

ACCESS TO JUSTICE FOR CHILDREN: GAMBIA

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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?

Gambia ratified the CRC on 3 August 1990.¹ The country has also ratified the Optional Protocol to the CRC on the sale of children child prostitution and child pornography, but has so far not ratified the remaining two Optional Protocols to the CRC on a communications procedure and on the involvement of children in armed conflict.²

Gambia has a dualist legal system in terms of the reception of international law into its domestic legal system and international human rights treaties require incorporation into the national legal system.³ As was recently confirmed by the Supreme Court of Gambia, domestic law prevails over international law until it has been incorporated into domestic law.⁴

According to the Constitution of Gambia, in pursuing policies to protect the rights and freedoms of the disabled, the aged, children and other vulnerable members of society and to ensure that such persons are provided just and equitable social opportunities, the State shall be bound by the fundamental rights and freedoms in the Constitution and shall be guided by international human rights instruments to which Gambia is a signatory and which recognise and apply particular categories of basic human rights to development processes.⁵

The Children's Act of 2005 (the "Children's Act") is the principal law concerning children's rights in Gambia.⁶ By its terms, the Children's Act "supersede[s] the provisions of all other laws, other than the Constitution, on any matters pertaining to children for which provision has been made under this Act".⁷

¹ Yale Law School, *How Children's Voices are Heard in Child Protective Proceedings: Gambia*, Representing Children Worldwide, October 2005, available at <http://www.law.yale.edu/rcw/rcw/jurisdictions/afw/gambia/frontpage.htm>.

² See United Nations Human Rights Treaty Collection: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx.

³ AllAfrica, *Gambia: Supreme Court Makes Yet Another Resounding Success*, 21 November 2014, available at <http://allafrica.com/stories/201411211743.html>.

⁴ Ibid.

⁵ Constitution of Gambia, section 216(2) and (3), available at <http://www.gov.gm/judiciary/constitution.pdf>.

⁶ African Child Policy Forum, *Harmonisation of Children's Laws in Gambia*, 2012, p. 3, available at <http://acerwc.org/wp-content/uploads/2012/05/English-ACERWC-Gambia-Harmonisation-of-Laws-on-Children.pdf>.

⁷ Children's Act, § 239, available at http://www.africanchildforum.org/ctr/Legislation PerCountry/Gambia/gambia_children_2005_en.pdf.

However, the UN Committee on the Rights of the Child has voiced concern that the Act “fails to cover all areas under the Convention, including issues related to child marriage, female genital mutilation and child labour, and that it has not been effectively enforced and has not been sufficiently disseminated”.⁸

B. Does the CRC take precedence over national law?

Although Gambia has ratified the CRC, the CRC does not take precedence over national law. International human rights treaties require incorporation into the national legal system in order to be directly applicable, as was recently confirmed by the Supreme Court of Gambia,⁹ but the CRC has not been incorporated into the national legal system.

The Children’s Act is the principal law concerning children’s rights in Gambia, and it supersedes all other laws, other than the Constitution, on matters pertaining to children. Any law which is inconsistent with the provisions made by the Children’s Act are considered void.¹⁰

C. Has the CRC been incorporated into national law?

No. The CRC has not been incorporated into national law.

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

No. The CRC is not binding national law in Gambia and therefore cannot be directly enforced in the courts. All matters involving children are governed by the Children’s Act and the Constitution.¹¹

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

No. Case law from matters litigated in Gambia is not readily available online. The Gambia Law Reports, which compile decisions rendered by the courts of Gambia between 1960 and 2008, do not include any cases citing the CRC.¹² As the Gambia Law Reports have since not been updated, research was unable to confirm whether the CRC might have been cited by the courts in Gambia since 2008.

II. What is the legal status of the child?

⁸ UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of Gambia*, CRC/C/GAM/CO/2-3, 4 February 2015, para. 7, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGAM%2fCO%2f2-3&Lang=en, also available at <https://www.crin.org/en/library/un-regional-documentation/concluding-observations-68ths-gambia-combined-second-and-third>.

⁹ AllAfrica, *Gambia: Supreme Court Makes Yet Another Resounding Success*, 21 November 2014, available at: <http://allafrica.com/stories/201411211743.html>.

¹⁰ Children’s Act, § 239.

¹¹ *Ibid.*, § 5.

¹² Judiciary of Gambia, *Gambia Law Reports*, available at http://www.gov.gm/judiciary/index.php?option=com_content&view=article&id=6&Itemid=32.

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

Yes. Section 68 of the Children's Act establishes a "Children's Court" which has the power to hear, among other things, all civil matters concerning children and applications relating to child care and protection.¹³ Under the Children's Act, such civil matters may be pursued by the child or his representatives.¹⁴

Children may also challenge violations of their fundamental rights enshrined in Chapter IV of the Constitution, which includes rights guarantees such as the right to life, liberty, privacy, fair trial, freedom of expression, freedom from discrimination, etc.¹⁵ Section 37 of the Constitution provides that "if any person alleges that any of the provisions of section 18 to 33 or section 36 (5) of this Chapter has been, is being or is likely to be contravened in relation to himself or herself" an application for redress may be made to the High Court.¹⁶

Complaints may also be lodged with the Office of the Ombudsman¹⁷ which is provided for in the Constitution of Gambia.¹⁸ The Ombudsman may receive complaints by members of the public, including children, regarding violations of their fundamental rights enshrined in the Constitution by the authorities.¹⁹ The work of the Office of the Ombudsman is governed by the Ombudsman Act 1997.²⁰

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 cases be brought by or with the assistance of a representative?

The Children's Court Rules 2010 ("Children's Court Rules") do not specify a particular age at which a child may bring a case on his or her own behalf. The Rules address only the manner in which a child may be represented. Specifically, according to section 14 of the Children's Court Rules, where a child is not represented by a next friend - a person who intervenes to assist a child to bring a legal action - and it appears to the Court that it would be in the best interest of the child to be represented by a legal practitioner,²¹ the Court may order that a legal practitioner be appointed to represent the child.²¹

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

Any relief available under the Children's Act may be pursued by the child or her "legal practitioner, next friend, agent or guardian ad litem where appropriate".²²

¹³ Children's Act, §§ 68, 70.

¹⁴ See e.g., Children's Act, § 13; see also Children's Court Rules, § 31, available at <http://ilo.org/dyn/natlex/docs/ELECTRONIC/91568/106248/F-699171462/GMB91568.pdf>.

¹⁵ Constitution, section 37.

¹⁶ Ibid., section 37(1).

¹⁷ See: <http://www.theioi.org/africa/gambia/office-of-the-ombudsman>.

¹⁸ Constitution, section 163.

¹⁹ Ibid.

²⁰ Ombudsman Act 1997, available at <http://www.theioi.org/africa/gambia/office-of-the-ombudsman>.

²¹ Children's Court Rules, § 14.

²² Children's Court Rules, § 31.

To the extent a young child or infant is unrepresented, the court must appoint a legal representative to bring a case on the child's behalf.²³

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

Yes. Under the Children's Act, all children are entitled to legal representation as well as legal aid provided by the government.²⁴ Section 14 of the Children's Court Rules expressly provides that "[w]here a child is not represented by a next friend and it appears to the Court that it will be in the best interest of the child for him or her to be represented by a legal practitioner, the Court may order that a legal practitioner to represent the child be appointed under the Legal Aid Act."²⁵

In such instances, the rules require the court to adjourn the hearing for the purpose of having a legal practitioner appointed to represent the child.²⁶ Immediately thereafter, the clerk of the court must submit an application for legal aid to the Executive Secretary of the National Agency for Legal Aid.²⁷

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)?

Yes. There are some further conditions to children bringing cases. For example, although the Children's Court Rules provide that a case may be instituted either in person or by the party's legal practitioner, next friend, agent or guardian ad litem where appropriate, the Children's Act requires "parents and guardians of the child [to] be present whenever possible".²⁸

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?

Under Gambian law, cases involving criminal charges against a child, civil matters concerning a child and applications relating to child care and protection must be brought in the Children's Court.²⁹ All such cases are governed by the Children's Court Rules. In civil proceedings, a party commences an action by entering a plaint, issuing a summons and filing a praecipe that contains, among other things, the name, address and occupation of both the plaintiff and defendant, and a short statement of the cause of action and relief sought.³⁰

²³ Children's Court Rules, § 14.

²⁴ Children's Act, § 72(1)(f); see also Institute for Human Rights and Development in Africa, *Legal Aid in the Gambia*, p. 15, April 2012, available at <http://www.ihrda.org/wp-content/uploads/2012/04/Legal-Aid-in-The-Gambia-layout-2012-website-download.pdf>.

²⁵ Children's Court Rules, § 14(1).

²⁶ Children's Court Rules, § 14(2).

²⁷ Children's Court Rules, § 14(3).

²⁸ Children's Act, § 72(d).

²⁹ Children's Act, § 70.

³⁰ Children's Court Rules, §§ 6-7.

Children may apply for redress at the High Court in order to challenge violations of their fundamental rights enshrined in Chapter IV of the Constitution.³¹ According to Section 37 of the Constitution, such applications are possible “if any person alleges that any of the provisions of section 18 to 33 or section 36 (5) of this Chapter has been, is being or is likely to be contravened in relation to himself or herself”.³² If a question regarding the fundamental rights guaranteed in Chapter IV of the Constitution arises in front of a lower court, the lower court “may, and shall if any party so requests, refer the question to the High Court, unless, in the opinion of the subordinate court, the raising of the question is merely frivolous or vexatious”.³³

The Ombudsman may receive complaints by members of the public, including children, regarding violations of their fundamental rights enshrined in the Constitution by the authorities and may also lodge his or her own investigations into social injustices and discrimination of individual rights by the authorities.³⁴

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

Individuals, including child victims, his/her 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”).³⁵ All available domestic remedies must have been exhausted before bringing a case to the African Committee.³⁶ 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.³⁷ 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.³⁸

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

³¹ Constitution, section 37.

³² Ibid., section 37(1).

³³ Ibid., section 37(4).

³⁴ Ibid., section 163; Ombudsman Act.

³⁵ 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/acerwc-charter-full-text/>. For more information about communications, see <http://acerwc.org/the-committees-work/communications/>.

³⁶ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at <http://acerwc.org/the-committees-work/communications/>.

³⁷ 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>.

³⁸ Ibid.

Peoples' Rights ("African Charter").³⁹ All available domestic remedies must have been exhausted before bringing a case to the African Commission.⁴⁰ 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.⁴¹ 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.⁴² 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.⁴³

ECOWAS Community Court of Justice

Individuals can bring complaints about violations of human rights that occur in any Member State of the Economic Community of West African States (ECOWAS) to the Community Court of Justice.⁴⁴ This includes acts or inaction of Community Officials which violate the rights of individuals.⁴⁵ There is no requirement to exhaust domestic remedies, therefore individuals do not need to pursue national judicial remedies before filing a case with the Community Court of Justice.⁴⁶ There are, however a number of conditions: the complaint must not be anonymous or be pending before another international court;⁴⁷ representation by an agent or lawyer is required;⁴⁸ and any action by or against a Community Institution or the Member State must be brought within three years of when the right of action arose.⁴⁹ Judgments of the Court of Justice are binding on the

³⁹ African Charter on Human and Peoples' Rights ("African Charter"), Article 55, available at <http://www.achpr.org/instruments/achpr>.

⁴⁰ Ibid., Article 56(5).

⁴¹ 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/>.

⁴² 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>.

⁴³ 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>.

⁴⁴ Supplementary Protocol A/SP.1/01/05, Articles 3 and 4, available at http://www.courtecowas.org/site2012/pdf_files/supplementary_protocol.pdf; Protocol on the Community Court of Justice, Articles 9(4) and 10(d), available at http://www.courtecowas.org/site2012/pdf_files/protocol.pdf.

⁴⁵ Ibid., Article 4; Protocol on the Community Court of Justice, Article 10(c).

⁴⁶ War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, 'ECOWAS Community Court of Justice', 2012, available at <http://co-guide.org/mechanism/ecowas-community-court-justice>.

⁴⁷ Supplementary Protocol A/SP.1/01/05, Article 4; Protocol on the Community Court of Justice, Article 10(d),

⁴⁸ Protocol on the Community Court of Justice, Article 12.

⁴⁹ Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).

Member States, Institutions of the Community, individuals and corporate bodies.
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B. What powers would courts have to review these violations, and what remedies could they offer?

The Children's Act vests power in the Children's Court to determine all cases involving criminal charges against a child, civil matters concerning a child and applications relating to child care and protection.⁵¹ The remedies available to the petitioner depend on the nature of the right violated. In civil matters, the Court may enforce or invalidate contracts entered into with minors.⁵² The Court also has the power to enter orders protecting children from abuse, such as (1) care orders, which place a child in the care of persons other than the child's parents if the court finds that the child is suffering or likely to suffer significant harm⁵³ and (2) exclusion orders, which prohibit certain persons from having contact with the child.⁵⁴ Additionally, any person who violates the Children's Act may be fined up to twenty thousand dalasi or imprisoned for a term not exceeding one year.⁵⁵

In cases concerning children's fundamental rights enshrined in the Constitution, the High Court may make such order, issue such writ, and give such directions as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the rights to which the person concerned is entitled.⁵⁶

The Ombudsman has broad powers which include: issuing of warrants, searching properties, questioning any person in connection with the matter, access documents, request particulars and information from any person, seize any objects, summon witnesses and to examine witnesses under oath, order the arrest of any person, who after being served with a summons fails to appear before it.⁵⁷ Once a complaint has been received by the Ombudsman's office, the Ombudsman shall hold an enquiry or investigation into the matter of the complaint and then recommend appropriate action or steps to remedy the rights violation through fair, proper and effective means.⁵⁸ The Ombudsman then notifies the complainant of the outcome of the inquiry or investigation in whichever manner and form the Ombudsman sees fit.⁵⁹ Otherwise, the Ombudsman informs the complainant that the matter will not be taken up and further enquired into or investigated.⁶⁰ Orders, writs and directions issued by the Ombudsman have the same force as those made by the High Court.⁶¹

⁵⁰ Revised Treaty of the Economic Community of West African States, Article 15(4), available at http://www.courtecawas.org/site2012/pdf_files/revised_treaty.pdf.

⁵¹ Children's Act, § 70.

⁵² Children's Act, § 14.

⁵³ Children's Act, § 92.

⁵⁴ Children's Act, § 93.

⁵⁵ Children's Act, § 235.

⁵⁶ Constitution, sections 5(2), 37(5).

⁵⁷ Ombudsman Act, sections 3-4.

⁵⁸ *Ibid.*, section 4.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, section 7.

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?

Such a challenge would have to directly involve one or more individual child victims as the Children's Act only provides the Children's Court with jurisdiction over disputes involving a particular child or children.⁶² According to Section 7 of the Children's Court Rules, the plaintiff's full name must be provided in the praecipe to commence an action.

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

No. Gambian law does not provide for group litigation.

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?

There do not appear to be any procedural laws that would allow non-governmental entities to challenge potential children's rights violations or intervene in cases generally. However, one notable exception is the Women's Act 2010, which allows associations acting in the interest of their members to bring cases to the High Court concerning a breach of the rights granted to female children by the Act⁶³

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 be the initial filing process entail?

Cases involving children's rights must be filed in the Children's Court, which consists of (1) a magistrate designated by the Chief Justice to act as Chairperson and (2) "two other persons of proven integrity from the community" appointed by the Chief Justice, including one woman.⁶⁴ The venue of the Children's Court is unspecified, except that, whenever possible, it should sit in a different building from the one normally used by other courts.⁶⁵

A party commences an action in front of the Children's Courts by entering a plaint, issuing a summons and filing a praecipe that contains, among other things, the name, address and occupation of both the plaintiff and defendant, and a short statement of the cause of action and relief sought.⁶⁶ Applications for the

⁶² Children's Act, § 70.

⁶³ Women's Act, § 12, available at:

<http://www.ilo.org/natlex/docs/MONOGRAPH/90619/115464/F-1335047347/GMB90619.pdf>.

⁶⁴ Children's Act, § 69.

⁶⁵ Children's Act, § 71.

⁶⁶ Children's Court Rules, §§ 6-7.

care and protection of a child are initiated by filing a motion and supporting affidavits with the Court.⁶⁷

The High Court has original jurisdiction to interpret and enforce the fundamental rights and freedoms as provided in Chapter IV of the Constitution and all applications to challenge violations of these rights must be addressed at the High Court directly.⁶⁸ The exact procedure in front of the High Court and requirements for submissions are unclear as there is no applicable procedure code.⁶⁹

A complaint can be brought to the attention of the Ombudsman by anybody in any form provided that where a complaint is made orally it is put into writing by a member of staff of the Ombudsman's office.⁷⁰

- B. Legal aid / Court costs. Under what conditions would free or subsidized 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?

Under the Children's Act, all children are entitled to legal aid and representation provided by the government.⁷¹ However, there have been concerns about the limited use of legal aid due to the lack of sufficient human resources allocated to the National Agency for Legal Aid and the low level of awareness among the population of the existence of legal aid, especially in civil cases, as addressed by the UN Committee on the Rights of the Child in its latest concluding observations on the situation of children in Gambia.⁷²

- 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 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?

Legal aid is available to children bringing claims under the Children's Act. In matters before the Children's Court, "the child shall have a right to legal representation and legal aid provided by Government."⁷³

There are some law firms in Gambia which offer pro bono legal advice, e.g. Farage Andrews Law Practice.⁷⁴ A pro bono law clinic offering free legal services to the local community is available at the University of The Gambia Faculty of Law.⁷⁵ The clinic was launched in 2012 in cooperation with the

⁶⁷ Children's Court Rules, §§ 15-16.

⁶⁸ Constitution, section 132(1).

⁶⁹ For detailed information on the High Court's jurisdiction, see http://www.gov.gm/judiciary/index.php?option=com_content&view=article&id=10&Itemid=16.

⁷⁰ Ombudsman Act, section 11.

⁷¹ Children's Act, § 72(1)(f); see also *Legal Aid in the Gambia*, p. 15.

⁷² UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of Gambia*, para. 82.

⁷³ Children's Act, § 72(1)(f); see also *Legal Aid in the Gambia*, p. 15.

⁷⁴ See: http://farageandrews.com/?page_id=14.

⁷⁵ See: <http://utgfacultyoflaw.weebly.com/special-programs.html>.

Gambia Bar Association.⁷⁶ The Female Lawyers Associations-The Gambia (FLAG) provides free legal service and representation to women and girls.⁷⁷

The Institute for Human Rights and Development in Africa (IHRDA), based in the Gambian capital Banjul, offers pro bono assistance on cases.⁷⁸ The Institute's work focuses on promoting awareness of human rights in Africa and improving the effectiveness of the African human rights system,⁷⁹ particularly in relation to bringing cases before the African Commission on Human and People's Rights, and serving as counsel on those cases.⁸⁰

- 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 Gambian Limitation Act prescribes limitation periods for instituting civil claims. The following periods apply: twelve years applies to most property claims, six years applies to actions in tort and contract, as well as sums recoverable under statute, recovery of rent, mortgage interest, trust property, and enforcement of judgments/arbitral awards, three years applies to personal injury (including death) claims, and two years applies to claims arising under the Labour Act, breach of contract of employment, or claims for recovery of contribution in respect of any damage. Time does not run in the case of fraud, concealment or mistake until discovery, and during a disability.⁸¹ These statutes of limitations apply equally to claims in Children's Court.⁸²

Research has been unable to confirm whether children fall into the category of 'disability' and whether statutes of limitations would apply to children bringing cases after they turn 18. Statutes of limitations for criminal offences committed against children also remain unclear as a copy of the Criminal Procedure Code Amendment Act 2002 was not available online at the time of research.

- 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?

Proceedings in the Children's Courts are flexible and not subject to the rigid rules of procedure in the regular courts. They are not open to the public and no one is allowed to publish information that may lead to the identification of a child.⁸³

⁷⁶ See: http://gba.gm/?page_id=584.

⁷⁷ See: <https://www.facebook.com/Female-Lawyers-Association-Gambia-1580223078884192/>.

⁷⁸ See: <http://www.ihrda.org/who-we-are/>.

⁷⁹ Ibid.

⁸⁰ See: <http://www.refugeelegalaidinformation.org/gambia-pro-bono-directory>.

⁸¹ Amie N. D. Bensouda, *Guide to Dispute Resolution in Africa: Gambia*, p. 122, available at <http://www.amiebensoudaco.net/img/disputeresolution.pdf>; we were unable to locate a copy of the Limitation Act.

⁸² Children's Court Rules, § 13(5).

⁸³ *Combined second and third periodic reports of Gambia to the UN Committee on the Rights of the Child*, CRC/C/GAM/2-3, 28 October 2011, para. 36, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGMB%2f2-3&Lang=en.

The Children's Court Rules make special provisions for children giving evidence and participating in court proceedings, but research was unable to produce a copy of the Evidence Act which applies to proceedings under these Rules, with such modifications as may be necessary to safeguard the rights and interests of the child.⁸⁴

In civil matters, the Children's Court may take testimony under oath, or without an oath if the declarant states that taking an oath is unlawful according to his or her religious belief.⁸⁵ The court also may summon a person to disclose information concerning a child if it is satisfied that the information is being withheld.⁸⁶ Additionally, the Court may allow a child to make a statement, though not under oath, and the statement and answers of the child to any questions posed by the court may be admitted in evidence.⁸⁷ Where in any criminal proceedings before the Court, a child called as a witness does not, in the opinion of the Court, understand the nature of an oath, his or her evidence may be received, though not given on oath, if, in the opinion of the Court, he or she possesses sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.⁸⁸

Yet, it is unclear as to how much the views of children are really taken into consideration in the courts of Gambia. The UN Committee on the Rights of the Child has criticised the limited respect for the views of the child in the community and the family, and the lack of information on whether the views of the child are constantly respected in the Children's Court.⁸⁹

There are no specific rules of evidence regarding investigations conducted by the Ombudsman. The procedures for these investigations are such as the Ombudsman considers appropriate in the individual circumstances.⁹⁰

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

The amount of time it takes to get a decision from a Gambian court depends on the type of case and the amount of evidence presented.⁹¹ Procedures instituted to reduce the time it takes to litigate a case to completion require parties to agree on deadlines for pre-trial matters and trial.⁹² If parties cannot agree, time frames may be imposed by the court.⁹³ Under these new procedures, most civil cases are disposed of within nine months.⁹⁴

⁸⁴ Children's Court Rules, § 13(7).

⁸⁵ *Ibid.*, § 38(2).

⁸⁶ Children's Act, § 100.

⁸⁷ Children's Court Rules, § 38(5).

⁸⁸ *Ibid.*, § 38(3).

⁸⁹ UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of Gambia*, para. 33.

⁹⁰ Ombudsman Act, section 12(1).

⁹¹ *Guide to Dispute Resolution in Africa: Gambia*, p. 122.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*

As only three equipped Children's Court, out of the five Children's Courts provided for by the Children's Act, are presently operational, it will likely take a considerable amount of time until a case is resolved.⁹⁵ According to the Gambian government, there are however plans to establish Children's Courts in every region of the country.⁹⁶

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

Litigants have a constitutional right to appeal within thirty days of judgment.⁹⁷ The Children's Act provides that cases involving children can be appealed from the Children's Court to the High Court, from the High Court to the Court of Appeal, and from the the Court of Appeal to the Supreme Court.⁹⁸ The Children's Court must explain to the parties their right to appeal from an adverse decision.⁹⁹

The outcome of an investigation by the Ombudsman can be challenged in the courts and the High Court is the final court of appeal in all matters in which the Ombudsman is a party.¹⁰⁰

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?

Negative decisions can have a lasting effect on future decisions as legal rulings may become binding precedent.¹⁰¹ The Supreme Court may depart from a previous decision, but all other courts shall be bound to follow the decisions of the Supreme Court on a matter of law.¹⁰²

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

In Gambia, the enforcement of awards in civil proceedings is governed by Chapter 8:02 of the Subordinate Courts (Civil Proceedings) Act, which provides that all judgments may be enforced against all persons bound thereby.¹⁰³ If any difficulty arises in enforcing a judgment, "any party interested may apply to the court, and the court may make the order thereon for the attendance and examination of any party or otherwise as may be just."¹⁰⁴

⁹⁵ UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of Gambia*, para. 82.

⁹⁶ *Combined second and third periodic reports of Gambia to the UN Committee on the Rights of the Child*, CRC/C/GAM/2-3, 28 October 2011, para. 36.

⁹⁷ *Guide to Dispute Resolution in Africa: Gambia*, p. 122.

⁹⁸ Children's Act, § 232.

⁹⁹ Children's Act, § 72(g).

¹⁰⁰ Ombudsman Act, section 17(2).

¹⁰¹ Constitution, section 126(2).

¹⁰² *Ibid.*

¹⁰³ Subordinate Courts (Civil Proceedings) Act, Ch. 8:02, Order VIII § 2(2).

¹⁰⁴ Subordinate Courts (Civil Proceedings) Act, Ch. 8:02, Order VIII § 4.

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.

The legal system of Gambia is based on English Common Law, but customary practices and the Sharia (Muslim) laws also form part of the legal system. While judicial powers are vested in the ordinary courts, Cadi courts have jurisdiction to apply the Sharia in matters relating to Islamic marriages, divorce, and inheritance, as provided by the Constitution.¹⁰⁵ In the exercise of their judicial functions, all courts and judges are subject to the Constitution, which is the Supreme Law of the land and other laws that apply in the country.¹⁰⁶

A further non-judicial mechanism available to children are Child Welfare Units which exist in every police station across the country. Once a complaint is made by a child or his or her representatives, the police can immediately report matters to the Department of Social Welfare.¹⁰⁷

Many challenges to children accessing justice in Gambia still exist. Some issues have been reported, for example, regarding the independence of NGOs in Gambia. The UN Committee on the Rights of the Child voiced concern about “reports indicating that activities by non-governmental organizations and civil society are closely monitored by the NGO Affairs Agency placed under the authority of the Office of the President, resulting in many organizations exercising self-censorship”.¹⁰⁸

The lack of a comprehensive legislative framework to curb child rights violations arising from child sex tourism and business activities, especially in the tourism sector, has also been noted by the Committee.¹⁰⁹ A general lack of accountability of business enterprises operating in the tourism industry in Gambia and the implications of this for children has been a long-standing concern.¹¹⁰

Finally, discrimination of certain groups of children is still widespread in Gambia, including legal and societal discrimination against girls, discrimination against children born out of wedlock, children with disabilities, children living in poverty, working children, children in street situations, children living in rural areas and refugee children.¹¹¹ A new crime of “aggravated homosexuality” has also recently been included in the 2014 Criminal Code according to which punishments of up to life imprisonment can be handed down, which, according to the Committee, encourages the persecution, stigmatization of and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, including children, and children from LGBTI families.¹¹²

¹⁰⁵ Constitution, section 134(4).

¹⁰⁶ *Combined second and third periodic reports of Gambia to the UN Committee on the Rights of the Child*, para. 6-7.

¹⁰⁷ *Ibid.*, para. 35.

¹⁰⁸ UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of Gambia*, para. 23.

¹⁰⁹ *Ibid.*, para. 25.

¹¹⁰ *Ibid.*, para 25-26.

¹¹¹ *Ibid.*, para. 29.

¹¹² *Ibid.*

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