

ACCESS TO JUSTICE FOR CHILDREN: NIGERIA

This report was produced by White & Case LLP in November 2013 but may have been subsequently edited by Child Rights International Network (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?

Nigeria¹ ratified the CRC on 19 April 1991.² Under the Nigerian Constitution, in force since 1999, the CRC and other ratified international instruments do not automatically have the force of law in Nigeria; rather, they must be incorporated through implementing legislation enacted by the National Assembly.³ Incorporation can either be direct, as with the incorporation of the African Charter on Human and Peoples' Rights by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1999,⁴ or in a more limited, subject-by-subject manner, as with the CRC and most other regional and international human rights instruments.

B. Does the CRC take precedence over national law?

For the reasons set forth in part I.A above, the CRC itself does not take precedence over national law, although there have been cases in which national law has been interpreted in a manner consistent with international human rights obligations.

The Supreme Court of Nigeria has held that, where there is a conflict between national legislation implementing an international human rights instrument and a domestic piece of legislation, the court should interpret the conflict so that the legislation implementing the international instrument prevails, as it should be presumed that the legislator does not intend to breach its international obligations.⁵ Therefore, a court may interpret the Child Rights Act of 2003,⁶ which implements large parts of the CRC, as taking precedence over other domestic legislation where a conflict between the two exists.

¹ Comments on this report provided by Civil Resource Development and Documentation Centre (CIRDDOC) Nigeria, October 2015.

² United Nations Treaty Collection, 'Convention on the Rights of the Child', available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

³ Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 12(1), available at http://www.nigerstate.gov.ng/epubl/Niger_constitution_1999.pdf ("No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly").

⁴ See Egede, E., 'Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria', 2007, *Journal of African Law*, 51, pp. 249-284, available at <http://login.westlaw.co.uk/maf/wluk/app/document?&srguid=ia744d05e0000013fe8550fa080a596dc&docguid=IF29F3AA0F64611E0AE10A41C594749DB&hitguid=IF29F3AA0F64611E0AE10A41C594749DB&rank=1&spos=1&epos=1&td=119&crumb-action=append&context=6&resolvein=true>.

⁵ *Abacha v. Fawehinmi* [2000] 6 MWLR (Part 600) 228, available at http://judgment.supremecourt.gov.ng/pdf.php?case_id=105; see also *Ibid.*, p. 256, and Nwapi, C., 'International Treaties in Nigerian and Canadian Courts', 2011, *African Journal of International and Comparative Law*. Volume 19, Page 38-65, p. 47, available at <http://www.eupublishing.com/doi/pdfplus/10.3366/ajicl.2011.0003>.

⁶ Act no 26 of 2003, available at <http://www.nass.gov.ng/nass/actssearch.php?search=child>.

However, subsequent legislation can repeal the implementing legislation if it does so expressly, and the implementing legislation can never take precedence over the Constitution.⁷

C. Has the CRC been incorporated into national law?

The CRC has not been incorporated wholesale into national law. However, the Child Rights Act, which was enacted by the National Assembly on 16 July 2003, is generally seen as an attempt to incorporate the CRC into national law. Although it does not expressly state that it is intended to incorporate the CRC, the Child Rights Act reflects the main provisions of the CRC.⁸

Part IV of the Nigerian Constitution contains fundamental rights provisions, some of which overlap with the rights provided for in the CRC, such as the right to life,⁹ the right to private and family life¹⁰ and the right to freedom of expression.¹¹ In the Constitution, most of these rights apply to both adults and children. The Constitution also contains certain rights that are specific to children, such as the obligation of the State to ensure children and young persons are protected against any exploitation, and against moral and material neglect.¹²

Nigeria is a federal constitutional republic consisting of 36 states. Matters relating to children are contained in the residual legislative list of the Nigerian Constitution which is within the legislative competence of the states.¹³ Therefore, although the Child Rights Act has been passed on a national level, the National Assembly has asked state governments to enact the Child Rights Act at the state level.¹⁴ There have been differing levels of incorporation of the Child Rights Act among the various states. See part V below for more information.

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

Under Section 12(1) of the Constitution, international instruments are not directly enforceable in Nigeria; rather, certain provisions have been incorporated into the municipal law of Nigeria in order for them to be applicable. However, the Supreme Court has held that unincorporated international instruments can be used by Nigerian courts as a source of interpretive guidance.¹⁵

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

There have only been a few cases where Nigerian courts have referred to international instruments in their judgments. An example is the case of *Mojekwu v. Ejikeme*,¹⁶ which

⁷ See Egede, E., p. 256.

⁸ Ibid., p. 268.

⁹ Ibid., Section 33.

¹⁰ Ibid., Section 37.

¹¹ Ibid., Section 39.

¹² Ibid., Section 17(3)(f).

¹³ Ibid., Section 4(7).

¹⁴ See Egede, E., p. 271.

¹⁵ *Abacha v. Fawehinmi*, at para 357.

¹⁶ *Mojekwu & others v. Ejikeme & others* (2000) 5 NWLR 402, available at

<http://www.equalrightstrust.org/ertdocumentbank/Mojekwu%20%20others%20v%20Ejikeme%20&>

concerned customary rules relating to inheritance and in which the court referred to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in its judgment. There are not yet any examples of Nigerian courts referring to the CRC.

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?

Under the Nigerian Constitution, “any person in Nigeria” can bring cases in domestic courts for the determination of questions relating to the civil rights of that person.¹⁷

Section 46 of the Constitution additionally specifies that any person who alleges a violation of fundamental rights under the Constitution can bring a case directly to the High Court of the relevant state.¹⁸ However, the Supreme Court has held that both the Federal High Court and High Courts of the states have concurrent jurisdiction in respect of the enforcement of fundamental rights.¹⁹

The Child Rights Act established family courts, which operate at Magistrate Court level and state High Court level, and which have jurisdiction to hear any civil and criminal proceedings involving the determination of the rights of a child.²⁰ The Child Rights Act sets out the guidelines for participation of children in court proceedings brought in the family courts.²¹ The Act also established Local Government Child Rights Implementation Committees, whose functions include initiating actions to ensure the observance of the rights of children contained in, among other things, the Child Rights Act and the CRC.²²

As the Child Rights Act has not yet been implemented in all states, this report will be looking at the rules applicable to family courts and rules applicable to general courts in parallel.

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

According to the Child Rights Act, children are required to have a guardian *ad litem* to safeguard the interests of the child and conduct proceedings on their behalf, unless the court is “satisfied that this is not necessary”.²³ Where the child is not represented by a legal practitioner and has not been appointed a guardian *ad litem*, the court may appoint a legal practitioner to represent the child if the child has sufficient understanding to

[%20others%20_2000_%205%20NWLR%20402.pdf](#).

¹⁷ Constitution, Section 6.6(b).

¹⁸ *Ibid.*, Section 46(1).

¹⁹ *Jack v University of Agriculture, Makurdi* [2004] 14 WRN 91, available at <http://www.lawpavilionpersonal.com/lawreportssummary.jsp?suite=olabisi@9thfloor&pk=SC.262/2000&apk=3127>; see also Brems, E. and Adekoya, C.O. (2010) “Human rights enforcement by people living in poverty: Access to justice in Nigeria”, pp. 261f.

²⁰ Child Rights Act, Section 151.

²¹ *Ibid.*, Section 89 and Part XIII.

²² *Ibid.*, Section 268 and Section 269.

²³ *Ibid.*, Section 89(1).

instruct a legal practitioner and wishes to do so.²⁴ The Minister charged with responsibility for matters relating to children may provide for the establishment of panels of persons from which guardians *ad litem* can be selected.

Where the family court sits at Magistrate Court level or state High Court level, the court will apply the procedural rules set out in the Child Rights Act as well as the more detailed procedural rules generally applicable to such Magistrates' Courts or High Courts.²⁵

The High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules and the civil procedure rules of the High Courts of certain other individual states set out how children can bring cases.²⁶ For example, the High Court of Lagos (Civil Procedure) Rules set out that "infants" and "persons under legal disability" may bring proceedings in court with the assistance of their guardian; "persons under legal disability" are defined to include persons who lack capacity to institute or defend any proceedings by reason of age.²⁷ The High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules similarly require that "infants" must be represented by a guardian *ad litem*; the age of "infants" is not defined.²⁸

The Federal High Court (Civil Procedure) Rules set out that "persons under legal disability" may bring cases through guardians appointed for that purpose²⁹ and that "infants" should be represented by a "next friend";³⁰ again, the age of "infants" is not defined.

Similarly, cases brought on behalf of an infant in a Magistrates' Court must be initiated by the infant's guardian. The Magistrates' Court may appoint a guardian *ad litem* at the outset of proceedings or at any time during the proceedings if it thinks this is necessary.

³¹

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

As mentioned in part II.B above, cases involving infants and young children must be brought by a guardian *ad litem*. Typically, this would be the child's parent or legal guardian.

Possessing "parental responsibility" over a child grants the holder the right to pursue legal claims related to a child and his or her property.³² Parental responsibility is usually

²⁴ Ibid., Section 89(3) and Section 89(4).

²⁵ Ibid., Section 161(2).

²⁶ This report focuses on the civil procedure rules of the High Court of the Federal Capital Territory, Abuja and the High Court of Lagos, which are available online.

²⁷ See High Court of Lagos (Civil Procedure) Rules 2012, Order 13, Section 9 and Order 50, Section 3, available at

[http://www.nigeria-law.org/The%20Judicature/State%20Courts/High%20Court%20of%20Lagos%20State/High%20Court%20of%20Lagos%20State%20\(Civil%20Procedure\)%20Rules%202012.pdf](http://www.nigeria-law.org/The%20Judicature/State%20Courts/High%20Court%20of%20Lagos%20State/High%20Court%20of%20Lagos%20State%20(Civil%20Procedure)%20Rules%202012.pdf).

²⁸ High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 11, Section 11, available at http://www.wipo.int/wipolex/en/text.jsp?file_id=218195#LinkTarget_2325

²⁹ Federal High Court (Civil Procedure) Rules 2009, Order 9, Section 10.

³⁰ Ibid., Section 11.

³¹ See Magistrates' Court (Civil Procedure) Rules 2008 (Lagos), Order 4, Section 9 – 11, available at <http://www.lagoshouseofassembly.gov.ng/uploads/3f1df2fb97937eff06078549bcb43654.pdf>.

³² Child Rights Act, Section 277 ("parental responsibility" means all the rights duties, powers,

held by the child's biological parents.³³ However, the Child Rights Act also provides for the appointment of legal guardians under certain circumstances.³⁴ Adults who do not hold parental responsibility may also serve as the child's guardian *ad litem* for the purposes of lawsuits under the Child Rights Act as set out in part II.B above.³⁵

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

Under the Child Rights Act, a child has the right to be represented by a legal practitioner and to free legal aid in the hearing and determination of any matter concerning the child.³⁶ However, as mentioned in part V below, the Child Rights Act has not yet been fully implemented in all states, and children may have to rely on the general rules relating to legal aid applicable to adults.

Further, under the Constitution, the National Assembly is mandated to ensure that legal aid and financial assistance is available to all citizens (including children) to enable them to engage the services of a legal practitioner to prosecute a claim where a fundamental right under the Constitution has been violated.³⁷

The Legal Aid Council was established pursuant to the Legal Aid Act of 1976, which was superseded by the Legal Aid Act of 2011 (Legal Aid Act).³⁸ The Legal Aid Act provides for free legal representation for a wide range of criminal proceedings. Legal aid is also available in civil cases, but only in the context of claims alleging a violation of the fundamental rights under the Constitution, claims arising out of criminal acts and claims relating to accidents including an employee's compensation claim.³⁹

Except in exceptional circumstances, legal aid is only available under the Legal Aid Act where a person earns less than the national minimum wage, although the Legal Aid Council has the discretion to grant legal aid on a contributory basis where a person earns up to 10 times the national minimum wage.⁴⁰ Where legal aid is granted and the applicant is awarded damages as a result of the proceedings, the Legal Aid Council can recover its costs out of up to 10% of the damages awarded and the costs awarded in the case.⁴¹

Legal aid will also only be available where the Legal Aid Council is satisfied that the applicant has reasonable grounds for taking, defending or being a party to a legal proceeding. The Legal Aid Council may refuse to grant legal aid if it appears unreasonable that the applicant should receive it in the particular circumstances of the case.⁴²

responsibilities and authority which by law a parent of a child has in relation to the child and his property").

³³ Ibid., Section 68.

³⁴ Ibid., Sections 82 – 88.

³⁵ Ibid., Section 89 and Section 90.

³⁶ Ibid., Section 155.

³⁷ Constitution, Section 46(4)(b).

³⁸ Legal Aid Act, 2011, available at http://www.legalaidcouncil.gov.ng/docs/legal_aid_act_2011.pdf.

³⁹ Ibid., Section 8(2) and Second Schedule.

⁴⁰ Ibid., Section 10(1)-(3).

⁴¹ Ibid., Section 10(3)(a).

⁴² Ibid., Section 8(6).

In addition to the general legal aid provisions, High Courts can also allow applicants to bring proceedings *in forma pauperis*, as discussed further in part IV.B below.

- 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)?

There is no provision in the Child Rights Act that requires a child's parents or guardians to consent to that child or his or her guardian *ad litem* bringing a legal proceeding, or to consent to the appointment of a particular guardian *ad litem*. Parents are, however, allowed to attend court proceedings.⁴³

While it is not a limit on a child's or a chosen legal representative's ability to bring a case, it is notable that any proposed settlement or compromise in civil proceedings involving a "person under legal disability" or "infants" must be approved by the court.⁴⁴

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 Child Rights Act states that civil and criminal matters involving children can be brought in family courts sitting at magisterial or state High Court level, in which case the proceedings will follow the procedural rules contained in the Child Rights Act and in the general procedure rules of the relevant court.⁴⁵

As stated in part II.A above, the Constitution sets out that "any person in Nigeria" can bring cases in domestic courts for the determination of questions relating to the civil rights of that person,⁴⁶ and that any person who alleges a violation of their fundamental rights under the Constitution can bring a case directly to the High Court of the state⁴⁷ or, as decided by the Supreme Court, the Federal High Court.⁴⁸

Children and their representatives may initiate legal proceedings in civil courts to challenge violations of their rights under domestic law. Civil cases not involving a violation of fundamental rights under the Constitution can be brought in a Magistrates' Court where they involve a low monetary claim,⁴⁹ or directly to the High Court of the relevant state in which the claim arises if the claim for compensation is above a particular amount.⁵⁰ The Child Rights Act sets out that where civil cases involve claims of Naira 50,000 or above, the family court hearing such claim will sit at High Court level.

⁴³ Child Rights Act, Section 156(c).

⁴⁴ Federal High Court (Civil Procedure) Rules 2009, Order 42, Section 6(1) and See Magistrates' Courts (Civil Procedure) Rules 2008 (Lagos), Order 4, Section 15(1).

⁴⁵ Child Rights Act, Section 161(2).

⁴⁶ Constitution, Section 6.6(b).

⁴⁷ *Ibid.*, Section 46(1).

⁴⁸ *Jack v. University of Agriculture, Makurdi.*

⁴⁹ Magistrates' Courts (Civil Procedure) Rules 2008 (Lagos), Order 1, Section 4.

⁵⁰ See UNODC, 'Basic civil procedure', available at http://www.unodc.org/documents/nigeria/publications/courtusersguides/Court_User_Guide_Basic_Civil_Procedure_No_5_PRINT.pdf.

Judicial review proceedings may be initiated in the Federal High Court or the High Court of the relevant state to challenge a decision of a public body.⁵¹ Judicial review proceedings require leave of the High Court, and must typically be brought within three months of the decision to be challenged.⁵² The Nigerian Constitution provides that courts can also review acts of the legislature.⁵³

If a fundamental right of a child under Chapter IV of the Constitution has been, or is likely to be infringed, legal challenges may be brought following the procedure set out in the Fundamental Rights (Enforcement Procedure) Rules.⁵⁴ Such challenges may be brought directly to the High Court (at federal or state level).⁵⁵ The Fundamental Rights (Enforcement Procedure) Rules do not require an application for leave, but can be brought directly to the court.⁵⁶ Claims brought under the Fundamental Rights (Enforcement Procedure) Rules do not become time barred by any statute of limitation.⁵⁷

If the rights violation amounts to a crime and the Attorney General or other public prosecutor does not bring criminal proceedings, any person may bring a private prosecution before a Magistrates' Court.⁵⁸ However, the Attorney General may at any time take over⁵⁹ or discontinue such proceedings.⁶⁰

In addition, if it appears that a child is in need of protection, the Child Rights Act provides that a child development officer, a police officer or any other person authorised by the Minister charged with responsibility for matters relating to children may bring a child before a family court, which may make an order for the care of the child.⁶¹

Individuals, including child victims, their 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").⁶² All available domestic

⁵¹ Federal High Court (Civil Procedure) Rules 2009, Order 34; High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 43; and High Court of Lagos (Civil Procedure) Rules 2012, Order 40.

⁵² Federal High Court (Civil Procedure) Rules 2009, Order 34, Section 3 and 4; and High Court of Lagos (Civil Procedure) Rules 2012, Order 40, Section 4.

⁵³ Constitution, Section 4(8).

⁵⁴ Fundamental Rights (Enforcement Procedure) Rules 2009, available at <http://www.accesstojustice-ng.org/articles/New%20FREPE%20Rules%20.pdf>.

⁵⁵ Constitution, Section 46(1) and Fundamental Rights (Enforcement Procedure) Rules, Order II, Rule 1.

⁵⁶ Fundamental Rights (Enforcement Procedure) Rules, Order II, Rule 2.

⁵⁷ *Ibid.*, Rule 1.

⁵⁸ Criminal Procedure Act (Chapter 80), Section 342 and Section 343 (applicable to Southern Nigeria), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=218192 and Criminal Procedure Code (Chapter 30), Section 143 (applicable to Northern Nigeria), see also <http://www.redress.org/downloads/country-reports/Nigeria.pdf>, at p. 12.

⁵⁹ Constitution, Section 174(1)(b) and Section 211(1)(b).

⁶⁰ *Ibid.*, Section 174(1)(c) and Section 211(1)(c).

⁶¹ Child Rights Act, Section 50(1).

⁶² African Charter on the Rights and Welfare of the Child ("African Children's Charter"), Article 44, available at:

<http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acrwc/acrwc-charter-full-text/>

. For more information about communications, see:

remedies must have been exhausted before bringing a case to the African Committee.⁶³ 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.⁶⁴ 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.⁶⁵

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”).⁶⁶ All available domestic remedies must have been exhausted before bringing a case to the African Commission.⁶⁷ 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.⁶⁸ 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.⁶⁹ 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.⁷⁰

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.⁷¹ This includes acts or inaction of Community Officials

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

⁶³ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at: <http://acerwc.org/the-committees-work/communications/>.

⁶⁴ 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>.

⁶⁵ Ibid.

⁶⁶ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

⁶⁷ Ibid., Article 56(5).

⁶⁸ 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/>.

⁶⁹ 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>.

⁷⁰ 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>.

⁷¹ Supplementary Protocol A/SP.1/01/05, Articles 3 and 4, available at: http://www.courtecowas.org/site2012/pdf_files/supplementary_protocol.pdf; Protocol on the Community Court of Justice, Articles 9(4) and 10(d), available at: http://www.courtecowas.org/site2012/pdf_files/protocol.pdf.

which violate the rights of individuals.⁷² 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.⁷³ There are, however a number of conditions: the complaint must not be anonymous or be pending before another international court;⁷⁴ representation by an agent or lawyer is required;⁷⁵ 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.⁷⁶ Judgments of the Court of Justice are binding on the Member States, Institutions of the Community, individuals and corporate bodies.⁷⁷

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

In civil proceedings, courts have the power to either award money damages or to issue an injunction ordering a party to carry or cease out a particular action.⁷⁸ At any point during the proceedings, courts may also issue temporary injunctions or other interlocutory orders, such as preservation orders, to prevent the defendant from causing harm relating to the subject matter of the proceedings as the case progresses.⁷⁹

In judicial review proceedings, the court may make one of three orders – an order of *certiorari* (setting aside an act as unlawful), order of *mandamus* (requiring the defendant to follow a particular course of action), or order of prohibition (preventing a public body from doing something prohibited under the law) - or issue an injunction.⁸⁰ A claimant in judicial review proceedings can also request damages.⁸¹

In proceedings brought to challenge a violation of fundamental rights under the Constitution, the court “may make any orders, issue such writs and give such directions as it may consider appropriate” for enforcing such right.⁸² Neither the Constitution nor the Fundamental Rights (Enforcement Procedure) Rules provide for specific remedies. However, it was held in *Asemota v. Yesufu* that the language implies the availability of remedies such as an order of *certiorari*, *mandamus* or prohibition, or injunction, though

⁷² Ibid., Article 4; Protocol on the Community Court of Justice, Article 10(c).

⁷³ 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>.

⁷⁴ Supplementary Protocol A/SP.1/01/05, Article 4; Protocol on the Community Court of Justice, Article 10(d),

⁷⁵ Protocol on the Community Court of Justice, Article 12.

⁷⁶ Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).

⁷⁷ 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.

⁷⁸ See for example Federal High Court (Civil Procedure) Rules 2009, Order 6, Section 13.

⁷⁹ Ibid., Order 26 and Order 28, Sections 1 and 2; High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 8 and Order 33; and High Court of Lagos (Civil Procedure) Rules 2012, Order 38, Sections 1 and 2.

⁸⁰ Federal High Court (Civil Procedure) Rules 2009, Order 34, Section 1; High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 43, Section 1; and High Court of Lagos (Civil Procedure) Rules 2012, Order 40, Sections 1.

⁸¹ Federal High Court (Civil Procedure) Rules 2009, Order 34, Section 7; High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 43, Section 7; and High Court of Lagos (Civil Procedure) Rules 2012, Order 40, Sections 7.

⁸² Constitution, Section 46(2) and Fundamental Rights (Enforcement Procedure) Rules, Order XI.

this list was not intended to be exclusive.⁸³ Courts have also awarded money damages in cases involving violations of fundamental rights.⁸⁴

Under the Constitution, the Federal High Court and Supreme Court also have the power to declare a piece of legislation inconsistent with the Constitution, in which case such piece of legislation will be void to the extent of the inconsistency.⁸⁵

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?

Nigeria's current law on standing is very restrictive. The Constitution sets out that a person can only approach the courts "for the determination of any question as to the civil rights and obligations of that person",⁸⁶ meaning that the individual victim whose rights have been infringed would have to be named. However, cases involving children brought in family courts are held in private, excluding the press and other persons who are not involved in order to protect the interests of the child.⁸⁷

Similarly, cases involving the violation of a fundamental right under the Constitution brought under the Fundamental Rights (Enforcement Procedure) Rules require one or more victims to be named, as only a person whose rights have been, are being, or are likely to be infringed may bring such a case.⁸⁸

Judicial review proceedings must be brought by a person who has a "sufficient interest" in the matter to which the application relates, as judges in the Federal High Court or the High Court of a state are not permitted to grant leave for such judicial review proceedings unless the applicant has sufficient interest in the proceedings.⁸⁹

Overall, Nigerian courts have interpreted the rules relating to standing and the concept of "sufficient interest" narrowly compared to other countries.

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

Where a number of people have the same interest in a civil case, including cases involving rights violations, the court may authorise one or more of such persons to bring an action on behalf of or for the benefit of all the interested parties.⁹⁰ In such a case, the

⁸³ *Asemota v. Yesufu* [1980] suit no M/21/80, see Brems, E. and Adekoya, C.O., p. 262.

⁸⁴ See for example *Adeyemi Candide-Johnson v. Mrs Esther Edigin* [1991] 1 NWLR (pt 129) 659 and *Minister of Internal Affairs v. Shugaba* [1982] 3 NCLR 915 at 928, cited in Brems, E. and Adekoya, C.O.

⁸⁵ Constitution, Section 4(8); see also *Madu, V.C.* (2012) "Judicial Review of Legislation", NIALS International Journal of Legislative Drafting (NIJLD), Vol. 1, No. 1 (2012), pp. 157-187, available at [http://www.nials-nigeria.org/journals/legdraftVIVIAN%20C%20MADU\(MRS\).pdf](http://www.nials-nigeria.org/journals/legdraftVIVIAN%20C%20MADU(MRS).pdf).

⁸⁶ Constitution, Section 6(6)(b)

⁸⁷ Child Rights Act, Section 156.

⁸⁸ Fundamental Rights (Enforcement Procedure) Rules, Order II, Rule 1.

⁸⁹ Federal High Court (Civil Procedure) Rules 2009, Order 34, Rule 3(4); High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 34, Rule 3(5); and High Court of Lagos (Civil Procedure) Rules 2012, Order 40, Rule 3(4).

⁹⁰ Federal High Court (Civil Procedure) Rules 2009, Order 9, Rule 12; High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 11, Rule 8; and High Court of Lagos (Civil Procedure) Rules 2012, Order 13, Rule 12.

individual victims would still have to be named, however, and could not be added to the proceedings as members of a class⁹¹ except in limited types of cases.⁹² The court may also join cases brought by separate claimants into one suit where convenient.⁹³

In addition, where separate proceedings relating to the same matter have already been filed, either the claimants or the court on its own motion may consolidate these together where “the same question of law or fact arises”.⁹⁴

Cases can also be joined or consolidated in judicial review proceedings⁹⁵ and in other proceedings relating to infringements of fundamental rights.⁹⁶

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?

As discussed in part III.C above, Nigeria has restrictive rules relating to standing in court, and the courts in Nigeria have applied these rules strictly. Courts will therefore not ordinarily entertain an action that is brought on behalf of another person.⁹⁷ A non-governmental organisation (NGO) would therefore have to be directly affected by a matter to bring legal proceedings.

The strict rules on standing have made it difficult for NGOs to bring actions to enforce fundamental rights. The Supreme Court attempted to broaden the restrictive interpretation of standing in its decisions in *Fawehinmi v. Akilu*⁹⁸ and *Akilu v. Fawehinmi (No 2)*.⁹⁹ However, the court distinguished between civil and criminal cases, with the effect that the rule was only relaxed in criminal matters. And, even in criminal matters, courts still require a party to disclose a personal interest or a close bond with the victim of the rights violation.¹⁰⁰

In the 2006 case of *Theophilus Uwalaka and Two Others v. Police Service Commission*,¹⁰¹ a human rights NGO instituted an action on behalf of two other applicants, seeking an order of *mandamus* to compel the respondent to investigate the allegation of bribery and other investigative malpractices alleged against certain police officers, which the respondent had neglected to investigate. The court held that the NGO had no standing to institute the action for itself and on behalf of the first and second applicants, as its civil

⁹¹ See Global Arbitration Review, ‘Nigeria’, available at:

<http://globalarbitrationreview.com/know-how/topics/63/jurisdictions/18/nigeria/>.

⁹² Such as claims involving trademarks or copyright infringements – see Federal High Court (Civil Procedure) Rules 2009, Order 9, Rule 4.

⁹³ *Ibid.*, Order 10, Rule 12; High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 11, Rule 1; and High Court of Lagos (Civil Procedure) Rules 2012, Order 14.

⁹⁴ Federal High Court (Civil Procedure) Rules 2009, Order 11; High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 34, Rule 6; and High Court of Lagos (Civil Procedure) Rules 2012, Order 37, Rule 7.

⁹⁵ Federal High Court (Civil Procedure) Rules 2009, Order 34, Rule 2 and Rule 11.

⁹⁶ Fundamental Rights (Enforcement Procedure) Rules, Order VII.

⁹⁷ *Adesanya v President of Nigeria* [1981] 2 NCLR 358, cited in Brems, E. and Adekoya, C.O. (2010), p. 266.

⁹⁸ *Fawehinmi v. Akilu* [1987] 4 NWLR (pt 67) 79.

⁹⁹ *Akilu v. Fawehinmi (No 2)* [1989] 2 NWLR (pt 102) 122, available at <http://www.nigeria-law.org/Akilu%20V%20Fawehinmi%20No%202.htm>.

¹⁰⁰ *Akilu v. Fawehinmi (No 2)*; see also *Adesanya v President of Nigeria*.

¹⁰¹ *Theophilus Uwalaka and Two Others v. Police Service Commission*, Unreported suit no FHC/ABJ/M570/2005.

rights or obligations were not in danger.¹⁰²

Conversely, the Fundamental Rights (Enforcement Procedure) Rules provide a broad right to intervene in cases that have already been filed. The relevant High Court in which the case is being heard (which can be at federal or state level) has the discretion to grant the opportunity to be heard to any person or body who desires to be heard in respect of any application brought to challenge a violation of fundamental rights.¹⁰³ The Fundamental Rights (Enforcement Procedure) Rules actively encourage allowing an *amicus curiae* or friend of the court to be heard in human rights cases.¹⁰⁴

In addition, in the year 2000, the National Human Rights Commission appointed a special rapporteur for children to assist and redress all forms of human rights violations. Under the complaint procedure of the Commission, every citizen or group, including NGOs, can lodge a complaint with the Commission seeking redress and legal assistance from the Commission, though such citizen or group cannot bring the claim directly to the courts under this procedure.¹⁰⁵

As stated in part III.A above, if it appears that a child is in need of protection, a child development officer, police officer or any other person authorised by the Minister may bring a child before a family court to make an order for the care of the child.¹⁰⁶

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 Child Rights Act provides for family courts to hear all civil and criminal cases in which the legal rights of a child are in issue, which will operate at state High Court or magisterial levels depending on the nature of the case.¹⁰⁷ Where civil cases involve monetary claims of N50,000 (fifty thousand Naira) or above, the proceedings will be brought in a family court sitting at High Court level.

The Child Rights Act contains some procedural guidance relating to proceedings in family courts and, for more detailed guidance, the procedural rules of the relevant High Court or Magistrates' Court apply.¹⁰⁸ The civil procedure rules of such Magistrates' Court or High Court provide detailed guidance on how to initiate civil proceedings.¹⁰⁹

Claims for judicial review are filed directly with the High Court of the state in which the violation occurred or the Federal High Court. Again, the civil procedure rules of the

¹⁰² See Brems, E. and Adekoya, C.O., p. 267.

¹⁰³ Fundamental Rights (Enforcement Procedure) Rules, Order XIII, Rule 1.

¹⁰⁴ Ibid., Rule 2.

¹⁰⁵ Federal Ministry of Women Affairs, Abuja, 'Country report on violence against children', July/August 2004, available at <http://www2.ohchr.org/english/bodies/CRC/docs/study/responses/Nigeria.pdf>.

¹⁰⁶ Child Rights Act, Section 50(1).

¹⁰⁷ Ibid., Part XIII, Sections 149-151.

¹⁰⁸ Ibid., Section 161(2).

¹⁰⁹ See, for example, Magistrates' Court (Civil Procedure) Rules 2008 (Lagos), Order 2, and High Court of Lagos (Civil Procedure) Rules 2012, Order 3.

relevant High Court provide guidance on the steps required to begin proceedings.¹¹⁰

Claims involving the violation of the Constitution can also be brought directly in the High Court of the state in which the violation occurred or the Federal High Court. Although Section 46 of the Constitution and the Fundamental Rights (Enforcement Procedure) Rules¹¹¹ only explicitly confer original jurisdiction on the High Court in the state in which the violation occurs, the Supreme Court has held that both the Federal High Court and High Courts of the states have concurrent jurisdiction in respect of the enforcement of fundamental rights.¹¹²

Private criminal proceedings are initiated in the Magistrates' Court, but may be transferred to the High Court of the relevant state depending on the nature of the alleged offence.¹¹³

Civil and criminal cases can also be brought in local customary courts and, in the north of Nigeria, in Sharia courts, as described in part V below.¹¹⁴

- 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?

As stated in part II.D above, in principle, legal aid should be available in all cases involving a child under the Child Rights Act.¹¹⁵ However, as discussed in part V below, the Child Rights Act has not yet been fully incorporated into state law and the general right to legal aid applicable to adults is more limited, especially in relation to civil cases. In addition, many Nigerian citizens are currently unaware of the legal aid services available, and the provision of legal aid has been limited due to a shortage of state funding and skilled personnel.¹¹⁶

The civil procedure rules of the Federal High Court and the High Courts of states provide for proceedings brought *in forma pauperis*, where that person's means do not permit him or her to employ legal representation and where that person has reasonable ground for suing or defending the claim, as the case may be.¹¹⁷ In such proceedings, court fees and costs may be remitted in whole or in part and a legal practitioner may be assigned. However, the judge has discretion to remit fees and costs and to assign a legal

¹¹⁰ Federal High Court (Civil Procedure) Rules 2009, Order 34; High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 43; and High Court of Lagos (Civil Procedure) Rules 2012, Order 40.

¹¹¹ Fundamental Rights (Enforcement Procedure) Rules, Order II, Rule 1.

¹¹² *Jack v University of Agriculture, Makurdi*; see also Brems, E. and Adekoya, C.O., pp. 261f.

¹¹³ Criminal Procedure Act (Chapter 80), Section 64 and Part 6, see also Redress, 'Nigeria', available at <http://www.redress.org/downloads/country-reports/Nigeria.pdf>.

¹¹⁴ Constitution, Section 6(5).

¹¹⁵ Child Rights Act, Section 155.

¹¹⁶ Odewale, O., 'Situation report on child maintenance in Africa: report on Nigeria', available at http://www.heidelberg-conference2013.de/tl_files/downloads-abstracts/abstracts-ab-3-3-2013/Abstract_Odewale.pdf.

¹¹⁷ Federal High Court (Civil Procedure) Rules 2009, Order 38, Rule 2; High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 52, Rule 2; and High Court of Lagos (Civil Procedure) Rules 2012, Order 47, Rule 2.

practitioner under the rules, and there is no guarantee of free legal assistance.¹¹⁸

Where proceedings are not brought *in forma pauperis*, Magistrates' Courts and High Courts all charge various filing and administrative fees.¹¹⁹ The costs of filing cases with courts, in particular the High Courts, are high, and it is very difficult for the majority of the population to afford these costs without assistance.¹²⁰ However, in the case of claims brought for the violation of a fundamental right under the Constitution, reduced rates apply.¹²¹

Courts in civil proceedings have the discretion to order either the complaining or the defending party to pay court costs and costs of legal representation of the other party. As a general rule, courts award the successful party its reasonable costs unless the successful party acted in a way that incurred unnecessary costs.¹²² However, in many cases, only a small portion of the actual costs is awarded.¹²³

Where a child complainant or his or her representative brings a private criminal prosecution, he or she will be required to pay a fee of N100 (one hundred Naira) with his or her application, along with a surety in an amount determined by the judge to ensure the proceedings are prosecuted to conclusion.¹²⁴

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?

Pro bono legal services are available for both individuals and NGOs. Organisations that offer free legal services, often with a particular focus on human rights cases, include:

- Office of the Public Defender;¹²⁵
- Nigerian Bar Association;¹²⁶
- Civil Liberties Organisation of Nigeria;¹²⁷
- Access to Justice;¹²⁸
- Constitutional Rights Project;¹²⁹
- Stepping Stones Nigeria (which focuses on protection of children accused of witchcraft in certain regions of Nigeria);¹³⁰

¹¹⁸ Federal High Court (Civil Procedure) Rules 2009, Order 38, Rules 4 and 5; High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 52, Rule 4 and 5; and High Court of Lagos (Civil Procedure) Rules 2012, Order 47, Rules 4 and 7.

¹¹⁹ See, for example, Magistrates' Courts (Civil Procedure) Rules 2008 (Lagos), Order 23, Rule 6; and High Court of Lagos (Civil Procedure) Rules 2012, Order 37, Rule 2.

¹²⁰ See Brems, E. and Adekoya, C.O.

¹²¹ Fundamental Rights (Enforcement Procedure) Rules, Appendix A.

¹²² See Magistrates' Courts (Civil Procedure) Rules 2008 (Lagos), Order 21, Rules 1 and 4; Federal High Court (Civil Procedure) Rules 2009, Order 25; High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 53, Rules 3 and 13; and High Court of Lagos (Civil Procedure) Rules 2012, Order 49.

¹²³ See Global Arbitration Review.

¹²⁴ Criminal Procedure Act (Chapter 80), Section 342(2).

¹²⁵ http://ondostateopd.org/what_we_do.php.

¹²⁶ <http://www.nigerianbar.org.ng/>.

¹²⁷ <http://www.clonigeria.org/>.

¹²⁸ <http://accesstojustice-ng.org/aboutus.php>.

¹²⁹ www.crpigeria.org/#sthash.MdPbP9tA.dpuf.

¹³⁰ <http://www.steppingstonesnigeria.org/>.

- International Federation of Women Lawyers (FIDA); and
- Civil Resource Development and Documentation Centre (CIRDDOC).

It is also possible to contact individual lawyers who offer pro bono legal services directly to discuss funding of a case. Online databases designed to help with this process are provided by:

- Legal Aid Council;¹³¹
- HG Global Legal Resources;¹³² and
- Fahamu Refugee Programme.¹³³

A legal practitioner who applies to be appointed to the rank of “Senior Advocate of Nigeria” is required to show evidence of diligently conducting not less than three pro bono cases in the legal year preceding his or her application. Abandoning or otherwise neglecting such pro bono cases is classed as professional misconduct.¹³⁴

Contingent fee arrangements are permitted in Nigeria, subject to an express prohibition against a legal practitioner purchasing or otherwise acquiring an interest in the subject matter of litigation that he is conducting.¹³⁵ Contingent fee arrangements must be reasonable under all the circumstances of the case, including the risk and uncertainty of the compensation, and are subject to the supervision of the Bar Council as to their reasonableness.¹³⁶ Contingent fee arrangements provide that legal fees are only payable if the case is successful, and such arrangements generally include a “success fee” portion. However, even under a contingent fee arrangement, the person bringing the case will still be responsible for paying expenses, such as court fees, and may be ordered to pay the successful party’s costs if the claim fails, as set forth in part IV.B above.

- 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?

Judicial review proceedings must be brought within three months of the public decision or act to be challenged.¹³⁷ In addition, the Public Officers Protection Act provides that any action against a public officer, including criminal proceedings, can only be brought within three months after the act or omission in question.¹³⁸

However, claims that allege a violation of a fundamental right under the Constitution and are brought under the Fundamental Rights (Enforcement Procedure) Rules are not time barred “by any statute of limitation whatsoever”.¹³⁹

¹³¹ <http://www.legalaidcouncil.gov.ng/>.

¹³² <http://www.hg.org/law-firms/human-rights/nigeria/lagos.html>.

¹³³ <http://www.refugeelegalaidinformation.org/nigeria-pro-bono-directory>.

¹³⁴ Legal Aid Act, Section 18(2) and (3).

¹³⁵ Legal Practitioners Act (Chapter 207), Laws of the Federation of Nigeria, Section 42(a), available at <http://www.nigeria-law.org/Rules%20of%20Professional%20Conduct%20in%20the%20Legal%20Profession.htm>.

¹³⁶ *Ibid.*, Section 42(c).

¹³⁷ Federal High Court (Civil Procedure) Rules 2009, Order 34, Section 3 and 4; and High Court of Lagos (Civil Procedure) Rules 2012, Order 40, Section 4

¹³⁸ Public Officers Protection Act (CAP.379) 1916, Section 2, available at <http://www.placng.org/lawsofnigeria/node/406>; see Redress, p. 10.

¹³⁹ Fundamental Rights (Enforcement Procedure) Rules, Order III, Rule 1.

For general civil proceedings in Nigeria, the time limit for bringing cases depends on the type of claim brought.¹⁴⁰ In general, claims involving violations of rights (other than fundamental rights under part IV of the Constitution) must be brought within six years of the violation.¹⁴¹ There are certain circumstances under which the time constraints can be extended, including where a claimant suffers from a disability.¹⁴² For the purposes of the limitation rules, children are classified as disabled.¹⁴³ Children can bring cases within six years after they cease to be disabled, i.e., once they become adults, giving them the opportunity to bring a case relating to violations of their rights during childhood as young adults.¹⁴⁴ However, in actions for negligence, nuisance or breach of duty, this period may be reduced to three years and a child would have to prove that they were not in the custody of a parent when the action accrued.¹⁴⁵

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 sets out the types of evidence that are admissible in civil and criminal proceedings, including documentary evidence, physical evidence, photographs, sound or video recordings, and witness statements or testimony.¹⁴⁶ The Evidence Act also allows for the admission of expert testimony, which involves not only giving factual information, but also the opinions based on that information.¹⁴⁷

Children may testify before any court provided they can understand and give rational answers to the questions put to them.¹⁴⁸ Children under the age of 14 may give evidence without swearing an oath where, in the opinion of the court, they are “of sufficient intelligence” and “understand[] the duty of speaking the truth”.¹⁴⁹ Children who have attained the age of 14 must give sworn testimonies under the Evidence Act, although the Child Rights Act provides that all children under 18 may give unsworn evidence in civil and criminal proceedings before a family court.¹⁵⁰ Such unsworn evidence is to be treated as if it had been given under oath.¹⁵¹

In general, all witnesses in civil and criminal proceedings must testify in open court.¹⁵² Proceedings in family courts, however, are generally closed to the public.¹⁵³ In addition,

¹⁴⁰ For example, Limitation Law (Chapter L67) (Lagos), available at <http://www.ywcpublishers.com/images/LIMITATION%20LAW.pdf>.

¹⁴¹ Ibid., Part 2, Section 8(1).

¹⁴² Ibid., Part 3, Section 35.

¹⁴³ Ibid., Part 3, Section 35(1).

¹⁴⁴ Ibid., Part 3, Section 36(1)(a).

¹⁴⁵ Ibid., Part 3, Section 36(2).

¹⁴⁶ Evidence Act 2011, available at http://www.aksjlegalresource.com/resource/Laws_of_the_Federation%5CEVIDENCE%20ACT%202011.pdf.

¹⁴⁷ Ibid., Part IV, Section 68.

¹⁴⁸ Ibid., Part XI, Section 175.

¹⁴⁹ Ibid., Part XII, Section 209.

¹⁵⁰ Child Rights Act, Section 160(1).

¹⁵¹ Ibid., Section 160(2).

¹⁵² Federal High Court (Civil Procedure) Rules 2009, Order 20, Rule 1(1); High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 39, Rule 1; High Court of Lagos (Civil Procedure) Rules 2012, Order 32, Rule 1(1); and Criminal Procedure Act (Chapter 80), Section 203.

¹⁵³ Child Rights Act, Section 156.

the name, address, school, photograph or any other identifying information relating to the child cannot be published.¹⁵⁴

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

Reports generally indicate that the pace of justice in Nigeria is excessively slow. A 2006 report by the UN Office on Drugs and Crime concluded that the length of trial was perceived by court users as the most serious problem of the country's justice system when compared with other factors hampering justice delivery.¹⁵⁵

Generally, the time taken to get a decision from a court depends upon the nature of the case and the jurisdiction in which the case is determined, and more complex cases will take longer. In jurisdictions such as Lagos, where the courts have a particularly heavy caseload, cases tend to take in excess of 36 months and frequently much longer. In other, less busy, jurisdictions, about 24 months is more likely.¹⁵⁶ However, there are also cases where civil proceedings are protracted for as long as seven to 20 years.¹⁵⁷

The High Court of Lagos, and other state High Courts, have introduced procedure rules to try to reduce the length of proceedings and improve case flow. The declared objective of the procedure rules is the "achievement of a just, efficient and speedy dispensation of justice".¹⁵⁸ In addition, the Court Automated Information Management System (CAIS) was introduced in Lagos state for civil cases aimed to dispose of fundamental rights case within six months, and other general civil cases within 12 months, although lawyers, human rights activists and NGOs in Lagos state have claimed that, in practice, fundamental rights cases are not concluded within six months, and have expressed the view that the situation has only improved marginally.¹⁵⁹

The time taken to obtain a decision in an appeal to the Court of Appeal depends upon the jurisdiction from which the appeal is made. In jurisdictions where the High Court's case load is not very heavy, appeals can be concluded in as little as eight to nine months. In other jurisdictions it may take as much as five or six years. Appeals from the Court of Appeal may take as long as eight or more years before a decision is obtained. This is because the Supreme Court sits in only one division, and cases from 16 divisions of the Court of Appeal are heard by the Supreme Court.

The High Court of Lagos State has issued fast track rules for certain types of actions. Cases assigned to the fast track route are to be concluded to final judgment within nine months from their commencement. However, in order to qualify for the fast-track procedure, the proceedings must involve (i) a claim or counterclaim equivalent to at least N100,000,000 (one hundred million Naira), (ii) a non-resident investor in Nigeria,

¹⁵⁴ Ibid., Section 157.

¹⁵⁵ UNODC, 'Assessment of the integrity and capacity of the justice system in three Nigerian states', January 2006, available at http://www.unodc.org/documents/corruption/publications_nigeria_assessment.pdf, p.98.

¹⁵⁶ See Global Arbitration Review.

¹⁵⁷ See Brems, E. and Adekoya, C.O., p. 271.

¹⁵⁸ High Court of Lagos (Civil Procedure) Rules 2012, Preamble, Section 1(b); and see Anyebe, P., 'Towards fast tracking justice delivery in civil proceedings in Nigeria', available at <http://www.nials-nigeria.org/journals/Peter%20Anyebe-%20Towards%20Fast%20Tracking.pdf>.

¹⁵⁹ See See Brems, E. and Adekoya, C.O., p. 272.

or (iii) a mortgage transaction.¹⁶⁰ Therefore, the fast track rules will have little impact in the context of violations of children's rights. Other than the foregoing, the civil procedure rules of the Federal High Court and the High Court of the states do not contain precise timing requirements.

Any person arrested for a criminal offence has the right to be brought within a "reasonable time", defined as one day where there is a court of competent jurisdiction within 40km of the place of arrest, or within two days or such longer time the court considers reasonable if not. If the accused is not tried within two months from arrest where no bail is granted or within three months where bail is granted, the accused must be released from custody, although this will not affect any later proceedings brought against him.¹⁶¹

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

In civil and criminal proceedings, decisions from the Magistrates' Courts can be appealed to the High Court of the relevant state following the procedures established in the civil procedure rules of the relevant High Court.¹⁶² Appeals to the High Court generally must be filed within 30 days.¹⁶³

High Court decisions in civil and criminal cases may be further appealed to the Court of Appeal.¹⁶⁴ Appeals against final decisions of High Courts may be made as of right. In cases where the ground of appeal involves (i) questions of law alone, (ii) the interpretation or application of the Constitution, (iii) the violation of a fundamental right under the Constitution, (iv) the custody of a child, (v) the grant of an injunction, or (vi) certain other matters, appeals are also as of right.¹⁶⁵ In other cases, appeals may be made with leave of either the High Court or the Court of Appeal.¹⁶⁶ Appeals to the Court of Appeal can be made *in forma pauperis*, but only where leave to do so is granted by the trial judge and only in appeals on grounds of law.¹⁶⁷

The Court of Appeal has the same powers as the High Courts.¹⁶⁸ It may, among other things, receive further evidence, affirm, set aside or vary the decisions of the lower court's judgment, make a final determination, or order a new trial in relation to all of the facts or particular issues.¹⁶⁹ Appeals to the Court of Appeals are governed by and must be made following the procedures set out in the Court of Appeal Rules.

Both civil and criminal proceedings in a family court sitting at magistrate level may

¹⁶⁰ High Court of Lagos (Civil Procedure) Rules 2012, Order 56.

¹⁶¹ Constitution, Section 36(4) and (5).

¹⁶² See for example High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 44 and Criminal Procedure Act (Chapter 80), Section 259.

¹⁶³ High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 44, Rule 1.

¹⁶⁴ Constitution, Section 240.

¹⁶⁵ *Ibid.*, Section 241.

¹⁶⁶ *Ibid.*, Section 242(1).

¹⁶⁷ Federal High Court (Civil Procedure) Rules 2009, Order 38, Rule 10; High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004, Order 52, Rule 10; and High Court of Lagos (Civil Procedure) Rules 2012, Order 47, Rule 9.

¹⁶⁸ Court of Appeal Rules, Order 4, Rule 1, available at <http://www.nigeria-law.org/The%20Judicature/Federal%20Courts/The%20Court%20of%20Appeal/Court%20of%20Appeal%20Rules%202011.pdf>.

¹⁶⁹ Court of Appeal Rules, Order 4.

initially be appealed to the High Court level and may be further appealed to the Court of Appeal.¹⁷⁰

Appeals from decisions of the Court of Appeal lie with the Supreme Court, the court of final appeal.¹⁷¹ Appeals may be made as of right against decisions of the Court of Appeal where, among other things, the appeal involves questions of law alone, the interpretation or application of the Constitution, or a violation of a fundamental right under Part IV of the Constitution.¹⁷² Other appeals to the Supreme Court are discretionary and may be made with leave of the Court of Appeal or of the Supreme Court.¹⁷³ Appeals to the Supreme Court are governed by the Supreme Court Act¹⁷⁴ and the Supreme Court Rules.¹⁷⁵

Judgments from Sharia courts and customary courts may be appealed to the Sharia Courts of Appeal or the Customary Courts of Appeal¹⁷⁶ of the relevant state, as applicable, and subsequently to the Court of Appeal and the Supreme Court.

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?

Precedent plays an important role in the Nigerian legal system. The Court of Appeal and all lower courts are bound by the decisions of the Supreme Court. The Federal High Court and the High Courts of each state and all other lower courts are equally bound by the decisions of the Court of Appeal. Therefore, the effects of a bad decision for children's rights could be felt for many years. The doctrine of judicial precedents does not apply as rigidly to certain courts, such as the customary courts and the Sharia courts in Nigeria.¹⁷⁷

As discussed further in part IV.I below, there have been many instances in which the Government has disregarded court orders, and there is no guarantee that court orders against the government will be enforced.

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

The enforcement of awards in civil proceedings is generally relatively straightforward and is governed by the Judgments (Enforcement) Rules¹⁷⁸ under the Sheriffs and Civil Process Act.¹⁷⁹ However, the enforcement of a compensation award against the Government or public officers in their official capacity requires the prior consent of the

¹⁷⁰ Child Rights Act, Sections 154(4)(e), 154(5) and 153(5).

¹⁷¹ Constitution, Section 233(1).

¹⁷² Ibid., Section 233(2).

¹⁷³ Ibid., Section 233(3).

¹⁷⁴ Supreme Court Act (Chapter 424), available at <http://www.nigeria-law.org/SupremeCourtAct.htm>.

¹⁷⁵ Supreme Court Rules 1985, available at <http://www.nigeria-law.org/SupremeCourtRules.htm>.

¹⁷⁶ Constitution, Section 277 and Section 282, respectively.

¹⁷⁷ See Dina, Y., Akintayo, J., & Ekundayo, Funke, 'Guide to Nigerian legal information', February 2005, available at <http://www.nyulawglobal.org/globalex/nigeria.htm>.

¹⁷⁸ Judgments (Enforcement) Rules, available at <http://www.nigeria-law.org/SheriffsAndCivilProcessAct-JERules.htm>.

¹⁷⁹ Sheriffs and Civil Process Law (Chapter 407) Laws of the Federation of Nigeria 1990, available at <http://www.nigeria-law.org/SheriffsAndCivilProcessAct-Tables.htm>.

Attorney General, whether at the state or federal level,¹⁸⁰ which adds another hurdle to enforcing positive decisions against public bodies.

Where a case has been successfully brought against the Government or a public body, there is no guarantee that the court decision will be respected. By some reports, past and current Nigerian governments have a reputation for non-compliance with court judgments with which they disagree,¹⁸¹ and there have been numerous instances in which the Government has disregarded court orders.¹⁸²

V. Additional factors. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

The Nigerian legal system is complicated by virtue of federalism and the coexistence of numerous legal systems. Across its 36 states, Nigeria is governed by a combination of federal law, state law, and law based on pre-independence English law. State law can be further subdivided into statutory legislation, customary law and Sharia law. This can result in wide variations in applicable law, particularly in areas that pertain to the family, where customary law has a strong role. Notably, juvenile justice and criminal activity are also covered by a mix of state and federal criminal codes as well as a Sharia penal code, all of which have particular importance for offences committed by and against children.¹⁸³ In addition, the various courts do not follow one set of civil procedure rules, but rather apply their own set of rules.

As mentioned in part I.C above, while Nigeria has ratified the CRC and has passed the Child Rights Act at a national level, the law has differing levels of incorporation among Nigerian states. As at July 2013, the Child Rights Act had been promulgated into state law in 24 states;¹⁸⁴ 12 states had not yet passed a law conforming to the Child Rights Act.¹⁸⁵ Implementation of the laws in these states has been very slow. Setting up the institutions required to implement some of the provisions is capital intensive and requires political will which is lacking in many of the states. As a result, there have been reports that the Child Rights Act has had a limited effect on child rights in these

¹⁸⁰ Ibid., Section 84(1) (“Where money liable to be attached by garnishee proceedings is in the custody or under the control of a public officer in his official capacity or in custodia legis, the order nisi shall not be made under the provisions of the last proceeding section unless consent to such attachment is first obtained from the [Attorney General] in the case of money in the custody or control of a public officer or of the court in the case of money in custodia legis, as the case may be.”).

¹⁸¹ See Redress.

¹⁸² See Lawal-Rabana, R. A., ‘The Nigerian Bar Association and the Protection of Rule of Law in Nigeria’, available at <http://www.ibanet.org/Document/Default.aspx?DocumentUid=36600e1c-9c7b-468a-a5e4-200948a446c2>; <http://allafrica.com/stories/201207020913.html/>.

¹⁸³ See CRIN, ‘Nigeria: national laws’, available at <http://www.crin.org/resources/infoDetail.asp?ID=24753>.

¹⁸⁴ Abia, Akwa-Ibom, Anambra, Benue, Cross River, Delta, Ebonyi, Edo, Ekiti, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Niger, Bayelsa, Kogi and Taraba: http://www.unicef.org/nigeria/Child_rights_legislation_in_Nigeria.pdf; see also <http://www.dailytimes.com.ng/article/fida-chairperson-calls-domestication-child-rights-act> (29 May 2013).

¹⁸⁵ Adamawa, Bauchi, Borno, Enugu, Gombe, Kaduna, Kano, Katsina, Kebbi, Sokoto, Yobe and Zamfara: http://www.unicef.org/nigeria/Child_rights_legislation_in_Nigeria.pdf; see also <http://www.dailytimes.com.ng/article/fida-chairperson-calls-domestication-child-rights-act> (29 May 2013).

states, which have their own state governments and judiciary. There exists no provision of national force that protects children against abusive conditions in all states, and in many states child protection activities in Nigeria are still the purview of NGOs. Implementation is also challenging as Nigerian state and local governments represent a diverse range of ethnic groups and customs.¹⁸⁶

In addition, there are differing definitions of the “child” in various states’ legislation, not all of which are consistent with the CRC (which defines a child as a person under 18). The Child Rights Act passed into law in the Federal Capital Territory (Abuja) also defines a child as a person who has not attained the age of 18 years, but some state implementation legislation contains differing definitions. For example, some state legislation sets the minimum age of marriage at 16 years (Akwa-Ibom state) or defines the child not by age but by “puberty” (Jigawa state).¹⁸⁷ Further, according to Article 2 of the Children and Young Persons Act enacted in Eastern, Western and Northern regions, a “child” means a person under the age of 14 years, while “young person” means a person who has attained the age of 14 years and is under the age of 17 years.¹⁸⁸ These are only some examples of different ages contained in different pieces of legislation and in customary law across Nigeria, and the different definitions of “child” make enforcement of children’s rights difficult as some children may be excluded from their scope.

Furthermore, despite the Constitution containing assurances of fundamental rights and the availability of a specific procedure for fundamental rights enforcement in Nigeria (in the form of the Fundamental Rights (Enforcement Procedure) Rules), people living in poverty are confronted with enormous obstacles that may hinder them from accessing justice for the enforcement of their rights. Some of the main problems are ignorance and illiteracy, procedural complexity, lack of assertiveness by rights holders, corruption, the inefficient administration of justice, and lack of trust in the justice system.¹⁸⁹

Corruption is a significant problem in Nigeria. Nigeria ranked 139th out of 176 countries in Transparency International’s 2012 Corruption Perceptions Index, meaning corruption is worse in Nigeria than in over three quarters of the countries included in the survey.¹⁹⁰ In addition, in Transparency International’s Global Corruption Barometer 2013, the Nigerian judiciary received a score of 3.9 on a scale of one (not at all corrupt) to five (extremely corrupt), making it the third most corrupt Nigerian institution included in the survey, after political parties and the police.¹⁹¹ The problem is seen as particularly prevalent in lower level courts.¹⁹²

¹⁸⁶ Yale Law School, ‘Nigeria’, December 2005, available at

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

¹⁸⁷ See UN Committee on the Rights of the Child, *Concluding Observations on the combined third and fourth reports of Nigeria*, CRC/C/NGA/CO/3-4, 11 June 2010, available at

http://www.crin.org/docs/CRC_Nigeria_54.doc.

¹⁸⁸ OMCT & Cleen Foundation, ‘Rights of the child in Nigeria’, June 2004, available at

http://www.cleen.org/nigeria_ngo_report_OMCT.pdf.

¹⁸⁹ See Brems, E. and Adekoya, C.O., pp. 263ff.

¹⁹⁰ See Transparency International, ‘Corruption perceptions index 2012’, available at

<http://www.transparency.org/cpi2012/results>.

¹⁹¹ See Transparency International, ‘Global corruption barometer 2013’, available at

http://issuu.com/transparencynigeria/docs/2013_globalcorruptionbarometer_en, at p. 37.

¹⁹² See Lawan, M., ‘Underdevelopment, Corruption and Legal Disorder in Nigeria: Exploring a Nexus’, *NIALS Journal of Law and Public Policy*, (2012) Vol. 1 NJLPP, at pp. 104f, available at

<http://www.nials-nigeria.org/journals/Mamman%20Lawanlawp.pdf>.

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