

ACCESS TO JUSTICE FOR CHILDREN:
COUNTRY REPORT CARD¹

KENYA

I. Legal Status of the Convention on the Rights of the Child (CRC)	
A. CRC takes precedence over conflicting legislation (/10) (no = 0; partial = 5; yes = 10)	10
B. CRC has been incorporated into national law (/10) (no = 0; partial = 5; yes = 10)	10
C. CRC is directly enforceable in domestic courts (/10) (no = 0; interpretive guidance = 3; some direct, some interpretive guidance = 6; yes = 10)	6
D. CRC has been applied in legal proceedings (/10) (no = 0; not systematically = 5; systematically = 10)	10
E. OP3 is ratified (/5) (no = 0; yes = 5)	0
SCORE /40:	36

II. Legal Status of the Child	
A. Full range of legal claims is available to challenge rights violations (/20)	
Specific standards: (2.5 each)	
<ul style="list-style-type: none"> ● violations can be challenged even if they are not crimes 	2.5
<ul style="list-style-type: none"> ● can bring private prosecutions where the State will not carry out a criminal prosecution itself 	2.5
<ul style="list-style-type: none"> ● can challenge deprivation of liberty and/or lawfulness of detention 	2.5 ²
<ul style="list-style-type: none"> ● mechanisms exist to investigate allegations against officials 	2.5
Independent bodies capable of taking complaints before or on behalf of children: (2 each)	
<ul style="list-style-type: none"> ● Independent institution exists with mandate that covers the protection and promotion of children's rights 	2
<ul style="list-style-type: none"> ● There is a specific department or person within the relevant institution that specifically deals with children's rights 	0
<ul style="list-style-type: none"> ● Institution is empowered to bring complaints in relation to violations of children's rights 	2

¹ This report card is based on CRIN's Access to Justice for Children: Model Report, available at www.crin.org/en/node/31972/.

² Constitution, Art. 51(2).

• Institution has a transparent appointment procedure	2 ³
• Institution is empowered to review State's progress in realising children's rights	2
B. Children can bring cases alone or via a representative (/7.5)	
Can bring a case in own name (no = 0; yes = 2.5)	2.5
Is generally not required to bring proceedings through a guardian ad litem or litigation friend (no = 0; yes = 2.5)	0
No conflict of interests in appointments of representatives (no = 0; yes = 2.5)	2.5
C. Parents/guardians can bring cases on behalf of very young children (/10)	
Parents' ability to act on behalf of child is tempered by the principle of the best interests of the child (no = 0; partial = 5; yes = 10)	5 ⁴
D. Children/representatives are eligible for free legal assistance (/30)	
Settings: (2 each)	
• civil	0
• criminal	2
• administrative	0
• family	2
• all other judicial settings	0
Right to a lawyer of own choosing (no = 0; yes = 5)	0
Right to lawyer with experience commensurate with nature of claim / offence (no = 0; yes = 5)	0
Right to legal aid throughout the criminal process from arrest to trial and appeal (no = 0; partial = 5; yes = 10)	5
E. No further legal limitations/conditions on children/representatives bringing, running or settling cases (/5) (deduct 1 for each limitation/condition)	5
SCORE /72.5:	42

III. Challenging Children's Rights Violations	
A. Children have complete access to all courts, complaints mechanisms (/10)	
Settings: (2.5 each)	
• criminal	2.5
• civil	2.5
• administrative	2.5
• informal, customary or alternative justice mechanisms available	2.5

³ Procedure laid out under the Kenyan National Commission on Human Rights Act, section 11 (http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/KenyaNationalCommissiononHumanRights_Act_No14of2011.pdf).

⁴ best interests of the child principle in Art. 4(2) of the Children's Act.

where appropriate	
B. Courts have broad powers to remedy rights violations (/16)	
Remedies: (2 each)	
• restitution	2
• compensation	2
• stop the enforcement of a law	2
• stop the enforcement of subsidiary legislation	2
• order government to take steps to prevent a violation	2
• launch investigation or bring proceedings at the court's initiative	2 ⁵
• guarantee non-repetition	2
• repeal of law (partial = 1)	2 ⁶
C. Widespread violations can be challenged without naming individual victims (/10)	
Named victims are not required (no = 0; partial = 5; yes = 10)	5 ⁷
D. Children can file group litigation to challenge multiple violations (/10)	
Group and collective litigation available (no = 0; partial (selected types of actions only) = 2.5; yes = 7.5)	7.5
Courts have the power to combine cases to offer clear, consistent pronouncements of the law (no = 0; yes = 5)	2.5
E. Non-governmental organisations can file, intervene in cases (/10)	
Can file (no = 0; yes = 7.5)	7.5
Can intervene (no = 0; yes = 2.5)	2.5
SCORE /56:	51

IV. Practical Considerations	
A. Venue (/5)	
Formal restrictions relaxed as necessary and appropriate (no = 0; partial = 2.5; yes = 5)	2.5 ⁸
B. Legal aid / costs (/5)	
Court fees and case related expenses are not payable (no = 0; yes = 5)	5
C. Pro-bono / financing (/10)	
Active legal and bar associations that offer pro-bono representation (no = 0; yes = 5)	5
Systematic procedures to promote pro-bono (no = 0; yes = 5)	5
D. Timing (/10)	
Limitation periods do not begin to run until a child reaches the age of 18	5

⁵ Power to make an order of judicial review (Art. 23(3)(f)).

⁶ Any law in contravention of the Constitution is void.

⁷ While public interest litigation would meet this standard, claims against the government require named individuals.

⁸ Children's Court exists.

(no = 0; yes =5)	
No time limitation period for “serious violations of international humanitarian law” (no = 0; yes = 5)	5 ⁹
E. Evidence (/7.5)	
Children may testify or give evidence in court proceedings (no = 0; yes = 2.5)	2.5
Opportunity to give evidence not under oath where this is not understood (no = 0; yes = 2.5)	2.5
Child friendly procedures to facilitate the giving of evidence (no = 0; yes = 2.5)	0
F. Resolution (/10)	
Cases involving children are resolved without undue delay (no = 0; partial = 5; yes = 10)	5 ¹⁰
G. Appeal (/10)	
Children have right to appeal (no = 0; yes = 10)	10
H. Impact and follow-up (/10)	
Judicial decisions are enforced and respected (no = 0; partial = 5; yes = 10)	0
I. Privacy (/10)	
Privacy of children involved in legal proceedings guaranteed by law; public can be excluded; personal details unpublished (no = 0; yes = 10)	10
J. Right to be heard (/10)	
Explicit provisions in place to guarantee children’s right to be heard and for his or her views to be taken into account during legal proceedings (no = 0; yes = 10)	10 ¹¹
SCORE /92.5:	67.5

TOTAL WEIGHTED SCORE /256 = 196.5

⁹ No limitation period for any criminal offence, Art. 219 Criminal Procedure Code and Limitation of Actions Act does not apply to criminal offences.

¹⁰ 2 - 6 years.

¹¹ Children Act art. 4(4)