

ACCESS TO JUSTICE FOR CHILDREN: TANZANIA

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

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

The Tanzanian Government ratified the CRC in 1991. It acceded to the Optional Protocol on the Involvement of Children in Armed Conflict in November 2004 and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography in April 2003. It further ratified the African Charter on the Rights and Welfare of the Child (ACRWC) in March 2003.¹

Tanzania follows a dualist legal system.² Under the dualist system, international instruments, such as the foregoing treaties, only become part of the domestic legal order after parliament passes a bill domesticating the instrument.

B. Does the CRC take precedence over national law?

Under Tanzania's dualist legal system, international instruments, such as the CRC, do not take precedence over national law.

C. Has the CRC been incorporated into national law?

In 2009, the Tanzanian Parliament enacted the Law of the Child Act to domesticate the CRC.³ The Act consolidates all former laws relating to the promotion and protection of children and repeals, replaces and/or amends any laws which were repugnant to the Convention.⁴

The Law of the Child Act lays out the system for ensuring justice for children, whether as offenders, witnesses, or victims. The Act enumerates seven rights of a child, including: the right to not be discriminated against, the right to a name and nationality, the right to grow up with parents, the right to parental property, the right of opinion, the right to be free from harmful employment, and the right to protection from torture and degrading

¹ Tanzania 3rd, 4th and 5th Report on the Implementation of the Convention of the Rights of the Child 2005-2011, January 2012, available at: <http://www.childrightsforum.org/files/Tanzania%20CRC%20State%20Reports%203%20up%20to%205%20Approved%202%20Jan%202012.pdf>.

² See Art. 63(3) of the Constitution of the United Republic of Tanzania, available at: <http://www.judiciary.go.tz/downloads/constitution.pdf>.

³ Law of the Child Act 2009, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_151287.pdf.

⁴ UNICEF, 'Tanzania passes landmark Law of the Child', 6 November 2009, available at: http://www.unicef.org/infobycountry/tanzania_51662.html.

treatment.⁵ Further, the Act states that parents have two main duties: the duty to maintain a child by providing them with necessities and the duty to protect and guide the child.⁶

While the Act attempts to incorporate most of the principles enshrined in the CRC and the ACRWC and to amend certain laws, certain aspects remain inconsistent with the CRC. For example, the Act has not amended section 13 (1) and (2) of the Law of Marriage Act 1971, which allows the marriage of girls from the age of 15.⁷ Corporal punishment is also not prohibited.⁸

The United Republic of Tanzania is comprised of Mainland Tanzania and the separate Republic of Zanzibar. The arrangement between Mainland Tanzania and the Republic of Zanzibar is akin to a federal arrangement and requires that the two republics enact separate laws concerning domestic issues. In 2011, Zanzibar signed into law a comprehensive children's rights law, the Children's Act.⁹ As the Children's Act is very similar to the Tanzanian Law of the Child Act, this summary only addresses the Tanzanian Law of the Child Act.

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

The CRC cannot be enforced directly, but the substance of its provisions can be enforced through the Law of the Child Act.

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

Obtaining coherent information on case law in Tanzania is impeded by the lack of a comprehensive search-able case law database. Search engines for court decision do exist¹⁰ but do not list all cases and are often not up-to-date. It is therefore difficult to research publicly available information with regard to the enforcement of the Law of the Child Act or the CRC itself in Tanzania.

But cases citing the CRC do exist. One example is the case of Jackson Davis v. The Republic¹¹, which was decided by the Court of Appeal of Tanzania on

⁵ Law of the Child Act, Sections 5-6, 10-13.

⁶ Ibid., Sections 8-9.

⁷ Part XIII sub part 1 sections 161 to 166 of the Child Act amends some sections of the Law of Marriage related to age, infants and wives but it does amend section 13 (1) and (2), which has been used to marry girls from the age of 15. The Child Act did not amend Chapter 16 section 130 (2) (e) of the Penal Code, which defines rape but makes an exception where the girl concerned is the perpetrator's wife and aged at least 15 years: Comments provided by the Legal and Human Rights Centre, Tanzania, August 2015.

⁸ For example, section 177 of the Child Act amends section 131 of the Penal Code by substituting life imprisonment with five years' imprisonment with corporal punishment: Comments provided by the Legal and Human Rights Centre, Tanzania, August 2015.

⁹ UNICEF, *Children's Act provides new tools for for protecting child rights in Zanzibar*, 25 August 2011, available : http://www.unicef.org/infobycountry/tanzania_59658.html.

¹⁰ United Republic of Tanzania Judiciary Database, available at: <http://www.judiciary.go.tz:8081/help/index.jsp>; Southern African Legal Information Institute, Tanzania Court of Appeal decisions, available at: <http://www.saflii.org/tz/cases/TZCA/>.

¹¹ Jackson Davis v. The Republic, full judgment available at: <http://www.saflii.org/tz/cases/TZCA/2009/2.html>.

20 November 2009. The case cites Article 3 of the CRC - best interests of the child - in addition to several domestic provisions, but applies the CRC in a way which can be argued is not coherent with the CRC as the court disallowed a child's testimony merely because it was given by a child.¹²

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 can bring a case in domestic courts to challenge a violation of their rights in two different ways. First, a child can bring a claim that any of the rights enumerated in the Law of the Child Act have been violated. The Law of the Child Act established a Juvenile Court to hear matters relating to children.¹³ The jurisdiction of the Juvenile Court extends to any offence other than homicide. But despite the legal requirement that children's cases be heard in Juvenile Courts, there currently exists only one Juvenile Court in Mainland Tanzania.¹⁴ However, according to the Law of the Child Act, the Chief Justice can designate any premises used by a primary court ad hoc to serve as a Juvenile Court.¹⁵

Secondly, a child can bring a separate legal challenge claiming that the rights afforded to him or her under the Bill of Rights included in Tanzania's Constitution have been violated. Similar to its U.S. equivalent, the Tanzania Constitution features a Bill of Rights which protects basic rights and fundamental freedoms to which every person is entitled. Section 4 of the Basic Rights and Duties Enforcement Act ("BRDEA") provides that if "any person" alleges that any of the provisions of the Bill of Rights has been, is being, or is likely to be contravened in relation to him or her, he or she may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the High Court for redress.¹⁶ The combined 3rd, 4th, and 5th state reports by Tanzania to the UN Committee on the Rights of the Child on the implementation of the CRC in Tanzania between 2005-2010 clarified that the reference to "any person" implies that every person, including a child, may bring a petition to the High Court for redress in the event that any of the basic rights and fundamental freedoms promulgated in the Bill of Rights is violated.¹⁷ The High Court has the authority to make any such orders as shall be necessary and appropriate to secure the applicant the enjoyment of the basic rights, freedoms and duties conferred or imposed on him under the Bill of Rights.

¹² See CRIN case commentary, available at: <http://crinarchive.org/Law/instrument.asp?InstID=1675>.

¹³ Ibid., Section 97.

¹⁴ African Committee of Experts on the Rights and Welfare of the Child, *Harmonisation of Laws on Children in Tanzania: Country Brief*, 2012, p. 10, available at: <http://www.acerwc.org/wp-content/uploads/2012/05/English-ACERWC-Tanzania-Harmonisation-of-Laws-on-Children.pdf>.

¹⁵ Law of the Child Act, Section 97(2).

¹⁶ Tanzania Basic Rights and Duties Enforcement Act, at Section 4, available at: <http://polis.parliament.go.tz/PAMS/docs/33-1994.pdf>.

¹⁷ Tanzania 3rd, 4th, and 5th Reports on the Implementation of the Convention on the Rights of Child 2005-2001, p. 21.

- 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?

According to the Tanzanian Civil Procedure Code (1966), every suit by a minor shall be instituted in his name by an adult, called a next friend, or the child's guardian.¹⁸ Any person who is of sound mind and has attained majority may act as a next friend of a minor or as his guardian for the suit, provided that their interest is not adverse to the minor.¹⁹ Where a suit is instituted on behalf of a minor without a next friend, the defendant may apply to have the charges dropped.²⁰ In sum, a child is required to have an adult representative to file a suit under both the Law of the Child Act and the Bill of Rights.

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

There is no distinction in Tanzanian law between children of different ages. Cases regarding infants or young children would be brought in the same manner described above under II.B. and would require a next friend to bring a case on behalf of the infant or young child.

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

There is no government funded legal aid system, except in capital offence cases, such as murder and treason.²¹ However, there have been reports that Tanzania will, in the near future, put in place a legal framework to provide legal aid and supervision of aid services to the less fortunate outside of capital offence proceedings as well.²² The government of Denmark, for example, has committed US \$10 million towards the effort of creating a government run legal aid system in Tanzania.²³ Currently, indigent plaintiffs must rely on NGOs, civil society organisations, or lawyers working pro bono to provide them with legal assistance. Please see section IV.B. for further details on alternative forms of legal assistance in Tanzania..

- 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)?

According to Order XXXI, Section 4 of the Civil Procedure Code, any person who is of sound mind and has attained the age of majority may bring

¹⁸ Civil Procedure Code (1966), Order XXXI, Section 1, available at: http://www.tanzania.go.tz/egov_uploads/documents/CIVIL%20PROCEDURE%20CODE.pdf.

¹⁹ Ibid., Section 4.

²⁰ Ibid., Section 2.

²¹ See Tanzania's Legal Aid (Criminal Proceedings) Act, available at: http://www.tanzania.go.tz/egov_uploads/documents/Legal%20Aid%20%28Criminal%20Proceedings%29%20Act.pdf.

²² AllAfrica, *Tanzania: Free Legal Aid Soon Becoming Necessity to All and Sundry*, 2 August 2013, available at: <http://allafrica.com/stories/201205180040.html>.

²³ Ibid.

a suit on behalf of a minor as long as their interests are not adverse to the minor.²⁴

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?

There are three ways of bringing a legal challenge to remedy a violation of children's rights in Tanzania: two in the domestic courts as described above under II.A. and one with the Commission for Human Rights and Good Governance.

First, a case can be filed with the High Court alleging that the conduct which is being challenged violated the Bill of Rights of the Constitution. As shown above, the BRDEA allows any person, including children, to apply to the High Court for redress in the event that any of their basic rights and fundamental freedoms is violated.²⁵

Secondly, a challenge can be brought in front of the Juvenile Court alleging that one of the rights enumerated in the Law of the Child Act has been violated. A social welfare office may also independently seek a care order from the Juvenile Court on account of these rights being violated or if they determine that a child is in need of care and protection.²⁶ The Child Act lists seventeen specific situations when a child is determined to be in need of care and protection, including, but not limited to, where the child: is an orphan; has been neglected or ill-treated by the person who has custody of the child; is destitute; or is under the care of a guardian who is unfit for the care of the child.²⁷

Thirdly, a child could file a petition to the Commission for Human Rights and Good Governance (CHRAGG) for redress.²⁸ The CHRAGG is a quasi-judicial national human rights institution. The core function of the CHRAGG is to promote, protect and preserve human rights and duties of the citizens of Tanzania. CHRAGG can resolve any complaint or rectify any act or omission emanating from a violation of any fundamental right or acts of mal-administration by mediation, conciliation, or negotiation.²⁹ The CHRAGG has a special desk for children and is currently working on rules of procedure through which children can lodge and process their complaints before it.³⁰

²⁴ Civil Procedure Code (1966), Order XXXI, Section 4.

²⁵ Tanzania Basic Rights and Duties Enforcement Act, at Section 4.

²⁶ The Law of the Child Act, Part III, 18 (2009).

²⁷ *Ibid.*, Part III, 16.

²⁸ The website of the Commission for Human Rights and Good Governance is available at: <http://www.chragg.go.tz/>.

²⁹ Tanzania 3rd, 4th, and 5th Reports on the Implementation of the Convention on the Rights of Child 2005-2001, p. 26-28.

³⁰ *Ibid.*, 63.

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”).³¹ All available domestic remedies must have been exhausted before bringing a case to the African Committee.³² 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.³³ 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.³⁴

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”).³⁵ All available domestic remedies must have been exhausted before bringing a case to the African Commission.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; 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.³⁷ 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.³⁸ If the case relates to serious or

³¹ 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/>.

³² African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at:

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

³³ 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>.

³⁴ Ibid.

³⁵ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at:

<http://www.achpr.org/instruments/achpr>.

³⁶ Ibid., Article 56(5).

³⁷ 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/>.

³⁸ 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

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.³⁹

African Court on Human and Peoples' Rights

Individuals or NGOs with observer status before the African Commission may bring their case to the African Court on Human and Peoples' Rights⁴⁰ alleging violations of the African Charter.⁴¹ All available domestic remedies must have been exhausted before bringing a case to the Court.⁴² The complaint must include, amongst other things, details of the applicant's identity, notwithstanding his/her request to remain anonymous.⁴³ The complaint must be written in one of the official languages of the Court,⁴⁴ and must be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court.⁴⁵ Applicants are entitled to be represented or to be assisted by legal counsel and/or by any other person of the applicant's choice.⁴⁶ The Court may, in the interest of justice, provide free legal representation and/or legal assistance to the applicant.⁴⁷ If the Court finds that there has been a violation of the African Charter, it will make "appropriate orders to remedy the violation, including the payment of

procedure', 2012, available at:

<http://co-guide.org/mechanism/african-commission-human-and-peoples-rights-communication-procedure>.

³⁹ 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>.

⁴⁰ The African Court on Human and Peoples' Rights will be incorporated into the African Court of Justice and Human Rights once the Protocol on the Statute of the African Court of Justice and Human Rights comes into force. The Court's Human Rights Section will have jurisdiction over human rights instruments including the African Charter on the Rights and Welfare of the Child and the African Charter on Human and Peoples' Rights. Individuals and NGOs accredited to the African Union or its organs will be able to submit complaints to the Court provided that the State concerned has made a declaration recognising the Court's competence to receive such complaints: see A4ID, 'African Court of Human and Peoples' Rights', 27 February 2012, available at:

<http://www.a4id.org/sites/default/files/user/African%20Court%20of%20Human%20and%20People%27s%20Rights.pdf>; As at January 2015, Tanzania has signed but not yet ratified this Protocol: Coalition for an Effective African Court on Human and Peoples' Rights, 'Ratification status: Protocol on the Statute of the African Court of Justice and Human Rights', 12 July 2014, available at:
http://www.africancourtcoalition.org/index.php?option=com_content&view=article&id=87:ratification-status-protocol-on-the-statute-of-the-african-court-of-justice-and-human-rights&catid=7:african-union&Itemid=12.

⁴¹ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, Articles 5(3) and 34(6), available at:

<http://www.achpr.org/instruments/court-establishment>.

⁴² Ibid., Article 6(2).

⁴³ African Court on Human and Peoples' Rights - Rules of Court, Rules 34 and 40, available at:

http://www.african-court.org/en/images/documents/Court/Interim%20Rules%20of%20Court/Final_Rules_of_Court_for_Publication_after_Harmonization_-_Final_English_7_sept_1_.pdf.

⁴⁴ Ibid., Rule 34; the official languages of the Court are: Arabic, English, French, Portuguese, Spanish, Kiswahili and any other African language.

⁴⁵ Ibid., Rule 40.

⁴⁶ Ibid., Rule 28.

⁴⁷ Ibid., Rule 31.

fair compensation or reparation”⁴⁸.

East African Court of Justice

Any individual or NGO who is resident in Tanzania may file a complaint with the East African Court of Justice about the legality of any Act, regulation, directive, decision or action of the State on the grounds that it is unlawful or violates the rule of law.⁴⁹ The Court has jurisdiction over the interpretation and application of the Treaty Establishing the East African Community (EAC Treaty), and will have human rights jurisdiction at a later date.⁵⁰ Despite the current lack of explicit jurisdiction over human rights, the Court has decided cases involving individual rights.⁵¹ A complaint must be lodged within two months of the decision or action complained of.⁵² There is no requirement to exhaust domestic remedies before bringing a complaint to the Court. The Court issues declarations as to whether particular acts or laws infringe the EAC Treaty, and can recommend specific amendments to laws to bring them in conformity with the Treaty. Court judgments can be appealed to the Appeals Chamber of the Court,⁵³ and are binding.⁵⁴

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

The High Court is vested with the power to make all such orders as shall be necessary and appropriate to secure the applicant the enjoyment of the basic rights, freedoms, and duties conferred or imposed on him under the Bills of Rights.⁵⁵ This broad power includes granting children monetary damages, allowing actions challenging a law or decision of a public body or agency, injunctions to stop harmful conduct, and criminal procedures against offenders.

The Juvenile Court can hand down criminal judgements for child offenders and determine applications relating to child care, maintenance and protection.⁵⁶

The Law of the Child Act also provides for a number of correctional measures. For the protection or discipline of a child, cases can be disposed of by ordering release to a parent or guardian directly or through a repatriation

⁴⁸ Ibid., Article 27(1).

⁴⁹ Treaty Establishing the East African Community, Article 30(1), available at: <http://www.eac.int/treaty/>.

⁵⁰ Ibid., Article 27; In May 2005, the Council of Ministers issued a Draft Protocol to Operationalise the Extended Jurisdiction of the East African Court of Justice, but the protocol has not yet been approved: <http://www.ijrcenter.org/regional-communities/east-african-court-of-justice/>.

⁵¹ See Open Society Justice Initiative, ‘Human rights decisions of the East African Court of Justice’, June 2013, available at:

<http://www.opensocietyfoundations.org/sites/default/files/east-african-court-digest-june-2013-20130726.pdf>

⁵² Treaty Establishing the East African Community, Article 30(2).

⁵³ Ibid., Article 35A.

⁵⁴ Open Society Foundations, ‘East African Court of Justice’, June 2013, available at:

<http://www.opensocietyfoundations.org/fact-sheets/east-african-court-justice>.

⁵⁵ Art. 30(4) of the Constitution of the United Republic of Tanzania.

⁵⁶ The Law of the Child Act, Part IX(a), 98 (2009).

order, committal to the care of a fit person or an approved voluntary institution, placement under supervision of an approved officer or a probation officer, or committal to an approved school.⁵⁷

- 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?

The Tanzanian Civil Procedure Code provides that every suit by a minor shall be instituted in the name of a person who shall be called the next friend of the minor.⁵⁸ As there are no provisions in the Code which would allow for the identity of a plaintiff to be withheld, every challenge needs to name at least one specific victim.

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

The Civil Procedure Code states that “[w]here there are numerous persons having the same interest in one suit, one or more of such persons may, with permission of the court, sue or be sued, or may defend in such suit, on behalf of or for the benefit of all persons so interested.”⁵⁹ Under this provision, one representative of a group of affected children can bring a claim on behalf of the whole group, but it appears that the representative’s own name has to be enclosed.

- 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?

A representative from an NGO can act as a next friend for a minor and bring a case on behalf of a child in this capacity.⁶⁰ Yet, there are no provisions which would allow for an NGO to file challenges on their own behalf without representing an individual child victim.

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?

Cases brought under the Law of the Child Act must be filed in the Juvenile Court. The Act does not prescribe a set procedure for filing an action; rather, it states that “[t]he procedure for conducting proceedings by the Juvenile Court in all matters shall be made by the Chief Justice.”⁶¹

⁵⁷ The Law of the Child Act, Part IX(d), 119 (2009).

⁵⁸ Civil Procedure Code (1966), Order XXXI, Section 1.

⁵⁹ Civil Procedure Code (1966), Order I, Section 8(1).

⁶⁰ Civil Procedure Code(1966), Order XXXI, Section I.

⁶¹ Law of the Child, Section 99.

Cases brought under the Bills of Rights need to be filed with the High Court of Tanzania.⁶²

Civil cases and criminal cases generally shall be instituted in a court within the local limits of whose jurisdiction (a) the defendant actually and voluntarily resides, or carries out business, or personally works for gain; (b) any of the defendants, where there are more than one, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either leave of court is given or the defendants who do not reside or carry on business, or personally work for gain acquiesce in such institution; or (c) the cause of action, wholly or in part, arises.⁶³

- 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?

With the exception of capital cases, the government of Tanzania does not currently provide any legal assistance to indigent plaintiffs or defendants. The Ministry of Constitutional Affairs and Justice has established the Legal Sector Reform Programme (LSRP)⁶⁴ to establish a national legal sector policy, but this process is still ongoing. The LSRP has publicly supported the establishment of a Legal Aid Network, which may lead to the formulation of a legal aid policy in the future.⁶⁵

- 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 several NGOs in Tanzania which provide free or low cost legal services, in addition to legal clinics and institutions such as the CHRGG. Some notable NGOs which offer legal assistance (or coordinate such assistance) include: Tanzania Network of Legal Aid Providers, Tanzania Paralegal Network, Legal and Human Rights Centre, Tanzania Women Lawyers Association, and Women's Legal Aid Centre. Some of these NGOs have established clinics where in-house staff, consisting mostly of lawyers and paralegals, provide a variety of legal aid services.⁶⁶

⁶² Basic Rights and Duties Enforcement Act (1994), Section 4.

⁶³ Civil Procedure Code (1966), Part I, Section 18.

⁶⁴ Information on the Tanzanian Legal Sector Reform Programme is available at: http://www.tz.undp.org/content/tanzania/en/home/operations/projects/democratic_governance/support-to-zanzibar-legal-sector-reform-programme/ or <http://www.pmoralg.go.tz/menu-data/programmes/LSRP/>.

⁶⁵ The Danish Institute for Human Rights, *Access to Justice and Legal Aid in East Africa*, December 2011, p. 52, available at: http://humanrightsvia.inforce.dk/files/images/Publikationer/Legal_Aid_East_Africa_Dec_2011_DIHR_Study_Final.pdf.

⁶⁶ *Ibid.*, 48-49; Comments provided by Terre des Hommes Netherlands, Tanzania Office, September

Tanzania's Bar Association, The Tanganyika Law Society (TLS), has established a pro bono system where lawyers are in principle obliged to offer legal advice and representation free of charge.⁶⁷ However, the society does not mandate a minimum number of hours of work, making it difficult to ascertain whether the system is a success.

The TLS is currently developing a scheme to provide further legal assistance to individuals. The Legal Aid and Advocacy Centre Project (LAAC) is a TLS construction and capital development project, which aims to establish a legal facility to bolster the increased provision of legal aid services by the TLS to the public and expand on the provision of legal education services to the public through seminars, a library facility and advocacy initiatives, as well as provision of Continuing Legal Education.⁶⁸

- 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?

Claims for breach of contract must be brought within six years after the cause of action arose; tort actions must be brought within three years; and claims for which the law does not provide a specific limitation period generally must be brought within six years after the cause of action arose, or the suit will be barred.⁶⁹

The Law of the Child Act does not have a statute of limitations for bringing actions. Thus, such claims will have to be brought within the standard six year statute of limitations shown above. There are no special provisions allowing an adult to bring a cause of action that occurred when they were a child.⁷⁰

- 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 Law of Child Act states that the proceedings of the Juvenile Court "shall be as informal as possible, and made by inquiry without exposing the child to adversarial procedures."⁷¹ When the child is a defendant, the Juvenile Court judge, not the opposing attorney, is instructed to cross-examine the child with those questions that appear to be necessary and desirable.⁷²

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⁶⁷ More information on the projects of the Tanganyika Law Society is available at:

<http://www.tls.or.tz/?services.html>.

⁶⁸ Tanganyika Law Society, *The Legal Aid and Advocacy Centre (LAAC) Project*, available at:

<http://www.tls.or.tz/?services/laac-project.html>.

⁶⁹ Practical Law, *Limitation Periods*, 1 September 2013, available at:

<http://us.practicallaw.com/1-518-8770>.

⁷⁰ See Law of the Child Act.

⁷¹ Law of the Child Act, Section 99(c).

⁷² *Ibid.*, Section 109.

In addition to relaxed examination procedures, the Act ensures that “the child shall have a right to give an account and express an opinion.”⁷³ However, the court has discretion to act on or disregard the child’s testimony depending on his or her credibility and whether the court believes that the child understands and appreciates his or her duty to tell the truth.⁷⁴

Cases brought before the Juvenile Court also offer some protection and privacy for children in general. Specifically, the Juvenile Court is required to sit in a different building or at different times from the ordinary court hours and is closed to the general public, unless a child is criminally charged jointly with an adult person.⁷⁵

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

Research suggests that there are no publicly available records which track the length of time it usually takes to resolve a case. However, there is a general lack of courts and lawyers which this is a major problem of the legal system in Tanzania.⁷⁶ For example, there is currently only one Juvenile Court, located in Dar es Salaam. As a result, it may take a substantial amount of time before a decision is handed down in a case.

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

Decisions in civil and criminal cases, issued by a resident magistrate or a district court may be appealed to the High Court.⁷⁷ If a claim is brought under the Tanzanian Bill of Rights at the High Court, it can be appealed to the Court of Appeal of Tanzania for further remedies.⁷⁸ The Law of the Child Act does not prescribe a process for appeals from Juvenile Court decisions.

- 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?

It is difficult to anticipate the long-term impacts of a negative decision based on the Law of the Child Act. Since the Law of the Child Act is still a fairly new law in Tanzania and hence little data is available online on precedents which might have enforced the Law of the Child Act, it is possible that a negative decision could have a large impact on how children’s rights are enforced in the future.

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

An individual holding a court decree must apply to the court which issued

⁷³ Ibid., Section 99(h).

⁷⁴ Ibid., Section 115.

⁷⁵ Law of the Child Act, Sections 99-100.

⁷⁶ African Committee of Experts on the Rights and Welfare of the Child, p. 10.

⁷⁷ Civil Procedure Code(1966), Part VII, Sections 70-76.

⁷⁸ Basic Rights and Duties Enforcement Act (1994), Section 14.

the decree or another court of competent jurisdiction to execute the decree.⁷⁹
The court may, on application of the decree holder, order that property be delivered, an individual be arrested or detained, or any other measures required for the nature of the relief be implemented.⁸⁰

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 police force has established Women and Children Desks in every police station in the country. The aim of this initiative is to bring legal assistance closer to children facing abuse, neglect, conflict with the law and other legal problems.⁸¹

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

⁷⁹ Civil Procedure Code(1966), Part II, Sections 33-34.

⁸⁰ Civil Procedure Code(1966), Part II, Section 42.

⁸¹ Thompson Reuters Foundation, *Tanzania Police Set Up Special Desks for Gender Violence Cases*, 28 November 2013, available at: <http://www.trust.org/item/20131128131537-fitsc>; Deutsche Welle, *Tanzania Steps Up Action on Gender Violence*, 3 December 2013, available at: <http://www.dw.de/tanzania-steps-up-action-on-gender-violence/a-17268312>.