

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

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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?**

Section 327(2) of the Zimbabwe's new Constitution<sup>1</sup> provides that "an international treaty which has been concluded or executed by the President or under the President's authority (a) does not bind Zimbabwe until it has been approved by Parliament; and (b) does not form any part of the law of Zimbabwe unless it has been incorporated into the law through an Act of Parliament."<sup>2</sup>

Although Zimbabwe signed and ratified the CRC in 1990,<sup>3</sup> no further action has been taken by Parliament to give the Convention the force of national law.

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

No. Although the Constitution provides that when interpreting legislation all courts and tribunals must adopt a reasonable interpretation consistent with any international convention, treaty or agreement which is binding on Zimbabwe in preference to an alternative interpretation inconsistent with that convention, treaty or agreement.<sup>4</sup> The CRC is not considered to be binding under domestic law, so the courts are not obliged to interpret national provisions in line with it.

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

No, the CRC has not been incorporated.

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<sup>1</sup> The new constitution is cited as the Constitution of Zimbabwe Amendment (No. 20) Act, 2013, available at: <http://www.parlzim.gov.zw/attachments/article/56/constitution.pdf>.

<sup>2</sup> Constitution of Zimbabwe, Section 327(2).

<sup>3</sup> UN Treaty Collection, available at:

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en).

<sup>4</sup> Constitution of Zimbabwe, Section 327(6).

The primary domestic law related to the rights of children in Zimbabwe is the Children's Act.<sup>5</sup>

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

The CRC is not directly enforceable in the national courts as it does not form part of national law.

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

Yes.<sup>6</sup> The High Court of Zimbabwe has cited the Convention in cases concerning sexual abuse and violence against children,<sup>7</sup> child support after parental separation,<sup>8</sup> and the detention of a child along with a parent.<sup>9</sup>

## 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?

Civil cases may be brought by a child or their representative as outlined in part II.B. Private prosecutions are possible in Zimbabwe, but in the case of a minor child, the action must be raised by a legal guardian.<sup>10</sup>

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

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<sup>5</sup> Children's Act [Chapter 5:06], available at: <http://www.refworld.org/docid/4c46c7d62.html>.

<sup>6</sup> Several other cases citing to the CRC can be found on the website of SAFLII (the Southern African Legal Information Institute for Legal Information), available at: [http://www.saflii.org/cgi-bin/sinosrch-adw.cgi?query=%22convention+on+the+rights+of+the+child%22&submit=Search&mask\\_path=zw](http://www.saflii.org/cgi-bin/sinosrch-adw.cgi?query=%22convention+on+the+rights+of+the+child%22&submit=Search&mask_path=zw).

<sup>7</sup> *State v. Chikungurese*, HH 125/2004, CRB 30/03, High Ct of Harare, 1 June 2004, available at: <https://www.crin.org/en/library/legal-database/state-v-chikungurese>.

<sup>8</sup> *Bion v. Bion*, [2005] ZWBHC 40, available at: <https://www.crin.org/en/library/legal-database/bion-v-bion>.

<sup>9</sup> *Chiramba and Others v. Minister of Home Affairs N/O and Another*, [2008] ZWHHC 82, available at: <https://www.crin.org/en/library/legal-database/chiramba-and-others-v-minister-home-affairs-no-and-other>.

<sup>10</sup> Criminal procedure and Evidence Act [Chapter 9:07], Section 12, available at: <http://www.refworld.org/pdfid/54a2c6fb4.pdf>.

The age of majority in Zimbabwe is 18;<sup>11</sup> however, under the Children's Act, a child is any person under the age of 16 and an infant is a person under the age of 7. According to the State Party report of Zimbabwe to the Committee on the Rights of the Child, there is no minimum age for children to seek redress before the courts and children can lodge complaints without parental consent.<sup>12</sup> However, children are not able to seek legal advice without parental consent until they reach the age of 16.<sup>13</sup>

In the Small Claims Court, a minor (or any other person under a legal disability) may be represented by his guardian or legal representative.<sup>14</sup>

In the Children's Court, the magistrate has the power to appoint a probation officer who is responsible for safeguarding the interests of any child or young person who is brought before the court and to be present during all proceedings.<sup>15</sup>

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

No additional information was available.

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

Under Section 31 of the Constitution, the State has an obligation to take all practical measures, within the limits of the resources available to it, to provide legal representation in civil and criminal cases for persons who need it and are unable to afford legal protection.

In Zimbabwe there are three categories of legal aid: (1) civil court legal aid, (2) criminal court legal aid and (3) legal aid from private institutions.<sup>16</sup> Legal aid is regulated by the Legal Aid Act 1996 and allocated on the basis of a means test. For further detail, please see part IV.B.

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<sup>11</sup> Legal Age of Majority Act (No.15 of 1982), Section 3, available at:

[http://www.child-abuse.com/childhouse/childwatch/cwi/projects/indicators/Zimbabwe/ind\\_zim\\_ch3.html](http://www.child-abuse.com/childhouse/childwatch/cwi/projects/indicators/Zimbabwe/ind_zim_ch3.html).

<sup>12</sup> *Second Periodic Report of the Republic of Zimbabwe to the UN Committee on the Rights of the Child*, CRC/C/ZWE/2, 16 July 2013, paras. 111 and 112, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fZWE%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fZWE%2f2&Lang=en).

<sup>13</sup> *Id.*

<sup>14</sup> Small Claims Court Act, Chapter 7:12, Part II, Section 6, available at:

[http://www.parl.zim.gov.zw/attachments/article/92/SMALL\\_CLAIMS\\_COURTS\\_ACT\\_7\\_12.pdf](http://www.parl.zim.gov.zw/attachments/article/92/SMALL_CLAIMS_COURTS_ACT_7_12.pdf).

<sup>15</sup> Children's Act, Chapter 5:06, Section 4(2a).

<sup>16</sup> [http://www.nyulawglobal.org/Globalex/Zimbabwe1.htm#\\_Legal\\_aid](http://www.nyulawglobal.org/Globalex/Zimbabwe1.htm#_Legal_aid).

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)?

No additional information was available.

### **III. How can children's rights violations be challenged before national courts?**

A. Is there 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?

One of the most fundamental changes in the newly enacted Constitution is the addition of Chapter 4, the Declaration of Rights, including a specific provision on children's rights.<sup>17</sup> Any of the rights granted by the Declaration of Rights can be enforced in a court by:

- a. any person acting in their own interests;
- b. any person acting on behalf of another person who cannot act for themselves;
- c. any person acting as a member, or in the interests, a group or class of persons;
- d. any person acting in the public interest;
- e. any association acting in the interests of its members.<sup>18</sup>

Constitutional complaints may be brought directly to the Constitutional Court when this is in the interests of justice and any person may appear as a friend of the court when so required by the interests of justice.<sup>19</sup>

Complaints can also be submitted to the Zimbabwe Human Rights Commission<sup>20</sup> regarding abuses and violations of rights and freedoms that are enshrined in the Constitution of Zimbabwe and in any international human rights agreements that the country has agreed to sign and any complaints arising from abuse of power or maladministration by the State and public institutions.<sup>21</sup> The Commission may also initiate an investigation of its own initiative.<sup>22</sup>

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<sup>17</sup> Constitution of Zimbabwe, Section 81.

<sup>18</sup> Constitution of Zimbabwe, Section 85.

<sup>19</sup> Constitution of Zimbabwe, Section 167(5).

<sup>20</sup> Constitution of Zimbabwe, Sections 242 to 243. Official website available at: <http://www.zhrc.org.zw/>.

<sup>21</sup> Zimbabwe Human Rights Commission Act [*Chapter 10:30*], Act 2/2012, available at: <http://www.zhrc.org.zw/index.php/zhrc-documents/legal-framework/2-zimbabwe-human-rights-commission-act-chapter1030-act-22012>.

<sup>22</sup> Zimbabwe Human Rights Commission Act, Section 4.

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,<sup>23</sup> as well as communications to the African Commission on Human and Peoples’ Rights (“African Commission”) about violations of the African Charter on Human and Peoples’ Rights.<sup>24</sup> All available domestic remedies must have been exhausted before bringing a case to the African Committee<sup>25</sup> or the African Commission.<sup>26</sup> The complaint must include, among other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, and whether or not the complainant wishes to remain anonymous and the reasons for this.<sup>27</sup> The African Committee<sup>28</sup> and the African Commission<sup>29</sup> 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. If the case relates to serious or massive human rights violations, or if the African Commission considers that the State is unwilling to comply with its recommendations in the case, the Commission may refer the complaint to the African Court on Human and Peoples’ Rights.<sup>30</sup>

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<sup>23</sup> African Charter on the Rights and Welfare of the Child (“African Children’s Charter”), Article 44, available at:

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

. For more information about communications, see:

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

<sup>24</sup> African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at:

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

<sup>25</sup> African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at:

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

<sup>26</sup> Ibid., Article 56(5).

<sup>27</sup> War Resisters’ International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Committee of Experts on the Rights and Welfare of the Child: communication procedure’, 2012, available at:

<http://co-guide.org/mechanism/african-committee-experts-rights-and-welfare-child-communication-procedure> and Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rule 93, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010/>.

<sup>28</sup> Ibid.

<sup>29</sup> 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>.

<sup>30</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights, Article 5, available at:

<http://www.achpr.org/instruments/court-establishment>; Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rules 84(2) and 118, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010>.

Individuals, groups or NGOs may submit complaints (known as “communications”) to the African Commission on Human and Peoples’ Rights (“African Commission”) about violations of the African Charter on Human and Peoples’ Rights (“African Charter”).<sup>31</sup> All available domestic remedies must have been exhausted before bringing a case to the African Commission.<sup>32</sup> The complaint must include, amongst other things: the name of the person filing it or, in the case of an NGO, the name of the legal representative; whether or not the complainant wishes to remain anonymous and the reasons for this; and the name of the victim, in a case where he/she is not the complainant.<sup>33</sup> The African Commission will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.<sup>34</sup> If the case relates to serious or massive human rights violations or if the Commission considers that the State is unwilling to comply with its recommendations in the case, the Commission may refer the complaint to the African Court on Human and Peoples’ Rights.<sup>35</sup>

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

In constitutional matters, court orders finding legislation unconstitutional have to be approved by the Constitutional Court, whose decision is final.<sup>36</sup>

There is very limited information available on the types of remedies available in the civil courts for these types of violations. However, compensation and measures to prevent recurrence of the violation may be recommended to the State by the African Commission.<sup>37</sup>

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<sup>31</sup> African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

<sup>32</sup> Ibid., Article 56(5).

<sup>33</sup> Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rule 93, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010/>.

<sup>34</sup> 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>.

<sup>35</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights, Article 5, available at: <http://www.achpr.org/instruments/court-establishment>; Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rules 84(2) and 118, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010>.

<sup>36</sup> Constitution of Zimbabwe, Sections 175 and 167(3).

<sup>37</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights, Article 5, available at: <http://www.achpr.org/instruments/court-establishment>; Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rules 84(2) and 118, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010>.

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 appears that a victim must be named in all types of cases. Nonetheless, the Children's Act protects the privacy of children involved in proceedings in the Children's Court by prohibiting the publication of the name, address, school or other identifying detail of any child, however, a judge may allow that this prohibition is dispensed with if that would be in the public interest.<sup>38</sup>

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

Class action lawsuits may be brought by either a representative of the group or by the Attorney General on behalf of a class of persons.<sup>39</sup> The High Court must grant leave for privately brought class action suits if it finds that such a suit is appropriate for a class action, having regard to, inter alia, the issues of fact or law that are likely to be common to the claims of individuals of the class, the education and financial standing of members and the difficulties likely to be encountered by members enforcing their claims individually, the availability of a suitable person to represent the class of persons concerned and any other relevant factors.<sup>40</sup>

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?

Research did not identify any legal provision which answers the question whether non-governmental organisations (NGOs) have legal standing to bring or intervene in cases concerning child rights violations. However, it would appear that some national organisations engage in litigation.<sup>41</sup>

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

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<sup>38</sup> Children's Act, Section 5(5).

<sup>39</sup> Class Actions Act, Section 3-4, available at:

[http://www.parlzim.gov.zw/attachments/article/94/CLASS\\_ACTIONS\\_ACT\\_8\\_17.pdf](http://www.parlzim.gov.zw/attachments/article/94/CLASS_ACTIONS_ACT_8_17.pdf).

<sup>40</sup> Class Actions Act, Section 3.

<sup>41</sup> In particular see the websites of the Zimbabwe Human Rights NGO Forum

(<http://www.hrforumzim.org/litigation/>) and Zimbabwe Lawyers for Human Rights

([http://www.zlhr.org.zw/index.php?option=com\\_content&view=article&id=8&Itemid=40](http://www.zlhr.org.zw/index.php?option=com_content&view=article&id=8&Itemid=40)).

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

The main courts in Zimbabwe are the Supreme Court, the Constitutional Court, the High Court, the Administrative Court, magistrates' courts and customary law courts. The Supreme Court is the final court of appeal in all matters, except those which fall within the jurisdiction of the Constitutional Court.<sup>42</sup> It sits as a court of appeal only and has no original jurisdiction. The High Court has original jurisdiction over all civil and criminal matters, as well as jurisdiction to supervise magistrates and all other subordinate court and review their decisions.<sup>43</sup> The High Court may also hear certain constitutional matters, except those which fall in the exclusive jurisdiction of the Constitutional Court.<sup>44</sup> The Constitutional Court is the highest court in all constitutional matters and its decisions on those matters bind all other courts.<sup>45</sup> It can only decide constitutional matters and issues connected with decisions on constitutional matters.<sup>46</sup> The Magistrates Courts are the court of first instance in criminal cases and the courts hear nearly all of the civil cases.<sup>47</sup> Finally, the customary courts have limited jurisdiction over matters of customary law such as customary marriages, custody and guardianship of minors and others.<sup>48</sup>

In addition to the ordinary courts, there are specialised courts in Zimbabwe, including Children's Courts. The Children's Courts are set up under the Children's Act to deal specifically with matters related to children, including the provision for protection, welfare and supervision of children and juveniles, the provision and establishment of institutions for the custody of children and juveniles, oversight of maintenance or child support orders, adoption of children, and matters related to crimes committed by juveniles.<sup>49</sup> The Children's Courts do not try children accused of crimes, but they may deal with children convicted by another court.<sup>50</sup> The procedure of cases in children's courts are different than the procedures governing civil or criminal proceedings, and are

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<sup>42</sup> Constitution of Zimbabwe, Section 169(1).

<sup>43</sup> Constitution of Zimbabwe, Section 171(1)(a)-(b).

<sup>44</sup> Constitution of Zimbabwe, Section 171(1)(c).

<sup>45</sup> Constitution of Zimbabwe, Section 167(1)(a).

<sup>46</sup> Constitution of Zimbabwe, Section 167(1)(b).

<sup>47</sup> Constitution of Zimbabwe, Section 174 and Magistrates Courts Act [*Chapter 7:10*], Section 11, available at:

[http://www.parlzim.gov.zw/attachments/article/92/MAGISTRATES\\_COURT\\_ACT\\_7\\_10.pdf](http://www.parlzim.gov.zw/attachments/article/92/MAGISTRATES_COURT_ACT_7_10.pdf).

<sup>48</sup> Constitution of Zimbabwe, Section 162(g) and

[http://www.nyulawglobal.org/Globalex/Zimbabwe1.htm#\\_The\\_Justice\\_System\\_in%20Zimbabwe](http://www.nyulawglobal.org/Globalex/Zimbabwe1.htm#_The_Justice_System_in%20Zimbabwe).

<sup>49</sup> Children's Act, Section 3.

<sup>50</sup> Madhuku, L., *An Introduction to Zimbabwean Law*, at p. 69, available at:

<http://library.fes.de/pdf-files/bueros/simbabwe/07323.pdf>.



conducted in the manner as the officer presiding over the children's court finds is best to do "substantial justice."<sup>51</sup>

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 representative be expected to pay court costs or cover other expenses?

Under the Legal Aid Act, eligibility is determined by 3 factors, namely: (i) insufficient means, (ii) reasonable grounds of success in the case in court and (iii) need of the services provided by the Act.<sup>52</sup>

Despite the broad right to legal aid provided under the Constitution and the Legal Aid Act, in reality, most defendants in the magistrates courts system do not have legal representation and requests by defendants in criminal cases for a government-provided attorney are rarely granted except in capital cases.<sup>53</sup>

No additional information was available on what court costs are payable or if there is an exemption in relation to children.

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?

Several organisations provide legal services free of charge. Zimbabwe Lawyers for Human Rights (ZLHR) takes on cases involving human rights abuses.<sup>54</sup> The Legal Resources Foundation provides legal services, including to children.<sup>55</sup> The Justice for Children Trust provides legal advice to children in relation to civil and criminal cases.<sup>56</sup>

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<sup>51</sup> Children's Act, Section 5.

<sup>52</sup> Legal Aid Act [*Chapter 7:16*], Section 8, available at: [http://defensewiki.ibj.org/index.php/Zimbabwe\\_Legal\\_Aid\\_Act](http://defensewiki.ibj.org/index.php/Zimbabwe_Legal_Aid_Act).

<sup>53</sup> United States Department of State, Bureau of Democracy, Human Rights and Labor, *Zimbabwe 2012 Human Rights Report*, p. 17, available at: <http://www.state.gov/documents/organization/204395.pdf>.

<sup>54</sup> [http://www.nyulawglobal.org/globalex/zimbabwe.htm#\\_Legal\\_Aid\\_by\\_Private%20Institutions](http://www.nyulawglobal.org/globalex/zimbabwe.htm#_Legal_Aid_by_Private%20Institutions).

<sup>55</sup> As part of the Legal Resources Foundation's Access to justice for children project, a total of 8,749 children were reached within this first year. 180 cases involving children were taken to court by LRF lawyers and 122 of these were successfully closed. It is important to note that of the 122 cases represented in court and successfully closed 47 such cases were criminal juvenile cases. See <http://www.lrfzim.com/legal-services/>.

<sup>56</sup> <http://www.hrforumzim.org/members/justice-for-children-trust/>.

Nonetheless, these organisations do not receive any government funding and there are no established procedures to promote pro-bono practice in the country.

Furthermore, contingency fee agreements are permissible under Zimbabwean law.<sup>57</sup>

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

Research did not identify any statutory provisions to allow young adults to bring cases about violations of rights that occurred when they were children.

Complaints to the Human Rights Commission must be submitted in writing within three years of the date of the action or omission complained of.<sup>58</sup>

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

According to the Criminal Procedure and Evidence Act, every person not expressly excluded by the Act will be considered competent to give evidence in a criminal trial.<sup>59</sup> The Act does not expressly find minors or children to be incompetent to give testimony; therefore, children should be able to provide evidence as witnesses.

The Civil Evidence Act also does not exclude children from giving evidence.<sup>60</sup> Where an issue as to the competence of any witness arises which is not provided for in this Act, the issue shall be determined in accordance with the practice of the Senior Courts of England and Wales, as long as that does not mean giving effect to any enactment passed by the UK Parliament after 1 June 1927.<sup>61</sup> In the Children's Courts the judge can permit the child to express their opinion.<sup>62</sup>

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<sup>57</sup> Legal Practitioners Act, Sections 22A-22F, available at:

[http://www.parlzim.gov.zw/attachments/article/114/LEGAL\\_PRACTITIONERS\\_ACT\\_27\\_07.pdf](http://www.parlzim.gov.zw/attachments/article/114/LEGAL_PRACTITIONERS_ACT_27_07.pdf).

<sup>58</sup> Zimbabwe Human Rights Commission Act, Section 9(1).

<sup>59</sup> Criminal Procedure and Evidence Act [*Chapter 9:07*], Section 244, available at:

<http://www.refworld.org/pdfid/54a2c6fb4.pdf>.

<sup>60</sup> Available at: [http://www.parlzim.gov.zw/attachments/article/94/CIVIL\\_EVIDENCE\\_ACT\\_8\\_01.pdf](http://www.parlzim.gov.zw/attachments/article/94/CIVIL_EVIDENCE_ACT_8_01.pdf).

<sup>61</sup> Civil Evidence Act, Section 56.

<sup>62</sup> Children's Act, Section 5.

Child-friendly rooms have been set up to allow children who have been victims of abuse to give evidence in court out of sight of the accused perpetrator and similar child-friendly rooms also exist in police stations and hospitals.<sup>63</sup>

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

According to the Constitution, the judiciary must be guided by the principle that justice must not be delayed.<sup>64</sup> Criminal proceedings typically proceed from investigation to trial within months.<sup>65</sup> However, there is no additional information available regarding the length of time a civil case could last.

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

Magistrate courts or children's courts decisions must first be appealed to the High Court. Appeals of decisions of the High Court may be brought to the Supreme Court.<sup>66</sup>

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

It is well within the realm of possibility that political cases could create negative repercussions, even after a favourable decision. For example, after a 1989 the Supreme Court ruling that corporal punishment of juvenile offenders was unconstitutional, the government decided to amend the Constitution in force at that time to explicitly make this form of punishment legal for male juveniles.<sup>67</sup> The practice has since been again ruled unconstitutional under Zimbabwe's new 2013 Constitution by the High Court in early 2015.<sup>68</sup>

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

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<sup>63</sup> *Second periodic report of Zimbabwe to the UN Committee on the Rights of a Child*, CRC/C/ZWE/2, 16 July 2013, p. 9, available at:

[http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ZWE/CRC\\_C\\_ZWE\\_2\\_6753\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ZWE/CRC_C_ZWE_2_6753_E.pdf).

<sup>64</sup> Constitution of Zimbabwe, Section 165(1)(b).

<sup>65</sup> *Zimbabwe 2012 Human Rights Report*, p. 18.

<sup>66</sup> <http://www.nyulawglobal.org/globalex/Zimbabwe1.htm>.

<sup>67</sup> *An Introduction to Zimbabwean Law*, at 124.

<sup>68</sup> For more information, please see

<https://www.crin.org/en/home/what-we-do/crinmail/children-court-crinmail-45#H>.

As a general matter, the government often refuses to abide by judicial decisions and routinely delays payment of court costs or judgments awarded in civil cases.<sup>69</sup> Moreover, a severe lack of judicial and police resources often results in under- or non-enforcement of domestic court orders.<sup>70</sup>

Judicial corruption in Zimbabwe is widespread, extending even beyond magistrates and judges. NGOs report that senior government officials continued to undermine judicial independence through a variety of methods, including bribery, threats and intimidation.<sup>71</sup>

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

Zimbabwe has a dual legal system in which common law and customary law operate in parallel.<sup>72</sup> The customary law of Zimbabwe governs some areas of marriage, inheritance and guardianship,<sup>73</sup> so it can have an impact on matters related to children's rights. The Committee on the Rights of the Child expressed concern that this "creates additional difficulties in implementing the Convention and impedes effective monitoring of its enforcement."<sup>74</sup>

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

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<sup>69</sup> Zimbabwe, Country Reports on Human Rights Practices - 2006.

[http://harare.usembassy.gov/humanrights\\_practices.html](http://harare.usembassy.gov/humanrights_practices.html)

<sup>70</sup> *Id.*

<sup>71</sup> <https://freedomhouse.org/report/countries-crossroads/2012/zimbabwe#.VUtoV1J0xi4>.

<sup>72</sup> Constitution, Section 89.

<sup>73</sup> [http://www.nyulawglobal.org/Globalex/Zimbabwe1.htm#\\_Customary\\_Law](http://www.nyulawglobal.org/Globalex/Zimbabwe1.htm#_Customary_Law)

<sup>74</sup> UN Committee on the Rights of the Child, *Concluding Observations on the combined third and fourth initial report of Zimbabwe*,