

ACCESS TO JUSTICE FOR CHILDREN: CENTRAL AFRICAN REPUBLIC

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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?

CAR ratified the CRC on 23 April 1992¹ and the Optional Protocol on the sale of children, child prostitution and child pornography (OP-SC) on 24 October 2012.² It has signed, but not ratified, the Optional Protocol on the involvement of children in armed conflict (OP-AC).³ It is significant that the OP-AC was not ratified by CAR, as child soldiering is a major issue that continues to plague the country.⁴ However, CAR has not signed nor ratified the third Optional Protocol on a communications procedure (OP3).

Furthermore, the CRC is mentioned in the preambles of both the Constitutional transition charter⁵ and the draft constitution⁶ (see below, part I.B, for more details on CAR’s constitutional law).

B. Does the CRC take precedence over national law?

In 2013, political upheaval in the Central African Republic (CAR) led to the suspension of the 2004 Constitution⁷ and the entry into force of a Constitutional transition charter⁸ pending the adoption of a new Constitution.⁹ Sections relating

¹ See United Nations Treaty Collection (UNTC), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

² UNTC, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en.

³ UNTC, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en.

⁴ United Nations Security Council, *Report of the Secretary General on children and armed conflict in the Central African Republic*, S/2011/241, 13 April 2011, available at: <http://reliefweb.int/report/central-african-republic/report-secretary-general-children-and-armed-conflict-central-african>.

⁵ Loi n°13.001 portant charte constitutionnelle de transition (Constitutional transition charter), 18 July 2013. Available at: <http://www.pmcar.org/docs/chartedettransition.pdf>.

⁶ Proposition de Constitution de la République Centrafricaine (CAR 2015 draft Constitution), available at: <http://www.journaldebangui.com/files/communiqués/837.pdf>.

⁷ Constitution de la République Centrafricaine (CAR 2004 Constitution), 27 December 2004, modified in 2010. Available at: <http://www.wipo.int/wipolex/fr/details.jsp?id=7437>.

⁸ Constitutional transition charter, available at: <http://www.pmcar.org/docs/chartedettransition.pdf>.

⁹ The National transition council (*Conseil national de transition, CNT*) is CAR’s temporary parliament, charged with drafting the new Constitution, which should be submitted to a referendum before the presidential elections, initially scheduled during the summer of 2015. The referendum and the elections have been postponed (up to date 15 October 2015). The draft constitution is available at: <http://www.journaldebangui.com/files/communiqués/837.pdf>. See France 24, “À Bangui, ”le forum de la

to CAR's constitutional law in this report refer to the transitional charter, which is a temporary piece of legislation. Wherever possible, relevant provisions of the draft constitution are also cited, however, it should be noted that it has not yet entered into force, and is subject to change before it is adopted.

According to article 97 of the Constitutional transition charter currently in force in CAR, international treaties and agreements take precedence over national legislation. This is also true under the draft constitution.¹⁰

The CRC therefore takes precedence over CAR's national legislation.

While the CRC should in theory take precedence over national law, the practical effects of monist legal systems are viewed by some as generally less favorable in the application of international law than dualist systems.¹¹ This is so because the interpretation and reference to international instruments within monist legal systems, particularly those that are Francophone, has been limited or subject to conditions. Though there is no case law specific to the CAR that specifically demonstrates this, the French Conseil d'Etat has suggested that international instruments will not be given precedence over national law of a constitutional nature.¹² While this is not specific to the CAR, the decisions of the French Conseil d'Etat may be influential in the CAR judiciary, as they are in other Francophone African countries.

C. Has the CRC been incorporated into national law?

CAR does not have a comprehensive legal instrument encompassing all the rights of children. Provisions relating to the protection of children's rights are scattered in several pieces of legislation, such as the Family code,¹³ the Labour code,¹⁴ the

dernière chance" pour la Centrafrique", 5 May 2015, available at:

<http://www.france24.com/fr/20150504-bangui-forum-derniere-chance-centrafrique-politique-reconciliatio-n-anti-balaka-seleka> ; and Amnesty International, "République centrafricaine. La nouvelle Constitution ne doit laisser aucune place à l'impunité", 4 May 2015, available at: <http://www.amnestyinternational.be/doc/s-informer/actualites-2/article/republique-centrafricaine-la-24579>.

¹⁰ Under article 82 of the 2015 draft Constitution: "*les traités ou accords régulièrement ratifiés ou approuvés ont, dès leur publication, une autorité supérieure à celle des lois, sous réserve, pour chaque accord ou traité, de son application par l'autre partie.*" (Treaties or agreements duly ratified or approved shall, upon publication, prevail over laws, subject, with respect to each agreement or treaty, to its application by the other party.) This article keeps the wording found in the former Constitution (see CAR 2004 Constitution, article 72).

¹¹ Killander, M. and Adjolahoun, H., "International Law and domestic human rights litigation in Africa: An introduction," in Killander, M. (ed.), *International Law and Domestic Human Rights Litigation in Africa*, Capetown, Pretoria University Law Press, 2010, p. 5. (hereinafter "Killander and Adjolahoun").

¹² Id.; See also *Case of Sarran, M., Levacher and others*, Conseil d'Etat, Assemblée, 30 October 1998: "[L]a suprématie ainsi conférée aux engagements internationaux ne s'applique pas, dans l'ordre interne, aux dispositions de nature constitutionnelle". Available at: www.rajf.org/spip.php?article233 (in *La Revue juridique française*).

¹³ Loi n°97.013 portant code de la famille (Family code), 11 November 1997. Available at: <http://jafbase.fr/docAfrique/Centrafricaine/code%20de%20la%20famille.pdf>. This code was being updated at the time of the collapse of the government in 2013. See: Groupe de la Banque Africaine de Développement, *Profil Genre de la République centrafricaine*, November 2011, p.10. Available at: <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/PGP%20RCA%20%C3%A9dit%20C3%A9%20282%29.pdf>.

¹⁴ Loi n°09.004 portant Code du Travail de la République Centrafricaine (Labour code), 29 January 2009.

Criminal Code¹⁵ and the Code of Criminal Procedure.¹⁶

In 2000, the Committee for the CRC “expressed concern about the lack of an appropriate legal framework, with the judicial system still reliant upon colonial-era legislation [...] and that certain customary practices violating children’s rights were sometimes applied instead of domestic law.”¹⁷ There is very little to demonstrate that this has changed significantly since 2000, although there is also very little information available on this point.

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

As stated above (parts I.B and I.C), the CRC takes precedence over national laws, and being mentioned in the Constitution, should be directly enforceable. However, the Constitution states that international instruments only are deemed to take precedence over national laws *upon publication*. There are other Francophone African countries, such as Benin and Côte d’Ivoire, with legal systems based on the French legal system, like the CAR, that have the exact same constitutional provisions and courts that have stated that international treaties lack applicability because they have not been published.¹⁸

While the United Nations (UN) treaty database has in its records that the CAR has ratified the CRC as of 23 April 1992, without reservation or declaration, it is unclear whether it has been published as part of national legislation so as to affirm this ratification, which means it may be susceptible to not being applied by courts.

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

While there are no examples of the CAR judiciary applying international legal instruments, the judiciaries of other Francophone African countries have applied international legal instruments but have not looked favorably upon them. For instance, in applying the Convention Against Torture, the Senegalese judiciary held that, though an international instrument ratified by the Senegalese government, it was not self-executing.¹⁹ Having said that, the French judiciary, in its Conseil d’Etat, has ruled that some articles of the CRC are self-executing and should be applied directly.²⁰ Whether the Francophone African judiciaries in

Available at:

http://www.africanchildforum.org/clr/Legislation%20Per%20Country/CAR/car_labour_%202009_fr.pdf

¹⁵ Loi n°10.001, Code pénal centrafricain (Criminal Code), 6 January 2010. Available at:

<http://www.ilo.org/dyn/natlex/docs/SERIAL/88116/100661/F1881819351/CAF-88116.pdf>

¹⁶ Loi n°10.002, Code de procédure pénale centrafricain (Code of Criminal Procedure), 6 January 2010.

Available at: <http://www.ilo.org/dyn/natlex/docs/SERIAL/88120/100660/F498635820/CAF-88120.pdf>

¹⁷ UN Committee on the Rights of the Child, *Concluding observations on the initial report of the Central African Republic*, CRC/C/15/Add.138, 18 October 2000, para. 12. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.138&Lang=en

¹⁸ Killander & Adjolahoun, p. 6. Benin has since then published the CRC in its Official Gazette, making the CRC directly enforceable. See CRIN, *Access to justice for children: Benin*, September 2014, available at: <https://www.crin.org/en/library/publications/benin-access-justice-children>.

¹⁹ Killander & Adjolahoun, p. 7.

²⁰ For a list of the articles of the CRC that the Court of Cassation (France’s Supreme Court) and the Conseil d’État (France’s Supreme Administrative Justice Court) have declared to be directly applicable, thereby giving access to certain rights for individuals, see CRIN, *Access to justice for children: France*,

general, and the judiciary of the CAR specifically, will adopt this more favorable approach is yet to be seen. Examples of courts applying the CRC could not be located. Furthermore, as of 2006, the national judiciary had not yet invoked the International Covenant on Civil and Political Rights.²¹

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 Family code, all human beings have legal personality, which starts at birth.²² Parents or guardians act as legal administrators for children under 18²³ (see details below in part II.B).

Whether children can bring cases before domestic courts in the CAR is not specifically addressed in the Code of Criminal Procedure.

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?

Children under 18 do not have legal capacity, except for conservatory measures regarding their property.²⁴ Parental authority can only be exercised in the child's best interest.²⁵ Parents or guardians act as legal administrators in all acts that the child does not have the capacity to perform.²⁶ In cases where the guardian's interests conflict with those of the child, the judge can appoint an ad hoc administrator.²⁷ The agreement of a judge is necessary for legal administrators to perform certain actions on behalf of minors, such as selling properties, waiving a right, contracting a loan.²⁸

As stated above, the Code of Criminal Procedure does not prescribe a method by which children can bring cases in domestic courts. The Code only prescribes methods as to how cases can be brought against children, e.g., before a court or tribunal for minors and children.²⁹

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

February 2014, available at: <https://www.crin.org/en/library/publications/france-access-justice-children>.

²¹ UN Human Rights Committee, *Concluding observations on the second periodic report of the Central African Republic*, CCPR/C/CAF/CO/2, 27 July 2006, para. 6. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCAF%2fCO%2f2&Lang=en.

²² Loi n°97.013 portant code de la famille (Family code), 11 November 1997, arts. 1 & 2. Available at: <http://jafbase.fr/docAfrique/Centrafrrique/code%20de%20la%20famille.pdf>.

²³ Family Code, art. 603-604.

²⁴ Family code arts. 561, 566. Available at:

<http://jafbase.fr/docAfrique/Centrafrrique/code%20de%20la%20famille.pdf>.

²⁵ Family Code, art. 578.

²⁶ Family Code, art. 603-604.

²⁷ Family Code, art. 605.

²⁸ Family Code, art. 608.

²⁹ Code of Criminal Procedure, Livre III, Titre I.

There is no specific procedure or method set out in the Code of Criminal Procedure. The Code of Civil Procedure could not be located.

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

A 1962 decree created a legal aid system,³⁰ which has been failing for different reasons. In addition to being outdated, the text of the decree was never publicised, and the population is unaware of its existence.³¹ In most African countries, the attribution of legal aid is based on the applicant's state of destitution. Yet in CAR, proving destitution requires a certificate which is sometimes delivered after a fee is paid.³² Furthermore, the definition of destitution found in the decree is outdated and there is no permanent agency in charge of legal aid.³³ In 2009, only 20 requests for legal aid were received nationally, all of them in Bangui's Court of Appeal.³⁴

Where this is necessary, the President of a jurisdiction or the President of the bar association can appoint a lawyer.³⁵ However, court-appointed lawyers receive a very low fee, which is likely to discourage them from defending legal aid cases.³⁶

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)?

Ability to access justice has been heavily dependent on the willingness of official bodies themselves to prosecute and to therefore permit access to justice, the consequence of which has been that "people with money are always able to obtain [favorable] verdicts and functionaries[,] and law enforcement officials benefit from near total impunity. . . . [G]ender affects also access to justice. It appears obvious that women's opinions and problems are not treated with the same level of respect as those of a man."³⁷

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

³⁰ Arrêté N°113, 12 April 1962.

³¹ See J. Ngoumbango Kohetto, *L'accès au droit et à la justice des citoyens en République centrafricaine*, PhD Thesis, Université de Bourgogne, 2013, p. 18. Available at: <https://halshs.archives-ouvertes.fr/tel-00987518/document>.

The author could not locate the text of the decree because of the lack of any database referencing legislation in CAR.

³² *Id.*, p. 56

³³ *Id.*, p. 57.

³⁴ *Id.*

³⁵ Loi n°91.017 fixant les statuts de la profession d'avocat en RCA, 27 December 1991, consolidated by law n° 97.010, 4 July 1997. Quoted in . Ngoumbango Kohetto, *L'accès au droit et à la justice des citoyens en République centrafricaine*, PhD Thesis, Université de Bourgogne, 2013, p. 57.

³⁶ *Id.*, p. 56.

³⁷ The World Bank's Social Cohesion and Violence Prevention Team (Social Development Department), *Understanding Access to Justice and Conflict Resolution at the Local Level in the Central African Republic (CAR)*, p. 8, 24 February 2012. Available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/16097/782640WP0CAR0A0Box0377336B00PUBLIC0.pdf?sequence=1>, accessed on 14 January 2014; notably, the situation has changed in that there is no longer a functioning judiciary in the CAR at the moment due to the outbreak of civil violence and displacement of persons.

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

The Code of Criminal Procedure sets out that public prosecution (*action publique*) is initiated by the public prosecutor, possibly at the victim's request.³⁸ A civil action relating to damage or injury suffered as a result of a criminal offence can be brought by those who have suffered such damage or injury caused directly by the offence in question.³⁹ The civil action can be brought together with the public action before the same jurisdiction, or separately, in which case the civil action's settlement is dependant upon the result of the public action.⁴⁰

More serious criminal offences (*crimes*) are brought before criminal courts, which sit in Courts of appeals.

Cases relating to minor criminal offences (*délits* and *contraventions*), as well as most civil matters are generally brought before regional tribunals (*Tribunaux de Grande Instance*, and *Tribunaux d'Instance* for civil cases under a certain threshold of damages at stake).⁴¹

Children's courts, in charge of examining minor criminal offences (*délits* and *contraventions*) perpetrated by minors were created but were not functioning as of October 2013.⁴²

Courts of Appeal rule over appeals of cases brought in first instance before regional tribunals, children's tribunals, commercial and labour tribunals.⁴³ Cases can then be appealed before the Court of Cassation, the judiciary's highest instance.

Administrative acts - except regulatory acts taken by the President of the Republic, can be challenged before administrative tribunals. The highest instance in the administrative order is the Conseil d'Etat, whose jurisdiction also covers regulatory acts taken by the President.⁴⁴

The Constitution of 2004 also created an Ombudsperson office (*Conseil National*

³⁸ Code of Criminal Procedure, art. 1.

³⁹ Text in French: "L'action civile en réparation du dommage causé par un crime, un délit ou une contravention, appartient à tous ceux qui ont personnellement souffert du dommage directement causé par l'infraction". Code of Criminal Procedure, art. 2.

⁴⁰ Code of Criminal Procedure, art. 4.

⁴¹ Centre du commerce international, *Guide juridique de l'entrepreneur en République Centrafricaine*, 2012, p.159, 164. Available at:

http://www.intracen.org/uploadedFiles/intracenorg/Content/About_ITC/Where_are_we_working/Multi-country_programmes/Pact_II/Guide%20OHADA%20Rep%20Centrafricaine%20-%20Juin%202012%20%284%29%20with%20cover.pdf

⁴² LegiGlobe, *République centrafricaine*, 7 October 2013. Available at: <http://legiglobe.rfd.org/republique-centrafricaine/2013/10/07>.

⁴³ Loi n° 95.0010 portant organisation judiciaire en République centrafricaine, 22 December 1995, art. 22 ; see Centre du commerce international, *Guide juridique de l'entrepreneur en République Centrafricaine*, 2012, p. 156.

⁴⁴ Loi n° 96.018 portant organisation et fonctionnement des tribunaux administratifs en République Centrafricaine, 13 January 1993, art. 5. See: Centre du commerce international, *Guide juridique de l'entrepreneur en République Centrafricaine*, 2012, p. 153. See id., pp. 150, 164.

de la Médiation), which receives requests from citizens regarding all kinds of conflicts, in particular political, economic, social and military conflicts involving civil servants and state agencies, with the aim of ensuring democracy and access to justice for vulnerable people.⁴⁵ Even though the 2004 Constitution is not in force anymore, the Draft Constitution maintains the Ombudsperson office.⁴⁶

Finally, the 2013 constitutional transition Charter allows individuals, whenever they feel wronged, to apply to the Constitutional Court to challenge a law's constitutionality. Individuals can do so either directly or through an "exception of unconstitutionality" claim (where an individual who is a party in court proceedings challenge the constitutionality of the law being applied).⁴⁷

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").⁴⁸ 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.⁴⁹ 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.⁵⁰

All available domestic remedies must have been exhausted before bringing a case to the African Commission.⁵¹ 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, the name of the victim, in a case where he/she is not the complainant,⁵² and whether or not the complainant wishes to remain anonymous and the reasons for this.⁵³

⁴⁵ CAR 2004 Constitution, art. 104.

⁴⁶ CAR Draft Constitution, Article 119. Available in French at:

<http://www.sangonet.com/afriqg/PAFF/Dic/actuC/ActuC19/projet-constitution-RCA-adopte-par-CNT-2015.pdf>.

⁴⁷ Constitutional transition charter, art. 77. The transition charter is in force temporarily, but a similar provision is included in CAR's draft constitution (art. 100). Direct claims and exceptions of unconstitutionality were also available in the 2004 Constitution (art. 73) and 1995 Constitution (art. 70).

⁴⁸ African Charter on Human and Peoples' Rights ("African Charter"), Article 55, available at:

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

⁴⁹ 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/afican-commission-human-and-peoples-rights-communication-procedure>.

⁵⁰ 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>.

⁵¹ African Committee of Experts on the Rights and Welfare of the Child, 'Communications', available at:

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

⁵² 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/>.

⁵³ 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:

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

The Criminal Code⁵⁴ of the CAR permits the courts to impose sanctions, which are either imprisonment or fines against perpetrators of violent or criminal acts against children.⁵⁵ The Criminal Code also recognises crimes of genocide, crimes against humanity, and war crimes.⁵⁶

Administrative tribunals can give an interpretation or quash an administrative act.⁵⁷

The Constitutional Court can nullify any law that it finds unconstitutional.⁵⁸

In civil, criminal and administrative procedures, judges (*juge des référés*) can order emergency measures pending a decision.⁵⁹

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?

As in other Francophone jurisdictions in Africa, plaintiffs generally have to prove their “interest to act” (*intérêt à agir*) for their complaint to be admissible. This is mostly interpreted narrowly in civil and criminal cases, where plaintiffs have to be personally affected. In administrative actions aiming at quashing an administrative act, plaintiffs must benefit from the act’s annulment for their complaint to be admissible.⁶⁰ Depending on jurisdictions, the assessment of a plaintiff’s “interest to act” in administrative proceeding may be more or less restrictive. Central African jurisprudence relating to this issue could not be located.

In criminal matters, only victims can join in the public prosecution as a *partie*

<http://co-guide.org/mechanism/african-committee-experts-rights-and-welfare-child-communication-procedure>.

⁵⁴ Loi n°10.001 portant Code Pénal Centrafricain (Criminal Code), 6 January 2010. Available at: <http://www.ilo.org/dyn/natlex/docs/SERIAL/88116/100661/F1881819351/CAF-88116.pdf>.

⁵⁵ Criminal Code, Articles 74, 86, 102, 107-111.

⁵⁶ Criminal Code, Article 158 and following.

⁵⁷ Loi n° 96.018 portant organisation et fonctionnement des tribunaux administratifs en République Centrafricaine, 13 January 1993, art. 5. See: Centre du commerce international, Guide juridique de l’entrepreneur en République Centrafricaine, 2012, p. 153. Available at: http://www.intracen.org/uploadedFiles/intracenorg/Content/About_ITC/Where_are_we_working/Multi-country_programmes/Pact_II/Guide%20OHADA%20Rep%20Centrafricaine%20-%20Juin%202012%20%284%29%20with%20cover.pdf.

⁵⁸ CAR’s Transition Charter, art. 84. CAR’s draft constitution, art. 105. The transition charter declares that if the law declared unconstitutional is already in force, it is withdrawn from the legislation’s corpus. This provision does not appear in the draft constitution. Further information will be available once a law on the Constitutional Court is adopted.

⁵⁹ See for instance “La succession de feu André MAGALE obtient par voie judiciaire l’expulsion de sa villa de l’ex-PM Elie DOTE” in *Centrafrique presse*, 24 March 2014, available at: <http://centrafrique-presse.over-blog.com/2014/03/la-succession-de-feu-andre-magale-obtient-par-voie-judiciaire-l-expulsion-de-sa-villa-de-l-ex-pm-elie-dote.html>.

⁶⁰ Le juge administratif, rempart de protection des citoyens contre l’administration en Afrique noire francophone? p.8. Available at: http://afrilex.u-bordeaux4.fr/sites/afrilex/IMG/pdf/LE_JUGE_ADMINISTRATIF_REMPART_DE_PROTECTION.pdf.

civile.⁶¹ It is therefore unlikely that an action could be brought in a criminal court without a named victim.

Regarding applications to the Constitutional Court, individuals do not have to prove their interest to act, but can act as long as they “feel wronged” by a law.⁶²

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

Provisions regarding collective actions or group litigation could not be located.

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?

Provisions relating to NGOs' capacity to file challenges could not be located. However, NGOs whose remit is relevant to the case can join in the prosecution as *partie civile* alongside the victim.⁶³

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?

As stated above (part III.A), criminal cases are reviewed in first instance by regional courts (*Tribunaux de Grande Instance*, and *Tribunaux d'Instance*) or criminal courts (sitting in Appeal courts) depending of the severity of the offence. In order to join in a prosecution, the victim needs to file a complaint and register as civil party (*partie civile*) before the investigation magistrate (*Magistrat instructeur* or *juge d'instruction*),⁶⁴ who communicates the request to the public prosecutor (*Procureur de la République*).⁶⁵ A victim can register as civil party at any time during the investigation. Registration as civil party can be challenged by the Public prosecution, the accused or another civil party.⁶⁶ The Code of Criminal Procedure requires civil parties to give an address in the jurisdiction where the investigation is conducted, failing which they would not be able to complain if

⁶¹ Code of Criminal Procedure, art 56.

⁶² Association des Cours Constitutionnelles ayant en Partage l'Usage du Français, “Rapport de la Cour Constitutionnelle du Centrafrique” in *L'accès au juge constitutionnel*, March 2000, p.205. Available at: http://www.accpuf.org/images/pdf/cm/centrafrique/062-rc-acces_juge_const.pdf.

⁶³ See for instance Réseau des journalistes pour les droits de l'homme en République centrafricaine, “Bangui : Les défenseurs des droits de l'homme demandent un procès Baba-Laddé”, 4 September 2012, available at: <https://reseaudesjournalistesrca.wordpress.com/2012/09/04/bangui-les-defenseurs-des-droits-de-lhomme-demandent-un-proces-baba-ladde/> ; F. Fappani, “Pourquoi nous souhaitons nous porter partie civile en Centrafrique contre les militaires pédophiles ?” in *Journal international de l'ONG CNRJ*, n°25, May 2015, p.3, available at: <http://www.cnrj.org/app/download/5796410689/speculum+universalis+25+mai+2015.pdf>.

⁶⁴ Code of Criminal Procedure, art. 56.

⁶⁵ Id. art. 57.

⁶⁶ Art. 58.

they did not receive documents and notifications.⁶⁷

Civil cases are brought before regional tribunals (*Tribunaux de Grande Instance*, and *Tribunaux d'Instance* for civil cases under a certain threshold of damages at stake).⁶⁸

Administrative cases are brought before administrative tribunals unless they relate to regulatory acts taken by the President, in which case the action would be brought directly to the Conseil d'Etat.

Conflicts involving civil servants and state agencies can be brought before the Ombudsperson office (*Conseil National de la Médiation*).⁶⁹ (See part III.A)

Tribunals can organise mobile court hearings (*audiences foraines*) to reach out to all areas within their jurisdictions.⁷⁰

Applications to the Constitutional Court are done in writing. They should state the applicant's name and address and include their signature. They should also state the law that is challenged and any relevant point of law.⁷¹

- 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?

In theory legal aid is available to complainants if they prove that they are destitute. However, as stated above (part II.D), the definition of destitution is outdated and there is no permanent agency in charge of legal aid, resulting in very few requests being registered.⁷²

In criminal cases, civil parties need to pay a fee within 30 days of filing their complaint, failing which, the complaint would be declared inadmissible.⁷³ In addition, any costs for an expert's testimony are paid by the party requiring the expert opinion.⁷⁴

⁶⁷ Code of Criminal Procedure, art. 60.

⁶⁸ Centre du commerce international, *Guide juridique de l'entrepreneur en République Centrafricaine*, 2012, pp.159, 164. Available at: http://www.intracen.org/uploadedFiles/intracenorg/Content/About_ITC/Where_are_we_working/Multi-country_programmes/Pact_II/Guide%20OHADA%20Rep%20Centrafricaine%20-%20Juin%202012%20%284%29%20with%20cover.pdf

⁶⁹ CAR 2004 Constitution, art. 104.

⁷⁰ Code of Criminal Procedure, art. 183.

⁷¹ Association des Cours Constitutionnelles ayant en Partage l'Usage du Français, "Rapport de la Cour Constitutionnelle du Centrafrique" in *L'accès au juge constitutionnel*, Mars 2000, p.206. Available at: http://www.accpuf.org/images/pdf/cm/centrafrique/062-rc-access_juge_const.pdf.

⁷² J. Ngoumbango Kohetto, *L'accès au droit et à la justice des citoyens en République centrafricaine*, PhD Thesis, Université de Bourgogne, 2013, p. 57. Available at: <https://halshs.archives-ouvertes.fr/tel-00987518/document>.

⁷³ Code of Criminal Procedure, art. 59.

⁷⁴ *Id.*, art. 84.

Costs have been mentioned as a reason why people would turn to local authorities such as village chiefs or religious leaders rather than consider bringing the case in formal legal settings.⁷⁵

- 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?

There is no system in place to promote pro bono legal assistance. *Avocats Sans Frontières* (Lawyers without borders) has recently set up an office in Bangui, whose mission includes the provision of technical services to civil society organisation to restore basic legal services, trainings for lawyers and support to legal assistance actors (Ministry of Justice, Bar association, civil society organisations...).⁷⁶ The Danish Refugee Council set a protection telephone hotline (“*Ligne verte*”), which provides support for victims human rights abuses.⁷⁷ The Association des Femmes Juristes Centrafricaines⁷⁸ (Central African women lawyers’ association) provides legal support for victims of violence.

- 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 victim of a criminal offence can register as civil party at any time during the investigation.⁷⁹

In criminal matters, public prosecution shall lapse after one year, three years or 10 years after the offence, depending on the gravity of the offence. For more serious violations (*crimes*) the limitation is either 10 years after the offence or 10 years after the latest legal act in the case if prosecution has started. Civil actions for damages in criminal cases cannot be undertaken after the period of limitation for public prosecution has run out.⁸⁰

- 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 Code of Criminal Procedure sets rules regarding witness testimonies, expert opinions and searches for material evidence. The party requiring the expert

⁷⁵ The World Bank Group, Understanding access to justice and conflict resolution at the local level in the Central African Republic, 24 February, p. 7. Available at:

<https://openknowledge.worldbank.org/bitstream/handle/10986/16097/782640WP0CAR0A0Box0377336B00PUBLIC0.pdf?sequence=1> ; a list of costs for different procedures can be found in J. Ngoumbango Kohetto, *L'accès au droit et à la justice des citoyens en République centrafricaine*, PhD Thesis, Université de Bourgogne, 2013, p. 562. Available at: <https://halshs.archives-ouvertes.fr/tel-00987518/document>.

⁷⁶ see <http://www.asf.be/fr/action/field-offices/asf-in-the-central-african-republic/>.

⁷⁷ see <http://drc.dk/relief-work/where-we-work/east-and-central-africa/central-african-republic>.

⁷⁸ see

<http://www.insightonconflict.org/conflicts/central-african-republic/peacebuilding-organisations/afjc/>.

⁷⁹ Id., art. 58.

⁸⁰ Code of Criminal Procedure, arts. 7-10.

opinion bears the costs of the expert's testimony.⁸¹

Children under 18 are not sworn in, and are heard with their parents or legal guardians present.⁸²

- 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 external control over the length of proceedings in CAR, and complex matters can last for years.⁸³ For instance, the Administrative Tribunal in Bangui had in 2013 a backlog of 400 cases and is only able to process 100 cases a year, because of the low number of magistrates. An average case therefore takes 4 years to be processed.⁸⁴

There are not enough regional tribunals, and the court of appeals' criminal section, which should hold a session twice a year, only has one or none because of poor budgeting.⁸⁵

Under the Constitution, the Constitutional Court should rule over challenges brought by individuals within one month of the complaint being filed, or eight days in urgent matters.⁸⁶

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

Courts of Appeal rule over appeals of cases brought in first instance before regional tribunals, children's tribunals, commercial and labour tribunals.⁸⁷ Cases can then be appealed before the Court of Cassation, the highest instance of the judiciary.

The highest instance in the administrative order is the Conseil d'Etat, whose jurisdiction also covers regulatory actions taken by the President.⁸⁸

- 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?

Under the Code of Criminal Procedure, if public proceedings ends with charges

⁸¹ Id., art. 84.

⁸² Id., art. 71.

⁸³ J. Ngoumbango Kohetto, *L'accès au droit et à la justice des citoyens en République centrafricaine*, PhD Thesis, Université de Bourgogne, 2013, p. 314. Available at: <https://halshs.archives-ouvertes.fr/tel-00987518/document>.

⁸⁴ Id., p.136.

⁸⁵ Id., p.139.

⁸⁶ CAR 2004 Constitution (art. 73) and Draft Constitution (art. 100). The Transition Charter does not set a time frame for decisions by the Transition Constitutional Court.

⁸⁷ Loi n° 95.0010 portant organisation judiciaire en République centrafricaine, 22 December 1995, art. 22 ; see Centre du commerce international, *Guide juridique de l'entrepreneur en République Centrafricaine*, 2012, p. 156.

⁸⁸ Loi n° 96.018 portant organisation et fonctionnement des tribunaux administratifs en République Centrafricaine, 13 January 1993, art. 5. See: Centre du commerce international, *Guide juridique de l'entrepreneur en République Centrafricaine*, 2012, p. 153. See id., pp. 150, 164.

being dropped (*ordonnance de non-lieu*), the defendant can ask for damages to be paid by the *partie civile* (in most cases the victim).⁸⁹

The Constitutional Court does not have a procedure against claimants when their complaint is declared abusive.⁹⁰

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

Enforcement is an issue in CAR. Magistrates have been reported to delay drafting their decisions. Rulings are announced and summarily recorded, but the full decision in writing may take up to a year to obtain.⁹¹ It is difficult for a plaintiff to have a positive decision enforced without a written document.

Furthermore, when a defendant could not be summoned in person to appear in court, the decision is declared void after six months if it was not enforced, which is problematic considering that after that period of time decisions are often not even produced in writing yet.⁹²

- 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.

No additional factors were identified.

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

⁸⁹ Code of Criminal Procedure, art. 62.

⁹⁰ Association des Cours Constitutionnelles ayant en Partage l'Usage du Français, "Rapport de la Cour Constitutionnelle du Centrafrique" in *L'accès au juge constitutionnel*, Mars 2000, p.207. Available at: http://www.accpuf.org/images/pdf/cm/centrafrique/062-rc-acces_juge_const.pdf.

⁹¹ J. Ngoumbango Kohetto, *L'accès au droit et à la justice des citoyens en République centrafricaine*, PhD Thesis, Université de Bourgogne, 2013, p. 152. Available at: <https://halshs.archives-ouvertes.fr/tel-00987518/document>.

⁹² Code of Civil Procedure, art. 438, quoted in J. Ngoumbango Kohetto, *L'accès au droit et à la justice des citoyens en République centrafricaine*, p.152.