awarded damages at the time of the original claim.⁶³ The court may also award an injunction, an order of mandamus or a prohibition or an order certiorari quashing the decision to which the application relates.⁶⁴

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?

Filing a civil claim generally requires identification of the individual victim.⁶⁵ However, provisions are made for private hearings where the court considers it necessary to protect the interests of a child.⁶⁶ The Children Act 1925 (the “Children Act”) also makes it an offence to publish any material from which the identity of a child involved in proceedings could be determined.⁶⁷

In criminal proceedings, victims are not directly identified, as the Constitution provides that defendants be prosecuted by the DPP on behalf of the State rather than on behalf of individuals.⁶⁸

For judicial review proceedings, the identification of individual victims is not required, as actions may be brought by third parties with a “sufficient interest”.⁶⁹ This requirement has been broadly interpreted in common law jurisdictions.⁷⁰

⁶¹ See, e.g., Supreme Court of Judicature Act Section 23, Section 25.

⁶² Supreme Court of Judicature Act 1962, Section 23(5), available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/4.01.pdf.

⁶³ Judicial Review Act 2000, Section 8(4).

⁶⁴ Ibid, Section 8(1)(b).

⁶⁵ Civil Proceedings Rules 1998, Rule 8.1(1), and Appendix to Civil Proceedings Rules 1998, prescribed forms 1 and 2.

⁶⁶ Children Act 1925, Section 97, available at: http://www.oas.org/juridico/PDFs/cyb_tto_children.pdf.

⁶⁷ Ibid, Section 87(3).

⁶⁸ The Constitution, Article 90(3); for more information, see <http://www.ag.gov.tt/AboutUs/Departments/DirectorofPublicProsecutions.aspx>.

⁶⁹ Civil Proceedings Rules, Rule 56.2, and Judicial Review Act 2000, Section 6(2).

⁷⁰ See, e.g., the English cases of R v. (1) Leicestershire County Council (2) Hepworth Building Projects Ltd (3) Onyx (UK) Ltd ex parte Blackfordby & Boothorpe Action Group Ltd, R (On the application of Feakins) v. Secretary of State for the Environment, food and Rural Affairs, and R (On the application of David Edwards) v. (1) The Environment Agency, (2) Secretary of State (Defendants) & Rugby Ltd (Interested Party).

Additionally, petitions to the Inter-American Commission on Human Rights can be made by third parties on behalf of victims.⁷¹ However, as discussed at IV(A) below, the efficacy of such a petition in relation to alleged human rights violations in T&T is questionable.

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

Group litigation is possible for civil actions in the Magistrates' Court provided that "if such persons brought separate actions any common question of law or fact would arise".⁷² In the High Court and Court of Appeal, new parties may be added to existing proceedings by the court if there is an issue connecting the new party to the matters in dispute.⁷³ An existing party to the litigation may apply for permission to add a party, and the person wishing to become a party may also make such application to be added.⁷⁴

Where five or more persons have the same or similar interest in the proceedings, the court may appoint one or more of those persons as a representative claimant.⁷⁵ In such situations, each person to be represented must be identified individually (or by description if individual identification is not practicable).⁷⁶ Despite this requirement of identification, other legislation gives the court some powers to protect the identity of children involved in proceedings (see discussion at III(C) above).

Groups may also bring claims for judicial review proceedings if the group as a whole has "sufficient interest" in the matter.⁷⁷

Collective action is also possible through petition to the Inter-American Commission on Human Rights. Article 26 of the Commission's Regulations provides that "[a]ny person or group of persons...may submit petitions to the Commission...with regard to alleged violations of a human right".⁷⁸ The identity of the petitioner must also be protected.⁷⁹ However, as discussed at IV(A) below, the efficacy of such a petition in relation to alleged human rights violations in T&T is questionable.

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?

⁷¹ Regulations of the Inter-American Commission on Human Rights, Article 26, available at: <http://www1.umn.edu/humanrts/oasinstr/zoas5cmr.htm>.

⁷² Petty Civil Courts Act 1911, Section 21(1), available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/4.21.pdf.

⁷³ Civil Proceedings Rules 1998, Rule 19.2(3)(b).

⁷⁴ Ibid, Rule 19.5(2).

⁷⁵ Ibid, Rule 21.1.

⁷⁶ Ibid, Rule 21.2(3)(b).

⁷⁷ Ibid, Rule 56.2.

⁷⁸ Regulations of the Inter-American Commission on Human Rights (1992), Articles 26 and 34(4), available at: <http://www1.umn.edu/humanrts/oasinstr/zoas5cmr.htm>.

⁷⁹ Ibid, Article 34(4).

For civil matters, non-governmental organisations (“NGOs”) are permitted to file representative claims on behalf of an individual, so long as the NGO itself has “sufficient interest in the proceedings” and the “same or similar interest” as the individual it is representing.⁸⁰ For claims that have already been filed, an NGO with “sufficient interest” can participate as a third party in the initial stages (including being heard at the case management conference and making submissions at the hearing of the application).⁸¹ An NGO can also be added by the court as a party to existing proceedings.⁸²

It may also be possible for an NGO to make submissions as an “amicus curiae” (“friend of the court”). Though the Civil Proceedings Rules do not address amicus curiae, such submissions were explicitly permitted under the Orders and Rules of the Supreme Court (which were replaced by the Rules) and there is evidence that such submissions are still possible upon special application to the court.⁸³

Amicus curiae participation and submissions have also been permitted in criminal proceedings.⁸⁴ There are no clear rules governing other interventions in criminal matters, but T&T’s courts could potentially follow the lead of courts in other common law jurisdictions (such as the UK Court of Appeal, which also lacks formal intervention procedures) and consider an intervention request from an NGO.⁸⁵

In the case of applications for judicial review, NGOs can file such applications directly so long as the “sufficient interest” test is satisfied.⁸⁶ If an NGO does not meet this test, it may still be granted leave to apply for judicial review in cases of particular public interest.⁸⁷ In such cases, notice of the application must be published for two days in two daily, nationally circulated newspapers, outlining the details of the application and inviting anyone with a more direct interest to file a similar application or apply to be joined as a party.⁸⁸ If no other party comes forward within 14 days of the last such publication, the court may grant leave to the applicant.⁸⁹

⁸⁰ Civil Proceedings Rules 1998, Rule 21.1.

⁸¹ Ibid, Rules 56.14 and 56.12(3).

⁸² Ibid, rule 19.5(2).

⁸³ See “Foreword” to the Civil Proceedings Rules 1998; Government of Trinidad and Tobago, *Feature Address by the Honourable Senator Anand Ramlogan at Civil Law Stakeholders’ Conference held by the Ministry of the Attorney General*, 24 March, 2011, available at: [http://www.ag.gov.tt/Portals/0/Documents/Speeches/Feature Address by the Honourable Senator Anand Ramlogan at Civil Law Stakeholders Conference.pdf](http://www.ag.gov.tt/Portals/0/Documents/Speeches/Feature%20Address%20by%20the%20Honourable%20Senator%20Anand%20Ramlogan%20at%20Civil%20Law%20Stakeholders%20Conference.pdf); High Court of Justice, *The State v. Barry Alphonso*, 27 March 2012, available at: http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/moosai/2008/cv_08_06DD27mar2012.pdf; provisions for the Attorney General to act as Amicus Curiae have also been included in the Equal Opportunity (No.2) Bill, Section 23, available at: <http://www.ttparliament.org/legislations/b2011h30.pdf>.

⁸⁴ See, e.g.: The High Court of Trinidad and Tobago, *In the Matter of R.A.: A Juror*, 2008, available at: <http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/charles/raajurorDD23April08.pdf>.

⁸⁵ Regarding intervention requests to the UK Court of Appeal, see: Justice, *To Assist the Court: Third Party Interventions in the UK*, 26 October 2009, para. 25, available at: <http://www.justice.org.uk/data/files/resources/32/To-Assist-the-Court-26-October-2009.pdf>.

⁸⁶ Judicial Review Act 2000, Section 6(2).

⁸⁷ Ibid, Section 7(1).

⁸⁸ Ibid, Section 7(2)-(3).

⁸⁹ Ibid, Section 7(4).

Additionally, NGOs can make petitions to the Inter-American Commission on Human Rights. Article 26 of the Commission’s Regulations provides that “any non-governmental entity legally recognized in one or more member states of the Organization [of American States] may submit petitions to the Commission, in accordance with these Regulations, on [its] own behalf or on behalf of third persons, with regard to alleged violations of a human right”.⁹⁰ However, as discussed at IV(A) below, the efficacy of such a petition in relation to alleged human rights violations in T&T is questionable.

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?

For civil matters, claims of less than TT\$15,000 (circa £1,500) are handled by the Petty Civil Court Division of the Magistracy.⁹¹ Any person under the age of 18 may prosecute for sums up to this amount, and any person between 14 and 18 may be sued for a debt up to this amount.⁹² Persons under 18 years may sue through their “next friend” and defend through their guardian, but the absence of a next friend or guardian does not prevent a minor from suing or being sued as described above.⁹³ For claims of TT\$15,000 or more, the High Court has original jurisdiction.⁹⁴ There is also a separate Family Court which has jurisdiction over specific family matters at the High Court and Magistrates’ Court levels.⁹⁵

The filing process at the Petty Civil Court Division of the Magistrates’ Court is set out in the Petty Civil Courts Act. An Ordinary Summons must be filled out detailing the claim, and then filed with the court, with a copy also being served on the defendant.⁹⁶ A Particulars of Claim should also be filed.⁹⁷ Filing procedures at the High Court for bringing civil action are set out in the Rules and in the Supreme Court of Judicature of Trinidad and Tobago’s Practice Directions (the “Practice Directions”).⁹⁸ A Claim Form is needed to commence proceedings in the High Court and it must be accompanied by a Statement of Case from the Claimant.⁹⁹

⁹⁰ Regulations of the Inter-American Commission on Human Rights, Article 26(1).

⁹¹ See e.g.: Judiciary of the Republic of Trinidad & Tobago, *Magistracy*, available at: <http://www.ttlawcourts.org/index.php/magistracy/overview>.

⁹² Petty Civil Courts Act 1911, Section 20.

⁹³ Ibid.

⁹⁴ See e.g.: Judiciary of the Republic of Trinidad & Tobago, *High Court*, available at: <http://www.ttlawcourts.org/index.php/supreme-court-27/high-court>.

⁹⁵ See e.g.: Judiciary of the Republic of Trinidad & Tobago, *Family Court*, available at: <http://www.ttlawcourts.org/index.php/family-court-41/overview>.

⁹⁶ Petty Civil Courts Act 1911, Petty Civil Court Rules, Section 4.

⁹⁷ Ibid, Section 6(1).

⁹⁸ Practice Directions (Supreme Court of Judicature of Trinidad and Tobago), available at: <http://www.ttlawcourts.org/index.php/component/attachments/download/2728>.

⁹⁹ Civil Proceedings Rules 1998, Part 5.

For criminal proceedings, summary matters are handled by the Magistrates' Court.¹⁰⁰ Indictable criminal matters are first tried at the High Court, although the Magistrates' Court also carries out preliminary inquiries into such matters to ensure that a *prima facie* case has been established before the accused is indicted for trial at the High Court.¹⁰¹

Generally, criminal matters are prosecuted by the DPP.¹⁰² The Constitution provides that "the DPP shall have power in any case in which he considers it proper to do so...to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of Trinidad and Tobago".¹⁰³ However, private criminal prosecutions are also possible in T&T. The procedure for private prosecutions is outlined in the Criminal Procedure Act 1925.¹⁰⁴ Private prosecutions may at any point be taken over and continued by the DPP.¹⁰⁵

Judicial review proceedings are commenced at the High Court. The application process is outlined in the Judicial Review Act 2000, and in the Pre-Action Protocol for Administrative Orders in the Practice Directions.¹⁰⁶ Application must be made for leave of the court to bring a claim for judicial review.¹⁰⁷ The court must be satisfied that the applicant has "sufficient interest" in the matter to which the application relates.¹⁰⁸ In public interest cases, the court may grant leave to apply for judicial review to an applicant even if he does not have a sufficient interest in the matter.¹⁰⁹

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 T&T. Appeals are made directly to the Judicial Committee 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.¹¹⁰ 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

¹⁰⁰ Judiciary of the Republic of Trinidad & Tobago, *Magistracy*.

¹⁰¹ Judiciary of the Republic of Trinidad & Tobago, *High Court*; Judiciary of the Republic of Trinidad & Tobago, *Magistracy*.

¹⁰² For more information on the Director of Public Prosecutions, see <http://www.ag.gov.tt/AboutUs/Departments/DirectorofPublicProsecutions.aspx>.

¹⁰³ The Constitution, Part 1, Chapter 6, Section 90(3).

¹⁰⁴ Criminal Procedure Act 1925, Section 10, available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/12.02.pdf.

¹⁰⁵ The Constitution, Part 1, Chapter 6, Section 90(3).

¹⁰⁶ Practice Directions, Appendix D.

¹⁰⁷ *Ibid*, Section 6(1).

¹⁰⁸ *Ibid*, Section 6(2).

¹⁰⁹ *Ibid*, Section 7(1).

¹¹⁰ 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>.

procedure applies.¹¹¹

- 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?

As detailed above, legal aid in T&T is governed by the Legal Aid and Advice Act. Useful information and resources can be found at the government's website.¹¹²

Legal aid for civil matters is available by application to the Authority. A Legal Officer will then conduct an interview to determine the applicant's eligibility, which is assessed by considering the applicant's disposable income and capital, as well as the merits of the matter.¹¹³ The Legal Aid and Advice Act sets out the specific limits of disposable income for a person to be considered eligible for legal aid, as detailed above.¹¹⁴ This process also applies to applicants seeking legal aid for judicial review matters.

For criminal proceedings, a magistrate or judge has discretion as to whether a defendant is eligible for legal aid. Where a minor is charged with an offence before a court of summary jurisdiction, the child may apply directly to the court for legal aid.¹¹⁵ For indictable offences, defendants seeking legal aid can apply to a judge of the High Court at any time after being committed for trial.¹¹⁶

Legal aid recipients are not liable for any court fees in connection with the matter covered by the legal aid certificate.¹¹⁷ If legal aid is not obtained, administrative fees in the High Court and Court of Appeal are assessed as set out in the Rules.¹¹⁸ Where relevant, costs determinations (e.g. for attorneys' fees) are made by the court as outlined in the Practice Guide to the Assessment of Costs.¹¹⁹

- 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

¹¹¹ Judicial Committee of the Privy Council, 'Role of the JCPC', available at: <https://www.jcpc.uk/about/role-of-the-jcpc.html>.

¹¹² Government of Trinidad and Tobago, *Legal Aid*, available at: http://www.ttconnect.gov.tt/gortt/portal/ttconnect/Cit_disableDetail/?WCM_GLOBAL_CONTEXT=/gortt/wcm/connect/gortt+web+content/TTConnect/Citizen/Role/APersonwithaDisability/SocialServices/Legal+Aid.

¹¹³ Legal Aid and Advice Act, Sections 3, 22(a), 23(2) and 25; Government of Trinidad and Tobago, *Legal Aid*.

¹¹⁴ Legal Aid and Advice Act, Section 25(1).

¹¹⁵ Ibid, Section 16(3)(a).

¹¹⁶ Ibid, Section 17(1).

¹¹⁷ Ibid, Section 29(3)(a).

¹¹⁸ Civil Proceedings Rules 1998, Part 67, Appendix D.

¹¹⁹ The Judiciary of the Republic of Trinidad and Tobago, *Practice Guide to the Assessment of Costs*, 20 December 2007, available at: <http://www.ttlawcourts.org/index.php/component/attachments/download/80>.

practicing lawyers on a pro bono basis, through a children's rights organization, or under an agreement that does not require the payment of legal fees up front?

There are a number of human rights organisations in T&T which may be able to offer legal assistance, advice and representation. Organisations with a particular focus on children's rights include:

- Trinidad & Tobago Coalition on the Convention on the Rights of the Child (TTCRC),¹²⁰
- Amnesty International;¹²¹
- Trinidad and Tobago Coalition against Domestic Violence;¹²²
- YMCA of Trinidad and Tobago.¹²³

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

The standard limitation period in T&T is four years from the date the cause of action arose for claims in contract, tort, personal injury, and for recovery of any sum recoverable under any enactment.¹²⁴ However, the law in T&T regards minors as being under a legal "disability", which means that limitation periods will not commence until the minor reaches 18 years of age.¹²⁵

For criminal matters, there is no time limit on prosecution for indictable offences.¹²⁶ The Administration of Justice (Indictable Proceedings) Act 2011, contained a controversial provision that imposed a 10-year limitation period for the prosecution of indictable offences (with certain exclusions, including for treason, murder, kidnapping, rape, assault, drug trafficking and arms and ammunition possession).¹²⁷ However, this provision was repealed by Parliament in October 2012.¹²⁸ Parliament's actions in repealing the provision were challenged, but ultimately upheld by the Court of Appeal in June 2014.¹²⁹

¹²⁰ For Trinidad & Tobago Coalition on the Convention on the Rights of the Child (TTCRC) contact details, see: <http://www.crin.org/organisations/viewOrg.asp?ID=4730>.

¹²¹ Amnesty International in Trinidad and Tobago, available at: <http://www.amnesty.org/en/region/trinidad-amp-tobago>.

¹²² Trinidad and Tobago Coalition against Domestic Violence, available at: <http://www.e-volvemedia.com/clients/cadv/>.

¹²³ YMCA of Trinidad and Tobago, available at: <http://www.ymca.int/where-we-work/ymca-country-profiles/latin-america-and-caribbean/trinidad-tobago>.

¹²⁴ Limitation of Certain Actions Act 1997, Sections 3(1) and 5, available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/7.09.pdf.

¹²⁵ Ibid, Sections 2(3)(a) and 11; Age of Majority Act 1973, Section 2, available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/46.06.pdf.

¹²⁶ Trinidad Express Newspapers, *Intent of Section 34 Changed*, 12 September 2012, available at: http://www.trinidadexpress.com/news/Intent_of_Section_34_changed-169572196.html.

¹²⁷ Administration of Justice (Indictable Proceedings) Act 2011, Section 34(2) and Schedule 6, available at: <http://www.ttparliament.org/legislations/a2011-20.pdf>.

¹²⁸ Trinidad and Tobago Newsday, *The Saga of Section 34*, 6 April 2013, available at: <http://www.newsday.co.tt/politics/0.175850.html>.

¹²⁹ Trinidad Express Newspapers, *Rowley: Section 34 not an Oversight*, 5 June 2014, available at:

For judicial review matters, applications must be filed within three months of the decision being questioned, though the court may extend this period if it finds there is good reason to do so.¹³⁰

Petitions to the Inter-American Commission on Human Rights must be filed within six months of a final ruling that represents the exhaustion of the petitioner's remedies under domestic law.¹³¹ However, see the discussion at IV(A) above with respect to the efficacy of such a petition in relation to alleged human rights violations in T&T.

- 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 admission of evidence generally in T&T is governed by the Evidence Act 1848 (amended most recently in 2009) and, for civil cases, by Part 29 of the Civil Proceedings Rules.¹³² Types of evidence admissible in civil proceedings include documents (defined as “any device by means of which information is recorded and stored”), witness statements, and expert opinions.¹³³

There are specific provisions in the Children Act regarding evidence in cases involving children, with additional provisions to come into force under the Children Act 2012 (which is awaiting proclamation).¹³⁴ For instance, where the court deems that giving evidence in the courtroom would “place the child at risk of harm”, the court can permit the child to make a written statement.¹³⁵ The Children Act 2012 will also provide for the recording of audio/video statements (for children under the age of 16) and cross-examination by video conference (for children under the age of 18), in each case, where deemed necessary by the court.¹³⁶

Under the Children Act 2012, children under the age of 10 are able to give unsworn evidence in criminal proceedings.¹³⁷ However, before accepting such evidence, the court must make sufficient enquiry to determine that the child is sufficiently intelligent to justify hearing the evidence, and that the child understands the duty to speak the truth.¹³⁸ Children over the age of 10 must give evidence under oath, and can be charged with perjury if they

<http://www.trinidadexpress.com/news/Rowley-Section-34-not-an-oversight-261931171.html>.

¹³⁰ Judicial Review Act 2000, Section 11(1).

¹³¹ Rules of Procedure of the Inter-American Commission on Human Rights, Article 32(1).

¹³² Evidence Act 1848, available at http://www.vertic.org/media/National_Legislation/Trinidad_and_Tobago/TT_Evidence_Act.pdf; Civil Proceedings Rules 1998.

¹³³ Evidence Act 1848, Sections 14(1), 19(4), 35(1), 37(1); Civil Proceedings Rules 1998, rule 33.

¹³⁴ Children Act 2012, available at <http://www.ttparliament.org/legislations/a2012-12.pdf>; Children Act 1925, available at http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/46.01.pdf; see also <http://www.ttparliament.org/publications.php?mid=28&id=632>.

¹³⁵ Children Act 1925, Section 17(1); Children Act 2012, Section 91(1)(a)-(c).

¹³⁶ Children Act 2012, Sections 91(1)(a)-(c), 94 and 97.

¹³⁷ Children Act 2012, Section 98(1).

¹³⁸ Children Act 1925, Section 19(1) and (2); Children Act 2012, Section 98(1) and (2).

wilfully give false evidence.¹³⁹

The Children Act 2012 also provides for the possible appointment of an intermediary to assist the child's understanding, and permits the court to direct that any person (other than a court officer or a party to the case) be barred from entering the courtroom when hearing sensitive evidence from a child.¹⁴⁰

The Children Act 1925 also makes it an offence to publish any material from which the identity of a child involved in proceedings could be determined.¹⁴¹ The court may also direct that any person (other than a court officer or a party to the case) be barred from entering the courtroom during the taking of evidence from a child.¹⁴² All matters arising under the Sexual Offences Act 1986 involving children are to be heard "in camera" (i.e. in private).¹⁴³ Additionally, a bill is currently being processed that, if enacted, would provide for any Family Court proceedings to be held in camera as well.¹⁴⁴

The Committee has recommended that T&T amends its legislation so that the principle of respect for the views of the child is recognised and respected, inter alia, within custody disputes and other legal matters affecting children.¹⁴⁵

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

The civil courts in T&T have a duty to actively manage cases, which includes "fixing timetables or otherwise controlling the progress of the case" and "giving directions to ensure that the trial of the case proceeds quickly and efficiently".¹⁴⁶ The DPP also has a duty in criminal proceedings to secure the "expeditious" hearing and determination of cases.¹⁴⁷ However, no specific time limits/periods are provided by legislation or court rules.

Secondary sources suggest that judgments are often delayed, particularly in criminal appeals. For instance, an article published in the Guardian Trinidad and Tobago in September 2013 voiced concerns over "the huge backlog" of criminal appeals in the courts, including one case that had been "pending for almost three years".¹⁴⁸ Pamela Elder, president of the Criminal Bar

¹³⁹ Children Act 2012, Section 98(7).

¹⁴⁰ Ibid, Sections 99 and 101.

¹⁴¹ Children Act 1925, Section 87(3).

¹⁴² Ibid, Section 97.

¹⁴³ Sexual Offences Act 1986, Section 29, available at: http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/11.28.pdf.

¹⁴⁴ Family Court Bill 2009, Section 10(3), available at: <http://www.ttparliament.org/legislations/b2009s05.pdf>; see for an overview: Children's Authority of Trinidad and Tobago, *Information Brief*, May 2013, available at: http://ttchildren.org/downloads/Children's_Authority_Info_Brief_-_May_28_2013.pdf.

¹⁴⁵ UN Committee on the Rights of the Child, *Concluding observations on the second periodic reports of Trinidad and Tobago*, para. 34.

¹⁴⁶ Civil Proceedings Rules 1998, Rules 25.1(g) and (l).

¹⁴⁷ Criminal Procedure Act 1925, Section 3(5).

¹⁴⁸ Guardian Trinidad and Tobago, *Appeal Court Too Slow*, 16 September 2013, available at: <http://guardian.co.tt/news/2013-09-16/appeal-court-too-slow>.

Association, has described the criminal justice system as being “in shambles”, saying that it typically takes between three and five years for an indictment to be filed after committal.¹⁴⁹ Chief Justice Ivor Archie has referred to the criminal justice system as being in “crisis”, and has suggested abolishing jury trials for all criminal offences to improve the efficiency and productivity of the system.¹⁵⁰ More positively, the new Criminal Proceedings Rules and the Administration of Justice (Indictable Proceedings) Act 2011 (due to be implemented in 2014) include measures designed to address the backlog of cases and streamline criminal trials.¹⁵¹

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

The Court of Appeal has jurisdiction over appeals from both the Magistrates’ Courts and the High Court (including the Family Court and judicial review proceedings).¹⁵²

For civil matters, the procedure for appeals to the Court of Appeal is outlined in the Civil Proceedings Rules.¹⁵³ An appeal is initiated by filing a notice at the relevant court office within 42 days of delivery of the judgment or order being appealed (except in the case of a procedural appeal, where notice should be filed within seven days).¹⁵⁴

If the applicant is not satisfied with the outcome at the Court of Appeal, a further (and final) appeal to the Privy Council is possible in civil matters.¹⁵⁵ Such appeals will only be allowed in certain matters, including those that (i) relate to questions of Constitutional interpretation, (ii) involve a sum of, or property valued at, TT\$1500 or above, or (iii) in the opinion of the Court of Appeal, involve a question of great general or public importance and therefore ought to be submitted to the Privy Council.¹⁵⁶ Appeals must be filed within 56 days of the Court of Appeal judgment or, where applicable, the order of the Court of Appeal granting leave to appeal.¹⁵⁷ However, extensions to this time limit may be possible, particularly for applicants from Caribbean countries such as T&T. The Board of the Privy Council has noted that “very limited legal aid, and some reluctance by local lawyers to undertake pro bono work, means that prisoners in the Caribbean region in particular will often struggle to file their application within” the time limit, and that “the Board has always sought to reflect this by bearing in mind this

¹⁴⁹ Trinidad and Tobago Newsday, *Elder: Criminal Justice in Shambles*, 5 October 2013, available at: http://www.newsday.co.tt/crime_and_court/0,184571.html.

¹⁵⁰ Guardian Trinidad and Tobago, *CJ's Formula for Court Backlog: Critical Changes*, September 2013, available at: <http://www.guardian.co.tt/news/2013-09-17/cjs-formula-court-backlog-critical-changes>.

¹⁵¹ Guardian Trinidad and Tobago, *Appeal Court Too Slow*.

¹⁵² The Judiciary of the Republic of Trinidad and Tobago, *About the Judiciary*, 2012, p. 7, available at: [http://www.ttlawcourts.org/PDF_docu/Brochures/About the Judiciary.pdf](http://www.ttlawcourts.org/PDF_docu/Brochures/About%20the%20Judiciary.pdf).

¹⁵³ Civil Proceedings Rules 1998, Part 64.

¹⁵⁴ Ibid, Rules 64.3 and 64.5.

¹⁵⁵ The Constitution, Article 109(1).

¹⁵⁶ Ibid.

¹⁵⁷ Judicial Committee (Appellate Jurisdiction) Rules, Practice Direction 4.3.1, available at: <http://www.jcpc.uk/procedures/practice-direction-04.html>; see also Practice Direction 2, available at: <http://www.jcpc.uk/procedures/practice-direction-02.html>; Judicial Committee (Appellate Jurisdiction) Rules, Rule 5, available at: <http://www.jcpc.uk/docs/judicial-committee-appellate-jurisdiction-rules-2009.pdf>.

context when deciding on how strictly to apply time limits”.¹⁵⁸

For criminal matters, appeals from the Magistrates’ Court decision in a summary trial should be made to the Court of Appeal within seven days of the judgment. Appeals of criminal decisions from the High Court are governed by the Supreme Court of Judicature Act 1962, which requires notice of appeal to be filed within fourteen days of conviction.¹⁵⁹

Currently, Court of Appeal decisions in criminal matters can be appealed to the Privy Council.¹⁶⁰ However, legislation is planned that would replace the Privy Council with the Caribbean Court of Justice for criminal appeals.¹⁶¹

- 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?

As a common law jurisdiction, T&T’s courts follow judicial precedent.¹⁶² Therefore, the decisions of higher courts, including those of the Privy Council, are binding on lower courts and may have long-term impact.

A positive decision may also result in political backlash or other repercussions. For instance, in *Roodal v. The State of Trinidad and Tobago*, the Privy Council declared T&T’s mandatory death penalty for certain crimes to be unconstitutional.¹⁶³ This decision met with resistance from the government, and then-Attorney General John Jeremie petitioned the Privy Council to hear the matter again.¹⁶⁴ The following year, in *Matthew v. The State of Trinidad and Tobago*, the Privy Council reversed its earlier decision, and the mandatory death sentence was reinstated.¹⁶⁵

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

We found no evidence of specific concerns or challenges with respect to the enforcement of positive decisions.

¹⁵⁸ Judicial Committee of the Privy Council, News Release, *Time Keeping Must Serve the Interests of Justice*, 25 October 2012, available at: <http://www.jcpc.uk/docs/news-release-121025.pdf>; see also: Judicial Committee of the Privy Council, *Carlos Hamilton and Jason Lewis v. The Queen*, 16 August 2012, which addresses the time extension criteria, available at: https://www.jcpc.uk/decided-cases/docs/JCPC_2011_0051_Judgment.pdf.

¹⁵⁹ Supreme Court of Judicature Act 1962, Sections 42-65, and Court of Appeal Rules, Order III, available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/4.01.pdf.

¹⁶⁰ Judiciary of the Republic of Trinidad & Tobago, *Court of Appeal*, available at: <http://www.ttlaw.courts.org/index.php/supreme-court-27/court-of-appeal>.

¹⁶¹ Guardian Trinidad and Tobago, *Out goes Privy Council*, 26 April 2012, available at: <http://guardian.co.tt/news/2012-04-26-000000/out-goes-privy-council>.

¹⁶² Organisation of American States, *Trinidad and Tobago: Description of the Legal System*, available at: www.oas.org/juridico/mla/en/tto/en_tto-int-description-ls.doc.

¹⁶³ Inter-American Commission of Human Rights, Report N° 137/09, Petition 981-05, *Admissibility of Reshi Bissoon and Foster Serrette Trinidad and Tobago*, 13 November 2009, available at: <http://www.cidh.oas.org/annualrep/2009eng/TT981.05eng.htm>.

¹⁶⁴ Guardian Trinidad and Tobago, *Privy Council an Intimidating Place*, 29 April 2012, available at: <http://guardian.co.tt/columnist/2012-04-29/privy-council-intimidating-place>.

¹⁶⁵ Ibid.

Detailed provisions for the enforcement of civil judgments are provided in the Civil Proceedings Rules.¹⁶⁶ For criminal matters, sentencing procedures are set out in the Criminal Procedure Act 1925, while special sentencing procedures for juveniles are specified in the Children Act.¹⁶⁷

In judicial review proceedings, the remedy will usually be an order quashing the decision and remitting it to the lower authority for reconsideration (which may not necessarily result in a different verdict).¹⁶⁸

For petitions to the Inter-American Commission on Human Rights, T&T's withdrawal from the jurisdiction of the Inter-American Court of Human Rights means that only non-binding recommendations can be made by the Commission.¹⁶⁹ Although denunciation did not relieve T&T of its obligations with respect to matters that arose prior to its withdrawal, the government appears to have ignored subsequent rulings of the Inter-American Court on such matters.¹⁷⁰ Given these circumstances, there is likely no way to enforce decisions or recommendations arising from such petitions.

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.

Regarding the independent monitoring of children's rights in T&T, the Committee has voiced concern that while a Human Rights Ombudsman exists in T&T, there is no independent mechanism with a specific mandate to regularly monitor and evaluate progress in the implementation of the Convention on the Rights of the Child, either within the Ombudsman's Office or as a separate institution, and which is empowered to receive and address individual complaints on behalf of, or from, children.¹⁷¹

Corporal punishment of children remains technically legal in T&T, including the administration of "reasonable punishment" of children under 16 by parents and teachers, and the whipping of a child as a criminal sentence.¹⁷² Though the Children (Amendment) Act 2000 repeals the provisions of the Children Act that

¹⁶⁶ Civil Proceedings Rules 1998, Part 44 "Enforcement: General Provisions", and Part 46 "How Judgments may be Enforced".

¹⁶⁷ Criminal Procedure Act 1925, Sections 29-57; Children Act 1925, Part IV.

¹⁶⁸ Civil Proceedings Rules, Rule 56.15; Judicial Review Act 2000, Section 21.

¹⁶⁹ Cecilia Cristina Naddeo, *The Inter-American System of Human Rights: A Research Guide*, August/September 2010, available at: http://www.nyulawglobal.org/globalex/Inter_American_human_rights.htm.

¹⁷⁰ U.S. Department of State, *2010 Human Rights Report: Trinidad and Tobago*, 8 April 2011, Section 1e, available at: <http://www.state.gov/j/drl/rls/hrrpt/2010/wha/154521.htm>.

¹⁷¹ UN Committee on the Rights of the Child, *Concluding observations on the second periodic reports of Trinidad and Tobago*, para. 16.

¹⁷² Children Act 1925, Sections 22 and 83(g); Global Initiative to End All Corporal Punishment of Children, *Trinidad & Tobago Country Report*, January 2012, available at: <http://www.endcorporalpunishment.org/pages/pdfs/states-reports/Trinidad.pdf>; Global Initiative to End All Corporal Punishment of Children, *Trinidad & Tobago Briefing for the Human Rights Council Universal Periodic Review*, March 2011, available at: <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TT/GIEACPC-GlobalInitiativeEndAllCorporalPunishmentChildren-eng.pdf>.

allow for corporal punishment by teachers and whipping, these amendments do not appear to be in force and have not been made part of the currently available version of the Children Act.¹⁷³

According to UNICEF statistics from 2005-2006, 75% of children aged 2-14 experienced physical punishment and/or psychological aggression at home.¹⁷⁴ Accordingly, it may be difficult to obtain public and/or political support for action combating the legality of corporal punishment.¹⁷⁵

Marriage and sexual consent laws in T&T impose varying age requirements that should be considered when contemplating any related legal action. The definition of a “child” in T&T is set out in the Age of Majority Act 1973, and means any person under the age of 18.¹⁷⁶ However, the Muslim Marriage and Divorce Act 1961 provides that women can marry at age 12 (with consent from a legal guardian) and men can marry at age 16.¹⁷⁷ Under the Hindu Marriage Act 1945, the minimum legal age for marriage is 18 for men and 14 for women.¹⁷⁸ Research by UNICEF suggests that eight per cent of women in T&T married under the age of 18.¹⁷⁹ The age of sexual consent is 16 for both men and women, but does not apply if the parties are married.¹⁸⁰

Child homelessness and mortality continue to be issues in T&T. Between 1996 and 2006, T&T was the only country in Latin America and the Caribbean that experienced an increase in mortality amongst children under age 5, according to a UNICEF report.¹⁸¹ The same report highlighted issues relating to “street children” in T&T, estimated to number between 500 and 9000.¹⁸² The T&T

¹⁷³ Children (Amendment) Act 2000, Section 24, available at: <http://www.ttparliament.org/legislations/a/2000-68.pdf>; Global Initiative to End All Corporal Punishment of Children, Trinidad & Tobago Country Report; Sheila Rampersad, Trinidad Express Newspapers, *How it can be done*; Children Act 1925; The Children (Amendment) Bill 1999, available at: <http://www.ttparliament.org/publications.php?mid=28&id=334>.

¹⁷⁴ UNICEF, *Progress for Children: A Report Card on Child Protection*, pp. 8 & 31, September 2009, available at http://www.unicef.org/romania/Progress_for_Children.pdf.

¹⁷⁵ Cherisse Clarke, *Corporal Punishment in Trinidad: A Dilemma of Childhood Discipline*, in: Caribbean Journal of Cultural Studies, August 2011, available at: http://www.mainlib.uwi.tt/epubs/toutmoun/papers/aug11/CClarke_ToutMoun2011.pdf.

¹⁷⁶ Age of Majority Act 1973, Section 2(1).

¹⁷⁷ Muslim Marriage and Divorce Act, 1961, Section 8, available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/45.02.pdf.

¹⁷⁸ Hindu Marriage Act, 1945, Section 11(1), available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/45.03.pdf.

¹⁷⁹ U.S. Department of State, *Trinidad and Tobago 2012 Human Rights Report*, 2012, p. 15, available at: <http://www.state.gov/documents/organization/204692.pdf>.

¹⁸⁰ Sexual Offences Act 1986, Sections 6(1), 7(1), 15(2), available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/11.28.pdf.

¹⁸¹ UNICEF, *The current and projected likely impact of the global economic crisis on the Trinidad and Tobago economy and more particularly, on the national budget*, 2010, available at: http://www.unicef.org/socialpolicy/files/Current_and_Projected_Likely_Impact_of_the_Global_Econ_Crisis_on_Trinidad_and_Tobago.pdf.

¹⁸² UNICEF, *The current and projected likely impact of the global economic crisis on the Trinidad and Tobago economy and more particularly, on the national budget*.

government has taken steps to combat these problems.¹⁸³

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

¹⁸³ Ibid; Education Act 1996, available at: http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/39.01.pdf; Equal Opportunities Act 2000, available at: <http://www.hsph.harvard.edu/population/womenrights/trinidad.women.00.pdf>.