

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

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### **I. What is the legal status of the Convention on the Rights of the Child (CRC)?**

#### **A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?**

The CRC has the authority of national law in Rwanda. Article 190 of Rwanda's Constitution grants properly ratified and published treaties superior status over organic law and ordinary laws.<sup>1</sup>

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

Article 190 of Rwanda's Constitution elevates properly ratified and published international treaties above national law, except where parties have failed to act in compliance with a treaty's terms.<sup>2</sup>

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

The preamble to Rwanda's Constitution affirms the country's commitment to the principles of human rights and explicitly refers to the CRC.<sup>3</sup> Furthermore, according to the constitution the President guarantees respect of international treaties and agreements<sup>4</sup>.

Moreover, multiple laws have been enacted or revised with the aim to conform to the provisions of the CRC: the Nationality Code; the Criminal Procedure Code; Law, which creates the National Prisons Service; Law, which creates the Rwanda Defense Forces; Law, which establishes the "Local Defence Force." In addition, a new law governing the National Commission for Human Rights was established<sup>5</sup>.

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

Under Article 190 of the Constitution, properly published treaties are superior to organic law; therefore, CRC may be directly enforced in the court.<sup>6</sup>

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<sup>1</sup> Article 190 of the Constitution. Available at: <http://www.rwandahope.com/constitution.pdf>.

<sup>2</sup> Ibid.

<sup>3</sup> Preamble § 9 of Rwanda's Constitution.

<sup>4</sup> Article 98 of the Constitution.

<sup>5</sup> Consolidated third and fourth periodic reports of Rwanda to the UN Committee on the Rights of the Child, CRC/C/RWA/3-4, 24 February 2012. Available at: [http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC\\_C\\_RWA\\_3-4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC_C_RWA_3-4.pdf).

<sup>6</sup> Harmonisation of Children's Laws in Rwanda, Country Brief, the African Child Policy Forum, p.2.

Available at:

<http://acerwc.org/wp-content/uploads/2012/05/English-ACERWC-Rwanda-Harmonisation-of-Laws-on-Children.pdf>.

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

Examples of domestic courts using or applying the CRC have been found, but most court decisions from Rwanda have proven inaccessible.

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?

According to the Constitution the judiciary is the guardian of rights and freedoms of the public and ensures their respect in accordance with procedures determined by law<sup>7</sup>.

Rwanda's Code of Civil Procedure provides for the bringing of civil suits by a plaintiff with "the status, interest, and capacity to bring the suit."<sup>8</sup> Because legal capacity is attained only when an individual reaches age 21,<sup>9</sup> a child must take legal action through a representative.

In general, the Judicial Police perform all criminal investigations. However, if the judicial police, without cause, reject a complaint or refuse to investigate, "the person who filed the complaint in the judicial police may take the complaint direct[ly] to the public prosecution."<sup>10</sup> While this language would appear broad enough to include children who initiate a criminal complaint, it remains unclear whether Rwandan law is so interpreted.

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?

The Civil Code of Rwanda fixes the age of majority at 21.<sup>11</sup> An individual who has not yet reached the age of 21 is unable to bring lawsuits or otherwise take legal action in his or her own name. An exception occurs when a child has been emancipated, in which case the child enjoys the legal capacity of an adult.<sup>12</sup> Short of emancipation, a guardian or representative for a child must bring legal action on behalf of the child.

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

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<sup>7</sup> The Constitution, Article 44.

<sup>8</sup> Article 2 of Law No. 21/2012 of 14 June 2012 Relating to the Civil, Commercial, Labour and Administrative Procedure ("Code of Civil Procedure"). Available at: [http://rwandapedia.rw/archive?field\\_abunzi\\_document\\_type\\_tid=123](http://rwandapedia.rw/archive?field_abunzi_document_type_tid=123)

<sup>9</sup> Article 360 of the Civil Code. Available at: <http://landwise.landesat.org/record/888>

<sup>10</sup> Article 22 of Law No. 13/2004 of 17 May 2004 Relating to the Code of Criminal Procedure ("Code of Criminal Procedure"). Available at: <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7532&iid=1333&rid=30693528>.

<sup>11</sup> Article 360 of the Civil Code.

<sup>12</sup> Article 430 of the Civil Code.

Because parental authority includes legal authority for a child,<sup>13</sup> a young child's parents would typically bring a case on the child's behalf. If a child's mother and father disagree, the father's preferences will take precedence, but the mother will be free to appeal to the Court of First Instance.<sup>14</sup> Similarly, a child's father is empowered to represent the child with respect to personal property and civil acts.<sup>15</sup>

In the event that a child's parents prove unfit, at the request of any interested person or a public prosecutor the court can deny the parental authority.<sup>16</sup> If a child has no parents or no guardian has been appointed by the child's parents, the court will appoint a guardian.<sup>17</sup>

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

A child's legal representative may be entitled to assistance, the provision of which is left to the discretion of the chief registrar and, subsequently, the court. The Code of Civil Procedure expressly authorizes the chief registrar to "request that a party benefits from free legal aid."<sup>18</sup>

With respect to criminal prosecutions against minors, the Criminal Code requires all minors be represented by counsel. If the minor or his or her guardian is not able to select counsel, the prosecution may ask for the President of the Lawyer's Association Bar to make an appointment.<sup>19</sup> Counsel is automatically appointed for any child who faces a lawsuit and whose legal guardian does not select counsel.<sup>20</sup>

Under the Law Relating to Rights and Protection of the Child Against Violence, legal assistance may also be provided to any child without a guardian.<sup>21</sup>

However, while numerous circumstances may give rise to eligibility for free legal assistance, Rwanda lacks a sufficient number of attorneys to represent all of those eligible for such services.<sup>22</sup>

**E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?**

Neither the Code of Civil Procedure nor the Civil Code describes limits on the

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<sup>13</sup> Article 349 of the Civil Code.

<sup>14</sup> Article 345 of the Civil Code.

<sup>15</sup> Article 352 of the Civil Code.

<sup>16</sup> Article 359 of the Civil Code.

<sup>17</sup> Article 365 of the Civil Code.

<sup>18</sup> Article 23(4) of the Code of Civil Procedure.

<sup>19</sup> Article 185 of the Code of Criminal Procedure.

<sup>20</sup> Article 191 of the Code of Criminal Procedure.

<sup>21</sup> Article 21 of the Law Relating to Rights and Protection of the Child Against Violence, No. 27/2001 of 28 April 2001. Available at:

<http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7726&iid=1193&rid=30692318>.

<sup>22</sup> U.S. Dep't of State, Rwanda 2012 Human Rights Report. Available at:

<http://www.state.gov/documents/organization/204366.pdf>.

bringing of cases by children's legal representatives, other than generally applicable standing requirements. As discussed above, the State or an interested party is free to request a court appoint a guardian in the event that a child's parents prove unfit. Otherwise, the child's parents or legal guardian are trusted with the responsibility of exercising the child's legal rights, if necessary, without limitations.

### **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?**

Violations of the law are investigated and recommended for prosecution by the Judicial Police. In the event that a complaint has been lodged and no prosecution is brought within six months, the victim may bring a "private prosecution."<sup>23</sup> This allows the victim to bypass the Judicial Police in recommending that the State prosecute the case.

In the context of civil actions, standing to bring suit requires that a plaintiff demonstrate status, interest, and capacity.<sup>24</sup> Because legal capacity is attained at the age of 21,<sup>25</sup> a legal guardian or representative must bring a lawsuit on behalf of anyone under the age of 21. Alternatively, a person under the age of 21 who has become emancipated is vested with the power to undertake all acts of civil life<sup>26</sup> and would have legal capacity to bring suit on their own behalf.

In order to bring suit, a plaintiff or the plaintiffs' representative must submit a claim to be recorded into the court register.<sup>27</sup> The chief registrar will serve the summons and provide the plaintiff's submission to the defendant, who will have 15 days to respond.<sup>28</sup> The case will then proceed to a hearing.<sup>29</sup>

According to the Constitution the Office of the Ombudsman is responsible for receiving and examining complaints from individuals and independent associations against the acts of public officials or organs, and private institutions. The office does not have the power to investigate or adjudicate these matters, it may submit to the courts or the prosecution service the complaints which it has received<sup>30</sup>.

#### *Regional Mechanisms*

Individuals, including child victims, his/her parents or legal representatives, groups, or NGOs recognised by the African Union may submit complaints (known

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<sup>23</sup> Article 135 of the Code of Criminal Procedure.

<sup>24</sup> Article 2 of the Code of Civil Procedure.

<sup>25</sup> Article 431 of the Civil Code.

<sup>26</sup> Article 430 of the Civil Code.

<sup>27</sup> Article 21 of the Code of Civil Procedure.

<sup>28</sup> Articles 23 and 34 of the Code of Civil Procedure.

<sup>29</sup> Article 23 of the Code of Civil Procedure.

<sup>30</sup> Article 182(3) of the Constitution.

as “communications”) to the African Committee of Experts on the Rights and Welfare of the Child (“African Committee”) about violations of the African Charter on the Rights and Welfare of the Child (“African Children’s Charter”).<sup>31</sup> All available domestic remedies must have been exhausted before bringing a case to the African Committee.<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, and whether or not the complainant wishes to remain anonymous and the reasons for this.<sup>33</sup> The African Committee will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.<sup>34</sup>

Individuals, groups or NGOs may submit complaints (known as “communications”) to the African Commission on Human and Peoples’ Rights (“African Commission”) about violations of the African Charter on Human and Peoples’ Rights (“African Charter”).<sup>35</sup> All available domestic remedies must have been exhausted before bringing a case to the African Commission.<sup>36</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>37</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>38</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>39</sup>

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<sup>31</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-acrwc/acrwc-charter-full-text/>. For more information about communications, see: <http://acerwc.org/the-committees-work/communications/>.

<sup>32</sup> African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at: <http://acerwc.org/the-committees-work/communications/>.

<sup>33</sup> War Resisters’ International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Committee of Experts on the Rights and Welfare of the Child: communication procedure’, 2012, available at: <http://co-guide.org/mechanism/african-committee-experts-rights-and-welfare-child-communication-procedure>.

<sup>34</sup> Ibid.

<sup>35</sup> African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

<sup>36</sup> Ibid., Article 56(5).

<sup>37</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>38</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>39</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>.

NGOs with observer status before the African Commission may bring their case to the African Court on Human and Peoples' Rights<sup>40</sup> alleging violations of the African Charter.<sup>41</sup> All available domestic remedies must have been exhausted before bringing a case to the Court.<sup>42</sup> The complaint must include, amongst other things, details of the applicant's identity, notwithstanding his/her request to remain anonymous.<sup>43</sup> The complaint must be written in one of the official languages of the Court,<sup>44</sup> and must be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court.<sup>45</sup> Applicants are entitled to be represented or to be assisted by legal counsel and/or by any other person of the applicant's choice.<sup>46</sup> The Court may, in the interest of justice, provide free legal representation and/or legal assistance to the applicant.<sup>47</sup> If the Court finds that there has been a violation of the African Charter, it will make "appropriate orders to remedy the violation, including the payment of fair compensation or reparation".<sup>48</sup>

Any individual or NGO who is resident in Rwanda may file a complaint with the East African Court of Justice about the legality of any Act, regulation, directive, decision or action of the State on the grounds that it is unlawful or violates the rule of law.<sup>49</sup> The Court has jurisdiction over the interpretation and application of the Treaty Establishing the East African Community (EAC Treaty), and will have human rights jurisdiction at a later date.<sup>50</sup> Despite the current lack of explicit jurisdiction over human rights, the Court has decided cases involving individual rights.<sup>51</sup> A complaint must be lodged within two months of the decision or action

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<sup>40</sup> The African Court on Human and Peoples' Rights will be incorporated into the African Court of Justice and Human Rights once the Protocol on the Statute of the African Court of Justice and Human Rights comes into force. The Court's Human Rights Section will have jurisdiction over human rights instruments including the African Charter on the Rights and Welfare of the Child and the African Charter on Human and Peoples' Rights. Individuals and NGOs accredited to the African Union or its organs will be able to submit complaints to the Court provided that the State concerned has made a declaration recognising the Court's competence to receive such complaints: see A4ID, 'African Court of Human and Peoples' Rights', 27 February 2012, available at:

<http://www.a4id.org/sites/default/files/user/African%20Court%20of%20Human%20and%20People%27s%20Rights.pdf>;

<sup>41</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, Articles 5(3) and 34(6), available at: <http://www.achpr.org/instruments/court-establishment>.

<sup>42</sup> Ibid., Article 6(2).

<sup>43</sup> African Court on Human and Peoples' Rights - Rules of Court, Rules 34 and 40, available at: [http://www.african-court.org/en/images/documents/Court/Interim%20Rules%20of%20Court/Final\\_Rules\\_of\\_Court\\_for\\_Publication\\_after\\_Harmonization\\_-\\_Final\\_English\\_7\\_sept\\_1\\_.pdf](http://www.african-court.org/en/images/documents/Court/Interim%20Rules%20of%20Court/Final_Rules_of_Court_for_Publication_after_Harmonization_-_Final_English_7_sept_1_.pdf).

<sup>44</sup> Ibid., Rule 34; the official languages of the Court are: Arabic, English, French, Portuguese, Spanish, Kiswahili and any other African language.

<sup>45</sup> Ibid., Rule 40.

<sup>46</sup> Ibid., Rule 28.

<sup>47</sup> Ibid., Rule 31.

<sup>48</sup> Ibid., Article 27(1).

<sup>49</sup> Treaty Establishing the East African Community, Article 30(1), available at: <http://www.eac.int/treaty/>.

<sup>50</sup> Ibid., Article 27; In May 2005, the Council of Ministers issued a Draft Protocol to Operationalise the Extended Jurisdiction of the East African Court of Justice, but the protocol has not yet been approved: <http://www.ijrcenter.org/regional-communities/east-african-court-of-justice/>.

<sup>51</sup> See Open Society Justice Initiative, 'Human rights decisions of the East African Court of Justice', June 2013, available at: <http://www.opensocietyfoundations.org/sites/default/files/east-african-court-digest-june-2013-20130726.pdf>.

complained of.<sup>52</sup> There is no requirement to exhaust domestic remedies before bringing a complaint to the Court. The Court issues declarations as to whether particular acts or laws infringe the EAC Treaty, and can recommend specific amendments to laws to bring them in conformity with the Treaty. Court judgments can be appealed to the Appeals Chamber of the Court,<sup>53</sup> and are binding.<sup>54</sup>

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

According to the Constitution the Supreme Court has the power to rule on the constitutionality of organic laws before their promulgation<sup>55</sup> as well as to hear petitions on the constitutionality of laws and decree-laws<sup>56</sup>. The Supreme Court is authorised to abrogate the whole or part of the organic law, law and decree-law if the petition is well-founded<sup>57</sup>.

Judges have broad authority to reach a decision, relying on current law or, in the absence of applicable law, the judge's view of what the law ought to be.

With respect to remedies, a public prosecutor or any interested person may request the court remove a child from the guardianship of his parents due to abuse or unfit parenting.<sup>58</sup> A court may deem the parents to have lost parental authority and subsequently appoint a guardian.<sup>59</sup>

In general, Rwandan courts are required to take a child's preferences into account when deciding on remedies. Article 9 of the Law Relating to Rights and Protection of the Child Against Violence requires that a child's preferences be taken into consideration when making any decision that affects the child.<sup>60</sup> It also states that a child has the right to express his or her opinion with respect to any legal matter that affects the child.<sup>61</sup>

The Office of Ombudsman is authorised to request for disciplinary sanctions to be imposed against any employee whether Government, public or private who acted unjustly towards a person and to determine what should be done so that those who suffered from injustice may find redress<sup>62</sup>.

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<sup>52</sup> Treaty Establishing the East African Community, Article 30(2).

<sup>53</sup> Ibid., Article 35A.

<sup>54</sup> Open Society Foundations, 'East African Court of Justice', June 2013, available at: <http://www.opensocietyfoundations.org/fact-sheets/east-african-court-justice>.

<sup>55</sup> Article 145(3) of the Constitution.

<sup>56</sup> Article 145(5) of the Constitution.

<sup>57</sup> 29/01/2004 - Organic Law N° 01/2004 Establishing the Organisation, Functioning and Jurisdiction of the Supreme Court, Article 93. Available at: <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7517&iid=1202&rid=30692432>

<sup>58</sup> Article 359 of the Civil Code.

<sup>59</sup> Article 361 of the Civil Code.

<sup>60</sup> Article 9 of Law No. 27/2001 of 28 April 2001 Relating to Rights and Protection of the Child Against Violence. Available at: <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7726&iid=1193&rid=30692318>.

<sup>61</sup> Ibid.

<sup>62</sup> Law No. 76/2013 of 11/9/2013 Determining the Mission, Powers, Organization and Functioning of the Office of the Ombudsman, Article 10. Available at:



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?

In order to file a claim with the registrar, a plaintiff must provide his or her name and residence and the name or residence of his or her legal representative, if applicable.<sup>63</sup> The Code of Civil Procedure contains no exception for cases brought on behalf of children.

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

Although Rwandan law does not expressly outline aggregate-litigation procedures, it contemplates certain forms of group litigation. For instance, the Code of Civil Procedure provides for the members of associations to file joint claims.<sup>64</sup> The Code of Civil Procedure also empowers the chief registrar to decide if there should be a “joint trial”<sup>65</sup> and discusses the rights and obligations of “several co-plaintiffs or co-defendants.”<sup>66</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?

The Code of Civil Procedure does not address the standing of non-governmental organizations. It does, however, provide that “only the interested parties can begin an action, except when the law provides otherwise.”<sup>67</sup> Because NGO is unlikely to be an interested party, Rwandan law appears to preclude suits brought by NGOs, unless the specific law under which the NGO is suing provides otherwise.

Similarly, in order to intervene, a person must demonstrate “his/her direct personal material or moral interest.”<sup>68</sup> This broader language may include NGOs asserting the right to intervene based on a “moral interest,” though no materials confirm that Rwandan courts entertain this type of standing.

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?

Rwanda has both criminal and civil court systems. The Judicial Police are responsible for investigating criminal complaints, as described in Section II.A. A civil complaint requires that the plaintiff, or his or her counsel or any other person

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[http://www.ombudsman.gov.rw/IMG/pdf/itegeko\\_rigenga\\_urwego\\_rw\\_umuvunyi1.pdf](http://www.ombudsman.gov.rw/IMG/pdf/itegeko_rigenga_urwego_rw_umuvunyi1.pdf)

<sup>63</sup> Article 19(2) of the Code of Civil Procedure.

<sup>64</sup> Article 25 of the Code of Civil Procedure.

<sup>65</sup> Article 23(5) of the Code of Civil Procedure.

<sup>66</sup> Article 25 of the Code of Civil Procedure.

<sup>67</sup> Article 3 of the Code of Civil Procedure.

<sup>68</sup> Article 114 of the Code of Civil Procedure.



duly authorised by him or her, file a written or oral complaint in a court of first instance.<sup>69</sup> This can be accomplished in person or by sending the complaint electronically or through the mail.<sup>70</sup> A written claim must be filed in the same number of copies as there are defendants, along with the submissions and the proofs upon which the claim is based,<sup>71</sup> and a fee is required in order for the court registrar to record the claim.<sup>72</sup>

- 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?

The law requires the provision of legal representation to minors in the judicial system.<sup>73</sup> However, there is an insufficient number of lawyers to meet the need for legal representation — a reality that observers suggest contributes to trial delays for minors.<sup>74</sup> Rwanda holds an annual Legal Aid Week, during which it attempts to process juvenile cases and remedy the backlog.<sup>75</sup>

The Criminal Procedure Code exempts certain groups from the obligation to pay court fees, but children are not among those exempted.<sup>76</sup>

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

The Legal Aid Forum comprises 37 organizations, including NGOs, the Rwandan Bar Association, the Corps of Judicial Defenders, and university legal aid clinics, and provides free legal services to indigent groups and vulnerable populations.<sup>77</sup> However, the demand for such services exceeds the supply.

- 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?

A claim is regarded as inadmissible and will not be recorded by the court registrar if there is “delay in submitting the claim.”<sup>78</sup> The courts appear to use a somewhat

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<sup>69</sup> Article 16 of the Code of Civil Procedure.

<sup>70</sup> Article 17 of the Code of Civil Procedure.

<sup>71</sup> Ibid.

<sup>72</sup> Articles 17 and 18 of the Code of Civil Procedure.

<sup>73</sup> U.S. Dep't of State, Rwanda 2012 Human Rights Report, p. 15. Available at: <http://www.state.gov/documents/organization/204366.pdf>.

<sup>74</sup> U.S. Dep't of State, Rwanda 2012 Human Rights Report, p. 13, 15. Available at: <http://www.state.gov/documents/organization/204366.pdf>.

<sup>75</sup> U.S. Dep't of State, Rwanda 2012 Human Rights Report, p. 13. Available at: <http://www.state.gov/documents/organization/204366.pdf>.

<sup>76</sup> Article 259 of the Code of Criminal Procedure.

<sup>77</sup> U.S. Dep't of State, Rwanda 2012 Human Rights Report, p. 13. Available at: <http://www.state.gov/documents/organization/204366.pdf>.

<sup>78</sup> Article 18 of the Code of Civil Procedure.

loose interpretation of “delay,” at least when dealing with claims of children. For instance, in a case involving a guardian who improperly transferred property from his wards to himself, the children challenged the transfer after waiting until one of them reached the age of majority.<sup>79</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?

Rwanda does not appear to have a code of evidence. This may be because the Rwandan court system vests the judge with significant discretion in evaluating the evidence. For instance, the judge may “appoint an expert to examine on behalf of the court any report of skilled persons or other evidence presented.”<sup>80</sup> The judge also has the authority “to make an order [as to] whether such evidence is sufficient, after examining the evidence of witnesses or conclusions.”<sup>81</sup> Once a judge has reached a decision, his pronounced judgment must “justify the rejection of the evidence produced and the value [the judgment] attributes to the different types of evidence produced in court.”<sup>82</sup>

Further emphasizing the apparently broad admissibility of evidence, the Code of Civil Procedure ensures review of a judgment in case of a false evidence. An application for review may be made “if the judgment was based on pieces of evidence, testimony or oaths which were subsequently recognised or declared by the court to be false.”<sup>83</sup> Notably, the right to review is triggered by substantively false evidence as opposed to inadmissible evidence.

The Code of Criminal Procedure states that children who have attained the age of 12 can testify as adults<sup>84</sup>. Furthermore, “Children under the age of 12 can also be heard but a court’s decision cannot be solely based on their testimony”<sup>85</sup>.

Rwanda does not appear to have specific rules regarding the evidence presented by children. Nevertheless, courts will sometimes make accommodations for children. For instance, though trials are typically open to the public, courts will close proceedings when minors are involved.<sup>86</sup>

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

The Code of Civil Procedure requires that all claims be tried within six months of initiation.<sup>87</sup> A court must write and announce its judgment within one month

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<sup>79</sup> Christine Umubyeyi, *Access to Justice in Civil Matters: A Critical Analysis of Legal Representation of Minors Under Guardianship in Rwanda*, 30 October 2011, p. 21. Available at: [http://repository.up.ac.za/bitstream/handle/2263/18653/Umubyeyi\\_Acces\(2011\).pdf?sequence=1](http://repository.up.ac.za/bitstream/handle/2263/18653/Umubyeyi_Acces(2011).pdf?sequence=1).

<sup>80</sup> Article 359(6) of the Code of Civil Procedure.

<sup>81</sup> Article 359(4) of the Code of Civil Procedure.

<sup>82</sup> Article 147 of the Code of Civil Procedure.

<sup>83</sup> Article 186(2) of the Code of Civil Procedure.

<sup>84</sup> Article 60 of the Code of Criminal Procedure.

<sup>85</sup> Ibid.

<sup>86</sup> U.S. Dep’t of State, Rwanda 2012 Human Rights Report, p. 15. Available at: <http://www.state.gov/documents/organization/204366.pdf>.

<sup>87</sup> Article 13 of the Code of Civil Procedure.

period of the closing of hearings.<sup>88</sup> A judge may announce his decision orally immediately after the last hearing, in which case he does not have to publish the entire judgment.<sup>89</sup>

International Bridges to Justice reports significant delays in adjudicating criminal cases: “More than 25% of Rwandan detainees are awaiting trial and, some of them have been waiting for 15 years with no lawyer, no expected date of trial, and limited access to family, food and medical assistance.”<sup>90</sup> Delays may affect children more acutely, as they are required to be represented by counsel at trial, yet insufficient numbers of lawyers are available to meet this need.<sup>91</sup>

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

Rwanda provides for the right to an appeal, and the U.S. Department of State reports that this right is respected in the court system.<sup>92</sup> An appeal must be filed within one month from the date of final judgment,<sup>93</sup> and only the first appeal will be considered.<sup>94</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?

A party who loses a lawsuit is barred from re-initiating the same lawsuit. The Code of Civil Procedure specifies that once a case has reached a final determination, it “cannot be summoned again for the same facts and between the same parties pleading the same subject matter.”<sup>95</sup>

In addition, a losing party may face a court order to refund the public treasury for certain costs associated with the lawsuit. Rwandan law makes the losing party responsible for allowances that the court provides “to witnesses, physicians, interpreters and other experts as well as transport fees for court bailiffs.”<sup>96</sup> As a result, a negative decision may highlight the financial consequences of losing a lawsuit and discourage others from bringing similar lawsuits.

In the long-run, a negative outcome may produce judicial precedent that is persuasive to judges deciding similar issues in the future. The Code of Civil Procedure directs judges to consider precedent. It states:

Judges shall decide cases by basing their decisions on the relevant law or, in the absence of such a law, on the rule they would have enacted,

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<sup>88</sup> Article 149 of the Code of Civil Procedure.

<sup>89</sup> Ibid.

<sup>90</sup> International Bridges to Justice, *Legal Defense Training and Community Round table Discussion to Improve Access to Justice in Rwanda*, 23 June 2010. Available at: <http://blog.ibj.org/2010/06/23/legal-defense-training-and-community-roundtable-discussion-to-improve-access-to-justice-in-rwanda/>.

<sup>91</sup> U.S. Dep’t of State, Rwanda 2012 Human Rights Report, p. 15. Available at: <http://www.state.gov/documents/organization/204366.pdf>.

<sup>92</sup> U.S. Dep’t of State, Rwanda 2012 Human Rights Report, p. 15. Available at: <http://www.state.gov/documents/organization/204366.pdf>.

<sup>93</sup> Article 163 of the Code of Civil Procedure; Article 165 of the Code of Criminal Procedure.

<sup>94</sup> Article 12 of the Code of Civil Procedure.

<sup>95</sup> Article 11 of the Code of Civil Procedure.

<sup>96</sup> Article 270 of the Code of Criminal Procedure.

had they to do so, guided by judicial precedents, customs and usages, general principles or law and written legal principles.<sup>97</sup>

Formal efforts to protect children's rights are a relatively new development in Rwanda. The country is still educating its citizenship about the illegality of child abuse and the legal mechanisms in place to protect the rights of children.<sup>98</sup> Perhaps partially due to ignorance, these legal mechanisms are not regularly utilized. For instance, the U.S. Department of State reports that child abuse in Rwanda is common.<sup>99</sup> In addition, although the minimum age for marriage is 21, "UNICEF reported an under-18 child marriage rate of 13 percent" between 2000 and 2010.<sup>100</sup> Given resistance to robust protection of child rights, Rwanda has not yet had prominent courtroom victories on behalf of children. However, the population's general opposition to child rights may indicate that political backlash is likely should judges render decisions that significantly improve children's legal status.

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

Rwanda struggles with a lack of lawyers. The U.S. Department of State reported that in 2012, there were 736 attorneys<sup>101</sup> in a country of 11 million people. As a result, many parties, including indigent defendants, find themselves navigating the judicial process without legal representation. The lack of legal representation likely complicates any attempts to seek enforcement of a positive decision should the losing party not willingly comply.

- 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.

Within the Rwandan legal framework there is a particularly acute gap in protection for children, which affects those who hold employment. Rwanda sets the minimum age for full-time employment at 18 and the minimum age for apprenticeship at 16.<sup>102</sup> Still, nine percent of Rwandan children between the ages of five and 17 are engaged in child labor.<sup>103</sup> Because legal majority is reached at age 21, children who seek to remedy labor-law violations will be unable to do so unless their representatives bring lawsuit. For instance, a 16-year-old who is forced to work full-time or a 20-year-old who faces unhealthy working conditions is unable to initiate a lawsuit without representatives.

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<sup>97</sup> Article 6 of the Code of Civil Procedure.

<sup>98</sup> Jean de la Croix Tabaro, *Child Commission Steps up Fight Against Abuse of Children's Rights*, The New Times, 20 November 2013. Available at: <http://www.newtimes.co.rw/news/index.php?a=72263&i=15547>.

<sup>99</sup> U.S. Dep't of State, Rwanda 2012 Human Rights Report, p. 39. Available at: <http://www.state.gov/documents/organization/204366.pdf>.

<sup>100</sup> Ibid.

<sup>101</sup> U.S. Dep't of State, Rwanda 2012 Human Rights Report, at 13. Available at: <http://www.state.gov/documents/organization/204366.pdf>.

<sup>102</sup> Article 4 of Law No. 13/2009 of 27 May 2009 Regulating Labour in Rwanda. Available at: <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=8858&iid=2465&rid=30701792>.

<sup>103</sup> U.S. Dep't of State, Rwanda 2012 Human Rights Report, p. 50. Available at: <http://www.state.gov/documents/organization/204366.pdf>.

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