

# **ACCESS TO JUSTICE FOR CHILDREN: ZAMBIA**

*This report was produced by White & Case LLP in July 2014 but may have been subsequently edited by Child Rights International (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.*

## **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?**

Zambia signed the CRC on 30 September 1990 and ratified it on 6 December 1991 without any reservations.<sup>1</sup> Zambia adopts a dualist legal tradition, therefore, international law and domestic law are classified as two separate legal systems.<sup>2</sup> Accordingly, the CRC requires incorporation into the national laws and so far there has only been partial incorporation.<sup>3</sup> The national laws that affect children are implemented through programmes: the National Plan of Action to eradicate Child Labour, the Victim Support Unit, the Child Justice Forum, the National Youth Policy and the National Child Policy, and ministries: mainly the Ministry of Sport, Youth and Child Development, the Ministry of Community Development and Social Services, the Ministry of Labour and Social Security and the Ministry of Education.<sup>4</sup>

### **B. Does the CRC take precedence over national law?**

No, the CRC does not take precedence over national law. The Constitution of Zambia is the supreme law of the land and where any other law contradicts the Constitution that other law shall be void as far as it contravenes the Constitution.<sup>5</sup> However, the CRC has in part been incorporated into domestic legislation, thus, certain national laws are consistent with the principles and provisions of the CRC.

### **C. Has the CRC been incorporated into national law?**

The CRC has only been partially incorporated into domestic legislation, therefore, Zambia's domestic legislation is not fully compliant with the principles and provisions of the CRC.<sup>6</sup> Additionally, some Zambian

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<sup>1</sup> *Initial State Party's report of Zambia to the UN Committee on the Rights of the Child*, CRC/C/11/Add.25, para 22, available at: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>.

<sup>2</sup> See <http://www.nyulawglobal.org/globalex/Zambia1.htm#sourcesoflaw>.

<sup>3</sup> Initial States Parties report of Zambia to the UN Committee on the Rights of the Child, Executive Summary.

<sup>4</sup> See [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct\\_zambia2.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia2.pdf).

<sup>5</sup> Constitution of Zambia Act, Part III, Article 1(3), available at: <http://www.parliament.gov.zm/downloads/VOLUME%201.pdf>.

<sup>6</sup> UN Committee on the Rights of the Child, *Concluding Observations on the initial report of Zambia*, CRC/C/15/Add.206, 2 July 2013, para 5, available at: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>.

customary laws contradict the CRC.<sup>7</sup> The Zambian customary laws are varied and their application is determined by the tribes and traditions attached to them.<sup>8</sup> Accordingly, the Committee on the Rights of the Child has put pressure on the Zambian government to make efforts to bring its customary laws in line with the CRC.<sup>9</sup>

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

No, the CRC is not directly enforceable in the Zambian courts of law. However, domestic laws have in part been brought in line with the CRC.<sup>10</sup> Zambia has provisions within its Constitution and other legislation, such as the Juveniles Act,<sup>11</sup> for the protection of children's rights. Article 11 of the Constitution protects children's fundamental rights and freedom; Article 12 protects children's right to life including the right of unborn babies and Article 6 reinforces the need for children to preserve their nationality and identity. New legislation for the protection of children's rights include the Anti-Gender Based Violence Act 2011,<sup>12</sup> the Education Act 2011,<sup>13</sup> the Persons with Disabilities Act 2012<sup>14</sup> and the Anti-Human Trafficking Act 2008.<sup>15</sup>

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

There are examples of the courts applying international human rights instruments in cases involving adults.<sup>16</sup> The research undertaken has not found examples of courts using or applying the CRC, however, there have been decisions by the Zambian courts that are compatible with the CRC. For example, the case of *John Banda (HPA/6/1998)*, which abolished corporal punishment as a criminal sanction.<sup>17</sup> The case of *R.M. v Hakasenke* in 2008 was brought by a school girl (through her guardian), who was raped by her teacher. R.M. was awarded compensation and her legal action provoked the Ministry of Education to issue preventive guidelines.<sup>18</sup>

## II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to

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<sup>7</sup> UN Committee on the Rights of the Child, *Concluding Observations on the initial report of Zambia*, para 5.

<sup>8</sup> See [http://www2.ohchr.org/english/bodies/hrc/docngos/omct\\_zambia2.pdf](http://www2.ohchr.org/english/bodies/hrc/docngos/omct_zambia2.pdf).

<sup>9</sup> UN Committee on the Rights of the Child, *Concluding Observations on the initial report of Zambia*, para 5.

<sup>10</sup> See <http://www.law.yale.edu/rcw/rcw/jurisdictions/afe/zambia/frontpage1.htm>.

<sup>11</sup> See Juveniles Act, available at: <http://www.parliament.gov.zm/downloads/VOLUME%205.pdf>.

<sup>12</sup> Available at: [http://www.zambialii.org/zm/legislation/act/2011/1/](http://www.zambialii.org/zm/legislation/act/2011/1;);  
<http://www.law.yale.edu/rcw/rcw/jurisdictions/afe/zambia/frontpage1.htm>.

<sup>13</sup> Available at: [http://www.parliament.gov.zm/index.php?option=com\\_docman&task=cat\\_view&gid=153&dir=DESC&order=date&limit=5&limitstart=15](http://www.parliament.gov.zm/index.php?option=com_docman&task=cat_view&gid=153&dir=DESC&order=date&limit=5&limitstart=15).

<sup>14</sup> Available at: [http://www.parliament.gov.zm/index.php?option=com\\_docman&task=cat\\_view&gid=153&dir=DESC&order=date&limit=5&limitstart=15](http://www.parliament.gov.zm/index.php?option=com_docman&task=cat_view&gid=153&dir=DESC&order=date&limit=5&limitstart=15).

<sup>15</sup> Available at <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwezam.htm>.

<sup>16</sup> See <http://www.chr.up.ac.za/index.php/browse-by-country/zambia.html>.

<sup>17</sup> See [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct\\_zambia2.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia2.pdf) at page 45.

<sup>18</sup> See <http://www.bettercarenetwork.org/violence/search/closeup.asp?infoID=17778>.

challenge violations of children's rights?

Children through their litigation friend can bring cases in domestic courts to challenge violations of their rights, including civil claims.<sup>19</sup> A litigation friend can be any person, who can fairly and competently conduct the proceedings on behalf of the child and whose interests do not conflict with that of the child.<sup>20</sup> There is evidence of cases brought by children and financial compensation won through the representation of Legal Resources Foundation and the Victim Support Unit.<sup>21</sup> These bodies assist with the prosecution of perpetrators of children's rights violations. In *R.M. v Hakasenke* the victim child's aunt brought the proceedings as her guardian with the assistance of a pro bono lawyer.<sup>22</sup> While the CRC cannot be directly enforced, children can use national laws to enforce their rights. However, there are concerns that the State rarely takes measures to prosecute or punish officials, who commit human rights violations.<sup>23</sup>

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?

Zambian law allows the application of legislation enacted in the United Kingdom in Zambia subject to certain limitations, such as the supremacy of the Zambian constitution.<sup>24</sup> Accordingly, with regard to complaints raised by children, the Civil Procedure Rules of the United Kingdom are applicable.<sup>25</sup> The rules require that children below the age of 18 years must initiate proceedings through a "litigation friend".<sup>26</sup> In practice a "litigation friend" is understood to be a parent, a guardian or a court-appointed trustee.<sup>27</sup>

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

There are no specific rules applicable to bringing cases on behalf of young children. Children under the age of 18 years participate in administrative and judicial proceedings through a "litigation friend."<sup>28</sup> The court has discretion to hear the child's evidence, if it considers it to be in the best interests of the child.<sup>29</sup>

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

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<sup>19</sup> *Initial States Parties report of Zambia to the UN Committee on the Rights of the Child*, para 96.

<sup>20</sup> Civil Procedure Rules, Rule 21.4 (United Kingdom).

<sup>21</sup> See [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct\\_zambia2.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia2.pdf) pages 4-7.

<sup>22</sup> See <http://www.bettercarenetwork.org/violence/search/closeup.asp?infoID=17778>.

<sup>23</sup> See <http://www.state.gov/documents/organization/220386.pdf>.

<sup>24</sup> English Law (Extent of Application) (Amendment) Act 2011, S2, available at:

<http://www.parliament.gov.zm/dmdocuments/The%20English%20Law%20Act.pdf>

<sup>25</sup> *Initial States Parties report of Zambia to the UN Committee on the Rights of the Child*, para 96.

<sup>26</sup> Civil Procedure Rules 1998, Rule 21.2, (United Kingdom) available at:

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part21#21.2>.

<sup>27</sup> *Initial States Parties report of Zambia to the UN Committee on the Rights of the Child*, para 96.

<sup>28</sup> Civil Procedure Rules, Rule 21.2, (United Kingdom).

<sup>29</sup> *Initial States Parties report of Zambia to the UN Committee on the Rights of the Child*, para. 97.

Legal assistance is available to anyone who has insufficient means to obtain legal advice and/or representation in both criminal and civil cases.<sup>30</sup> However, although legally children are entitled to the same protection as adults, children's right to a defence is not guaranteed and most children do not have access to legal assistance to prepare their defence.<sup>31</sup> Legal Aid in Zambia is guaranteed by Chapter 34 of the Laws of Zambia under the Legal Aid Act.<sup>32</sup> However, due to lack of human resources within the Zambian Legal Aid Department, children's right to legal assistance is routinely violated.<sup>33</sup>

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)?

Zambia uses the Civil Procedure Rules of the United Kingdom with regard to children initiating proceedings.<sup>34</sup> The rule requires that any person acting as the child's litigation friend must be competent to conduct the proceedings on behalf of the child and that there must be no conflict of interest between the child and their litigation friend.<sup>35</sup> Under the Civil Procedure Rules, while a child's parents or guardian do not have to consent to the child or their "litigation friend" initiating legal proceedings, any person acting as the child's "litigation friend" must give the child's parent, guardian or custodian notice of this intention and provide a "certificate of suitability."<sup>36</sup>

### 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 Zambian Constitution provides that if any person alleges a violation of any of their rights as set out in the Zambian Constitution, then that person may apply for redress to the High Court of Zambia. The High Court of Zambia will hear and determine such cases unless the question raised is "merely frivolous or vexatious".<sup>37</sup> Furthermore, Article 125 establishes the Human Rights Commission ("HRC"), which investigates human rights violations including abuse against children.<sup>38</sup>

Where the State fails to prosecute an alleged perpetrator of a criminal act against a child, the child may initiate civil proceedings through their litigation friend -

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<sup>30</sup> See <http://www.legalaidboard.org.zm/#!/about-us/cjg9>.

<sup>31</sup> See [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct\\_zambia2.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia2.pdf) at page 20.

<sup>32</sup> Legal Aid Act, available at <http://www.parliament.gov.zm/downloads/VOLUME%204.pdf>.

<sup>33</sup> See <http://www.ojji.org/legal/situation.php?c=1&p=192>.

<sup>34</sup> *Initial States Parties report of Zambia to the UN Committee on the Rights of the Child*, para 96.

<sup>35</sup> Civil Procedure Rules 1998, Rule 21.4(a) and (b) (United Kingdom).

<sup>36</sup> Civil Procedure Rules, Rules 6.13, 21.5, (United Kingdom).

<sup>37</sup> Constitution of Zambia Act, Part XII, Article 125.

<sup>38</sup> *Initial States Parties report of Zambia to the UN Committee on the Rights of the Child*, para 25.

the case of *R.M. v Hakasenke* is an example of such legal action by a child.<sup>39</sup>

Additionally, Section 10 of the Human Rights Commission Act gives the HRC the power to require the attendance of any authority, the disclosure of information and the production of documents during its investigation of human rights violations. The HRC also has power to recommend the punishment of any officer, the release of a victim of human rights violation from detention and the payment of compensation to the victim or their family.<sup>40</sup>

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”).<sup>41</sup> All available domestic remedies must have been exhausted before bringing a case to the African Committee.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup>

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”).<sup>45</sup> All available domestic remedies must have been exhausted before bringing a case to the African Commission.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup> If the case relates to serious or

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<sup>39</sup> See [http://www.equalitynow.org/take\\_action/adolescent-girls\\_action322](http://www.equalitynow.org/take_action/adolescent-girls_action322).

<sup>40</sup> Human Rights Commission Act, Part II, available at: <http://www.parliament.gov.zm/downloads/VOLUME%204.pdf>.

<sup>41</sup> 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-acerwc/acerwc-charter-full-text>; For more information about communications, see: <http://acerwc.org/the-committees-work/communications/>.

<sup>42</sup> African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at: <http://acerwc.org/the-committees-work/communications/>.

<sup>43</sup> 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>.

<sup>44</sup> Ibid.

<sup>45</sup> African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

<sup>46</sup> Ibid., Article 56(5).

<sup>47</sup> 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/>.

<sup>48</sup> War Resisters’ International, Quaker United Nations Office Geneva, Conscience and Peace Tax

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.<sup>49</sup>

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.<sup>50</sup>

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

The High Court of Zambia has broad remedial powers. Under Section 13 of the High Court Act, the court has unlimited jurisdiction to hear and determine any civil or criminal matters under any law, and power to grant any remedies or reliefs whether interim or final that it considers any of the parties to be entitled to.<sup>51</sup> The Act does not set out details of the remedies available to a victim in a civil claim. Under the Zambian Penal Code Act, the court can impose on a perpetrator of a criminal act a death sentence, imprisonment, community service, the payment of a fine or compensation.<sup>52</sup>

In a case brought by the Legal Resources Foundation on behalf of a school boy aged 17 years, who was severely beaten by the police, the child received ZMK 322.7 million in compensation. The school boy was taking part in a protest held by the school children against their teachers' strike, when the police attended the scene to disperse the demonstration and assaulted the boy in June 2001.<sup>53</sup> However, such cases with financial compensation for child victims are not common.<sup>54</sup>

Furthermore, in the case of human rights violations, the HRC can permit the victim to seek redress in a court of law, and take any such other action as the HRC considers necessary to remedy the violation of a right.<sup>55</sup>

C. Would such a challenge have to directly involve one or more individual

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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>.

<sup>49</sup> 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>.

<sup>50</sup> 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>.

<sup>51</sup> High Court Act, Part IV, S 13, available at <http://www.parliament.gov.zm/downloads/VOLUME 3.pdf>.

<sup>52</sup> Penal Code Act, Chapter VI, S 24, available at:

<http://www.parliament.gov.zm/downloads/VOLUME%207.pdf>.

<sup>53</sup> See [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct\\_zambia2.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia2.pdf) at page 5.

<sup>54</sup> See [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct\\_zambia2.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia2.pdf) at page 5.

<sup>55</sup> Human Rights Commission Act, Part II, S 10.

child victims, or is it possible to challenge a law or action without naming a specific victim?

Judicial review proceedings may be brought by any parties with a “sufficient interest”, without the involvement or identification of any individual child victims.<sup>56</sup> The research undertaken has not found examples of relevant judicial review cases in Zambia. However, judicial review proceedings involving child victims may be permissible given Zambia’s application of laws enacted in the United Kingdom. Such proceedings are used to challenge the lawfulness of a decision or action by a public body subject to leave of the High Court. To grant leave the court must first be satisfied that those bringing the case have sufficient interest in the matter.<sup>57</sup>

The commencement of other types of legal proceedings generally requires the identification of a specific victim, although hearings may be held in private, where necessary, to protect the interests of any child.<sup>58</sup> Additionally, under the Juveniles Act, the court has the power to proceed in the absence of the child, if it is satisfied that the child’s presence is not essential.<sup>59</sup> The Juveniles Act also specifically prohibits the publication of the name, address, or school of the child, or any details that could lead to the identification of any child concerned in the proceedings (including the alleged perpetrator or alleged victim and any witnesses).<sup>60</sup>

Unfortunately, these protection provisions are frequently violated by the media and no cases appear to have been brought against members of the media for violating a child’s privacy.<sup>61</sup>

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

This may be possible following the Civil Procedures Rules of the United Kingdom. The Civil Procedure Rules allow representative proceedings and group litigation.<sup>62</sup> Representative proceedings may be brought by one person on behalf of a group of people, who have the “same interest in a claim”,<sup>63</sup> although each claimant must be identified individually wherever possible.<sup>64</sup> The research undertaken has not found examples of collective action or group litigation in Zambia.

The HRC hears cases from individuals, their agents as well as groups of complainants.<sup>65</sup>

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<sup>56</sup> Senior Courts Act 1981, S 31(1) (United Kingdom), available at: <http://www.legislation.gov.uk/ukpga/1981/54/section/31>.

<sup>57</sup> Senior Courts Act 1981, S 31(3) (United Kingdom).

<sup>58</sup> Civil Procedure Rules, Rule 39.2 (United Kingdom), available at: <http://www.justice.gov.uk/courts/procedure-rules/civil/rules>.

<sup>59</sup> Juveniles Act, Part II, S 124.

<sup>60</sup> Juveniles Act, Part II, S 123.

<sup>61</sup> *Initial States Parties report of Zambia to the UN Committee on the Rights of the Child*, para. 528.

<sup>62</sup> Civil Procedure Rules, Part 1 (United Kingdom).

<sup>63</sup> Civil Procedure Rules, Rule 19.6 (United Kingdom).

<sup>64</sup> Civil Procedure Rules, Rule 19.7 (United Kingdom).

<sup>65</sup> Human Rights Commission Act, Part II, S 10.

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?

Yes, the Legal Resources Foundation has brought cases on behalf of children where there have been violations of their rights.<sup>66</sup> However, the research undertaken has not found evidence of cases brought in the name of non-governmental organisations in Zambia. The Human Rights Commission is permitted to intervene of its own volition or upon receipt of a complaint or allegation under the Human Rights Commission Act from an association acting in the interest of its members.<sup>67</sup>

**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?

The Zambian Constitution provides that in cases involving violations of fundamental rights and freedom of the individual, the violated person may apply for redress to the High Court of Zambia.<sup>68</sup> Cases brought in lower courts that deal with questions of fundamental rights and freedom may be challenged in the High Court of Zambia. A decision of the High Court can be appealed in the Supreme Court.<sup>69</sup> The lower courts primarily deal with tort, contract matters and petty crimes.<sup>70</sup>

The research undertaken has not found details of the relevant court procedures and initial filing process.

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?

Legal Aid is provided by the Legal Aid Board of Zambia, which was established by the Legal Aid Act, and covers representation in any court.<sup>71</sup> All applications are subjected to a means test, which seeks to establish the financial position of the applicant and includes an assessment of the applicant's capital and income.<sup>72</sup> If Legal Aid is granted, the receiving

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<sup>66</sup> See [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct\\_zambia2.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia2.pdf) pages 6-7.

<sup>67</sup> See <http://www.hrc.org.zm/index.php/complaints/complaints-procedure>.

<sup>68</sup> Constitution of Zambia Act, Part III, Article 28, available at: <http://www.parliament.gov.zm/downloads/VOLUME%201.pdf>.

<sup>69</sup> Constitution of Zambia Act, Part III, Article 28.

<sup>70</sup> See <http://www.nyulawglobal.org/globalex/Zambia1.htm#internationallaw>.

<sup>71</sup> Legal Aid Act, S3, S3A-C.

<sup>72</sup> See <http://www.legalaidboard.org.zm/#!/how-it-works/cfvg>.



individual is asked to pay either K150.00 for a criminal case or K160.00 for a civil case,<sup>73</sup> which is less than half the average monthly income per person in Zambia. It is not clear from the research undertaken whether children would be exempt from paying such fees or whether a bursary scheme exists.

Legal assistance is rarely provided to children accused of crime as a result of the Zambian Legal Aid Department being significantly understaffed.<sup>74</sup>

- 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?

Yes. Limited pro bono assistance from defence lawyers is available to children.<sup>75</sup> The Legal Resources Foundation offers free legal aid services to those who cannot finance their representation.<sup>76</sup> Advocacy for Child Justice is a national non-profit organisation that advocates for the rights of children in contact with the law and provides legal aid services.<sup>77</sup> The International Senior Lawyers Project has worked in Zambia providing legal assistance.<sup>78</sup>

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

The time period for bringing complaints depends on the type of claim being pursued. The Limitation Act 1939 of the United Kingdom is applicable in Zambia.<sup>79</sup> Under this Act, children are classified as “disabled” and may toll the applicable statute of limitations until they turn 18 years of age. At 18 years of age they are permitted to bring cases as young adults that relate to violations of their rights during childhood.<sup>80</sup>

However, complaints brought to the HRC must be brought within two years, as the Human Rights Commission Act does not allow the HRC to deal with matters that are submitted more than two years after knowledge of a violation.<sup>81</sup>

- 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?

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<sup>73</sup> See <http://www.legalaidboard.org.zm/#!/how-it-works/cfvg>.

<sup>74</sup> See [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct\\_zambia2.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia2.pdf) at page 20.

<sup>75</sup> See <http://www.oiji.org/legal/situation.php?c=1&p=192>.

<sup>76</sup> See <http://www.osisa.org/law/zambia/legal-resources-foundation-zambia>.

<sup>77</sup> See <http://www.acjzambia.org/>.

<sup>78</sup> See <http://islp.org/content/where-we-work>.

<sup>79</sup> The Law Reform (Limitation of Actions, etc.) Act available at: <http://www.parliament.gov.zm/downloads/VOLUME%206.pdf>

<sup>80</sup> Limitation Acts S28, S38(2) (United Kingdom), available at: <http://www.legislation.gov.uk/ukpga/1980/58>.

<sup>81</sup> HRC Complaints Procedure, available at: <http://www.hrc.org.zm/complaint.php>.

The research undertaken has not found what type of evidence is admissible or required to prove a violation. Acceptance of a child's testimony in civil and criminal cases is dependent upon the Judge's assessment of the child's competence.<sup>82</sup> The Zambia Judges Rules require that the court satisfy itself first that the testifying child understands the meaning of truth. Once this is established, the child's testimony is admissible in both criminal and civil cases.<sup>83</sup> However, Chapter 88 of the Criminal Procedure Code<sup>84</sup> requires that evidence provided by a child is corroborated. This requirement constrains the prosecution of offenders, particularly in cases of child abuse.<sup>85</sup> The Juvenile Act has a similar requirement for corroboration, if the evidence was not given on oath.<sup>86</sup>

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

The research conducted did not reveal an average length of time for a case to be resolved. However, under the Zambian Constitution, criminal cases are to be heard "within a reasonable time".<sup>87</sup>

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

Decisions of the lower courts can be challenged in the High Court<sup>88</sup> and High Court decisions may be appealed in the Supreme Court,<sup>89</sup> which is the final court of appeal.<sup>90</sup>

- 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?

Zambia places a high value on precedent through its common law system. As a result, any case that comes before the same or a lower court with substantially similar facts to a prior case must follow the ruling in that prior case, unless the deciding court can provide good reasons to overturn the prior ruling and set a new precedent.<sup>91</sup> Thus, a negative decision could determine the outcome of later cases for some time.

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

Concerns have been raised with regard to delays in settlement of financial

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<sup>82</sup> *Initial States Parties report of Zambia to the UN Committee on the Rights of the Child*, para 95; Juveniles Act, Part V, S122(1).

<sup>83</sup> *Initial States Parties report of Zambia to the UN Committee on the Rights of the Child*, para 95.

<sup>84</sup> See <http://www.parliament.gov.zm/downloads/VOLUME%207.pdf>.

<sup>85</sup> *Initial States Parties report of Zambia to the UN Committee on the Rights of the Child*, para 73(c).

<sup>86</sup> Juveniles Act, Part V, S122(1).

<sup>87</sup> Constitution of Zambia Act, Part III, Article 18.

<sup>88</sup> Constitution of Zambia Act, Part VI, Article 94.

<sup>89</sup> Constitution of Zambia Act, Part III, Article 28.

<sup>90</sup> Constitution of Zambia Act, Part VI, Article 92.

<sup>91</sup> See <http://www.neweconomia.com/zambia/zambiagovlegalsystem.html>.

rewards made by the court as in the case of *R.M. v Hakasenke*.<sup>92</sup> While Zambia's legislation provides for an independent judiciary, there are concerns of judicial and political corruption. As a result, judicial independence is not consistently applied in practice, and government officials often use their positions to circumvent court procedures.<sup>93</sup>

**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.

While the value of a positive decision is helpful from a precedent perspective, there are problems in Zambia with respect to educating people of their rights and encouraging them to take legal action to enforce these rights. According to the Open Society Initiative for Southern Africa (OSISA), “[a]ccess to justice [in Zambia] is limited by low levels of knowledge of rights and the justice system, physical accessibility, financial accessibility and unreasonable delay in the dispensation of justice.”<sup>94</sup>

In addition to the constitutional and statutory legislation described above, local courts in Zambia apply customary law to matters concerning children.<sup>95</sup> The principles of customary law are rooted in tribal laws and traditions, and thus vary widely throughout the country.<sup>96</sup> Presiding Judges in local courts (typically prominent citizens) have substantial power to invoke customary law, render judgments regarding marriages, divorces, inheritances, and other civil proceedings, and rules on minor criminal matters. Judgments in these local courts may not be in full accordance with statutory law, including the Penal Code.<sup>97</sup> There are also concerns that the Customary Laws are not compliant with the CRC.<sup>98</sup>

It has been a challenge to implement the principle of participation and ensure that children's views are heard and respected in Zambian society, since ‘elders are perceived as being always wise and children as immature and sometimes foolish’.<sup>99</sup>

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

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<sup>92</sup> See [http://www.equalitynow.org/take\\_action/adolescent-girls\\_action322](http://www.equalitynow.org/take_action/adolescent-girls_action322).

<sup>93</sup> See <http://www.business-anti-corruption.com/country-profiles/sub-saharan-africa/zambia/corruption-levels/judicial-system.aspx>.

<sup>94</sup> See <http://www.osisa.org/other/law/zambia/zambia-justice-and-rule-law>.

<sup>95</sup> See [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct\\_zambia2.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia2.pdf) at page 4.

<sup>96</sup> See [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct\\_zambia2.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia2.pdf) at page 4.

<sup>97</sup> See [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct\\_zambia2.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia2.pdf) at page 4.

<sup>98</sup> UN Committee on the Rights of the Child, *Concluding Observations on the initial report of Zambia*, para 5.

<sup>99</sup> *Initial States Parties report of Zambia to the UN Committee on the Rights of the Child*, Chapter III General Principles.