

ACCESS TO JUSTICE FOR CHILDREN: UGANDA

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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?

Ratified international conventions are neither automatically effective in Ugandan law nor automatically enforceable by local courts. They are incorporated by implementing legislation in accordance with the convention or must be re-enacted via legislation. All laws and conventions are subordinate to the Ugandan Constitution: any law or custom that is inconsistent with a provision of the Constitution is considered void.¹

The CRC and the Organisation for African Unity's Charter on the Rights and Welfare of the African Child have been incorporated into Ugandan law by virtue of the Children Act 1997.² Uganda has ratified the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography³ but neither protocol has been explicitly incorporated into Ugandan law.

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law and it specifically does not take precedence over the Constitution.⁴

C. Has the CRC been incorporated into national law?

The CRC has been incorporated into Ugandan law by the Children Act. Notably, the CRC and the Organisation for African Unity's Charter on the Rights and Welfare of the African Child are only incorporated "with appropriate modifications to suit the circumstances in Uganda."⁵ Governmental policy in general aims to adhere to the principles and standards set out in the CRC and its associated protocols, but there are economic and practical obstacles to the full and effective protection by the Ugandan government of the rights of Ugandan children.

There is criticism that the incorporation of the CRC and ratification of its associated Protocols have not been entirely effective.⁶ However, there have been a number of

¹ Constitution of the Republic of Uganda 1995 (Constitution), Chapter 1 art. 2, available at:

http://www.parliament.go.ug/new/images/stories/constitution/Constitution_of_Uganda_1995.pdf.

² Children Act, First Schedule, s. 4, available at: <http://www.ulii.org/ug/legislation/consolidated-act/59>.

³ Save the Children, 'Legal frameworks', 2011, available at:

<http://resourcecentre.savethechildren.se/start/countries/uganda/legal-frameworks>.

⁴ Constitution, Chapter 1 art. 2.

⁵ Children Act, First Schedule, s. 4.

⁶ See Halling, C., 'Child rights at the international and national levels', available at:

http://www.lucsus.lu.se/lep/Halling_Childrights.pdf; UN Committee on the Rights of the Child, *Concluding observations on the initial report of Uganda*, CRC/C/OPSC/UGA/CO/1, 16 October 2008. Available at:

proposals⁷ to rectify this and there is some indication that legislative reform is forthcoming, particularly as a result of pressure from non-government organisations (NGOs).⁸

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

The CRC cannot be directly enforced by the Ugandan courts. However, the Children Act, as part of Ugandan legislation, can be enforced by the courts. This is equivalent to direct enforcement of the CRC by the courts, since the Children Act effectively re-enacts the CRC by expressly stating that children have the right to enforce all rights under the CRC, in addition to the rights stated in the Act.⁹

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

The CRC itself is rarely cited by the Ugandan courts.¹⁰ Similarly, the Charter on the Rights and Welfare of the African Child is rarely cited.¹¹ The Children Act is more often cited as the authority for protection of the rights of children. Although the Act re-enacts the CRC in its First Schedule, it is not necessarily the case that the courts are considering the CRC when citing the Act, as they may be referring to rights set out elsewhere in the Act.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?

Children and their representatives can bring cases in the Ugandan courts to challenge violations of children's rights. See part III.A for the ways in which this can be done.

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?

<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPSC.UGA.CO.1.pdf>.

⁷ UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Uganda*, CRC/C/UGA/CO/2, 23 November 2005. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fUGA%2fCO%2f2&Lang=en.

⁸ See UN Committee on the Rights of the Child, *Concluding observations on the initial report of Uganda*; Uganda Child Rights NGO Network, 'Response to the Government of Uganda country report on the implementation of the UN Convention on the rights of the child', 1997, available at:

http://www.crin.org/docs/resources/treaties/crc.16/Uganda_UCRNN_NGO_Report.pdf.

⁹ Children Act, Schedule 1, s. 4.

¹⁰ See Uganda Legal Information Institute, available at:

<http://www.ulii.org/search/node/%22convention%20on%20the%20rights%20of%20the%20child%22%20type%3Acaselaw>.

¹¹ See Uganda Legal Information Institute, available at:

<http://www.ulii.org/search/node/%22African%20Charter%22> and

<http://www.ulii.org/search/node/%22African%20Child%22>.

¹² See Uganda Legal Information Institute, available at:

<http://www.ulii.org/search/node/%22children%20act%22%20type%3Acaselaw>.

All Ugandan statutes relevant for these purposes define a child as “a person below the age of 18 years”.¹³ The Civil Procedure Rules (CPRs) require any action brought by a child to be instituted by a “next friend” on behalf of the child.¹⁴ In practice, the next friend will usually be a parent or other guardian of the child. The next friend must be a person of “sound mind [who] has attained majority”, and must not have an adverse interest to that of the child.¹⁵ The next friend has a moral duty to ensure that the interests of the child are fully and properly protected in the suit.¹⁶

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

In the case of infants and young children, the child’s parent or legal guardian would typically initiate a lawsuit on behalf of the child as a next friend in the manner described in part II.B above. Neither the CPRs nor the relevant legislation differentiates between infants and young children, and older children.

Under the Children Act, parents (or if the parents are deceased, a relative of the parents, the warden of an approved home or a foster parent with a care order)¹⁷ have “parental responsibility”.¹⁸ “Parental responsibility” means all rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child.¹⁹ It is likely that, should it ever be contested, these “rights, duties [and] powers” would be deemed to include the right to pursue legal claims relating to the child. This is the case in English law, which bears many similarities to Ugandan law in the area of child rights and is frequently referred to by the Ugandan courts.²⁰

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

Various statutes specify circumstances in which legal aid from the Ugandan State is technically available. The Constitution grants a right to legal representation at the expense of the State for any person accused of an offence which carries a sentence of death or life imprisonment.²¹ The Poor Persons Defence Act provides a right to legal aid “where it appears for any reason that it is desirable, in the interests of justice, that a prisoner should have legal aid in the preparation and conduct of his or her defence at his or her trial and that the means of the prisoner are insufficient to enable him or her to obtain such aid”.²² There is generally no statutory right to legal aid for civil and family law cases, although in any case before the Family and Children Court, Section 16 of the Children Act provides the child with a right to legal representation.²³

However, Lady Justice Hellen Obura, a senior Ugandan judge, has stated concern that

¹³ See, for example, Children Act, s. 1.

¹⁴ CPRs, Order XXXII, Rule 1(1).

¹⁵ Ibid., Rule 4(1).

¹⁶ *Semyalo v The Registered Trustees Kampala Archdiocese* [2012] UGSC 1, available at: <http://www.ulii.org/ug/judgment/supreme-court/2012/11>.

¹⁷ Children Act, s. 6(2).

¹⁸ Ibid., s. 6(1).

¹⁹ Ibid., s. 1(o).

²⁰ See, for example, *In the matter of Deborah Joyce Alitubeera & Richard Masaba*, [2012] UGCA 4, available at: <http://www.ulii.org/ug/judgment/high-court/2012/4-0>.

²¹ Constitution, art. 28(e)(3).

²² Poor Persons Defence Act 1998, s. 2.

²³ Children Act, s. 16.

these rights to legal aid are not enforceable in reality. In her view, “[t]his is because legal aid service provision requires substantial funding and the Government of Uganda as a key duty bearer has not committed any meaningful amount of funds to implement these laws. Matters are even worsened by the lack of legal aid policy and a national body to guide and coordinate legal aid provision.”²⁴ She further noted that “state actors are limited by inadequate funding, charges of corruption, low staff numbers and capacity, limited geographical outreach, huge case backlogs and limited coordination with other actors.” In particular reference to Section 16 of the Children Act, the Yale University survey “Representing Children Worldwide” notes that “Uganda does not have the institutions or financial resources to fully implement the provisions”.²⁵ In May 2013, it was reported that a legal aid policy bill was being considered by the Minister of Justice and Constitutional Affairs.²⁶

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)?

A child’s parents or guardian do not have to consent to a next friend initiating legal proceedings, but any parent or appointed guardian of the child who wishes to be appointed in place of the next friend can apply to the court to this effect. The court may then substitute the parent or appointed guardian as the next friend.²⁷

Whilst it is not a limit on a next friend bringing a case, it is notable that any proposed settlement in a civil proceeding involving a child must be approved by the court.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?

The Constitution²⁹ states that any person who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened can apply to the High Court for redress, through the procedure created by the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules 2009.³⁰

The Constitution also states that “[a]ny person alleging that an Act of Parliament or any other law or anything in or done under the authority of any law or that any act or omission by any person or authority is inconsistent with or in contravention of a provision of the Constitution, may petition the Constitutional Court for a declaration to

²⁴ ‘Facilitating Access To Justice Through Legal Aid; Models, Laws And Practices In East Africa: A Case Of Uganda’, 8th East Africa Judicial Conference, Arusha, Tanzania, 17-21 May, 2010.

²⁵ Representing Children Worldwide, ‘Uganda’, May 2005, available at:

<http://www.law.yale.edu/rcw/rcw/jurisdictions/afe/uganda/frontpage.htm>.

²⁶ Nsambu, H., ‘A call for speedy passing of legal aid bill’, 20 May 2013, available at:

<http://www.newvision.co.ug/news/642938-a-call-for-speedy-passing-of-legal-aid-bill.html>.

²⁷ CPRs, Order XXXII, Rule 9(2).

²⁸ Ibid., Order XXXII, Rule 7.

²⁹ Constitution, art. 50.

³⁰ Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules 2009, Statutory Instrument 13-14.

that effect, and for redress where appropriate”.³¹

Any person can institute private prosecutions in a magistrate’s court, so a child and/or their representatives may do this if they have reasonable cause to believe that an offence has been committed.³² Such action could be a fallback if a report pursuant to Section 11 of the Children Act has failed to achieve the desired effect.³³

Judicial review proceedings can be brought with the leave of the High Court in accordance with Order XLIIA of the CPRs, inserted into the CPRs by the Civil Procedure (Amendment) (Judicial Review) Rules 2003.³⁴ Again, such action could be a fallback if a report pursuant to Section 11 of the Children Act has failed to achieve the desired effect.³⁵

The legislation envisages that most cases involving children’s rights, however, should be brought through the procedure set out in the Children Act.³⁶ Such cases typically appear before a Village Executive Committee Court, from which cases can be appealed to a Sub-County Executive Committee Court, from which cases can be further appealed to a Family and Children Court.³⁷ The Village Executive Committee Court has a wide jurisdiction to hear cases involving children; the relevant local court will hear “all causes and matters of a civil nature concerning children”.³⁸ The Village Executive Committee Court also has jurisdiction to hear less serious criminal offences involving children.³⁹ The Family and Children Court has jurisdiction over all criminal charges against a child except any offence punishable by death and any offence for which a child is jointly charged with a person over 18 years of age, which are heard by a magistrate’s court or the High Court.⁴⁰

Finally, children can make complaints about violations of their rights to the national Human Rights Commission, “a body established by Government to investigate complaints and promote public awareness about human rights in Uganda”.⁴¹ However, out of the 4,753 complaints received by the Commission in 2013, only 3.3% were lodged by children, mostly concerning the right to education, maintenance and neglect by parents or guardians.⁴² The Committee on the Rights of the Child has expressed its concern at the lack of a specific department in the Commission dealing with children’s

³¹ Constitution, arts 50 and 137(3).

³² Magistrates Court Act 1971, s. 42(3), available at: <http://www.ulii.org/ug/legislation/consolidated-act/16>.

³³ See part V below.

³⁴ SI 2003 No. 75. See Rule 4.

³⁵ See part V below.

³⁶ However, the Yale University survey “Representing Children Worldwide” notes that: “Representing children who have been abused or neglected is primarily the responsibility of the state, which would prosecute these cases as criminal proceedings. Thus it seems that most child abuse and neglect cases are handled through the criminal system, whereas most civil family law cases concern maintenance and custody proceedings.”

³⁷ Children Act, s. 105.

³⁸ Ibid., s. 92(1).

³⁹ Ibid., s. 92(2).

⁴⁰ Ibid., ss. 93, 103 and 104.

⁴¹ *Second periodic report of Uganda to the UN Committee on the Rights of the Child*, CRC/C/65/Add.33, 5 November 2004, para. 40. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f65%2fAdd_33&Lang=en.

⁴² Uganda Human Rights Commission, ‘16th annual report 2013’, 2013, p. xxviii, available at:

<http://www.uhrc.ug/?p=1873>.

rights, and has recommended that Uganda establish a separate department with the necessary human and financial resources to receive and investigate complaints from or on behalf of children on violations of their rights.⁴³

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”).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 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

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”).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

⁴³ UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Uganda*, paras 18-19.

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/acerwc-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>.

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

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

East African Court of Justice

Any individual or NGO who is resident in Uganda 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.⁵³ 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.⁵⁴ Despite the current lack of explicit jurisdiction over human rights, the Court has decided cases involving individual rights.⁵⁵ A complaint must be lodged within two months of the decision or action complained of.⁵⁶ 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,⁵⁷ and are binding.⁵⁸

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

Under the CPRs, all civil courts have the power to award financial damages and injunctive relief. More specifically, under Article 50 of the Constitution, the High Court can award “redress which may include compensation” for breaches of constitutional rights. Under Article 137, the Constitutional Court can grant a declaration that any law or any action or omission is unconstitutional, and can also award redress.

In judicial review proceedings, the High Court may issue orders, prohibitions, quashing orders and injunctions.⁵⁹ The High Court (in the case of foreign children), as well as the Chief Magistrate's Court (in the case of Ugandan children), also has the power to make

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

⁵⁴ 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/>.

⁵⁵ 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>.

⁵⁶ Treaty Establishing the East African Community, Article 30(2).

⁵⁷ Ibid., Article 35A.

⁵⁸ Open Society Foundations, 'East African Court of Justice', June 2013, available at:

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

⁵⁹ CPRs, Order XLIIA (introduced by the Civil Procedure (Amendment) (Judicial Review) Rules 2003), Rule 2.

adoption orders.⁶⁰

The Family and Children Courts have a wide range of powers, which include the ability to make: care orders;⁶¹ supervision orders;⁶² exclusion orders;⁶³ search and production orders⁶⁴ and orders to disclose information;⁶⁵ and orders placing a child under emergency protection.⁶⁶

Local council courts, which include Village Executive Committee Court and Sub-County Executive Committee Court, have the power to order remedies including reconciliation, declaration, compensation, restitution, costs, apology, and attachment and sale.⁶⁷

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?

Article 50(2) of the Constitution states that “any person or organisation may bring an action against the violation of another person’s or group’s human rights”. Such an action would typically be brought in the High Court.

Under Article 137(3), “[a]ny person alleging that an Act of Parliament or any other law or anything in or done under the authority of any law or that any act or omission by any person or authority is inconsistent with or in contravention of a provision of the Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate”.

It is therefore possible to challenge a law or action without naming a specific victim.

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

Under the CPRs, “[w]here there are numerous persons having the same interest in one suit, one or more of such persons may, with the 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”.⁶⁸ The decision of Principal Judge Ntabgoba in *British American Tobacco Limited v. The Environmental Action Network Ltd*⁶⁹ makes it clear that a public interest group can, in principle, bring an action on behalf of a group of claimants. The CPRs also provide for the selection of test cases.⁷⁰

⁶⁰ Children Act, s. 44.

⁶¹ Ibid., s. 19(1).

⁶² Ibid., s. 19(2).

⁶³ Ibid., s. 34.

⁶⁴ Ibid., s. 36.

⁶⁵ Ibid., s. 41.

⁶⁶ Ibid., s. 37.

⁶⁷ Local Council Courts Act 2006, s. 13, available at:

http://www.ulii.org/files/ug/legislation/act/2006/2006/local_council_courts_act_2006_pdf_81432.pdf.

⁶⁸ CPRs, Order I, Rule 8.

⁶⁹ Civil Appl. No. 27/2003 (Arising From Misc. Appl. No.70/2002), available at:

http://www.tobaccocontrollaws.org/files/live/litigation/292/UG_The%20Environmental%20Action%20Netwo.pdf.

⁷⁰ CPRs, Order XXXIX.

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

In light of Articles 50(2) and 137(3) of the Constitution,⁷¹ an NGO could file a challenge in respect of an actual or potential breach of children's rights.

As regards intervention in existing cases, none of the CPRs, Court of Appeal, Constitutional Court and Supreme Court rules make any provision in respect of *amicus curiae*.⁷² Some limited guidance has been provided by the Ugandan courts,⁷³ from which it is apparent that the judiciary has, to date, generally been unwilling to accept *amicus* interventions.⁷⁴

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

As per part III.A above, a case challenging a violation of children's rights could be brought in the Constitutional Court, the High Court, a Magistrate's Court or a Village Executive Committee Court. The filing process differs for each court.

Civil suits must be instituted by plaint⁷⁵ and satisfy the requirements of Order VII of the CPRs. Court fees in general are set out in the Judicature (Courts Fees) Rules.⁷⁶

For the Constitutional Court, the filing procedure and fees are set out in the Constitutional Court (Petitions and References) Rules 2005 and the Judicature (Rules of the Constitutional Court (Petitions for Declarations under Article 137 of the Constitution) Directions.⁷⁷ Petitions must be in the form set out in the Schedule. In addition to the court fee, Rule 4(3) specifies that the petitioner must deposit 200,000 shillings (approximately US\$77) as security for costs. As the average annual income in Uganda is US\$490,⁷⁸ this represents a substantial sum.

The filing procedure for a judicial review petition in the High Court is set out in the Civil Procedure (Amendment) (Judicial Review) Rules 2003 and the Judicature (Judicial Review) Rules 2009.⁷⁹

⁷¹ Extracted in part III.C above.

⁷² Mubangizi, J. and Mbazira, C. 'Constructing the *amicus curiae* procedure in human rights litigation: What can Uganda learn from South Africa?', Law Democracy & Development, vol. 16 (2012) 199, 211-212, available at: <http://www.saflii.org/za/journals/LDD/2012/11.pdf>.

⁷³ See, for example, *Soroti Joint Medical Services Ltd v Sino Africa Medicines and Health Ltd*, Miscellaneous Application 452 of 2011, arising out of Commercial Division Civil Suit No. 415 of 2011, available at: <http://www.ulii.org/ug/judgment/commercial-court/2011/109>.

⁷⁴ See Mubangizi, J. and Mbazira, C., Section 4.

⁷⁵ CPRs, Order IV, Rule 1.

⁷⁶ SI 13-1.

⁷⁷ SI 13-15.

⁷⁸ World Vision, 'Uganda', available at: <http://www.worldvision.org/our-work/international-work/uganda>.

⁷⁹ SI 2003 No. 75 and SI 2009 No. 11, available at: http://www.ulii.org/files/ug/legislation/statutory-instrument/11/judicial_review_rules_s_i_no_11_of_2009_pdf_17590.pdf

For a Magistrate's Court, the fees are as specified in Appendix B to the Third Schedule to the Magistrates Courts Act.

For a Village Executive Committee Court, a Subcounty Executive Committee Court to a Family and Children Court, the filing procedure and fees are set out in the Children (Family and Children Court) Rules.⁸⁰

- 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?

See part II.D above in respect of legal aid.

The Ugandan courts will not allow the issue of a suit without payment of the relevant court fee. However, the CPRs include provisions on suits brought by "paupers", which would apply to suits brought by children and their next friends who are unable to pay the fee prescribed to file the action.⁸¹ Under Rule 5 of the Judicature (Courts Fees) Rules,⁸² the civil courts have discretion to vary court fees or order that proceedings take place under Order XXXIII of the CPRs which govern suits by paupers.

Under Section 195 of the Magistrates Act, a court may order a payment of costs to the prosecutor (whether public or private) by a person convicted of any offence. A court may also order a payment of costs to any person acquitted of any offence by the prosecutor (whether public or private) if the court considers that the prosecutor had no reasonable grounds for prosecuting that person.

- 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?

Many law firms and organisations in Uganda offer pro bono services,⁸³ though services are mainly concentrated in urban centres.⁸⁴ Pro bono in Uganda has been pioneered by the Uganda Law Society.⁸⁵ Under the Advocates (Pro Bono Services to Indigent Persons) Regulations,⁸⁶ passed by the Uganda Law Society and the Law Council, it is mandatory for every lawyer to provide 40 hours of pro bono legal services per year.⁸⁷

⁸⁰ SI 59-2.

⁸¹ CPRs, Order XXXIII.

⁸² SI 13-1.

⁸³ The provision of pro bono services is comprehensively described and explained in Kakooza, A., 'Pro Bono Publico and its Administration in Uganda', available at: http://www.academia.edu/1546047/PRO_BONO_PUBLICO_AND_ITS_ADMINISTRATION_IN_UGANDA.

⁸⁴ Ibid.

⁸⁵ <http://www.uls.or.ug/index.php>.

⁸⁶ SI No. 39 of 2009.

⁸⁷ Latham & Watkins, 'A survey of pro bono practices and opportunities in 71 jurisdictions', August 2012, p. 333, available at:

<http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in->

There are a variety of non-governmental legal aid providers in Uganda, many of whom are members of the Legal Aid Service Providers Network.⁸⁸ They include community-based organisations, faith-based organisations, humanitarian agencies, UN agencies and other local, national, regional and international NGOs. Legal aid providers often specialise in assisting certain categories of actors in the legal system, such as defendants in capital cases, and access to their services is generally subject to means tests and merits tests. There are generally no restrictions on obtaining assistance from legal aid providers for cases brought by, against or on behalf of children.

Non-governmental legal aid providers that offer legal assistance to children in Uganda include the following:⁸⁹

- The Legal Aid Project of the Uganda Law Society (LAP) provides legal assistance, including the provision of legal information, dispute resolution and court representation, to indigent and vulnerable people in Uganda. This includes assisting children in advocating for their human rights. LAP has branches in Kabarole, Kabale, Masindi, Jinja, Gulu and Luzira, with its head office in Kampala.
- The Legal Aid Clinic of the Law Development Centre offers free legal assistance to indigent petty criminals and juvenile offenders as well as children in need of care and protection.
- Justice For Children Uganda is a non-profit, child-advocacy group that provides legal and social services to abused and neglected children and their protective parents when the system fails. The organisation ensures that abused children receive legal representation that is diligent, free of conflicts of interest and meets the highest standards of care.
- The Uganda Christian Lawyers' Fraternity (UCLF) seeks to promote access to justice for the poor and vulnerable by providing legal aid to such persons. This includes legal aid in domestic matters, such as children's issues.⁹⁰
- The Refugee Law Project runs an access to justice programme that provides free legal assistance, including legal representation, to individuals and groups of forced migrants. Legal representation is carried out under various thematic areas including child rights and protection.⁹¹
- FIDA Uganda, Legal Aid Clinic provides legal services to indigent women and children to enable them to access justice.⁹²
- Justice Centres are a one-stop-shop legal aid service covering both civil and criminal areas of justice for indigent, marginalised and vulnerable persons.⁹³
- Platform for Labour Action operates a Legal Aid Clinic for vulnerable, marginalised and undocumented workers, including children in exploitative forms of work, children at risk of exploitation, youth and workers earning below the threshold of Ushs 150,000 per month.⁹⁴
- Youth Justice Support Uganda provides legal assistance including representation

[71-jurisdiction-2012.pdf](#)

⁸⁸ LASPNET is an umbrella body that was established in 2001 to coordinate NGOs in addressing issues of access to justice: <http://www.laspnet.org>; see also Kakooza, A.

⁸⁹ Kakooza, A.

⁹⁰ <http://www.ugclf.org>.

⁹¹ <http://www.refugeelawproject.org/our-work/access-to-justice.html>.

⁹² <http://www.fidauganda.org>.

⁹³ <http://www.justicecentres.go.ug>.

⁹⁴ <http://www.pla-uganda.org>.

to street children.

A full list of NGOs in Uganda that provide legal aid is available through the Uganda National NGO Directory.⁹⁵

NGOs also play a significant role in training paralegals and equipping them to provide legal aid in criminal matters. Paralegals conduct “Paralegal Aid Clinics” on a regular basis in the main prisons across the country, which aim to empower prisoners awaiting trial to apply the law in their own cases. The Paralegal Advisory Service aims to provide basic legal assistance and seeks to secure access to bail for eligible suspects. Uganda now has more than 70 paralegals working in the criminal justice system. Paralegals, however, do not represent defendants in court.⁹⁶

Despite the number of legal aid providers, obtaining access to legal aid has been challenging for many ordinary Ugandans, including children. Lady Justice Hellen Obura states that non-governmental legal aid providers are hampered in their efforts by “inadequate funding, high staff turnover, limited capacity to conduct monitoring and evaluation, poor documentation of both financial records and activities, donor dependency, limited geographical outreach with no strategy for taking the services beyond the existing areas of operation and addressing quality issues coupled with lack of standards on legal aid which compromises quality of services delivered”.⁹⁷

Under Rule 26 of the Advocates (Professional Conduct) Regulations,⁹⁸ a lawyer “cannot enter any agreement for the sharing of a proportion of the proceeds of a judgment whether by way of percentage or otherwise” either in respect of fees or disbursements. This is apparently the only restriction on conditional and contingency fee arrangements, so a child complainant or his or her next friend should be able to obtain legal assistance through an agreement that does not require the payment of legal fees up front.

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

For civil proceedings, the time limit for bringing cases in Uganda depends on the type of claim brought, as set out in the Limitation Act 1959. In general, claims involving violations of rights would need to be brought within six years of the violation.⁹⁹

There are certain circumstances under which claims may be brought after the usual time constraints, including where the claimant is “disabled”.¹⁰⁰ Because they do not have full access to the legal system, children are classified as “disabled” for the purposes of the statute of limitations.¹⁰¹ This means that the time requirements for their particular claim would not come into play until their 18th birthday, giving them the opportunity to bring

⁹⁵ http://www.ugandangodirectory.org/index.php?option=com_mtree&task=listcats&cat_id=4&Itemid=2.

⁹⁶ Latham & Watkins, p. 332.

⁹⁷ ‘Facilitating Access To Justice Through Legal Aid; Models, Laws And Practices In East Africa: A Case Of Uganda’.

⁹⁸ SI 267-2.

⁹⁹ Limitation Act 1959, s. 3.

¹⁰⁰ Ibid. s. 21.

¹⁰¹ Ibid. preamble: “For the purposes of this Act, a person shall be deemed to be under a disability while he or she is an infant.”

cases relating to violations of their rights during childhood as young adults.

Under Rule 5(1) of the Civil Procedure (Amendment) (Judicial Review) Rules 2003,¹⁰² “an application for judicial review must be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the court considers that there is good reason for extending the period within which the application shall be made.”

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

The Evidence Act 1909¹⁰³ and the CPRs (in particular Order XVIII) set out the law of evidence in Uganda.

Under the Evidence Act, a child will be competent to testify unless the court considers that the child is unable to understand the questions put to him or her.¹⁰⁴

In a Magistrate’s Court, where a child witness does not, in the opinion of the court, understand the nature of an oath, the child’s evidence may be received, though not given upon oath, if, in the opinion of the court, the child can understand the reception of the evidence and the duty of speaking the truth.¹⁰⁵

Under Section 16 and Section 18 of the Children Act, the Family and Children Court shall sit as often as necessary in private, proceedings shall be conducted informally, parents or guardians shall be present whenever possible, the child has the right to be represented by a lawyer, the right to appeal shall be explained to the child, and no other people are allowed in the court room except witnesses, parents or guardians, the probation and social welfare officer or a person whom the court has authorised. Under the Children (Family and Children Court) Rules, specific procedure and rules of evidence are set out for the Family and Children Court.

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

The Ugandan courts are overburdened and suffer from a backlog of cases.¹⁰⁶ A fast-track procedure was established by the Judicature (Small Claims Procedure) Rules in 2011 but it remains to be seen whether this has reduced or will reduce the delay experienced by many litigants.¹⁰⁷ Unfortunately, no accurate or comprehensive statistics are available on the average or typical duration of cases in the Ugandan courts.

¹⁰² SI 2003 No. 75. See Rule 4.

¹⁰³ Available at: <http://www.ulii.org/ug/legislation/consolidated-act/6>.

¹⁰⁴ Ibid., s. 117.

¹⁰⁵ Magistrates Courts Act, s. 101.

¹⁰⁶ See, for example, Tabaro, P. ‘Alternative justice - a solution to backlog in Uganda’s judicial system’, 31 August 2012, available at:

http://www.observer.ug/index.php?option=com_content&view=article&id=20681:alternative-justice-a-solution-to-backlog-in-ugandas-judicial-system; ‘Courts increase efforts to reduce backlog of cases’, available at: <http://direct.ugandaradionetwork.com/a/story.php?s=9098&PHPSESSID=0c494d88cc5c34b6dd16ef1a5b974fd9>.

¹⁰⁷ SI No.25 of 2011.

In March 2013, the Judicature (Mediation) Rules were enacted.¹⁰⁸ The Judicature (Mediation) Rules require civil courts to refer all actions to mediation before trial¹⁰⁹ and make specific provision for mediation in which a child has an interest.¹¹⁰ The Judicature (Mediation) Rules are intended to reduce the backlog of cases and expedite future proceedings by avoiding the requirement for trial.

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

The hierarchy of courts in Uganda is as follows. Generally, appeals lie from:

1. a Village Executive Committee Court to a Parish and Subcounty Executive Committee Court;
2. a Sub county Executive Committee Court to a Family and Children Court;
3. a Family and Children Court to a Chief Magistrate's Court;
4. a Chief Magistrate's Court to the High Court;
5. the High Court to the Court of Appeal; and
6. the Court of Appeal to the Supreme Court.

Section 105 of the Children Act and Rule 33 of the Children (Family and Children Court) Rules¹¹¹ confirm that, in relation to the trial of a child, appeals should be made in the same way.

Appeal procedure in the Supreme Court is governed by the Judicature (Supreme Court Rules) Directions.¹¹² Appeal procedure in the Court of Appeal is governed by the Judicature (Court of Appeal Rules) Directions.¹¹³ Appeals procedure in the High Court is governed by Order XLIII of the CPRs.¹¹⁴ Appeal procedure in the Family and Children Court is governed by Rule 33(2) of the (Family and Children Court) Rules.¹¹⁵ Appeal procedure in the local courts is governed by Part X of the Local Council Courts Act 2006.

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?

Uganda is a common law jurisdiction in which the courts are bound by the doctrines of precedent and *stare decisis*. The Supreme Court has described *stare decisis* as “a cardinal rule in our jurisprudence”.¹¹⁶ Courts are bound by their own and higher courts' decisions, which means that the negative effects of a bad decision could be felt for many years. Within the judicial system, a bad decision from a higher court will be more far-reaching and have greater effects than a bad decision from a lower court. The Ugandan Government may, of course, legislate to overturn a rule of law which emanated from a court decision.

¹⁰⁸ SI No. 10 of 2013, available at:

[http://www.judicature.go.ug/files/downloads/Judicature%20Mediation%20Rules%20S.I.%20No.%2010%20of%202013\[2\].pdf](http://www.judicature.go.ug/files/downloads/Judicature%20Mediation%20Rules%20S.I.%20No.%2010%20of%202013[2].pdf)

¹⁰⁹ Ibid., Rule 4(1).

¹¹⁰ Ibid., Rule 12.

¹¹¹ SI 59-2.

¹¹² SI 13-11.

¹¹³ SI 13-10.

¹¹⁴ See also Magistrates Court Act, ss. 204 and 220.

¹¹⁵ SI 59-2.

¹¹⁶ *Attorney General v Uganda Law Society (Constitutional Appeal No. 1 of 2006)* [2009] UGSC 2.

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

The enforcement of awards in civil proceedings is relatively straightforward and governed by Orders XXI (Judgment and Decree), XXII (Execution of Decrees and Orders) and XXIII (Attachment of Debts) of the CPRs. The judicial review process in Uganda is similar to that in England, in that (aside from the provision of compensation, which may be available),¹¹⁷ judicial review proceedings often do not provide directly enforceable remedies. Rather, judges tend to issue “quashing orders”, which overturn an unlawful decision but do not force a public body to follow any particular course of action. Instead, the body need only approach the decision again bearing the ruling in mind, and may ultimately opt not to alter its stance.

- 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.

Section 11 of the Children Act provides that any member of the community who has evidence that a child’s rights are being infringed or that a parent or guardian is able to but refuses or neglects to provide the child with adequate food, shelter, clothing, medical care or education shall report the matter to the local council.¹¹⁸ The Secretary for Children’s Affairs of the local council may, upon receiving the report, summon the person against whom the report was made to discuss the matter and make a decision in the best interests of the child.¹¹⁹ If the matter remains unresolved, the Secretary for Children’s Affairs should refer the matter to the Village Executive Committee Court. Under this provision, a report could be made of a violation of child rights which the Secretary for Children’s Affairs of the local council decides not to investigate or decides not to refer to the Village Executive Committee Court.¹²⁰ It is unclear what legal recourse would be available to the child or the reporting person in such circumstances as there is no explicit right of appeal set out and it seems likely that the child or reporting person would be forced to bring an action in the courts to protect the child’s rights, potentially under the judicial review or private prosecution procedures described at part III.A.

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

¹¹⁷ Civil Procedure (Amendment) (Judicial Review) Rules 2003, Rule 8.

¹¹⁸ Children Act, s11.

¹¹⁹ Ibid.

¹²⁰ Ibid.