

ACCESS TO JUSTICE FOR CHILDREN: SIERRA LEONE

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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?

Sierra Leone signed the CRC on 13 February 1990 and ratified it on 18 June 1990.¹ As the country follows a “dualist” approach to international law,² all international treaties require national/domestic legislation to be implemented. The Parliament adopted such legislation by enacting the Child Rights Act of 2007.³

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law. Pursuant to the Sierra Leone Constitution,⁴ laws made by or under the authority of Parliament have a higher legal hierarchy than other statutory instruments (e.g. treaties).⁵ However, the Child Rights Act of 2007 states that the CRC should guide interpretation of the statute.⁶

C. Has the CRC been incorporated into national law?

With the enactment of the Child Rights Act of 2007, Sierra Leone incorporated the CRC into its national legal order. Such incorporation was direct, as opposed to subject-by-subject, which means that the statute was adopted to incorporate the whole treaty and not isolated provisions of it.

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

As Sierra Leone has a “dualist” legal system, domestic courts enforce international treaties (including the CRC) only to the extent to which they are incorporated into national law. Therefore, domestic courts can enforce the CRC only in an indirect fashion, i.e., if they apply the domestic statute that incorporates the treaty (Child Rights Act of 2007).

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

¹ See

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

² See http://www.nyulawglobal.org/Globalex/Sierra_Leone1.htm.

³ See <http://www.sierra-leone.org/Laws/2007-7p.pdf>.

⁴ See <http://www.sierra-leone.org/Laws/constitution1991.pdf>.

⁵ See Sierra Leone Constitution, section 170(1).

⁶ See Child Rights Act of 2007, section 3(2).

The Child Rights Act of 2007, as noted above,⁷ is the implementing statute of the CRC. Therefore, in a child rights matter, domestic courts would use or apply the Child Rights Act of 2007, rather than the CRC itself. The available databases on Sierra Leone's case law do not show any cases in which the CRC was used or applied.⁸

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?

Under the High Court Rules of 2007,⁹ which regulates civil litigation in general, children and their representatives can bring civil cases in domestic courts to challenge violations of children's rights.

Further, the Child Rights Act of 2007 creates a specific system for the protection of the rights encompassed in the statute (life, maximum survival and development, name, nationality, opinion, etc.), a system in which multiple institutions (Village Child Welfare Committees, District Councils, Child Panels, and Family Court) intervene, each with its own different proceedings and remedies.¹⁰ Under this system, children and their representatives have the ability to challenge violations of statutory rights by bringing a case or complaint before the relevant institution.¹¹

With regard to criminal offenses affecting children, neither they, nor their representatives may bring a private prosecution against the offender. According to the Criminal Procedure Acts of 1965, the power to prosecute individuals for criminal offenses is vested exclusively in the Director of Public Prosecutions.¹²

Finally, the Child Rights Act of 2007 confers on children the right to be listened to and participate in all decisions affecting their welfare.¹³

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?

In general civil litigation, to bring a case before a domestic court, a child must act through a next friend or guardian *at litem*, who at the same time needs to be represented by a solicitor.¹⁴ Next friends or guardians *at litem* can be changed for "good cause" by court order,¹⁵ and their representation ceases when the child attains the age of 21.¹⁶

⁷ See Answer to Question I.A.

⁸ See <http://www.worldlii.org> and http://www.crin.org/Law/CRC_in_Court/index.asp.

⁹ See <http://www.sierra-leone.org/Laws/High%20Court%20Rules.pdf>.

¹⁰ See Child Rights Act of 2007, section 47 to 82.

¹¹ See Child Rights Act of 2007, 48(2)(j), 59, 68, 83(1), and 91.

¹² See Criminal Procedure Acts of 1965, sections 46(2) and (3).

¹³ See Child Rights Act of 2007, section 31.

¹⁴ See High Court Rules of 2007, order 14, rules 1(3) and (4).

¹⁵ See High Court Rules of 2007, order 14, rule 2(5).

¹⁶ See High Court Rules of 2007, order 14, rule 3.

The system created by the Child Rights Act of 2007 provides for proceedings outside general civil litigation that are generally informal and non-adversarial (by inquiry),¹⁷ regardless of whether the intervening institution is non-judicial (Village Child Welfare Committees, District Councils, and Child Panels) or judicial (Family Court). As a result, children can always act in their own name,¹⁸ except when applying for a maintenance order from the Family Court, where they have to be represented by a next friend.¹⁹

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

Cases concerning infants and young children would typically be brought by parents either together or separately as they have the right to act as the child's legal representative.²⁰ In addition, a guardian with the power to bring a case on a child's behalf can be appointed by the child's parents, subject to the approval of a court.²¹

There is, however, a group of cases that would typically be brought by a person other than the parents: child abuse or neglect cases where the parents are involved, and that could result in termination of parental rights.²² For these cases, the Child Rights Acts of 2007 gives District Councils the authority to initiate an investigation upon receiving information from any person.²³

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

The Sierra Leone Constitution does not provide for the right to free or subsidized legal assistance, even in criminal proceedings.²⁴

In the context of general civil litigation, the High Court Rules of 2007 contemplate the possibility to sue or defend as a pauper on proof that the person is not worth Le 1,000,000.²⁵ Once the court determines that the person qualifies as a pauper, a solicitor may be assigned to his case only if the courts consider it necessary.²⁶

The recently enacted Legal Aid Act of 2012²⁷ gives indigent plaintiffs and defendants, both in civil and criminal cases, the opportunity of obtaining free legal representation "if interests of justice requires so," upon application to

¹⁷ See Child Rights Act of 2007, sections 53 and 80.

¹⁸ See Child Rights Act of 2007, sections 48(2)(j), 53(2), 59, 68(a), 73(5), and 83(1)(a).

¹⁹ See Child Rights Act of 2007, section 91(2)(a).

²⁰ See Child Rights Act of 2007, section 36(1)(d).

²¹ See Child Rights Act of 2007, section 36(1)(e).

²² See Child Rights Act of 2007, section 63(2).

²³ See Child Rights Act of 2007, section 59.

²⁴ Section 23(5)(c) of the Sierra Leone Constitution recognizes the right of every criminal defendant to be defended by counsel of his own choice, but imposes no obligation on the State to provide counsel for those defendants that cannot afford the services of a lawyer.

²⁵ See High Court Rules of 2007, order 14, rule 10.

²⁶ See High Court Rules of 2007, order 14, rule 14.

²⁷ [See http://www.sierrali.org/sl/legislation/act/2012/6](http://www.sierrali.org/sl/legislation/act/2012/6).

the Legal Aid Board.²⁸

The Child Rights Act of 2007 confers children the right to legal representation in all proceedings before the Family Court.²⁹ Proceedings before other institutions, as mentioned above,³⁰ are generally informal and non-adversarial, and thus children have no right to be represented by a lawyer.

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

There is no provision in the law of Sierra Leone requiring parental or guardian consent for a case to be brought on a child's behalf. Nonetheless, a next friend or guardian *at litem* representing a child in a case cannot make implied admissions by not denying a fact contained in the opponent's pleadings,³¹ and cannot settle the claim without the court's approval.³²

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

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

First, a legal challenge where the interpretation or enforcement of the Sierra Leone Constitution is involved must be brought before the Supreme Court, and if a constitutional question arises in a proceeding initiated at another court, such proceeding has to be stayed and the question referred to the Supreme Court.³³

Second, a legal challenge to a potential violation can be brought before the High Court, following the rules of general litigation, in order to seek declaratory judgment, money damages, or some kind of specific performance.³⁴

Third, cases involving potential violations of the rights protected by the Child Rights Act of 2007 can be generally presented before a Village Child Welfare Committee³⁵ that can issue an instruction to make the violation cease.³⁶ Moreover, District Councils have authority to investigate cases of child abuse or neglect,³⁷ and the Family Court has jurisdiction over cases concerning parentage, custody, access and maintenance of children.³⁸

²⁸ See Legal Aid Act of 2012, section 20.

²⁹ Child Rights Act of 2007, section 81(1).

³⁰ See Answer to Question II.B.

³¹ See High Court Rules of 2007, order 14, rule 7.

³² See High Court Rules of 2007, order 14, rule 8.

³³ See Sierra Leone Constitution, sections 124 and 127(1).

³⁴ See High Court Rules, order 43, rules 1 and 3(3).

³⁵ See Child Rights Act of 2007, section 48(2)(j).

³⁶ See Child Rights Act of 2007, sections 48(2)(i) and 52(2).

³⁷ See Child Rights Act of 2007, section 58(2).

³⁸ See Child Rights Act of 2007, section 78.

Fourth, under the High Court Rules of 2007, challenges can take the form of “judicial review” proceedings. Children and their representatives may initiate such proceedings to obtain writs of prohibition, certiorari and mandamus, as well as injunctions.³⁹ A habeas corpus proceeding can be brought to challenge an unlawful detention.⁴⁰

Finally, individual complaints may be submitted to the Human Rights Commission of Sierra Leone. The Commission has the power to investigate or inquire into, on its own or on complaint by any person, any allegations of human rights violations.⁴¹ The Commission may, where it finds it necessary, appoint a legal practitioner to intervene, with leave of the court, in legal proceedings in cases which involve human rights issues over which the Commission has competence. Such intervention is restricted to issuing amicus curiae briefs dealing with the matter in question.⁴² It can recommend that compensation be paid to a victim of a human rights violation or to their families or legal representatives; award costs arising out of pursuing a complaint lodged at the Commission; recommend a change of policy, practice or legislation that has caused the violation; recommend the introduction of a law or the taking of action to prevent further violations; or recommend reparation or restoration of anything to the victim.⁴³

Regional mechanisms

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”).⁴⁴ All available domestic remedies must have been exhausted before bringing a case to the African Committee.⁴⁵ 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.⁴⁶ The African Committee will investigate the complaint and decide on the merits

³⁹ See High Court Rules of 2007, order 52, rule 1.

⁴⁰ See High Court Rules of 2007, order 53, rule 1.

⁴¹ The Human Rights Commission of Sierra Leone Act 2004, section 7(2), available at: <http://www.sierra-leone.org/Laws/2004-9p.pdf>.

⁴² Ibid., section 12.

⁴³ Ibid., section 11; <http://www.hrcsl.org/content/who-we-are>.

⁴⁴ 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/>.

⁴⁵ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at: <http://acerwc.org/the-committees-work/communications/>.

⁴⁶ 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>.

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.⁴⁷

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”).⁴⁸ All available domestic remedies must have been exhausted before bringing a case to the African Commission.⁴⁹ 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.⁵⁰ 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.⁵¹ 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.⁵²

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.⁵³ This includes acts or inaction of Community Officials which violate the rights of individuals.⁵⁴ 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.⁵⁵ There are, however a number of conditions: the complaint must not be anonymous or be pending before another

⁴⁷ Ibid.

⁴⁸ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

⁴⁹ Ibid., Article 56(5).

⁵⁰ 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/>.

⁵¹ 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>.

⁵² 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>.

⁵³ 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.

⁵⁴ Ibid., Article 4; Protocol on the Community Court of Justice, Article 10(c).

⁵⁵ 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>.

international court;⁵⁶ representation by an agent or lawyer is required;⁵⁷ 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.⁵⁸ Judgments of the Court of Justice are binding on the Member States, Institutions of the Community, individuals and corporate bodies.⁵⁹

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

The Supreme Court, in a case of constitutional interpretation or enforcement, makes a declaration on the question at issue, and has the power to issue any kind of order that is necessary to give effect to such declaration.⁶⁰

In an ordinary civil suit, as noted before,⁶¹ courts can provide different remedies, such as declaratory judgment, money damages, and specific performance, though this last type of relief is not available against the Government.⁶² Additionally, while the action is pending a court might issue, upon application of a party, an order of injunction or an order for the detention, custody, or preservation of any property related to the case.⁶³

Within the system of the Child Rights Act of 2007, Village Child Welfare Committees deal with statutory violations by issuing judicially enforceable instructions.⁶⁴ District Councils can, after concluding a child abuse or neglect investigation, remove a child from the custody of his parents or guardians⁶⁵ and apply for a care order to terminate parental rights,⁶⁶ or a supervision order to place the child under the supervision of a probation officer.⁶⁷ Finally, Family Court provides different types of relief, in accordance with the nature of the case: parentage order, custody, periodic access, and maintenance.⁶⁸

With regard to “judicial review” proceedings, as previously explained,⁶⁹ there are four possible remedies: a writ of prohibition to stop an ongoing illegal conduct; a writ of certiorari to obtain judicial review of administrative determinations; a writ of mandamus to force the production of an act that is mandated by law; and an injunction, an equitable remedy to order a person

⁵⁶ Supplementary Protocol A/SP.1/01/05, Article 4; Protocol on the Community Court of Justice, Article 10(d),

⁵⁷ Protocol on the Community Court of Justice, Article 12.

⁵⁸ Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).

⁵⁹ Revised Treaty of the Economic Community of West African States, Article 15(4), available at: http://www.courtecowas.org/site2012/pdf_files/revised_treaty.pdf.

⁶⁰ See Sierra Leone Constitution, sections 127(1) and (2).

⁶¹ See Answer to Question III.A.

⁶² See State Proceedings Act of 2000, section 18(1)(a). This statute can be found at: <http://www.sierra-leone.org/Laws/2000-14.pdf>.

⁶³ See High Court Rules, order 35, rules 1 and 2.

⁶⁴ See Child Rights Act, sections 48(2)(i), 52(2), and 55(2).

⁶⁵ See Child Rights Act, section 62(3).

⁶⁶ See Child Rights Act, section 63.

⁶⁷ See Child Rights Act, section 64.

⁶⁸ See Child Rights Act, sections 83, 86, 87, and 91.

⁶⁹ See Answer to Question III.A.

to do or refrain from doing a certain act or acts. Like specific performance, an injunction is also not an available remedy against the Government.⁷⁰

Lastly, termination of an unlawful detention is the relief provided in a habeas corpus proceeding. It is worth noting that courts have the power to temporarily release the alleged victim while the action is pending.⁷¹

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?

Although the general rule for civil litigation is that parties must be identified, the High Court Rules of 2007 make an exception in cases concerning construction of a written instrument. This exception encompasses challenges to statutes and regulations, but not to actions. Under this exception, a person may be appointed to represent another person (even an unborn child) or a class – where specific child victims do not need to be named – that are or may be interested in or affected by the proceedings, whenever one of the following conditions is present: 1) the person, class, or some member of the class cannot be ascertained; 2) the person, class, or some member of the class, though ascertained, cannot be found; or 3) the court, even though the person or class members can be ascertained and found, consider it proper for the purposes of saving expense.⁷²

Cases before the Family Court, on the other hand, require children to be identified, but their identity cannot be made public.⁷³

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

It was mentioned above⁷⁴ that the High Court Rules of 2007 allow for class litigation, even without naming individual victims, in cases concerning the construction of a written instrument. In such cases, a representative is appointed to litigate on behalf of the class, and every decision made by the court is binding upon all class members, including those who are not a party in the case.⁷⁵

Group litigation is also a possibility, though individual victims must be identified. The High Court Rules of 2007 allow two or more persons to be joined as plaintiffs when their cases share some common question of law or fact, and their individual causes of action arise out of the same transaction or series of transactions.⁷⁶

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?

⁷⁰ See State Proceedings Act of 2000, section 18(1)(a).

⁷¹ See High Court Rules, order 53, rule 2(4).

⁷² See High Court Rules, order 18, rule 15.

⁷³ See Child Rights Act of 2007, section 82.

⁷⁴ See Answer to Question III.C.

⁷⁵ See High Court Rules, order 18, rule 15(3).

⁷⁶ See High Court Rules, order 18, rule 4(1).

There is no provision in the law of Sierra Leone specifically granting non-governmental organizations the power to file challenges or intervene in cases related to children's rights violations. Nevertheless, the class-litigation provision of the High Court Rules states that, to represent the class, the court "may appoint one or more persons."⁷⁷ Because the provision does not clarify who that person/s might be or the qualifications required (if any), it is uncertain whether non-governmental organizations can act as class representatives.

Furthermore, in the context of the Child Rights Act of 2007, a Child Panel, although not a non-governmental organization, has the authority to mediate in criminal and civil matters where a child is involved.⁷⁸

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?

In accordance with the Sierra Leone Constitution, the High Court has jurisdiction over both civil and criminal matters.⁷⁹ Consequently, civil cases, "judicial review," and habeas corpus proceedings can be filed in the High Court. A case has to be initiated by the filing of – depending on the nature of the case – a writ of summons, an originating summons, or an origination motion or petition, which then has to be served on the adversary. Court fees normally apply.⁸⁰ Where the Government is being sued, a notice of intention to commence proceedings has to be served on the Government at least three months before the initial filing.⁸¹

As to the cases that fall within the reach of the Child Rights Act of 2007, they can be filed in a Village Child Welfare Committee,⁸² unless it is a child abuse or neglect matter, which has to be presented before a District Council for investigation.⁸³ For cases concerning parentage, custody, access and maintenance of children, an application to the Family Court is required.⁸⁴

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 mentioned above, in an ordinary civil case, there is the possibility to sue or defend as a pauper on proof that the child is not worth Le 1,000,000, and a

⁷⁷ See High Court Rules of 2007, order 18, rule 15 (1).

⁷⁸ See Child Rights Act of 2007, sections 71(2), 74, and 75.

⁷⁹ See Sierra Leone Constitution, section 132(1).

⁸⁰ For more detail, see High Court Rules of 2007, orders 5-11, 52, and 53.

⁸¹ See State Proceedings Act of 2000, section 3(1).

⁸² See Child Rights Act of 2007, section 48(2)(j).

⁸³ See Child Rights Act of 2007, section 59.

⁸⁴ See Child Rights Act of 2007, section 78.

court could assign a solicitor to his case only if it considers it necessary.⁸⁵ While a child litigating as a pauper is exempted from the payment of any court fee,⁸⁶ there is uncertainty as to his potential liability for other expenses related to the proceedings (e.g. costs incurred in by the opposing party), as a court has full power to determine by whom and to what extent the costs of the proceedings are to be paid,⁸⁷ and there is no specific provision excluding paupers from being potentially liable for such costs.

It was also noted above⁸⁸ that indigent plaintiffs and defendants in civil and criminal matters can obtain free legal representation by filing an application with the Legal Aid Board, and that, in Family Court Proceedings, children have the right to legal representation.

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?

There are a few organizations in Sierra Leone that offer pro bono legal services. Some of these are:

- Timap for Justice;⁸⁹
- BRAC;⁹⁰ and
- LAWCLA.⁹¹

In addition, children and their representatives can obtain free legal services from some NGOs specializing in children's rights, like:

- Center for Human Rights;⁹² and
- Children and Women Empowerment Society.⁹³

The Legal Practitioners Act of 2000,⁹⁴ which regulates the legal profession, expressly declares that fee agreements between a lawyer and a client in which payment is conditioned upon success are of no legal validity.⁹⁵

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?

⁸⁵ See Answer to Question II.D.

⁸⁶ See High Court Rules of 2007, order 14, rule 13.

⁸⁷ See High Court Rules of 2007, order 57, rule 1(1).

⁸⁸ See Answer to Question II.D.

⁸⁹ See <http://www.timapforjustice.org>.

⁹⁰ See <http://sierraleone.brac.net/index.php>.

⁹¹ LAWCLA has no website, but can be contacted at: 15D Old Railway Line, Freetown, Sierra Leone – Tel: +232-22-240440.

⁹² Center for Human Rights has no website, but can be contacted at: 19 Main Road, Congo Town, Freetown, Sierra Leone – Tel: +232-33-187585 – Email: centhrtsl@yahoo.com.

⁹³ Children and Women Empowerment Society has no website, but can be contacted at: Room 30-31, National Stadium Main Bowl, BrookeFields, Freetown, Sierra Leone – Tel: +232-76-681763/+232-76-635937 – Email: cwessl@yahoo.com.

⁹⁴ See <http://www.sierra-leone.org/Laws/2000-15.pdf>.

⁹⁵ See Legal Practitioners Act of 2000, section 44(b).

Normally, a civil case based on tort or contract liability would have to be brought within 6 years from the accrual of the cause of action.⁹⁶ A much shorter period applies in “judicial review” proceedings, where the application has to be made no later than 3 months from the date of the occurrence of the event giving grounds for making the application.⁹⁷ Lastly, the Family Court has jurisdiction over cases concerning a parentage order, custody, periodic access, and maintenance, as long as there is a child involved, a condition that ceases when the person reaches the age of 18.⁹⁸

- 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 High Court Rules of 2007 set out the admissible kinds of evidence in civil proceedings, including documents, witness statements and testimony, and expert testimony.⁹⁹ There are no specific provisions dealing with evidence to be presented or introduced by children.

Although the Child Rights Act of 2007 contains no evidence-related provisions, it guarantees children the opportunity of expressing their opinion in every matter affecting their welfare.¹⁰⁰

- 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 particular rules or guidelines in Sierra Leone law with regards to the timing of judicial decisions. Still, it would be fair to assume that cases take a long time to be resolved, probably several years, as it has been reported that there are insufficient numbers of judges, magistrates, and prosecuting attorneys, as well as unprofessional conduct and absenteeism by court personnel.¹⁰¹ Courts are forced to operate from the overcrowded law-courts building in the center of Freetown, which lacks the most basic infrastructure and equipment, and faces acute problems such as infrequent electricity supply.¹⁰²

There are no publicly available updated statistics on the time it takes for cases to be heard by Sierra Leone’s courts.

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

According to the Sierra Leone Constitution, all decisions made by the High Court can be appealed as of right before the Court of Appeals,¹⁰³ and decisions of the latter court in civil and criminal matters can be also appealed

⁹⁶ See Limitations Act of 1961, section 3(1)(a).

⁹⁷ See High Court Rules of 2007, order 52, rule 3(1).

⁹⁸ See Child Rights Act of 2007, section 1(2).

⁹⁹ See High Court Rules of 2007, orders 27, 29, 31, 32, 41, and 42.

¹⁰⁰ See Child Rights Act of 2007, sections 53(2), 73(5), and 81(2).

¹⁰¹ See Human Rights Watch January 2011 Report on Sierra Leone at: <http://www.hrw.org/world-report-2011/sierra-leone>.

¹⁰² See UN Department of Economic And Social Affairs January 2004 Report at: <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan023286.pdf>.

¹⁰³ See Sierra Leone Constitution, section 129(2).

as of right before the Supreme Court.¹⁰⁴

Within the system of the Child Rights Act of 2007, children affected by decisions of a Village Child Welfare Committee may appeal – as of right – to a Child Panel.¹⁰⁵ Equally, children have a right to appeal decisions of the Family Court¹⁰⁶ to the High Court, which has supervisory jurisdiction over all inferior courts.¹⁰⁷

- 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?

Being a common law jurisdiction,¹⁰⁸ precedent plays an important role in Sierra Leone's courts. By constitutional mandate, all courts are bound to follow their own and higher courts' decisions.¹⁰⁹ Only the Supreme Court can depart from precedent, though it is expected to generally follow it.¹¹⁰ As a result, the impact of a bad decision could last many years.

There are no publicly available reports noting the political backlash brought about by particular cases.

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

The High Court Rules of 2007 vest courts with different powers to enforce their decisions.

To enforce a judgment ordering the payment of a sum of money, a successful party to a case can: 1) obtain a writ *feri facias*, and thus have a law enforcement officer collecting the debt from the defendant; 2) initiate garnishee proceedings, in order to recover from a third party who owes to or holds money or property for the defendant; or 3) apply for a writ of sequestration, and have the money or other defendant's property seized.¹¹¹

A judgment ordering the defendant to do or to refrain from doing a particular act can be enforced by: 1) a writ of sequestration of the defendant's property; 2) an order of committal, which would hold the defendant in contempt to the court; or 3) having the act done by the successful party or a third party.¹¹²

Judgments for the payment of money against the Government are to be enforced differently. The successful party to the case has to apply to the High Court for a certificate stating the particulars of the judgment and the

¹⁰⁴ See Sierra Leone Constitution, section 123(1).

¹⁰⁵ See Child Rights Act of 2007, section 54.

¹⁰⁶ See Child Rights Act of 2007, section 81(4).

¹⁰⁷ See Sierra Leone Constitution, section 134.

¹⁰⁸

See

http://www.nyulawglobal.org/Globalex/Sierra_Leone1.htm#_Sources_of_Law_in%20Sierra%20Leone.

¹⁰⁹ See Sierra Leone Constitution, sections 122(2) and 128(3).

¹¹⁰ See Sierra Leone Constitution, section 122(2).

¹¹¹ See High Court Rules of 2007, orders 46, 48, and 50.

¹¹² See High Court Rules of 2007, orders 46 and 51.

amount to be paid.¹¹³ Such certificate must then be served on the Attorney General, who must make the payment.¹¹⁴ Executions, attachments or other similar resources are not available against the Government.¹¹⁵

- 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 system created by the Children Rights Act of 2007, if properly implemented, can be a highly valuable tool to deal with children's rights violations outside of the formal court system. As noted above,¹¹⁶ this statute calls for the creation of multiple institutions, most of them not being judicial in nature. Village Child Welfare Committees, District Councils, and Child Panels are able to offer proceedings that are more informal and flexible, where the child has an opportunity to be heard without having to speak through any representatives, and where, as a result, a solution more suitable to the child's situation can be reached.¹¹⁷ Most importantly, these institutions are in a better position to generate a setting in which the child could be better understood, as they are not to be integrated by professional judges or lawyers, but by people who have a deeper understanding of the problems at issue. In fact, the law requires these institutions to be integrated by public officials, professional social workers, members of local communities, representatives of NGOs and the Church, and even a local boy and a girl representing other children in the community.¹¹⁸

It is also important to highlight the role that the National Commission for Children is called upon to play. Another institution created by the Children Rights Act of 2007,¹¹⁹ it is vested with the highest political role in connection with children's rights. In this sense, the Commission's main function is that of monitoring and coordinating the implementation of the CRC and the statute.¹²⁰

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

¹¹³ See State Proceedings Act of 2000, section 21(1).

¹¹⁴ See State Proceedings Act of 2000, section 21(2) and (3).

¹¹⁵ See State Proceedings Act of 2000, section 21(4).

¹¹⁶ See Answers to Questions II.A and II.B.

¹¹⁷ See Child Rights Act of 2007, sections 53 and 73(5).

¹¹⁸ See Child Rights Act of 2007, sections 47(2), 49(2), and 72(1).

¹¹⁹ See Child Rights Act of 2007, section 4.

¹²⁰ See Child Rights Act of 2007, section 11.