

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

*This report was produced in April 2014. Child Rights International Network (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?**

The People's Democratic Republic of Algeria (Algeria) ratified the CRC by adopting a Presidential Decree n° 92-09 of 17 November 1992, which was published on 23 December 1992.

In addition, Algeria has also ratified the Optional Protocols to the CRC on the Sale of Children, Child Prostitution and Child Pornography (2 September 2006, Algerian Official Journal No. 55) and on the Involvement of Children in Armed Conflict (2 September 2006, Algerian Official Journal No. 55).<sup>1</sup>

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

The principle that ratified treaties take precedence over domestic law is enshrined in the Algerian Constitution. Article 132 stipulates that "treaties ratified by the President of the Republic, in the circumstances provided for by the Constitution, shall take precedence over the law".<sup>2</sup>

This principle was confirmed by the Constitutional Council<sup>3</sup> in a decision of 20 August 1989, which held that "after ratification and upon publication, any convention is incorporated into domestic law and, pursuant to article 132 of the Constitution, acquires a higher status than the law, thereby permitting any Algerian citizen to invoke it before the courts".<sup>4</sup>

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

Yes. The decision of the Constitutional Council of 20 August 1989 confirms that once the CRC was ratified it became incorporated into national law.

Although Algeria has ratified the CRC, it has issued Interpretative Declarations

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<sup>1</sup> *Third and fourth periodic report of Algeria to the UN Committee on the Rights of the Child*, CRC/C/DZA/3-4, 18 July 2011, page 52. Available at:

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=CRC/C/DZA/3-4&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=CRC/C/DZA/3-4&referer=/english/&Lang=E).

<sup>2</sup> Article 132 of the Algerian Constitution of 1996 as amended by Law no. 02-03 of 10 April 2002 and Law no. 08-19 of 15 November 2008. The Constitution is available at:

[http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_125825.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125825.pdf).

<sup>3</sup> The Constitutional Council of Algeria is a Constitutional Court which has been established under the Algerian Constitution of February 1989. Article 163 of the Constitution provides: "A Constitutional Council is established, entrusted with the mission to ensure the respect of the Constitution". According to the website of the Constitutional Council of Algeria: "The control of constitutionality in Algeria is based essentially on the European model of Constitutional justice".

<sup>4</sup> Decision of the Constitutional Council of 20 August 1989 concerning the electoral Code, published in the Official Journal n° 36 of 30 August 1989, page 71.

regarding Articles 13, 14 paragraphs 1 and 2, 16 and 17 of the CRC. The purpose of these declarations is for Algeria to express its views on these Articles in light of the Algerian Constitution which provides that Islam is the official religion of the State.

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

Yes. The decision of the Constitutional Council of 20 August 1989 confirms that any Algerian citizen can invoke the CRC before the courts.<sup>5</sup>

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

None of the decisions of the Constitutional Council since 1989 concern children's rights or human rights in general.<sup>6</sup> There are no other online tools or databases that allow access to decisions rendered by the Algerian tribunals and courts.

**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 Algeria's 2011 report, children whose rights have been violated may bring an action as a civil plaintiff against the perpetrator of the violence inflicted upon them, by lodging a complaint with the public prosecutor or the juvenile court judge. The presence of a parent or guardian is mandatory. If there is no guardian, the public prosecutor acts in his place.<sup>7</sup>

An action can also be brought, by the child's tutor, before the administrative courts to seek the annulment, interpretation or review of the legality of an act adopted by the State or an administrative entity.

An action cannot be brought by an individual before the Constitutional Council<sup>8</sup> as this possibility is only granted to the President, the President of the People's National Assembly (lower chamber of parliament) and the President of the National Council (upper chamber of parliament).<sup>9</sup> In addition, the constitutionality of a law can only be challenged before the Constitutional Council before its promulgation.

According to the Committee on the Rights of the Child, Algeria does not have an independent body with a clear mandate to receive and address individual complaints from children of alleged violations of their rights. In its 2012 Concluding Observations, it recommended that Algeria establish an independent mechanism either as part of a National Human Rights Institution with a Child Unit, or as a separate mechanism (e.g. Ombudsperson for Children) to deal with children's complaints of violations of their rights in a child-friendly and expeditious manner, and to provide remedies for such

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<sup>5</sup> Ibid.

<sup>6</sup> The decisions of the Constitutional Council are available at: <http://www.conseil-constitutionnel.dz/indexFR.htm>.

<sup>7</sup> *Third and fourth periodic report of Algeria to the UN Committee on the Rights of the Child*, paras 49-50.

<sup>8</sup> Article 165 of the Constitution expressly provides that the Constitutional Council is responsible for judging the constitutionality of treaties, laws and regulations.

<sup>9</sup> Article 166 of the Constitution.

violations.<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?

According to Algeria's 2011 report, children who bring actions related to violations of their rights must be represented by their parent or guardian, or the public prosecutor in the absence of a parent or guardian.

Under Algerian law the age of majority is 19 years.<sup>11</sup> Therefore, children do not have legal capacity and must be represented by a "tutor",<sup>12</sup> who, according to the Family Code, is the child's father.<sup>13</sup> Under law, parental responsibility only lies with the father.<sup>14</sup> Accordingly, in case of a violation of a child's rights, the child's father can bring a case on behalf of the child.

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

Algerian law does not distinguish between infants / young children and "older" children. Therefore, in the case of infants and young children, cases would be brought by their "tutor", who is their father.<sup>15</sup>

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

According to Algeria's 2011 report, children who bring actions related to violations of their rights must be assisted by counsel at all stages of the prosecution and judgment; where necessary, they will automatically be assigned counsel by the juvenile court judge.<sup>16</sup>

Under Article 1 of Ordinance n° 71-57 of 5 August 1971 concerning legal assistance (Ordinance), any person is eligible to receive legal assistance.<sup>17</sup> In addition, Article 25 of the Ordinance provides for the free assistance of counsel for children who appear before a juvenile court, children's tribunal, or any other criminal court.<sup>18</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)?

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<sup>10</sup> UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth report of Algeria*, CRC/C/DZA/CO/3-4, 18 July 2012, paras 17-18. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDZA%2fCO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDZA%2fCO%2f3-4&Lang=en).

<sup>11</sup> Article 40 of the Civil Code. Available at: <http://www.joradp.dz/TRV/FCivil.pdf>.

<sup>12</sup> Article 87 of the Family Code. Available at: <http://www.joradp.dz/TRV/FFam.pdf>.

<sup>13</sup> Ibid.

<sup>14</sup> UN Committee on the Rights of the Child, para. 48.

<sup>15</sup> Articles 81 and 82 of the Family Code.

<sup>16</sup> *Third and fourth periodic report of Algeria to the UN Committee on the Rights of the Child*, paras 49-50.

<sup>17</sup> Article 1 of Ordinance n° 71-57 of 5 August 1971 concerning legal assistance. The Ordinance is included in the Civil Code at page 51 of the Annexes: <http://www.joradp.dz/TRV/FCivil.pdf>

<sup>18</sup> Ibid., Article 25.

As stated in parts II.A and B above, a child can only bring a legal action through their tutor. This signifies that in practice, the child's tutor exercises control over the decision as to whether or not a claim will be filed in the event of a violation of the child's rights.

More generally, under Algerian law, children between the ages of 16 and 18 are allowed to conclude legal acts. If the act is profitable to the child it will be deemed valid. However, if the act is harmful to the child it will be deemed null.<sup>19</sup> If there is uncertainty about the profitability of the act, the document is submitted to the tutor for authorisation.

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

#### A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

A civil action would have to be brought before the Family Affairs section of the Tribunal of First Instance.<sup>21</sup> The "judge of family actions" is responsible for safeguarding children's rights.<sup>22</sup>

An action before the Criminal Court would have to be either in the form of a civil action<sup>23</sup> before the Investigation Judge of the Criminal Court<sup>24</sup> or in some cases by directly instituting proceedings against the defendant before the court.<sup>25</sup> However, if a civil action has been brought before the Court of First Instance, the claimant cannot bring another civil claim before the Criminal Court.<sup>26</sup>

An administrative action would be brought by the child's tutor before the territorially competent administrative tribunal to seek the annulment, interpretation or review of the legality of an act adopted by the State or an administrative entity.

#### *Regional mechanisms*

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").<sup>27</sup> All available domestic

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<sup>19</sup> Article 83 of the Family Code.

<sup>20</sup> Ibid., Article 83 paragraph 2.

<sup>21</sup> Article 423 of the Civil and Administrative Law. Available at: <http://www.joradp.dz/TRV/FPCivil.pdf>.

<sup>22</sup> Ibid., Article 424.

<sup>23</sup> Article 239 of the Criminal Procedure Law. Available at: <http://www.joradp.dz/TRV/FPPenal.pdf>.

<sup>24</sup> Ibid., Article 72.

<sup>25</sup> Ibid., Article 337 bis.

<sup>26</sup> Ibid., Article 5.

<sup>27</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:

remedies must have been exhausted before bringing a case to the African Committee.<sup>28</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>29</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>30</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>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 civil proceedings, courts may award damages.<sup>36</sup> Criminal Courts are empowered to review claims related to material, moral or physical harms,<sup>37</sup> and may award damages.<sup>38</sup>

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

<sup>28</sup> African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at:

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

<sup>29</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>30</sup> Ibid.

<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> Article 25 of the Civil and Administrative Law.

<sup>37</sup> Article 3 of the Criminal Procedure Law.

<sup>38</sup> Ibid., Article 239.

In administrative proceedings, the court can annul, interpret or review the legality of an act adopted by the State or an administrative entity (i.e., declare the act wholly or partially illegal).

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 is not possible to challenge a law or bring an action without naming a specific victim as Article 15 of the Civil and Administrative Law requires that the action specifies, amongst other information, the name and address of the claimant. If this information is absent, the claim will not be admissible.<sup>39</sup>

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

The Civil and Administrative Law and the Criminal Procedure Law are silent on the possibility of bringing a collective action or to conduct a group litigation.

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?

Non-governmental organisations (NGOs) may seek permission to intervene in civil courts if they are able to prove that their intervention is sufficiently linked to the parties' claims.<sup>40</sup>

The Criminal Procedure Law is silent on the possibility for NGOs to file challenges or intervene in cases that have already been filed.

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

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

Civil actions should be brought before the Family Section of the Tribunal of First Instance. In practice, the claim (*requête introductive d'instance*) must be submitted at the office of the Tribunal registrar (*greffe*).<sup>41</sup>

Criminal actions are brought before the Criminal Court and filed either before the Investigation Judge or Court's Registrar or at the hearing.<sup>42</sup>

Administrative claims (*requête introductive d'instance*) must be filed by a lawyer before the territorially competent administrative tribunal.<sup>43</sup> The claim must enclose the

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<sup>39</sup> Ibid., Article 15.

<sup>40</sup> Ibid., Articles 194 and 195.

<sup>41</sup> Article 14 of the Civil and Administrative Law.

<sup>42</sup> Article 240 of the Criminal Procedure Law.

<sup>43</sup> Articles 800, 801 and 803 of the Civil and Administrative Code.

administrative act that is challenged<sup>44</sup> and indicate the name of the tribunal before which the claim is lodged and the name and address of the claimant.<sup>45</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 applicant must submit a request for legal assistance at the prosecutor's office of the Tribunal territorially competent. The request must enclose a tax declaration or a certificate of non-taxation and a declaration that because of lack of financial resources, the party is unable to exercise its right to go before court.<sup>46</sup>

The condition to satisfy in order to benefit from legal assistance is to prove that due to lack of financial resources, a party is not able to exercise its right to go before court.<sup>47</sup>

The request for legal assistance is examined by a Bureau composed of five members: the general prosecutor of the court, a judge, a representative of the tax authorities, a representative of the Bar and a representative of the local assembly of the territorial area within which the court is located. The Bureau renders a decision to either grant legal assistance or not. The refusal to grant legal assistance has to contain the reasons for the denial of the party's request.<sup>48</sup>

Article 417 of the Civil and Administrative Law exempts the beneficiary of legal assistance from court costs. Article 13 of Ordinance n° 71-57 of 5 August 1971 concerning legal assistance exempts "temporarily" the beneficiary of the legal assistance from paying any procedural fees.<sup>49</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 practicing 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?

Although Algerian law is silent on this point, the Information Center on Women and Children's Rights is a very active institution which provides pro bono legal assistance on children rights and publishes guides on children's rights under the CRC.<sup>50</sup> However, the Center is not legally entitled to represent children before local courts.

In addition, the law firm *Taouti* undertakes pro bono work in a wide spectrum of areas including: human rights and discrimination suits, social security disputes, consumer, children and family matters, in both hearings and appeals.<sup>51</sup>

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<sup>44</sup> Ibid., Article 819.

<sup>45</sup> Ibid., Articles 815, 816 and 15.

<sup>46</sup> Article 6 of Ordinance n° 71-57 of 5 August 1971 concerning legal assistance.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid., Article 10.

<sup>49</sup> Ibid., Article 13. The article is not clear as to when these fees would be due by the beneficiary. The vague wording of the article suggests that this could be once a final judgment has been rendered.

<sup>50</sup> Available at: <http://www.ciddef-dz.com/pages-index/index.php>.

<sup>51</sup> Société Civile d'Avocats Taouti, 'Pro bono', available at: <http://www.lawhouse.biz/ProBonoEng.html>.

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?

Article 10 of the Criminal Procedure Law provides that the expiry of the period during which a claim could be brought is subject to the rules of the Civil Code. Article 308 of the Civil Code provides that this period is 15 years.

Article 829 of the Civil and Administrative Code provides that administrative claims must be lodged within a period of four months as of the date of notification (to a person) of the individual administrative decision/act or as of the date of publication of a general or collective administrative act.

There are no specific provisions that allow young adults to bring cases about violations of their rights that occurred when they were children.

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 Criminal Court takes evidence from witnesses, evidence found during the investigation and from experts.<sup>52</sup> The same applies for cases where children are involved for having committed a crime.<sup>53</sup>

Hearings before the Criminal Court are public unless the judge considers that the case might endanger the public order. If so, only the judgment will be rendered in public.<sup>54</sup>

In order to safeguard the child's privacy, Algerian law stipulates that proceedings are to take place, and the judgement be handed down, in camera.<sup>55</sup> The publication of the record of juvenile court proceedings in books or the press, on radio or film, or through any other medium is prohibited. The publication by the same means of any text or illustration concerning the identity or personality of young offenders is also prohibited,<sup>56</sup> and may give rise to penalties under the criminal law.<sup>57</sup>

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

There is no reliable information on how long it takes to get a decision from the court. A broad estimate would be one year to obtain a decision from the court.

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

An appeal against a decision rendered by the Tribunal of First Instance (civil action)

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<sup>52</sup> Article 305 of the Criminal Procedure Law.

<sup>53</sup> Ibid., Article 467.

<sup>54</sup> Ibid., Article 285.

<sup>55</sup> Articles 461 and 493 of the Code of Criminal Procedure.

<sup>56</sup> Ibid., Article 477.

<sup>57</sup> *Third and fourth report of Algeria to the UN Committee on the Rights of the Child*, para. 301.



would be filed before the Civil Section of the Court of Appeal.<sup>58</sup>

An appeal against a decision rendered by the Children Section of the Criminal Court would be filed before the Criminal Section of the Court of Appeal.<sup>59</sup>

Appeals against a judgment rendered by an administrative tribunal have to be filed before the Council of State (*Conseil d'Etat*).

- 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?

Although public opinion is generally not exposed to child rights, public opinion in Algeria is sensitive to cases which involve child molestation or murder.

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

Parents of victims of sexual violence or abuse are often reluctant to sue the offenders as they are ashamed of bringing a claim and revealing what happened to their child in public. Some parents also avoid bringing claims in order to avoid harming their children socially.

- 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.

There are no additional factors.

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

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<sup>58</sup> Article 34 of the Civil and Administrative Law.

<sup>59</sup> Article 429 of the Criminal Procedure Law.