

ETHIOPIA: ACCESS TO JUSTICE FOR CHILDREN

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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?

Ethiopia ratified the CRC in 1991, and has also ratified the additional protocols on children in armed conflict and the sale of children, both in 2014.¹ The CRC is part of the national legal system of Ethiopia. Article 9(4) of the Ethiopian Constitution provides that all ratified international agreements are an integral part of the laws of the country² and Article 13(2) provides that the “fundamental rights and freedoms” of the Constitution shall be interpreted in a way that is consistent with international instruments adopted by Ethiopia, including the CRC.³

B. Does the CRC take precedence over national law?

Although Article 9(4) of the Constitution provides that all ratified international agreements are an integral part of the laws of the country, the Constitution is the supreme law of the land. As such, all laws of the country derive their legal validity from the Constitution.⁴ The rights guaranteed by the Constitution must be interpreted in a manner consistent with the international instruments adopted by Ethiopia, including the CRC.⁵ It is not clear whether the courts would apply the Convention in place of national law where constitutional rights are not engaged.

C. Has the CRC been incorporated into national law?

The CRC has been incorporated into Ethiopian domestic law.⁶ Additionally, Article 36 of the Constitution has incorporated some of the provisions of the CRC directly into its text,⁷ including the requirement that in all actions concerning children, the child’s best interests must be the primary consideration.⁸

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

¹ See <http://indicators.ohchr.org/>.

² Constitution of the Federal Democratic Republic of Ethiopia, Article 9(4), 21 August 1995. Available at: <http://www.hopr.gov.et/HPR/faces/c/constitution.jsp> (accessed 10 July 2013).

³ Constitution of the Federal Democratic Republic of Ethiopia, Article 13(2), 21 August 1995. Available at: <http://www.hopr.gov.et/HPR/faces/c/constitution.jsp> (accessed 10 July 2013).

⁴ GlobaLex – Introduction to the Ethiopian Legal System and Legal Research 5.1

⁵ Constitution of the Federal Democratic Republic of Ethiopia, Article 13(2), 21 August 1995. Available at: <http://www.hopr.gov.et/HPR/faces/c/constitution.jsp> (accessed 12 July 2013).

⁶ U.N. Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention*, CRC/C/15/Add.67 (Jan 24, 1997). Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f8%2fAdd.27&Lang=en.

⁷ Constitution of the Federal Democratic Republic of Ethiopia, Article 36, 21 August 1995. Available at: <http://www.hopr.gov.et/HPR/faces/c/constitution.jsp> (accessed 12 July 2013).

⁸ *Id.* at Article 36(2)

The Federal Courts Proclamation empowers federal courts to consider cases arising under international treaties. Although no such challenges can be located, national courts formally have the power to directly enforce the CRC.⁹

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

No examples could be found of the Ethiopian courts using or applying the CRC.

However, in a recent landmark decision by the Cassation Bench of the Federal Supreme Court, the best interests of the child were invoked as a guiding principle and the main standard to be considered when ruling on child custody and other issues affecting children.¹⁰ Because this ruling came through the Supreme Court, it is binding on all other Ethiopian courts, both federal and regional.¹¹

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?

A child's representative can bring cases in domestic courts to challenge violations of the child's rights. Representatives can include parents, guardians and attorneys.

Children may only engage with the judicial system where explicitly provided for in law.¹² In civil cases related to the financial or property rights of a child, the child must be represented by a "tutor".¹³ Where parents are married, they jointly act as the tutors of a minor child,¹⁴ while family arbitrators must appoint a guardian or tutor where parents are divorced.¹⁵ Where parents are not capable of representing the child, the court may appoint a representative¹⁶ but must, as far as possible give preference to a close relative.¹⁷

In the event of a conflict of interests between a child and his or her tutor, the court may appoint a tutor "ad hoc" on the application of the tutor or any member of the family council.¹⁸ The family council is made up of the parents, grandparents and great-grandparents of the child as well as any brothers or sisters who have reached the

⁹ Child Rights Int'l Network, *Ethiopia: National Laws*, CRIN, (Aug. 8, 2012). Available at: <http://www.crin.org/resources/infodetail.asp?id=29238>.

¹⁰ For a summary of the facts and decision, see *Accessing Justice: The Experience of ACPF's Children's Legal Protection Centre*, Addis Ababa: The African Child Policy Forum, 5 (2011). Available at http://www.africanchildforum.org/site/images/stories/Accessing_Justice_Final_Edited_on_July_7_2011.pdf.

¹¹ Kahsay Debesu & Andualem Eshetu, *Evidence in Ethiopia*, ABYSSINIA LAW, (Sept. 4, 2012). Available at: <http://www.abysinnialaw.com/root/study-online/item/935-evidence-in-ethiopia>.

¹² Civil Procedure Code, Article 199(1)-(3)

¹³ Civil Procedure Code, Article 280(1)

¹⁴ Civil Procedure Code, Article 204

¹⁵ Civil Procedure Code, Article 206

¹⁶ Civil Procedure Code, Article 212

¹⁷ Civil Procedure Code, Article 213

¹⁸ Civil Procedure Code, Article. 221

age of majority.¹⁹

Where the public prosecutor refuses to prosecute an alleged offence, a private prosecution may be brought by the injured party, the legal representative of the injured party, the husband or wife of the injured party, the legal representative of an incapable person, or the attorney of a corporation.

An application for habeas corpus may be made to the High court by any person who is detained.²⁰

Parliament established the Ethiopian Human Rights Commission (“EHRC”) by proclamation in July 2000, as required under Article 55(14) of the Constitution. Its mission is to “ensure the observance of human rights through awareness creation, monitoring, research and advising the government as well as through investigation and ensuring that appropriate measures are taken to redress human rights violations.”

The EHCR is headed by the Chief Commissioner and a Deputy Chief Commissioner for children and women’s affairs is responsible for children’s rights within the EHCR.²¹ Both the Chief Commissioner and Deputy are nominated by Parliament following public consultations.²² The Commission is explicitly empowered to undertake investigations into rights violations, either following a complaint or on its own initiative.²³ The EHCR website provides an online complaints form and further guidance on submitting complaints.²⁴

The Commission must also ensure that the legislative actions of the State conform with the human rights standards within the Constitution and must engage with the State’s reports to international human rights institutions.²⁵

The Institute of the Ombudsman, and the Deputy Chief Ombudswoman for Children and Women, can also receive complaints regarding violations of children’s rights and in turn directs those complaints to the relevant authorities, but children can only lodge complaints through their parents or guardians.²⁶ Parents, guardians, and children’s rights organisations can also bring violations directly to the relevant authorities.

Federal Courts have jurisdiction over cases related to international treaties and so would hear cases related to the Convention on the Rights of the Child. No examples of such cases could be found as of the date of publication.

¹⁹ Civil Procedure Code, Article. 241

²⁰ Civil Procedure Code, Article. 177

²¹ Proclamation No. 210/2000, Article 8. Available at:

http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_229633.pdf

²² Ethiopian Human Rights Commission, *Profile and History*. Available at:

<http://www.ehrc.org.et/AboutUs/Profilehistory/tabid/56/Default.aspx>.

²³ Proclamation No. 210/2000, Article 6(4)

²⁴ Available here: <http://www.ehrc.org.et/OnlineComplaint/tabid/69/Default.aspx>

²⁵ Proclamation No. 210/2000, Article 6(2) and (7)

²⁶ U.N. Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, p. 3, CRC/C/ETH/4-5 (April 2012). Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=829&Lang=en.

This means the willingness of those parties to report violations of a child’s rights determines the success that the Ombudsman has in addressing them.

- 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 cannot bring challenges to violations of their rights on their own behalf. A child's representative, whether that is a parent, a guardian, or a lawyer, must bring the case on behalf of the child. See above for further information.

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

As noted above, the cases of infants and young children must be brought by a child's representative as is the case with older children.

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

No comprehensive legal aid provision exists in Ethiopia and there is no legislation to govern the provision of such aid.

The EHRC's Free Legal Aid Centres are a source of legal aid for sufferers of human rights violations. There are presently over one hundred Free Legal Aid Centres across the country where children or their representatives can receive assistance in bringing cases.²⁷

Additionally, the EHRC recently signed a Memorandum of Understanding with universities throughout the country to open additional centres to provide free legal aid services to disadvantaged groups, particularly women and children.²⁸

The Ethiopian Institution of the Ombudsman can also provide free advice and mediation services.²⁹

In criminal proceedings a person who is detained has a right to access his or her advocate.³⁰ Courts have the power to appoint an advocate for a "young person" where no parent, guardian or other person in loco parentis appears to represent the young person; or where the young person is charged with an offence punishable with "rigorous imprisonment" exceeding ten years or with death.³¹

- 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)?

²⁷ United Nations Development Programme, *Democratic Governance: Our Stories*, UNDP (accessed Jul. 25, 2013). Available at: <http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/successstories/vulnerable-people-get-free-legal-aid-in-ethiopia/>.

²⁸ U.N. Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, p. 3, CRC/C/ETH/4-5 (April 2012). Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=829&Lang=en

²⁹ Ethiopia institution of the Ombudsman. More information available at: http://www.ethombudsman.gov.et/index.php?option=com_content&view=frontpage&Itemid=1&lang=en.

³⁰ Criminal Procedure Code, Article 61

³¹ Criminal Procedure Code, Article 174

No other conditions or limits on children or their chosen representatives bringing cases in either state or federal courts have been located.

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?

Civil legal challenges can be brought directly by parents, guardians and children's rights organisations. See section II.A above and sections III.B-E for more detail.

The Ethiopian Human Rights Commission (EHRC) receives complaints about alleged violations of human rights directly from or on behalf of children and refers them to the relevant authorities.³² The Institute of the Ombudsman also receives complaints regarding violations of children's rights and in turn directs those complaints to the relevant authorities, but children can only lodge their complaints through their parents or guardians.³³ Parents, guardians, and children's rights organisations can also bring violations directly to the relevant authorities.

African Committee of Experts on the Rights and Welfare of the Child

Individuals, including child victims, their parents or legal representatives, groups, or NGOs recognised by the African Union may submit complaints (known as "communications") to the African Committee of Experts on the Rights and Welfare of the Child ("African Committee") about violations of the African Charter on the Rights and Welfare of the Child ("African Children's Charter").³⁴ All available domestic remedies must have been exhausted before bringing a case to the African Committee.³⁵ The complaint 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, and whether or not the complainant wishes to remain anonymous and the reasons for this.³⁶ The African Committee will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.³⁷

³² *Id.* at p. 6.

³³ *Id.* This means the willingness of those parties to report violations of a child's rights determines the success that the Ombudsman has in addressing them.

³⁴ African Charter on the Rights and Welfare of the Child ("African Children's Charter"), Article 44, available at:

<http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acrwc/acrwc-charter-full-text/>. For more information about communications, see:

<http://acerwc.org/the-committees-work/communications/>.

³⁵ African Committee of Experts on the Rights and Welfare of the Child, 'Communications', available at: <http://acerwc.org/the-committees-work/communications/>.

³⁶ War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, 'African Committee of Experts on the Rights and Welfare of the Child: communication procedure', 2012, available at:

<http://co-guide.org/mechanism/african-committee-experts-rights-and-welfare-child-communication-procedure>.

³⁷ *Ibid.*

African Commission on Human and Peoples' Rights

Individuals, groups or NGOs may submit complaints (known as “communications”) to the African Commission on Human and Peoples’ Rights (“African Commission”) about violations of the African Charter on Human and Peoples’ Rights (“African Charter”).³⁸ All available domestic remedies must have been exhausted before bringing a case to the African Commission.³⁹ The complaint 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; whether or not the complainant wishes to remain anonymous and the reasons for this; and the name of the victim, in a case where he/she is not the complainant.⁴⁰ The African Commission will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.⁴¹ If the case relates to serious or massive human rights violations or if the Commission considers that the State is unwilling to comply with its recommendations in the case, the Commission may refer the complaint to the African Court on Human and Peoples’ Rights.⁴²

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

Federal courts may directly review violations of the CRC.⁴³ Crimes against children can be heard by courts with criminal jurisdiction, including regional federal courts and circuit courts.⁴⁴ Remedies are governed by the civil and criminal codes.

In civil cases, courts are able to award damages in the form of financial compensation to the injured party,⁴⁵ order restitution of property,⁴⁶ and order an injunction restraining a party from committing or continuing to commit an action.⁴⁷ By bringing a private prosecution, the victim of a human rights violation that constitutes a criminal offence can seek the criminal punishment of an offender.⁴⁸

³⁸ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

³⁹ Ibid., Article 56(5).

⁴⁰ Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rule 93, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010/>.

⁴¹ War Resisters’ International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Commission on Human and Peoples’ Rights: communication procedure’, 2012, available at: <http://co-guide.org/mechanism/african-commission-human-and-peoples-rights-communication-procedure>.

⁴² Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights, Article 5, available at: <http://www.achpr.org/instruments/court-establishment>; Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rules 84(2) and 118, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010>.

⁴³ Child Rights Int’l Network, *Ethiopia: National Laws*, CRIN, (Aug. 8, 2012), <http://www.crin.org/node/31800>

⁴⁴ Foreign Law Guide, *Ethiopia*, Foreign law guide, (accessed May 29, 2013). Available at: www.foreignlawguide.com/ip/flg/Ethiopia.htm; Civil Procedure Code [Civ. P. Code] chp. 2 (Eth.).

⁴⁵ Civil Code, Article 2090

⁴⁶ Civil Code, Articles 2118 and 2119

⁴⁷ Civil Code, Article 2121

⁴⁸ Criminal Procedure Code, Article. 47

Where it is alleged that a law violates the Constitution, including its rights provisions, the Council of Constitutional Inquiry has the power to investigate the issue and submit recommendations to the House of the Federation (the upper house of the legislature). It is for the House of the Federation to decide whether the law violates the Constitution or not.⁴⁹ Any law that does violate the Constitution is void.⁵⁰

Administrative law and the corresponding powers of the courts are developing in Ethiopia, but the powers of the courts are currently unclear.⁵¹

- 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?

Under Article 12 of the Criminal Procedure Code, it is possible to make an anonymous accusation of a serious breach of the law which, if credible, must be investigated by the police.⁵²

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

Civil claims may be joined as a single case where they relate to the same transaction or series of transactions.⁵³ The provision would not allow anyone to directly benefit from the judgment unless they were a plaintiff. Each plaintiff must have a vested interest in the suit.⁵⁴

- 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?

NGOs appear to be able to file challenges to children's rights violations and to intervene in cases that have already been filed.⁵⁵ The Children's Legal Protection Centre ("CLPC") provides an example. CLPC was formed as a part of the African Child Policy Forum ("ACPF") to provide access to justice for children in Ethiopia. Since its creation in 2005, the CLPC has, among other things, provided legal counselling as well as legal representation to children when their rights are violated.⁵⁶

- 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?

⁴⁹ Constitution of Ethiopia, Article 84. Available at:

https://www.constituteproject.org/constitution/Ethiopia_1994.pdf.

⁵⁰ Constitution of Ethiopia, Article 9(1)

⁵¹ Aberham Yohannes and Desta G/Michael, *Administrative Law*. See p. 198 for a discussion of developments in the area of administrative law in Ethiopia.

⁵² Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No. 414/2004), Article 12.

⁵³ Civil Procedure Code, Article 35

⁵⁴ Civil Procedure Code [Civ P. Code] Article 33(2) (Eth.).

⁵⁵ Civil Procedure Code [Civ P. Code] Article 41 (Eth.).

⁵⁶ *Accessing Justice: The Experience of ACPF's Children's Legal Protection Center*, 2.

Federal courts have jurisdiction over cases arising under the Constitution, federal laws, and international treaties.⁵⁷ This jurisdiction extends to both civil and criminal cases. The Ethiopian court system is generally divided into three types of courts: civil, criminal, and labour. Violations of a child's rights can be brought in whichever type of court has jurisdiction over the particular type of violation at issue.

In civil claims, a complainant must submit a statement of claim that meets the requirements set out in the Civil Procedure Code.⁵⁸ The Code does not contain any reference to relaxed procedures for child claimants.

- 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?

Means of free or subsidised legal aid from the court system itself could not be located. Child complainants and their representatives are expected to pay costs and expenses themselves unless they are able to obtain legal aid from another source, such as those mentioned in Section IID above and IVC below.

Generally speaking, court fees must be paid in order to file a suit before the courts.⁵⁹ It is possible, however, to bring a civil case as a "pauper" where a claimant does not have sufficient means to pay all or part of the prescribed court fees.⁶⁰ Where a person is permitted to sue as a pauper, the court can order that he or she will not be liable to pay court fees or other charges related to proceedings.⁶¹

- 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?

NGOs, such as The Children's Legal Protection Centre, offer pro bono legal counselling and representation in cases involving violations of children's rights.⁶²

- 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?

There are specific statutes of limitations barring criminal prosecution after a set time period based on the severity of the crime. If a violation can be charged under the criminal code, it is subject to those time bars.⁶³

⁵⁷ Girmachew Alemu Aneme, *Introduction to the Ethiopian Legal System and Legal Research*, GlobaLex, (September 2010), www.nyulawglobal.org/globalex/Ethiopia.htm.

⁵⁸ Civil Procedure Code, Articles 80 - 93 and 222 - 236

⁵⁹ Civil Procedure Code, Article 215(1)

⁶⁰ Civil Procedure Code, Article 467. See Book VII Chapter 2 of the Civil Procedure Code for further rules on filing a suit as a pauper.

⁶¹ Civil Procedure Code, Article 473

⁶² *Accessing Justice: The Experience of ACPF's Children's Legal Protection Center*, 2.

⁶³ Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No. 414/2004) arts. 213,

Limitation periods for other criminal offences vary according to the severity of the offence. At the two extremes, a prosecution must be brought in relation to an offence carrying the death penalty within 25 years and for in relation to offences punishable with simple imprisonment not exceeding a year, within three years.⁶⁴

A criminal complaint must be made within three months of the injured person becoming aware of the criminal act or of the criminal. Where the victims was incapacitated in a way that prevented him or her from complaining, the three month period begins from the point at which he or she became able to complain.⁶⁵ For any crime punishable on complaint - offences specifically listed in the Criminal Code - a prosecution must be brought within two years.

Civil cases are subject to other time limits based on the court and other codes. Generally speaking, a civil claim must be brought within two years of the damage being caused. A longer period is allowed where the Penal Code provides for this.⁶⁶

There are no specific provisions addressing young adults' ability to bring cases for violations of their rights during their childhoods.

- 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?

Ethiopia has a common law precedent system in which lower courts are bound to follow evidentiary rulings from courts above them, and Supreme Court decisions are binding on all lower courts, both federal and regional.⁶⁷ Ethiopia has no code of evidence. Evidentiary rules are scattered through various codes and found in case law.

During a criminal hearing relating to an accused young person, all proceedings must be heard in chambers. No person may be present at the hearing except witnesses, experts, parents, guardians, or representatives of welfare organisations. The public prosecutor must be present at any hearing in the High Court.⁶⁸

A young person may be removed from the court during the hearing of evidence "which it is undesirable that the young person should hear".⁶⁹

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

As there are no readily available published cases, it is difficult to determine, as a practical matter, how long it might take to get a decision from the court, especially as there have been no direct challenges brought for violations of the CRC.

218, 217, 222.

⁶⁴ See Criminal Code, Articles 217 and 224 for full list of limitation periods.

⁶⁵ Criminal Code, Article 213

⁶⁶ Civil Procedure Code [Civ. P. Code] chp. 7 (Eth.).

⁶⁷ Kalsay Debesu & Andualem Eshetu, *Evidence in Ethiopia*, ABYSSINIA LAW, (Sept. 4, 2012), <http://www.abysinnialaw.com/root/study-online/item/935-evidence-in-ethiopia>.

⁶⁸ Criminal Procedure Code, Article 176

⁶⁹ Criminal Procedure Code, Articleicle 175

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

Ethiopia has a dual judicial system with two parallel court structures. The federal courts and the state courts each have their own independent administrations. The Federal Supreme Court has a cassation division with the power to review and overturn decisions issued by lower federal courts and state supreme courts containing fundamental errors of law.⁷⁰ “Young persons” must make appeals through a legal representative.⁷¹

Complainants can only appeal against amount of damages from the court of first instance under grounds specifically listed in the Civil Code.⁷²

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?

Ethiopia is still developing as a nation and dealing with the remnants of political and social turmoil. A negative decision in the higher courts could have negative effects because those decisions are binding on the lower courts and the CRC is not entirely implemented into national law at this time.

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

As referenced in Section V below, enforcement in rural areas can be difficult for a variety of reasons, including some traditional practices at odds with the CRC.

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.

Religious and Customary Courts

Article 34(5) of the Constitution provides that “This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious and customary laws, with the consent of the parties to the dispute.”⁷³ This provides for the independent validity of unofficial, non-state laws, such as those based on custom and religion, in the areas of social activity. This formal legal pluralism is confined to matters of personal status and family law.⁷⁴

Presently, the only religious courts in Ethiopia are the Sharia Courts. They apply Islamic law and have been officially established at both the federal and state levels. As

⁷⁰ Girmachew Alemu Aneme, *Introduction to the Ethiopian Legal System and Legal Research*, GlobaLex (September 2010), Available at: www.nyulawglobal.org/globalex/Ethiopia.htm.

⁷¹ Criminal Procedure Code, Article 185(4)

⁷² Civil Code, Articles 2152 and 2153

⁷³ *Constitution of the Federal Democratic Republic of Ethiopia*, Article 34-5, 21 August 1995. Available at: <http://www.hopr.gov.et/HPR/faces/c/constitution.jsp> (accessed 10 July 2013).

⁷⁴ Girmachew Alemu Aneme, *Introduction to the Ethiopian Legal System and Legal Research*, GlobaLex, (September 2010), www.nyulawglobal.org/globalex/Ethiopia.htm.

relevant to children's rights, they can have jurisdiction over the guardianship of minors and family relationships. A matter will not be adjudicated in the Sharia Courts unless all parties voluntarily submit to jurisdiction.⁷⁵

Customary courts are recognised, but not established, by law. As with the Sharia Courts, the decision whether to bring a dispute to a customary court or a regular court is left to the parties. These courts have no legal authority but carry "moral force" and still operate as primary decision makers in rural areas throughout Ethiopia. They have evolved from traditional elder counsels and derive their authority from the tradition and local customs of the people of Ethiopia, some of which are still harmful to children.⁷⁶

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

⁷⁵ Girmachew Alemu Aneme, *Introduction to the Ethiopian Legal System and Legal Research*, GlobaLex, (September 2010). Available at: www.nyulawglobal.org/globalex/Ethiopia.htm.

⁷⁶ Girmachew Alemu Aneme, *Introduction to the Ethiopian Legal System and Legal Research*, GlobaLex, (September 2010),. Available at: www.nyulawglobal.org/globalex/Ethiopia.htm.