

# **ACCESS TO JUSTICE FOR CHILDREN: MARSHALL ISLANDS**

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

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

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

Under the Marshallese Constitution, the CRC and other ratified international instruments do not automatically have the force of law in the Marshall Islands.<sup>1</sup> Rather, such instruments must be incorporated into national law via implementing legislation.

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

The CRC does not take precedence over national law, although national law is interpreted where possible in a manner consistent with the CRC and other international human rights obligations.

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

Although the Marshall Islands ratified the CRC in 1993, to date the Convention has not been directly incorporated into national law. The Government of the Marshall Islands has, however, referenced executive and/or legislative actions taken to implement provisions of the CRC in both of its reports to the Committee on the Rights of the Child (submitted in 1998 and 2004).<sup>2</sup>

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

Because the CRC has never been referenced in any legal proceeding, it is unclear whether it is possible for it to be directly enforced in Marshallese courts. It appears doubtful, however, since the CRC has not to date been

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<sup>1</sup> Constitution of the Marshall Islands, Article V, Section 1(4), available at [http://www.paclii.org/mh/legis/consol\\_act/cotmi363/](http://www.paclii.org/mh/legis/consol_act/cotmi363/) (“No treaty or other international agreement which is finally accepted by or on behalf of the Republic on or after the effective date of this Constitution shall, of itself, have the force of law in the Republic”).

<sup>2</sup> UN Committee on the Rights of the Child, *Concluding observation on the initial periodic report of the Marshall Islands*, CRC/C/28/Add.12, 18 November 1998, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f28%2fAdd.12&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f28%2fAdd.12&Lang=en); and *Concluding observations on the second periodic report of the Marshall Islands*, CRC/C/93/Add.8, 20 August 2005, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f93%2fAdd.8&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f93%2fAdd.8&Lang=en).

directly incorporated into national law. In other countries in which the CRC has not been directly incorporated into national law, the CRC cannot be directly enforced in the courts, but may be used as a source of interpretive guidance in legal proceedings that involve children's rights.

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

Neither the CRC nor any other international instrument has ever been cited by Marshallese courts, with the exception of international instruments explicitly made enforceable among specific parties via private contracts, e.g., the ICC Rules of Arbitration<sup>3</sup> and the Hague-Visby Rules regarding international carriage of goods by sea.<sup>4</sup>

## 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 are entitled to bring civil cases in Marshallese courts to challenge violations of their rights, subject to the conditions described in part II.B below.

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 of any age may initiate civil proceedings in their own name via a representative, such as a general guardian, committee, conservator or other like fiduciary.<sup>5</sup> A child who does not have a duly appointed representative may initiate civil proceedings via an adult "next friend" or by a "guardian ad litem".<sup>6</sup> The court must appoint a guardian ad litem or issue other appropriate order for a child who is underrepresented in a proceeding.<sup>7</sup> It is unclear who is eligible to serve as a child's next friend or guardian ad litem.

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

In the case of infants and young children, the child's parent or legal guardian would typically bring a lawsuit on behalf of the child as the child's representative. A "parent" is interpreted to include adoptive parents under the Constitution<sup>8</sup> and legally adoptive parents, customarily adoptive parents

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<sup>3</sup> *Air Marshall Islands, Inc. v. Dornier*, available at <http://www.paclii.org/mh/cases/MHSC/2002/9.html>.

<sup>4</sup> *Minaj Holdings Ltd. v. Int'l Maritime Trading Co. Ltd.*, available at <http://www.paclii.org/mh/cases/MHHC/2012/2.pdf>.

<sup>5</sup> Rules of Civil Procedure 2015, Rule 17(c), available at: [http://www.paclii.org/cgi-bin/sinodisp/mh/rules/ct\\_rules/rocp2015235/rocp2015235.html?stem=&synonym=&query=civil%20procedure](http://www.paclii.org/cgi-bin/sinodisp/mh/rules/ct_rules/rocp2015235/rocp2015235.html?stem=&synonym=&query=civil%20procedure).

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> Constitution, Article XIV, Section 1.

and stepparents under the Social Security Act 1990.<sup>9</sup> There is no uniform family law in the Marshall Islands on parental rights, duties or responsibilities, although parents are generally expected to provide financial support to the child and arrange for the provision of care and supervision of the child.<sup>10</sup> Where this is not the case, legal guardianship can be granted to suitable and willing persons under the Guardianship Act 1984.<sup>11</sup> Notably, while a legal guardian is entitled to the custody of the child, a legal guardian does not have the power to bind the child or his property, or to represent him in any legal proceedings pertaining to his property.<sup>12</sup> However, a legal guardian may execute and file a complaint for support payments on behalf of a minor obligee.<sup>13</sup>

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

Children are entitled to legal assistance in bringing civil cases. The Constitution recognises the right of the Marshallese people to legal services as well as the obligation of the State to take every step reasonable and necessary to provide these services.<sup>14</sup> Under the Legal Aid Office Act 1984, the Marshall Islands Legal Aid Office has the duty to give “special emphasis” to aiding children in civil and criminal cases and to their parents in legal matters that substantially affect the children.<sup>15</sup> In civil cases, the Legal Aid Office has the duty to furnish, to the extent of its ability, legal services to any child whom it finds unable to afford legal services or unable to find qualified counsel to represent him or her. Such legal services include legal advice and counseling, drafting of documents and civil court actions or defence thereof and other acts normally performed by legal aid offices.<sup>16</sup> In addition, the Legal Aid Office has the duty to perform such other legal duties as may be directed by the courts.<sup>17</sup>

Children accused of crime or delinquency are entitled to a lawyer at every stage of the proceedings from initial appearance through appeal.<sup>18</sup> The Legal Aid Office has the duty to represent children accused of crime or delinquency before the court if so ordered by the court.<sup>19</sup> This does not seem to be systematically adhered to, as, for example, in 2013 all four

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<sup>9</sup> Social Security Act 1990, Section 103(ff), available at [http://www.paclii.org/mh/legis/consol\\_act\\_2012/ssa1990186/](http://www.paclii.org/mh/legis/consol_act_2012/ssa1990186/).

<sup>10</sup> See Adoptions Act 2002, Section 803(1)(c), available at [http://www.paclii.org/mh/legis/consol\\_act\\_2012/aa2002125/](http://www.paclii.org/mh/legis/consol_act_2012/aa2002125/).

<sup>11</sup> Guardianship Act 1984, available at [http://www.paclii.org/mh/legis/consol\\_act\\_2012/ga1984136/](http://www.paclii.org/mh/legis/consol_act_2012/ga1984136/).

<sup>12</sup> Guardianship Act 1984, Section 211(2).

<sup>13</sup> Uniform Reciprocal Enforcement of Support Act 1972, Section 614, available at [http://www.paclii.org/mh/legis/consol\\_act\\_2012/ureosa1972444/](http://www.paclii.org/mh/legis/consol_act_2012/ureosa1972444/).

<sup>14</sup> Constitution, Article 2, Section 15.

<sup>15</sup> Legal Aid Office Act 1984, Section 805(c), available at [http://www.paclii.org/mh/legis/consol\\_act\\_2012/rotmilaoa1984376/](http://www.paclii.org/mh/legis/consol_act_2012/rotmilaoa1984376/).

<sup>16</sup> Legal Aid Office Act 1984, Section 805(a).

<sup>17</sup> Legal Aid Office Act 1984, Section 805(d).

<sup>18</sup> Rules of Criminal Procedure 2012, Rule 44(a), available at [http://www.paclii.org/mh/rules/ct\\_rules/rocp2012256/](http://www.paclii.org/mh/rules/ct_rules/rocp2012256/); Rules of the Procedure for Juvenile Delinquency Proceedings 1985, Rule 5(a), available at [http://www.paclii.org/mh/rules/ct\\_rules/jrop1985275/](http://www.paclii.org/mh/rules/ct_rules/jrop1985275/).

<sup>19</sup> Legal Aid Office Act 1984, Section 805(b).

juvenile offenders who were tried in the High Court received legal aid, whereas none of the 175 juveniles tried in District courts were represented.<sup>20</sup>

It is notable that when an “information of delinquency” is filed against a child, the child’s parent or guardian must be issued a summons and will later be expected to attend court during all stages of the proceedings, unless the court determines that this is not practical owing to the circumstances of the particular case.<sup>21</sup>

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

While it is not a limit on a child or chosen legal representative bringing a case, it is notable that a child’s representative cannot enter into a settlement on behalf of the child without permission from the court.<sup>22</sup>

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

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

Children and their representatives may initiate legal proceedings in civil courts to challenge violations of their rights under domestic law, following the Rules of Civil Procedure. Civil claims seeking money damages under certain amounts may be heard by a Community Court or the District Court under the Judiciary Act 1983, or are otherwise filed in the High Court.<sup>23</sup>

The Constitution specifies that all laws found to be inconsistent with it are considered void<sup>24</sup>, and that all actions taken by any person or body found to be inconsistent with it are unlawful.<sup>25</sup> Any person alleging a violation of the Constitution can initiate proceedings in a court of general jurisdiction, specifically the Community Court, the District Court or the High Court.<sup>26</sup> In addition, in any lawsuit involving the constitutionality of an act of Nitijela, the Marshallese parliament, “affecting the public interest”, and to which the Government or an officer, agency or employee thereof is not a party, the presiding court must give notice to the Attorney General. Similarly, in any lawsuit involving the constitutionality of a local government ordinance affecting the public interest, and to which the local government or an officer, agency or employee thereof is not a party, the presiding court must give

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<sup>20</sup> *Marshall Islands Judicial Annual Report 2013*, available at:

[http://www.paclii.org/mh/court-annual-reports/2013.html#3. Juvenile\\_Cases\\_Majuro](http://www.paclii.org/mh/court-annual-reports/2013.html#3. Juvenile_Cases_Majuro).

<sup>21</sup> Rules of the Procedure for Juvenile Delinquency Proceedings 1985, Rules 3(a), 4(b).

<sup>22</sup> Civil Procedure Act 1966, Section 115(3), available at

[http://www.paclii.org/mh/legis/consol\\_act\\_2012/cpa1966185/](http://www.paclii.org/mh/legis/consol_act_2012/cpa1966185/).

<sup>23</sup> Judiciary Act 1983, Sections 228(1)(a), 234(2)(a), available at

[http://www.paclii.org/mh/legis/consol\\_act\\_2012/ja1983112/](http://www.paclii.org/mh/legis/consol_act_2012/ja1983112/).

<sup>24</sup> Constitution, Article I, Section 2(1).

<sup>25</sup> Constitution, Article I, Section 2(2).

<sup>26</sup> Constitution, Article I, Sections 4(a)-(b); Judiciary Act 1983, Section 262.

notice to the local government. In any lawsuit involving the constitutionality of a statute, the Attorney General may file an amicus curiae brief (see Part III. E below) without order of the court.<sup>27</sup>

With the permission of the High Court, the validity or applicability of a public body rule may be determined in an action for “declaratory judgment” if it is alleged that the rule may interfere with or impair the legal rights or privileges of the complainant. The public body must be made a party to the action.<sup>28</sup> Also with the permission of the High Court, “judicial review” proceedings may be initiated to challenge the decision of a public body.<sup>29</sup> The High Court may affirm the decision or remand the case for further proceedings, or, if it determines that substantial rights of the complainant have been prejudiced, may reverse or modify the decision.<sup>30</sup>

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

In civil proceedings, courts may either award money damages or issue an injunction ordering a party to carry out or cease a particular action. At any point during the proceedings, civil courts may also issue temporary injunctions and restraining orders to prevent the defending party from causing any further harm to the complainant.<sup>31</sup> In addition, the District Court or High Court may render a declaratory judgment that declares the rights and other legal relations of a complainant, regardless of whether further remedies may be sought.<sup>32</sup>

In proceedings alleging a violation of constitutional rights, courts have the power to issue all writs and other processes, make rules and orders and promulgate all procedural regulations, not inconsistent with law, as may be required for the due administration of justice and the enforcement of the Constitution.<sup>33</sup> Subject to final review by the Supreme Court, courts may invalidate the challenged public act or decision as unconstitutional.<sup>34</sup>

**C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?**

This does not appear to be possible. In civil actions, the names of the parties

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<sup>27</sup> Supreme Court Rules of Procedure 2009, Rule 28(g), available at [http://www.paclii.org/mh/rules/ct\\_rules/scrop2009347/](http://www.paclii.org/mh/rules/ct_rules/scrop2009347/).

<sup>28</sup> Administrative Procedure Act 1979, Section 109, available at [http://www.paclii.org/mh/legis/consol\\_act\\_2012/apa1979285/](http://www.paclii.org/mh/legis/consol_act_2012/apa1979285/).

<sup>29</sup> Administrative Procedure Act 1979, Sections 117(1)-(2).

<sup>30</sup> Administrative Procedure Act 1979, Section 117(7).

<sup>31</sup> Rules of Civil Procedure 2015, Rule 65.

<sup>32</sup> Special Court Proceedings Act 1966, Section 202, available at [http://www.paclii.org/mh/legis/consol\\_act\\_2012/scpa1966255/](http://www.paclii.org/mh/legis/consol_act_2012/scpa1966255/); see also Rules of Civil Procedure 2015, Rule 57.

<sup>33</sup> Constitution, Article VI, Section 1(2).

<sup>34</sup> See, e.g., *Enos v. Marshall Islands*, available at <http://www.paclii.org/mh/cases/MHSC/1987/9.html>; *Navarro v. Chief of Police*, available at <http://www.paclii.org/mh/cases/MHSC/1989/24.html>; see also Constitution, Article VI, Section 2.

must be included on all pleadings.<sup>35</sup>

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

Lawsuits relating to the same matter may be joined together where all persons “assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action”.<sup>36</sup>

Class action is possible in civil matters in the Marshall Islands where (1) a joinder of parties would be impractical; (2) a common question of fact or law arises; (3) the claims of the representative parties are typical of the claims of the whole class and (4) the representative parties will fairly and adequately protect the interests of the class.<sup>37</sup>

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

In general, proceedings must be brought in the name of the party with real interest in the matter.<sup>38</sup> It is not clear whether non-governmental organisations (NGOs) could bring cases to challenge violations of children’s rights.

NGOs may, however, seek permission from the court to intervene in existing civil cases in which they have an interest and the result of the case has potential to impede their interests.<sup>39</sup> In existing Supreme Court cases of any nature – civil, criminal, or otherwise – non-governmental organisations may also seek permission to serve as a friend of the court, otherwise known as “amicus curiae”.<sup>40</sup> In either role, the non-governmental organisation may provide expertise to the court on a particular point of law or make submissions on matters of judicial interpretation.

**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?

As above, civil claims seeking money damages under certain amounts may be heard by a Community Court or the District Court under the Judiciary Act

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<sup>35</sup> Rules of Civil Procedure 2015, Rule 10.

<sup>36</sup> Rules of Civil Procedure 2015, Rule 20(a).

<sup>37</sup> Rules of Civil Procedure 2015, Rule 23.

<sup>38</sup> Rules of Civil Procedure 2015, Rule 17(a).

<sup>39</sup> Rules of Civil Procedure 2015, Rules 24(a)-(b).

<sup>40</sup> Supreme Court Rules of Procedure 2009, Rule 28(g).

1983, or are otherwise filed in the High Court.<sup>41</sup> Civil actions are commenced by filing a complaint with the court.<sup>42</sup> If a party plans to question the constitutionality of primary or secondary legislation, they must file a notice stating the constitutional question to the Attorney-General or the local government attorney concerned.<sup>43</sup>

Similarly, criminal cases involving offenses with maximum penalties under certain thresholds may be heard by a Community Court or the District Court under the Judiciary Act 1983, or are otherwise filed in the High Court.<sup>44</sup> “Juvenile delinquency” proceedings may be brought in the High Court, the District Court or a Community Court having jurisdiction over the place where the delinquency or any part of it occurred, unless the acts charged legally constitute murder or rape of which the child is not conclusively presumed to be incapable by law, in which case the proceedings must be brought in the High Court.<sup>45</sup>

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

As discussed in part II.D, child complainants and their representatives are entitled to legal assistance in both civil and criminal cases.

In civil proceedings, the prevailing party will be responsible for payment of court costs (other than attorney’s fees).<sup>46</sup> Notably, however, costs may not be imposed against the Government, its agencies or local governments.<sup>47</sup>

The Civil Procedure Act 1966 allows persons unable to pay court costs to initiate or defend civil or criminal proceedings, or any appeal therein, in “forma pauperis”, meaning that the court fees will be waived.<sup>48</sup>

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

Agreements where payment of legal fees is contingent on the bringing of a

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<sup>41</sup> Judiciary Act 1983, Sections 228(1)(a), 234(2)(a).

<sup>42</sup> Rules of Civil Procedure 2015, Rule 3.

<sup>43</sup> Rules of Civil Procedure 2015, Rules 5.1.

<sup>44</sup> Judiciary Act 1983, Sections 228(1)(a), 234(2)(a).

<sup>45</sup> Juvenile Procedure Act 1966, Section 305, available at [http://www.paclii.org/mh/legis/consol\\_act\\_2012/jda1966229/](http://www.paclii.org/mh/legis/consol_act_2012/jda1966229/).

<sup>46</sup> Rules of Civil Procedure 2014, Rule 54(d), available at: [http://rmicourts.org/doc/pdf/court%20rules/RMI-R-Civ-Pro-%28September%202014%29\\_final.pdf](http://rmicourts.org/doc/pdf/court%20rules/RMI-R-Civ-Pro-%28September%202014%29_final.pdf).

<sup>47</sup> Civil Procedure Act 1966, Section 139.

<sup>48</sup> Civil Procedure Act 1966, Section 136(1); see also Supreme Court Rules of Procedure 2009, Rule 24.

successful lawsuit are generally permitted in civil proceedings.<sup>49</sup>

It is also possible to obtain legal assistance from practicing lawyers on a pro bono basis, although no formal system for providing this assistance exists. In addition, there are no rules that require lawyers to provide pro bono services.<sup>50</sup>

While there are no legal restrictions, few international human rights organisations have been active and few local human rights organisations have been formed in the Marshall Islands. One notable exception, Women United Together Marshall Islands<sup>51</sup>, a local organisation that addresses women's, family and social issues, currently does not offer free legal assistance.

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?

For civil proceedings, the time limit for bringing cases in the Marshall Islands depends on the type of claim brought, as set out in the Civil Procedure Act 1966.<sup>52</sup> In general, claims involving violations of rights would need to be brought within six years of the violation.<sup>53</sup> Notably, however, actions for negligence, assault, battery, false imprisonment and medical malpractice would need to be brought within two years of the violation.<sup>54</sup> Any action by or against the estate of a deceased person also would need to be brought within two years of the appointment of the estate's representative.<sup>55</sup> There are certain circumstances under which claims may be brought after the usual time constraints, including where the violation was fraudulently concealed<sup>56</sup>, the complainant is outside or departs from the Marshall Islands<sup>57</sup> or the complainant is disabled.<sup>58</sup> Judicial review proceedings must typically be filed within 30 days of the decision to be challenged.<sup>59</sup>

Because they do not have full access to the legal system, children are classified as disabled for the purposes of the statute of limitations. This means that the time requirements does not come into play until their 18<sup>th</sup> birthday, giving children the opportunity to bring cases relating to violations of their rights during childhood as young adults.<sup>60</sup>

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<sup>49</sup> Legal Profession Act 1991, Sections 509(4)-(5), available at [http://www.paclii.org/mh/legis/consol\\_act\\_2012/lpa1991179/](http://www.paclii.org/mh/legis/consol_act_2012/lpa1991179/).

<sup>50</sup> Legal Profession Act 1991, Sections 509(4)-(5).

<sup>51</sup> <http://www.wutmirmi.org/>.

<sup>52</sup> Civil Procedure Act 1966, Sections 117-120.

<sup>53</sup> Civil Procedure Act 1966, Section 120.

<sup>54</sup> Civil Procedure Act 1966, Sections 118(a), (c)-(d).

<sup>55</sup> Civil Procedure Act 1966, Section 119.

<sup>56</sup> Civil Procedure Act 1966, Section 124.

<sup>57</sup> Civil Procedure Act 1966, Section 123.

<sup>58</sup> Civil Procedure Act 1966, Section 121.

<sup>59</sup> Administrative Procedure Act 1979, Section 117(2).

<sup>60</sup> Civil Procedure Act 1966, Section 121.



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

The Evidence Act 1989 sets out the kinds of evidence that are admissible in civil proceedings, including documents, physical evidence, photographs or video recordings and witness statements or testimony.<sup>61</sup> The Act also provides for the admission of expert testimony, which involves not only giving factual information, but also opinions based on that information.<sup>62</sup>

Except as otherwise provided in the Act, every person is competent to be a witness.<sup>63</sup> Children may give evidence or testify before any court so long as they have personal knowledge of the matter<sup>64</sup> and can “declare that they will testify truthfully, by oath or affirmation administered in a form calculated to awaken their conscience and impress their mind with the duty to do so”.<sup>65</sup>

There are considerable protections provided to child witnesses under the age of 16 in criminal cases under the Rules of Criminal Procedure.<sup>66</sup> Among other things, protections for child witnesses may include interviews in chambers, testifying via two-way closed circuit television and/or room arrangements that avoid direct confrontation with the defendant.<sup>67</sup> Flexible procedures, including informal hearings in closed sessions, are also available to children accused of delinquency in juvenile delinquency proceedings.<sup>68</sup> However, a child of 16 years of age or older may be treated in all respects as an adult in these proceedings if in the opinion of the court his physical and mental maturity so justify.<sup>69</sup> However, these protections afforded to children in criminal cases do not apply to children giving evidence in civil cases.

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

There are no precise timing requirements for the resolution of either civil or criminal cases. In addition, no statistics are available to indicate how long is typically required for cases to reach resolution.

The Rules of Civil Procedure aim to secure the “just, speedy, and inexpensive determination of every action”.<sup>70</sup> All persons accused of criminal offenses are guaranteed the “right to ... a speedy and public trial”.<sup>71</sup>

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<sup>61</sup> Evidence Act 1989, Articles VI, IX-X, available at [http://www.paclii.org/mh/legis/consol\\_act\\_2012/ea198980/](http://www.paclii.org/mh/legis/consol_act_2012/ea198980/).

<sup>62</sup> Evidence Act 1989, Rules 702-706.

<sup>63</sup> Evidence Act 1989, Rule 601.

<sup>64</sup> Evidence Act 1989, Rule 602.

<sup>65</sup> Evidence Act 1989, Rule 603.

<sup>66</sup> Rules of Criminal Procedure 2012, Rule 26(b)(1).

<sup>67</sup> Rules of Criminal Procedure 2012, Rule 26(b)(1)(A).

<sup>68</sup> Juvenile Procedure Act 1966, Section 302(1).

<sup>69</sup> Juvenile Procedure Act 1966, Section 302(2).

<sup>70</sup> Rules of Civil Procedure 2015, Rule 1.

<sup>71</sup> Constitution, Article II, Section 4(4).

The Rules of Criminal Procedure aim to promote an “expeditious trial”.<sup>72</sup> In juvenile delinquency proceedings, in all situations not already covered by law, the court may adopt the procedure it deems best suited to enable it to dispose of the case “promptly, justly, and in the best interests of the child and the public, taking care to see the child is not prejudiced by his immaturity or inability to adequately protect his own interests”.<sup>73</sup> According to the 2013 Annual Report of the Judiciary, the average duration of a case in the High Court where the child is accused of a crime is 137 days and in the District Court - 213.31 days.<sup>74</sup>

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

Community Court decisions are reviewed by the District Court<sup>75</sup>; both Community Court and District Court decisions are in turn reviewed by the High Court<sup>76</sup>; finally, High Court decisions, including in judicial review proceedings<sup>77</sup>, are reviewed by the Supreme Court.<sup>78</sup> The Supreme Court typically only reviews the High Court’s appellate decisions if the High Court certifies that the case involves a “substantial question of law as to the interpretation or effect of any provision of the Constitution”.<sup>79</sup> However, the Supreme Court may also review any final decision of any court at its discretion.<sup>80</sup>

An appeal may be taken by filing a notice of appeal with the court that issued the decision within 30 days of the decision, or within such longer time as may be prescribed by the court’s rules.<sup>81</sup> Appellate courts may review the facts as well as the law, except that the Supreme Court may not set aside the High Court’s findings of fact unless clearly erroneous.<sup>82</sup> Appellate courts may, among other things, affirm, modify, set aside or reverse the lower court’s decision, or order a new trial.<sup>83</sup>

In criminal cases, both the conviction and the sentence may be appealed.<sup>84</sup> An appeal of a decision in juvenile delinquency proceedings does not require filing fees.<sup>85</sup>

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

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<sup>72</sup> Rules of Criminal Procedure 2012, Rules 17.1, 46(b).

<sup>73</sup> Rules of the Procedure for Juvenile Delinquency Proceedings 1985, Rule 7.

<sup>74</sup> *Marshall Islands Judicial Annual Report 2013*, available at:

[http://www.paclii.org/mh/court-annual-reports/2013.html#3. Juvenile\\_Cases\\_Majuro](http://www.paclii.org/mh/court-annual-reports/2013.html#3. Juvenile_Cases_Majuro).

<sup>75</sup> Judiciary Act 1983, Section 229.

<sup>76</sup> Constitution, Article VI, Section 3(1).

<sup>77</sup> Administrative Procedure Act 1979, Section 118.

<sup>78</sup> Constitution, Article VI, Section 2(2).

<sup>79</sup> Constitution, Article VI, Section 2(2)(b).

<sup>80</sup> Constitution, Article VI, Section 2(2)(c).

<sup>81</sup> Civil Procedure Act 1966, Section 131.

<sup>82</sup> Judiciary Act 1983, Section 266(2).

<sup>83</sup> Judiciary Act 1983, Section 266(1).

<sup>84</sup> Rules of Criminal Procedure 2012, Rule 32(j)(1).

<sup>85</sup> Juvenile Procedure Act 1966, Section 306(2).

Precedent plays an important role in the Marshallese judicial system. The courts are bound by their own and higher courts' decisions, which means that the negative effects of a bad decision could be felt for many years.

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

The courts have various and flexible powers to enforce awards in civil proceedings. The enforcement of an award for money damages is governed by the Enforcement of Judgments Act 1966<sup>86</sup>, and the enforcement of injunctions and other judgments ordering a party to carry out or cease a particular action is governed by the Rules of Civil Procedure.<sup>87</sup> A judgment of any court is presumed to be satisfied 20 years after it is rendered.<sup>88</sup>

- 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.

As part of the subordinate court system, the Traditional Rights Court is empowered to determine questions relating to titles, land rights or other legal interests that depend on Marshallese customary law and traditional practice.<sup>89</sup> The Nitijela is responsible for declaring such customary law and traditional practice.<sup>90</sup> A decision by the Traditional Rights Court may be appealed to the High Court, but the High Court must adopt the decision unless it is clearly erroneous or contrary to law.<sup>91</sup>

Certain amendments to the Criminal Code in 2011<sup>92</sup> reduced the degree of protection afforded by child rights in the Marshall Islands. While the amendments increased the penalties for child abuse and neglect<sup>93</sup>, they lowered the maximum age at which a child has a cause of action for certain forms of sexual assault<sup>94</sup> and for criminal conduct resulting from a mistake

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<sup>86</sup> Enforcement of Judgments Act 1966, available at [http://www.paclii.org/mh/legis/consol\\_act\\_2012/eoja1966251/](http://www.paclii.org/mh/legis/consol_act_2012/eoja1966251/); see also Rules of Civil Procedure 2015, Rule 69.

<sup>87</sup> Rules of Civil Procedure 2015, Rule 70.

<sup>88</sup> Civil Procedure Act 1966, Section 116.

<sup>89</sup> Constitution, Article VI, Sections 4(1), (3).

<sup>90</sup> Constitution, Article X, Section 2(1).

<sup>91</sup> *Abija v. Bwijmaron*, available at <http://www.paclii.org/mh/cases/MHSC/1994/3.html>.

<sup>92</sup> Criminal Code 2011, Section 310.2, available at [http://www.paclii.org/mh/legis/consol\\_act\\_2012/cc201194/](http://www.paclii.org/mh/legis/consol_act_2012/cc201194/).

<sup>93</sup> Criminal Code 2011, Sections 6.03(1)(b), 6.06(2)(c), 230.3; Child Abuse and Neglect Act 1991, Section 512(3), available at [http://www.paclii.org/mh/legis/consol\\_act\\_new/caana170/](http://www.paclii.org/mh/legis/consol_act_new/caana170/). Before the 2011 amendments, a person convicted of child abuse or neglect was subject to a fine not exceeding \$2,000 and/or a term of imprisonment not exceeding two years. As a result of the 2011 amendments, child abuse and neglect are now felonies in the third degree for which a convicted person is subject to a fine not exceeding \$5,000 and/or a term of imprisonment not exceeding 35 months.

<sup>94</sup> Criminal Code 2011, Sections 213.1(1)(b)-(c), 213.3(1)(b)-(c), 213.5; Criminal Code 1966, Sections 152(A)(1)(b), (C)(1)(b), (E)(1), (E)(3), available at [http://www.paclii.org/mh/legis/consol\\_act\\_new/cc94/](http://www.paclii.org/mh/legis/consol_act_new/cc94/). Before the 2011 amendments, children under the age of 16 had a cause of action for continuous sexual assault and sexual assault in the first and third degrees (based solely on the age of the victim). As a result of the 2011 amendments, now only children under the age of 14 have a cause of action for continuous

as to the child's age.<sup>95</sup>

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sexual assault, and children age 14 to 15 only have a cause of action for sexual assault in the first or third degree (based solely on the age of the victim) if the defendant is three or more years older than and not married to the child.

<sup>95</sup> Criminal Code 2011, Section 213.8(1); Criminal Code 1966, Section 153(1). Before the 2011 amendments, whenever the criminality of conduct depended on a child's being younger than a specified age above the age of 16, it was an affirmative defense that the defendant reasonably believed the child to be of that specified age or older. As a result of the 2011 amendments, now whenever the criminality of conduct depends on a child's being younger than a specified age above the age of 14, it is an affirmative defense that the defendant reasonably believed the child to be of that specified age or older.