

ACCESS TO JUSTICE FOR CHILDREN: GHANA

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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 Republic of Ghana signed the CRC on 29 January 1990 and ratified it on 5 February 1990.¹ Ghana has signed, but not ratified, the three Optional Protocols to the CRC on: the involvement of children in armed conflict; the sale of children, child prostitution, and child pornography; and a communications procedure.² It has also ratified and acceded to other international human rights instruments, including the African Charter on the Rights and Welfare of the Child (“African Children’s Charter”) in 2005³ and the African Charter on Human and Peoples’ Rights (“African Charter”) in 1989.⁴

As a dualist state, Ghana must take legislative or executive action to incorporate ratified international treaties into local law before it is applicable within the local jurisdiction.⁵

B. Does the CRC take precedence over national law?

The 1992 Constitution is “the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void.”⁶ Though there is nothing to suggest that the CRC takes precedence over national law, Chapter 6, Article 37, Clause 3 of the 1992 Constitution provides:

“In the discharge of the obligations stated in clause (2) of this article [which include “the protection and promotion of all other basic human rights and freedoms, including the rights of the disabled, the aged, children and other vulnerable groups in development processes”], the State shall be guided by international human rights instruments which recognise and apply particular categories of basic human rights to development

¹ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

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https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en;
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en;
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en.

³ See UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Ghana*, CRC/C/GHA/CO/2, 17 March 2006, p. 2. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGHA%2fCO%2f2&Lang=en.

⁴ <http://www.achpr.org/instruments/achpr/ratification/>.

⁵ The Open Society Initiative for West Africa, ‘Ghana – Justice Sector and the Rule of Law, A review by AfriMAP and The Open Society Initiative for West Africa and The Institute for Democratic Governance’, 2007, p. 21.

⁶ 1992 Constitution, Article 1(2).

processes.”

C. Has the CRC been incorporated into national law?

Yes. According to Ghana’s reports to the Committee on the Rights of the Child, “[a]s a dualist State, Ghana enacted the Children’s Act 1998 (Act 560) to domesticate the Convention in its national law.”⁷ The Children’s Act was “meant to reform and consolidate the laws relating to children and to provide for the rights of the child.”⁸ The Committee on the Rights of the Child has acknowledged that the Children’s Act conforms to the CRC.⁹

Article 28 of the 1992 Constitution is dedicated to children’s rights and provides that Parliament shall enact laws necessary to ensure such rights.¹⁰ Other laws, such as the Criminal Code (Amendment) Act (Act 554) and the Juvenile Justice Act 2003 (Act 653) were also “passed with the ostensible object of incorporating the obligations of the CRC into Ghanaian law.”¹¹ Additional legislation further enforces the minimum standards set out in the CRC,¹² including the Persons with Disability Act 2006; the Ghana National Commission on Children (Repeal) Act 2006 (Act 701); the Domestic Violence Act 2007 (Act 732); the Education Act 2008 (Act 778); the Property Rights of Spouses Bill; the Intestate Succession Bill 2009; the National Health Insurance Amendment Act, 2012 (Act 852); and the Mental Health Act, 2012 (Act 846).

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

Given that Ghana is a “dualist” state, the courts would not enforce the CRC directly, but would instead enforce the laws enacted to domesticate it, such as the Children’s Act. As stated in a report published by The Open Society Initiative for West Africa in 2007 citing a decision of the Ghana Supreme Court:

“[i]nternational laws, including intra African enactments, are not binding on Ghana until such laws have been adopted or ratified by the municipal laws... This is a principle of public international law which recognises the sovereignty of States as a prerequisite for international relationship and law.”¹³

However, “the courts have affirmed that the principles of international instruments relating to fundamental human rights are enforceable to the extent that they fit into the provision set out in Article 33(5) of the Constitution, which allows the courts to rely on

⁷ *Third, Fourth, and Fifth Periodic Report of Ghana to the UN Committee on the Rights of the Child*, CRC/C/GHA/3-5, 2014, p. 6. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGHA%2f3-5&Lang=en.

⁸ GTZ Legal Pluralism and Gender Pilot Project, ‘Child Maintenance and Plural Legal Systems in Ghana’, January 2004, p. 35.

⁹ UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Ghana*, p. 1.

¹⁰ 1992 Constitution, Article 28.

¹¹ UNICEF Division of Policy and Practice, ‘Legislative Reform Related to the Convention on the Rights of the Child in Diverse Legal Systems – National Case Studies: Armenia, Barbados and Ghana’, March 2008, p. 71.

¹² *Ibid.*, pp. 6-9.

¹³ *Ibid.*, (citing *NPP v. A-G (CIBA Case)*, [1996-97] SCGLR, 729 at 761).

other human rights principles in addition to those specifically set out in the bill of rights.”¹⁴ Article 33(5) of the Constitution provides: “The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.”

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

We are not aware of judgments from domestic courts in which the CRC has been used or applied.

However, it appears that there is precedent for domestic courts applying other international instruments. The report published by The Open Society Initiative for West Africa in 2007 identified a case, *New Patriotic Party v. IGP*, [1993-94] 2 GLR 459, in which “it was held that the fact that Ghana had not passed specific legislation to give effect to the ACHPR [African Charter on Human and Peoples’ Rights] did not mean it could not be relied upon.”¹⁵ Application, however, is likely very sporadic, as “judges are generally not conversant with and therefore do not apply international human rights treaties.”¹⁶

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 through their “next friends” or guardians ad litem can bring civil cases, initiate judicial review proceedings to challenge violations of their constitutional rights, and bring administrative actions (see parts II.B and III.A below).

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?

Generally speaking, children may only bring cases through a “next friend” or a guardian ad litem, who is defined as a person who intervenes to assist a child in bringing legal action.¹⁷ For example, a civil lawsuit by a child may be filed with the assistance of a next friend as plaintiff.¹⁸ A child may raise complaints about domestic violence to police if assisted by a next friend.¹⁹ A child by his/her next friend (or the child’s parent, guardian, probation officer, social welfare officer, the Commission on Human Rights

¹⁴ Ibid., p. 23 (citing *NPP v. Attorney-General (The CIBA case)*, [1996-97] SCGLR 729; (1997) 2 CHRLD 5).

¹⁵ Ibid., p. 23.

¹⁶ Ibid., p. 29.

¹⁷ Children’s Act 1998 (Act 560), section 124; High Court (Civil Procedure) Rules, Order 5, rule 1(3).

¹⁸ Judicial Training Institute, *Civil Procedure Bench Book*, 2011, p. 15 (“Suits by infants and the mentally challenged - These are instituted by the next friend as plaintiff or defended by a guardian ad litem as defendant”), available at: <http://jtighana.org/new/links/publications/CourtRegistrarsHandbook.pdf>; www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=229775 (article reporting about lawsuit filed in Accra High Court by student against school authorities).

¹⁹ Domestic Violence Act 2007 (Act 32), section 6(2).

and Administration Justice or any other person) may apply to a Family Tribunal for a maintenance order for a child.²⁰

Except where a next friend or guardian ad litem has been appointed by the court, a next friend or guardian ad litem of a child can only act if the child's lawyer has filed in the court registry a certificate stating that the person named as next friend or guardian ad litem is a proper person to act as such and has no interest in the cause or matter adverse to that of the child.²¹

There are certain circumstances where a child may act by themselves. Pursuant to the Children's Act, a child may apply to a Family Tribunal for a care or supervision order to be discharged in his/her best interests.²²

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

As explained in part II.B above, it appears that cases may be brought by a guardian ad litem or next friend.

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

Under Ghana's Legal Aid Scheme, every person is entitled to legal aid "in connection with any proceedings related to the Constitution if they have reasonable grounds for taking, defending, prosecuting or being a party to the proceedings."²³ Legal aid is also provided to persons who earn the government minimum wage or less and desire legal representation in any criminal matter, in certain civil matters including maintenance of children, or in the event that the Legal Aid Board determines the person requires legal aid.²⁴

Under the Courts Act, the Supreme Court, Court of Appeal, the High Court or Regional Tribunal may assign a lawyer by way of legal aid to any party to any proceedings before the Court or Tribunal where the Court or Tribunal is of the opinion that it is desirable in the interest of justice that the party should have legal aid and that the person is financially unable to obtain the services of a lawyer. A Circuit Court, a Circuit or Community Tribunal may also do so with the prior approval of the Chief Justice, given the circumstances described above.²⁵

Children in conflict with the law have a right of access to legal advice under the Juvenile Justice Act 2003 (Act 653).²⁶

Section 38 of the Children's Act also provides for children's right to legal representation in the Family Tribunal.

²⁰ Ibid., section 48.

²¹ High Court (Civil Procedure) Rules, Order 5, rule 2(2).

²² Children's Act 1998 (Act 560), section 25.

²³ Legal Aid Scheme Act 1997 (Act 542), section 2; see also Court's Act 1993 (Act 459), section 114; 1992 Constitution, Article 294.

²⁴ Ibid.

²⁵ Courts Act, section 114.

²⁶ Juvenile Justice Act, sections 11 – 1, 22.

Legal aid consists of “representation by a lawyer, including all such assistance as is given by a lawyer, in the steps preliminary or incidental to any proceedings or arriving at or giving effect to a compromise to avoid or to bring an end to any proceedings”.²⁷

In practice, it appears that the Legal Aid Scheme is vastly under-resourced; in 2012 it was reported that the Scheme lacks the requisite number of lawyers and it can only be found in the regional capitals.²⁸ A survey of the justice sector commissioned by the Ministry of Justice in 2012 showed that 79% of Ghanaians did not know of the existence of the Legal Aid Scheme or the services it provides.²⁹ According to a report by the Commonwealth Human Rights Initiative, there is no structure in place by any government body to ensure that children in conflict with the law are represented by a lawyer.³⁰ Only approximately 5% of cases pursued by the Legal Aid Scheme are criminal cases, and very few of these criminal defendants are juveniles.³¹

Not all children receive legal representation at the Family Tribunal, though it is guaranteed by law. Legal representation for children is provided only at the request of the child, the child's parents or relatives, or persons interested in the matter, and compensation for counsel must be paid by the parties, rather than the state.³² Although they may not receive legal representation, children in child protection proceedings are usually represented by probation officers of the Department of Social Welfare.³³

- 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 next friend or guardian ad litem of a child must act by a lawyer.³⁴

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?

A legal challenge to protect children's rights can be brought several ways:

First, where a person, including a child, alleges that a provision of the 1992 Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened, then they may apply to the High Court for redress.³⁵

Second, any person can apply to the High Court for judicial review of laws, regulations,

²⁷ Legal Aid Scheme Act, section 2(3); Courts Act, section 114.

²⁸ <http://allafrica.com/stories/201208250216.html>.

²⁹

<http://www.gh.undp.org/content/ghana/en/home/presscenter/articles/2014/01/09/undp-furnishes-offices-of-ghana-legal-aid-scheme/>.

³⁰ <http://www.humanrightsinitiative.org/publications/ghana/JuvenileJusticeinGhana.pdf>

³¹ Ibid.

³² <http://www.law.yale.edu/rcw/rcw/jurisdictions/afw/ghana/frontpage.htm>.

³³ Ibid.

³⁴ High Court (Civil Procedure) Rules, Order 4, rule 1(3), Order 5, rule 1(4).

³⁵ 1992 Constitution, Article 33(1).

administrative acts or decisions.³⁶

Third, a civil claim may be brought for any relief or remedy for tort.

Fourth, under Ghana's system of child protection, any person with information on child abuse or a child in need of care and protection can file a complaint to the Department of Social Welfare.³⁷ Parental consent is not required.³⁸ This Department will then either refer the matter to a Child Panel for mediation if the child is not in immediate danger, or bring the case to a Family Tribunal if the child has been abused or is in immediate need of care and protection.³⁹

Fifth, complaints about violations of fundamental rights and freedoms can be filed with the Commission on Human Rights and Administrative Justice ("CHRAJ").⁴⁰ The CHRAJ can investigate complaints about any violations committed by a public officer in the exercise of official duties, as well as persons, private enterprises and other institutions.⁴¹ It can take appropriate action to call for the "remedying, correction and reversal" of such violations "through such means as are fair, proper and effective measures". This includes bringing proceedings in a competent court for any available remedy to bring an end to the violation, or to challenge the validity of a regulation if the violation is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise beyond the power of the law.⁴² The CHRAJ will not investigate matters pending before a court or judicial tribunal. It may also refuse to investigate complaints related to a decision, recommendation, act, or omission of which the complainant has had knowledge for more than 12 months if the subject matter of the complaint is trivial, if the complaint is frivolous, vexatious or not made in good faith, or if the complainant does not have sufficient personal interest in the subject matter of the complaint.

Finally, there are a number of regional human rights mechanisms that are available:

i. 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 Children's Charter.⁴³ All available domestic remedies must have been exhausted before bringing a case to the

³⁶ See High Court (Civil Procedure) Rules, Order 55; *Second periodic report of Ghana to the UN Committee on the Rights of the Child*, CRC/C/65/Add.34, 14 July 2005, para. 20. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f65%2fAdd.34&Lang=en.

³⁷ Children's Act, section 17.

³⁸ *Second periodic report of Ghana to the Committee on the Rights of the Child*, para. 54.

³⁹ Children's Act, section 19.

⁴⁰ 1992 Constitution, Arts 216 – 230.

⁴¹ http://www.chrajghana.com/?page_id=27

⁴² *Ibid.*; see also 1992 Constitution, Arts 219, 229.

⁴³ 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/>.

African Committee.⁴⁴ 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.⁴⁵ 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.⁴⁶

ii. 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.⁴⁷ All available domestic remedies must have been exhausted before bringing a case to the African Commission.⁴⁸ 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.⁴⁹ 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.⁵⁰ 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.⁵¹

iii. 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’ Rights⁵² alleging violations of

⁴⁴ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at: <http://acerwc.org/the-committees-work/communications/>.

⁴⁵ 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>.

⁴⁶ Ibid.

⁴⁷ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

⁴⁸ Ibid., Article 56(5).

⁴⁹ 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/>.

⁵⁰ War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Commission on Human and Peoples' Rights: communication procedure’, 2012, available at: <http://co-guide.org/mechanism/african-commission-human-and-peoples-rights-communication-procedure>.

⁵¹ 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>.

⁵² 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

the African Charter.⁵³ All available domestic remedies must have been exhausted before bringing a case to the Court.⁵⁴ The complaint must include, amongst other things, details of the applicant's identity, notwithstanding his/her request to remain anonymous.⁵⁵ The complaint must be written in one of the official languages of the Court,⁵⁶ and must be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court.⁵⁷ Applicants are entitled to be represented or to be assisted by legal counsel and/or by any other person of the applicant's choice.⁵⁸ The Court may, in the interest of justice, provide free legal representation and/or legal assistance to the applicant.⁵⁹ 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 fair compensation or reparation".⁶⁰

iv. ECOWAS Community Court of Justice

Individuals can bring complaints about violations of human rights that occur in any Member State of the Economic Community of West African States (ECOWAS) to the Community Court of Justice.⁶¹ This includes acts or inaction of Community Officials which violate the rights of individuals.⁶² There is no requirement to exhaust domestic remedies, therefore individuals do not need to pursue national judicial remedies before filing a case with the Community Court of Justice.⁶³ There are, however a number of conditions: the complaint must not be anonymous or be pending before another

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 October 2014, Ghana 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.

⁵³ 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>.

⁵⁴ *Ibid.*, Article 6(2).

⁵⁵ 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.

⁵⁶ *Ibid.*, Rule 34; the official languages of the Court are: Arabic, English, French, Portuguese, Spanish, Kiswahili and any other African language.

⁵⁷ *Ibid.*, Rule 40.

⁵⁸ *Ibid.*, Rule 28.

⁵⁹ *Ibid.*, Rule 31.

⁶⁰ *Ibid.*, Article 27(1).

⁶¹ Supplementary Protocol A/SP.1/01/05, Articles 3 and 4, available at:

http://www.courtecawas.org/site2012/pdf_files/supplementary_protocol.pdf; Protocol on the Community Court of Justice, Articles 9(4) and 10(d), available at:

http://www.courtecawas.org/site2012/pdf_files/protocol.pdf.

⁶² *Ibid.*, Article 4; Protocol on the Community Court of Justice, Article 10(c).

⁶³ War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, 'ECOWAS Community Court of Justice', 2012, available at:

<http://co-guide.org/mechanism/ecowas-community-court-justice>.

international court;⁶⁴ representation by an agent or lawyer is required;⁶⁵ and any action by or against a Community Institution or the Member State must be brought within three years of when the right of action arose.⁶⁶ Judgments of the Court of Justice are binding on the Member States, Institutions of the Community, individuals and corporate bodies.⁶⁷

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

The High Court has original jurisdiction to address claims of violations of fundamental human rights and freedoms under the 1992 Constitution.⁶⁸ The High Court may issue such directions or orders or writs as it may consider appropriate to enforce or secure the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person concerned is entitled. This includes *habeas corpus* (order for review of detention), *certiorari* (quashing order), *mandamus* (mandatory order), prohibition (prohibiting order), and *quo warranto* (challenging an individual's right to hold an office or governmental privilege).⁶⁹ Laws that are found to be inconsistent with the Constitution are, to the extent of the inconsistency, void.⁷⁰

A Family Tribunal may issue a care order to the Department of Social Welfare, which removes the child from a situation where he/she is suffering or likely to suffer significant harm, or a supervision order setting out the terms under which a child may remain in the custody of a parent, guardian, or relative.⁷¹

Damages are available following civil claims for relief or a remedy for tort.⁷²

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?

It does not appear possible to challenge a law or action in court without naming a specific victim. Most cases in the High Court are commenced by issuing a writ of summons, which must state the name and address of the plaintiff. Likewise, applications for redress concerning a fundamental right under Article 33 of the 1992 Constitution or for judicial review must be made to the High Court by motion, which must contain the full name and address of the applicant and his/her lawyer.

However, according to a Supreme Court decision, the CHRAJ has the power to act without receiving a complaint. Additionally, complaints may be brought before the CHRAJ on behalf of another under certain circumstances.⁷³

⁶⁴ Supplementary Protocol A/SP.1/01/05, Article 4; Protocol on the Community Court of Justice, Article 10(d),

⁶⁵ Protocol on the Community Court of Justice, Article 12.

⁶⁶ Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).

⁶⁷ Revised Treaty of the Economic Community of West African States, Article 15(4), available at: http://www.courtecowas.org/site2012/pdf_files/revised_treaty.pdf.

⁶⁸ 1992 Constitution, Article 33; Courts Act 1993 (Act 459), section 15.

⁶⁹ 1992 Constitution, Article 33(2).

⁷⁰ *Ibid.*, Article 1(2).

⁷¹ Children's Act, sections 20-21.

⁷² <http://www.beyuoandco.com/commencing-civil-proceedings-in-the-high-court-of-ghana/>

⁷³ http://www.chrajghana.com/?page_id=84 .

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

Where multiple persons have the same interest in proceedings, the proceedings may be commenced by any one or more of them representing all or some of them. A judgment or order given in proceedings binds all the persons acting as representatives of the parties, but will not be enforced against a person not a party to the proceedings except with leave of the court.⁷⁴

All persons with a common claim may be joined in one action as plaintiffs “to prevent multiplicity of suits, save time and ensure that justice is done”.⁷⁵

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?

We were unable to locate a code of civil procedure or rules of court addressing this issue, nor was it addressed in any of the secondary sources we reviewed.

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?

Civil proceedings are usually commenced by issuing a writ of summons.⁷⁶ A plaintiff or his/her lawyer is required to apply to the registrar for a writ of summons to be issued. Filing fees must be paid when filing the application for issuance of a writ of summons. The writ is then filled out and signed or marked by the plaintiff.⁷⁷ The writ must state the name and address of the plaintiff and the defendant, and must be accompanied by a statement of claim.⁷⁸ Civil actions are commenced in the District Court if the value or claim is 5,000 Ghana cedis or less, in the Circuit Court if the value or claim is 10,000 Ghana cedis or less, or otherwise in the High Court.⁷⁹

Regarding proceedings in Family Tribunals, given that the Family Tribunals are at the District Court level,⁸⁰ it appears the same filing procedures would apply.

Criminal proceedings are generally commenced by a criminal summons presented by the police to the court. Criminal cases against children are dealt with in the Juvenile

⁷⁴ High Court (Civil Procedure) Rules, Order 4, Rule 11.

⁷⁵ <http://jtighana.org/new/links/publications/CivilProcedureBook.pdf>

⁷⁶ Judicial Training Institute, *Registrars' Handbook*, 2011, section 2.A, 2.B, 2.D-2.G, pp. 14-18.

⁷⁷ Judicial Training Institute, *Civil Procedure Bench Book*.

⁷⁸ <http://jtighana.org/new/links/papers/CI%2047%20Justice%20Sule%20Gbadegbe.pdf>.

⁷⁹ <http://jtighana.org/new/links/publications/CourtRegistrarsHandbook.pdf>

⁸⁰ Courts Act, section 50 (“A District Court also has jurisdiction to hear and determine any action that arises under the Children’s Act, 1998 (Act 560) and shall for the purposes of that enactment be the Family Tribunal and exercise the powers conferred on a Family Tribunal under that Act and any other enactment”).

Court.⁸¹

Applications for redress concerning a fundamental right under Article 33 of the 1992 Constitution must be made to the High Court by motion supported by an affidavit signed by the applicant or by the applicant's lawyer. It must contain: the full name and address of the applicant and his/her lawyer, and any person directly affected by the application; the facts upon which the applicant relies; the relief or remedy sought by the applicant and the grounds on which the applicant seeks the relief or remedy.⁸²

Similarly, applications for judicial review must be made to the High Court by motion supported by an affidavit by or on behalf of the applicant which must contain the particulars above.⁸³

Complaints to the CHRAJ may be made via phone, email, post, fax, or in person at any of the Commission's offices throughout the country. Complainants should indicate the remedy sought, and provide all relevant information that will assist the Commission in its investigation, including supporting documents and full names, addresses, and phone numbers of relevant parties.⁸⁴

The contact information for the CHRAJ is as follows:

- *Head Office:*
Old Parliament House, High Street, Accra.
Postal Address: Box AC 489, Accra.
Phone: 0302- 662150/ 664267/ 664561/ 668839
Fax: 0302- 660020/ 668840/ 680396/ 673677
Email: info@chrajghana.com
Website: www.chrajghana.com
- *Regional Offices:*
Accra: 030 222 7111
Bolgatanga: 038 202 2312
Cape Coast: 033 203 2280/3158
Ho: 036 202 6797
Koforidua: 034 202 2321
Kumasi: 032 202 7445
Sunyani: 035 202 3573
Takoradi: 031 202 3730
Tamale: 037 202 2035
Tema: 030 320 8003
Wa: 039 202 2393

B. Legal aid / Court costs. Under what conditions would free or subsidized legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court

⁸¹ Criminal Procedure Code (Act 30), section 340.

⁸² High Court (Civil Procedure) Rules, Order 67, rule 2.

⁸³ Ibid., Order 55, rule 4.

⁸⁴ See http://www.chrajghana.com/?page_id=84; http://www.chrajghana.com/?page_id=74.

costs or cover other expenses?

The technical right to legal aid is discussed in part II.D above.

An applicant whose legal aid application is approved is exempted from paying the prescribed fee in respect of the filing of relevant court documents and the cost of preparing appeal records.⁸⁵ Courts may also exempt parties from paying court costs that would otherwise be due.⁸⁶

Complaints made before the CHRAJ are free of charge.⁸⁷

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organization, or under an agreement that does not require the payment of legal fees up front?

There are a number of NGOs that provide pro bono legal representation in human rights cases, including HelpLaw Ghana,⁸⁸ Women's Initiative for Self-Empowerment (WISE),⁸⁹

FIDA-Ghana,⁹⁰ Legal Resources Centre (LRC),⁹¹ WiLDAF-Ghana, Centre for Public Interest Law (CEPIL),⁹² and the socio-legal centre by DCI-Ghana.⁹³ However, "these are also swamped with cases well beyond their capacity."⁹⁴

- 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 limitation period is three years for an action claiming damages for negligence, nuisance or breach of duty in respect of personal injuries to any person.⁹⁵ Limitation periods are suspended during periods of "disability", which includes while a person is an "infant".⁹⁶

An application for redress concerning a fundamental right under Article 33 of the 1992 Constitution must be submitted to the High Court within six months after the occurrence

⁸⁵ Legal Aid Scheme Act, section 25.

⁸⁶ Civil Proceedings (Fees and Allowances) Rules, 1978 (LI 1190), Rule 8. [Note that we were unable to determine whether this particular legislation is in force, though given the progressive nature of the judicial system in Ghana, it is unlikely that the substance of such provision would have been abolished].

⁸⁷ See http://www.chrajghana.com/?page_id=84.

⁸⁸ Provides free legal and related services to the poor and the less privileged in Ghana, focusing on representation of indigent criminal defendants, including children: <http://www.help-law.org/>.

⁸⁹ Provides support services, including legal aid, to women and children who have suffered violence, including sexual assault: <http://www.wise-up.org/>.

⁹⁰ FIDA has a free legal aid program, which prioritises indigent women and children. Services include counselling, settlement, mediation and court representation: <http://www.fidaghana.org/about/>.

⁹¹ <http://www.lrcghana.org/index.php>.

⁹² <http://www.cepil.org.gh/>.

⁹³ <http://www.law.yale.edu/rcw/rcw/jurisdictions/afw/ghana/frontpage.htm>; The Open Society Initiative for West Africa, p. 126.

⁹⁴ Dr Kwesi Appiah, 'Report on Access to Justice – Scoping Study of the Justice (Formal and Informal) Sector in Ghana', April 2013, STAR-Ghana, p. 8.

⁹⁵ Limitation Act 1972, section 3, available at: <http://laws.ghanalegal.com/acts/id/374>.

⁹⁶ Ibid., section 16.

of the alleged contravention, or three months of the applicant becoming aware that the contravention is occurring or is likely to occur.⁹⁷

An application for judicial review must be made to the High Court within six months of the event giving grounds for making the application.⁹⁸

Complaints to the CHRAJ should be made “as soon as possible but not later than 12 months after the conduct or decision you want to complain about took place.”⁹⁹

- 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 Children’s Act allows a child the right to participate in proceedings concerning the child. Section 11 provides for the right of a child “capable of forming views” to express an opinion, to be listened to and to participate in decisions affecting the child’s wellbeing, “the opinion of the child being given due weight in accordance with the age and maturity of the child.” Section 30(5) provides for the right of a child to participate in proceedings before a Child Panel.¹⁰⁰ Section 38 similarly provides a child with the “right to give an account and express an opinion at a Family Tribunal.”

More generally, the Evidence Act (1975) (Act 323) provides that a child is competent to be a witness unless the child is “incapable of expressing himself so as to be understood, either directly or through interpretation by one who can understand him” or “incapable of understanding the duty of a witness to tell the truth.”

Family Tribunal proceedings sit *in camera*.¹⁰¹ This means that the court’s sittings are restricted to those permitted to be present at the trial - namely, the child, counsel, parents, court officials, social welfare, police officials, and interested persons permitted by the Tribunal.¹⁰² The Children’s Act provides for a “child’s right to privacy” that “shall be respected throughout the proceedings at a Family Tribunal” and also provides that “[n]o person shall publish any information that may lead to the identification of a child in any matter before a Family Tribunal except with the permission of the Family Tribunal.”¹⁰³

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

We have not determined how long the judicial process typically takes. Secondary sources speak about delays generally. In a paper not specific to child law or human rights cases, 33% of cases were resolved within six months of filing, 28% within seven to 12 months, 18% within one to two years, 8% within two to three years, and 12%

⁹⁷ High Court (Civil Procedure) Rules, Order 67, rule 3.

⁹⁸ *Ibid.*, Order 55, rule 3.

⁹⁹ See http://www.chrajghana.com/?page_id=84#/Q7.

¹⁰⁰ Child Panels are established in each district and have non-judicial functions to mediate in criminal and civil matters which concern a child prescribed under the Children’s Act: Children’s Act, section 28.

¹⁰¹ Judicial Training Institute, *Family Tribunal Bench Book*, 2011, p. 6.

¹⁰² *Ibid.* (citing section 36(1)(a)-(e) of the Children’s Act.)

¹⁰³ Children’s Act 1998 (Act 560), sections 38, 39.

were not resolved within three years.¹⁰⁴

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

The High Court has jurisdiction to hear appeals from District Courts, which would include Family Tribunals.¹⁰⁵ Appeals from the High Court may be made to the Court of Appeal, with the right of further and final appeal to the Supreme Court regarding decisions concerning violations of fundamental rights and freedoms.¹⁰⁶

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?

As a common law jurisdiction with judicial precedent, all courts are bound to follow the decisions of the Supreme Court on questions of law, and those lower than the Court of Appeal must follow the decisions of the Court of Appeal on questions of law.¹⁰⁷ Therefore, a negative decision of the Supreme Court and Court of Appeal would potentially have a long-term impact. However, the Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so.¹⁰⁸

While the 1992 Constitution explicitly protects the independence of the judiciary,¹⁰⁹ attempted interference with the judiciary by the ruling party has been reported in recent years. In 2010, in response to a number of court decisions unfavourable to the ruling party, the party chairman demanded that the chief justice “purge” and “cleanse” the judiciary.¹¹⁰

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

Traditional values, beliefs, and customs have been described as a potential barrier to the implementation of the protective demands of the law.¹¹¹

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.

It has proven difficult to obtain access to the primary sources of law in Ghana. Legal opinions are not readily available or searchable, nor are codes of civil procedure or rules of the court consistently available (though a few could be located). If unfamiliar with Ghana’s legal system, these factors could make undertaking legal action to challenge a

¹⁰⁴ World Bank, ‘Uses and Users of Justice in Africa: The Case of Ghana’s Specialised Courts’, July 2010.

¹⁰⁵ Court’s Act, sections 15, 16, 21, 47-50; Judicial Training Institute, *Family Tribunal Bench Book*, p. 12 (“An appeal from the decision of the Family Tribunal is heard at the High Court.”).

¹⁰⁶ 1992 Constitution, Articles 33, 129.

¹⁰⁷ *Ibid.*, Articles 129(3), 136(5).

¹⁰⁸ *Ibid.*, Article 129(3).

¹⁰⁹ *Ibid.*, Article 125(1).

¹¹⁰ <http://www.freedomhouse.org/report/countries-crossroads/2012/ghana>.

¹¹¹ Ahmed Bawa Kuyini and Fati K. Mahama, ‘Implementing Child Rights and Protection Law in Ghana: Case Study’, p. 19.

violation of children's rights in Ghana difficult.

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