

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

*This report was produced by White & Case LLP and Child Rights International Network (CRIN) in May 2015. 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?**

Gabon has ratified the Convention on the Rights of the Child in February 1994.<sup>1</sup> Gabon also ratified the three Optional Protocols to the CRC (Optional Protocol on the involvement of children in armed conflict in 2010<sup>2</sup> ; Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography in 2007<sup>3</sup> and Optional Protocol on a communications procedure in 2012<sup>4</sup>).

Gabon has not signed the Optional Protocol to the International Covenant on Civil and Political Rights enabling the Human Rights Committee to receive individual complaints but has ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights<sup>5</sup> on a complaints procedure.

Gabon has ratified the African Charter on the rights and well-being of the child in 2007.<sup>6</sup>

International treaties and agreements are ratified by the President after the adoption of a law by the Parliament and review by the Constitutional Court.<sup>7</sup> The CRC therefore forms part of domestic law.<sup>8</sup>

---

<sup>1</sup> See United Nations Treaty Collection (UNTC), available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en).

<sup>2</sup> See (UNTC), available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en).

<sup>3</sup> See (UNTC), available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-c&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en).

<sup>4</sup> See (UNTC), available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-d&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en).

<sup>5</sup> See (UNTC), available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3-a&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en).

<sup>6</sup> *Second periodic report of Gabon to the UN Committee on the rights of the child*, CRC/C/GAB/2, 29 December 2014, para. 24. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGAB%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGAB%2f2&Lang=en).

<sup>7</sup> Constitution of the Republic of Gabon (Constitution), art. 113. Law n°3/91, 26 March 1991, modified by the following laws: n°1/94, 18 March 1994 ; n°18/95, 29 September 1995 ; n°1/97, 22 April 1997 ; n°14/2000, 11 October 2000 ; n°13/2003 19 August 2003 and law n°047/2010, 12 January 2011. Available at: <http://www.assemblee-nationale.ga/36-connaitre-l-assemblee-nationale/76-la-constitution/>.

<sup>8</sup> UN Committee on the Rights of the Child, *Summary Record of the 756th Meeting, 29th session*, CRC/C/SR.756, 28 February, 2003, para. 27. Available at: <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/945d0616dfea443c1256d1a002f38ce?Opendocument>

B. Does the CRC take precedence over national law?

International treaties which have been ratified take precedence over national law in the event of conflict with national law.<sup>9</sup>

C. Has the CRC been incorporated into national law?

While the CRC has not been incorporated into national law in a single instrument, provisions relating to children's rights can be found, *inter alia*, in the following laws and decrees:

- Civil and family law
  - Law N°15/72 on a Civil Code (first part), 29 July 1972<sup>10</sup> ;
  - Law N° 19/89 on a Civil Code (second part), 30 December 1989<sup>11</sup> ;
  - Ordinance no. 1/77/PR on a Code of Civil Procedure, 2 February 1977 ;
- Criminal law
  - Law N°21/63 on a Criminal Code, 31 May 1963<sup>12</sup> ;
  - Law n°36/2010 on a Code of criminal procedure, 25 November 2010<sup>13</sup> ;
- Monitoring
  - Decree n°000873/PR/MFPEPF creating a National observatory for children's rights (*Observatoire national des droits de l'enfant*), 17 November 2006 ;
  - Decree n°0191/PR/MFAS setting indicators relating to child protection, 22 May 2012 ;<sup>14</sup>
- Child trafficking
  - Law n°09/2004 on preventing child trafficking in the Gabonese Republic, 21 September 2004<sup>15</sup> ;
  - Decree n°000024/PR/MTE setting the conditions of controls, investigations and searches relating to the prevention and fights against child trafficking, 6 January 2005 ;
- Violence

---

t.

<sup>9</sup> E. Folefack, updated by J.-P. Bozec, *The Gabonese Legal System and Legal Research*, June-July 2013. Available at: <http://www.nyulawglobal.org/Globalex/Gabon1.htm>.

<sup>10</sup> Available at: <http://jafbase.fr/docAfrique/Gabon/CodeCiv.pdf>.

<sup>11</sup> Available at:

<http://www.yinternet.org/archives/coopgabon.net/thanguy/le-code-civil-du-gabon/code-civil-gabon-deuxieme-partie.pdf>.

<sup>12</sup> Available at:

[http://www.africanchildforum.org/clr/Legislation%20Per%20Country/gabon/gabon\\_penal\\_1963\\_fr.pdf](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/gabon/gabon_penal_1963_fr.pdf).

<sup>13</sup> Available at:

[http://data.over-blog-kiwi.com/0/49/08/21/201303/ob\\_b97aca\\_code-de-procedure-penale-gabonais.PDF](http://data.over-blog-kiwi.com/0/49/08/21/201303/ob_b97aca_code-de-procedure-penale-gabonais.PDF).

<sup>14</sup> *Second periodic report of Gabon to the UN Committee on the rights of the child*, CRC/C/GAB/2, 29 December 2014, para. 25. Available at:

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

<sup>15</sup> Available at:

[http://www.africanchildforum.org/clr/Legislation%20Per%20Country/gabon/gabon\\_trafficking\\_2004\\_fr.pdf](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/gabon/gabon_trafficking_2004_fr.pdf).

- Law 38/2008 on preventing and fighting female genital mutilations, 29 January 2009 ;
- Decree on sexual harassment ;
- Juvenile justice
  - Law n°39/2010 on the protection of minors in the judicial system, 23 November 2010 ;
- Education
  - Law n°21/2011 on a general orientation for education, training and research, 14 February 2012 ;
- Child labour
  - Decree n°0031/PR/MTEFP relating to fighting child labour, 8 January 2002 ;
  - Decree n°651/PR/MTEPS setting individual exceptions to the minimum age for accessing to employment, 13 April 2011 ;<sup>16</sup>

In 2012, Gabon conducted a study on the national legal framework in order to identify its compliance with international standards.<sup>17</sup> Further to this study, Gabon has started drafting a comprehensive Child Code.<sup>18</sup>

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

According to the Civil Code, duly ratified treaties are directly enforceable.<sup>19</sup> The CRC, as any other provision of an international treaty ratified by Gabon, can be cited directly before judicial and administrative authorities, even if such provisions have not been incorporated into domestic law.<sup>20</sup>

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

Although we could not find instances of national Courts quoting the CRC, the Constitutional court has quoted international treaties and declarations such as ILO conventions<sup>21</sup> and the Universal Declaration on Human Rights<sup>22</sup>

---

<sup>16</sup> Id., para. 26.

<sup>17</sup> *Second periodic report of Gabon to the UN Committee on the rights of the child*, CRC/C/GAB/2, 29 December 2014, para. 27. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGAB%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGAB%2f2&Lang=en).

<sup>18</sup> 'Protection et promotion des droits de l'enfant : un projet de code en bonne voie' in *L'union*, 28 July 2015. Available at: <http://www.dworaczek-bendome.org/v2/2015/07/28/gabon-protection-et-promotion-des-droits-de-lenfant-un-projet-de-code-en-bonne-voie/>.

<sup>19</sup> Civil Code, First part, Art. 14. Available at: <http://jafbase.fr/docAfrique/Gabon/CodeCiv.pdf>; See also World Trade Organisation, *Examen des politiques commerciales : Gabon*, WT/TPR/S/188, 27 August 2007, p.12. Available at: [https://www.wto.org/french/tratop\\_f/tpr\\_f/s188-02\\_f.doc](https://www.wto.org/french/tratop_f/tpr_f/s188-02_f.doc).

<sup>20</sup> *Initial report of Gabon to the UN Committee on the rights of the child*, CRC/C/41/Add.10, 13 July 2001, para. 55. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGAB%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGAB%2f2&Lang=en).

<sup>21</sup> See Constitutional Court, decision 11/2011, 14 April 1993, available at: [http://www.cour-constitutionnelle.ga/sites/default/files/docs/DECISION%20N\\_0011\\_14%20AVRIL%201993.pdf](http://www.cour-constitutionnelle.ga/sites/default/files/docs/DECISION%20N_0011_14%20AVRIL%201993.pdf).

<sup>22</sup> See Constitutional Court, decision 006/CC, 4 March 1993, available at: [http://www.cour-constitutionnelle.ga/sites/default/files/docs/DECISION%20N\\_006\\_04%20MARS%201993.pdf](http://www.cour-constitutionnelle.ga/sites/default/files/docs/DECISION%20N_006_04%20MARS%201993.pdf).

when reviewing acts' and laws' compliance with the Constitution.

## 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?

In general, minors do not have legal capacity and must be assisted by a representative to bring a case in court (see exceptions below in II.B). According to the Civil code, minors are individuals under 21 years of age. Minimum ages to get married vary between boys (18 years old) and girls (15 years old).<sup>23</sup> Once married, a minor is emancipated and can perform all acts of civil life, as an adult.<sup>24</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?

Generally, minors must be assisted by a representative to bring a case. The representative is normally the child's father or mother, or the child's guardian.<sup>25</sup> Article 495 of the Civil Code thus states that parental authority includes legal administration of the child's property.<sup>26</sup> In cases where the parents are not the child's guardian, the guardian's actions on behalf of the child is assisted by and monitored by a guardianship council (*Conseil de tutelle*) whose members are chosen by a judge among the child's "relatives and allies."<sup>27</sup> However, the legal guardian can bring legal action regarding the child's property without the authorisation of the guardianship council. Other types of legal actions require prior authorisation by the guardianship council.<sup>28</sup>

From the age of 16, minors can, with the assistance of a lawyer, bring legal action to claim damages in relation to misdemeanours (*délits*) suffered by them or their property.<sup>29</sup> They can, with the assistance of their legal representative, bring a legal action against their employer in order to claim severance fees. They can do so without assistance from the age of 18.<sup>30</sup> In cases where a minor undertakes legal action without prior agreement from his/her guardian, the lawyer assisting the minor cannot ask the guardian to pay fees or expenses.<sup>31</sup>

Mothers who are minors have legal capacity in legal proceedings brought to establish paternity for their child.<sup>32</sup>

---

[93.pdf](#)

<sup>23</sup> Civil Code, First part, art. 203.

<sup>24</sup> Id., arts. 610 and 615.

<sup>25</sup> Id., arts. 495, 519, and 576.

<sup>26</sup> Id., arts. 495 and 519.

<sup>27</sup> Id. art. 541.

<sup>28</sup> Id. art. 590.

<sup>29</sup> Id. art. 607.

<sup>30</sup> Id.

<sup>31</sup> Id. art. 608.

<sup>32</sup> Id. art. 429.

Finally, minors can themselves ask for review of placement measures taken by a judge.<sup>33</sup>

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

Cases relating to violations of rights of infants and young children are brought by their representative on their behalf (see above in II.C. No specific provision could be located).

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

In civil and administrative matters, claimants and defendants who are unable to exercise their rights because of a lack of resources are entitled to legal aid (see below IV.B). This includes children's representatives or children themselves in cases where they have legal standing (see above in II.B).

In criminal matters, court-appointed lawyers are available for suspects who cannot afford a lawyer.<sup>34</sup> The Code of criminal procedure does not give any details on legal assistance available to victims, except for fees exemptions (see below IV.B).

The Gabonese legal aid system has been described as "insufficient".<sup>35</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)?

According to the civil code, legal actions on behalf of a child are brought by the child's guardian or parents, rather than by a chosen legal representative (see above II.B). The agreement of the child's parent or guardian is therefore required to bring a case.

Furthermore, literature on the justice system in Gabon mentions a high level of corruption, pieces of evidence being illegally withdrawn, falsified justice decisions.<sup>36</sup>

---

<sup>33</sup> Id. art. 503-505.

<sup>34</sup> Code of criminal procedure, art. 54. Available at: Available at: [http://data.over-blog-kiwi.com/0/49/08/21/201303/ob\\_b97aca\\_code-de-procedure-penale-gabonais.PDF](http://data.over-blog-kiwi.com/0/49/08/21/201303/ob_b97aca_code-de-procedure-penale-gabonais.PDF).

<sup>35</sup> T. Ondo, *Plaidoyer pour un nouveau régime politique au Gabon*, Editions Publibook, 20 December 2012.

<sup>36</sup> *Initial report of Gabon on the implementation of the African Charter on People and Human Rights*, quoted in ClientEarth, *Droit d'accès à la justice des communautés locales et autochtones (Gabon)*, August 2014, p. 21, available at: <http://www.clientearth.org/ressources-externes/gabon/Droit-acces-justice-Aout-2014.pdf>; see also UN Committee Against Torture, *Concluding observations on the initial report of Gabon*, CAT/C/GAB/CO/1, 17 January 2013, para.14, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGAB%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGAB%2fCO%2f1&Lang=en).

### 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?

In criminal matters, prosecution is typically exercised by the public prosecutor on behalf of society and in the public interest.<sup>37</sup> Private prosecution is available by bringing a complaint (*plainte avec constitution de partie civile*): the victim, then considered a "civil party" (*partie civile*) is involved in the proceedings, and can claim civil compensation for the damages suffered.<sup>38</sup> The *partie civile* can also set the public prosecution in motion by complaining directly to the tribunal (*citation directe*).<sup>39</sup>

In cases relating to child protection, NGOs or social services often seize the Children judge (*juge des mineurs*) who then opens an investigation.<sup>40</sup> However the number of such judges in the country is reportedly insufficient.<sup>41</sup>

In matters affecting human rights and public liberties, natural or legal persons who are party to a case in a lower tribunal can seize the Constitutional Court to raise an unconstitutionality claim ("*exception d'inconstitutionnalité*") which challenges the constitutionality of the law being applied by the lower tribunal.<sup>42</sup>

The National Human Rights Commission (*Commission nationale des droits de l'Homme* or CNDH) can receive complaints from individuals or groups of individuals regarding violations of their human rights.<sup>43</sup> Despite having been established by law in 2006, the Commission started its work in 2012 only and is still not fully operational.<sup>44</sup>

---

<sup>37</sup> Code of criminal procedure, art. 2.

<sup>38</sup> Code of criminal procedure, art. 7, quoted in ClientEarth, *Droit d'accès à la justice des communautés locales et autochtones (Gabon)*, August 2014, p.16. Available at: <http://www.clientearth.org/ressources-externes/gabon/Droit-acces-justice-Aout-2014.pdf>.

<sup>39</sup> Code of criminal procedure, quoted in F. Nkea Ndzigue, *La procédure pénale au Gabon*, L'Harmattan, 2012, p.14.

<sup>40</sup> *Second periodic report of Gabon to the UN Committee on the rights of the child*, CRC/C/GAB/2, 29 December 2014, para. 40. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGAB%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGAB%2f2&Lang=en).

<sup>41</sup> UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit to Gabon*, CAT/OP/GAB/1, 20 May 2015, para 30. Available (in French) at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fGAB%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fGAB%2f1&Lang=en).

<sup>42</sup> Constitution, art. 86. Available at: <http://www.assemblee-nationale.ga/36-connaitre-l-assemblee-nationale/76-la-constitution->; see also: Law n°9/91 on the Constitutional Court, 26 September 1991, as amended by law n°13/94, 17 September 1994, art. 45, available at: [http://www.accpuf.org/images/pdf/cm/gabon/042-tri-txt\\_leg.pdf](http://www.accpuf.org/images/pdf/cm/gabon/042-tri-txt_leg.pdf).

<sup>43</sup> *Second periodic report of Gabon to the UN Committee on the rights of the child*, CRC/C/GAB/2, 29 December 2014, para. 39. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGAB%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGAB%2f2&Lang=en).

<sup>44</sup> UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit to Gabon*, CAT/OP/GAB/1, 20 May 2015, para 28. Available (in French)

Conflicts with administrative bodies can also be raised with the Ombudsperson (*Médiateur de la République*), as long as they are not already being reviewed by a court of justice.<sup>45</sup> However, the Ombudsperson's decisions are not binding.

Individuals, including child victims, his/her 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>46</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>47</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>48</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>49</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>50</sup>

All available domestic remedies must have been exhausted before bringing a case to the African Committee or the African Commission.<sup>51</sup> The complaint must

---

at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fGAB%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fGAB%2f1&Lang=en).

<sup>45</sup> See: ‘Le statut du Médiateur de la République ou de l’équivalent au Gabon’ in *Juriscope*, 1998.

Available at:

[http://www.juriscope.org/uploads/etudes/Gabon/Droit%20administratif\\_Statut%20du%20Mediateur%20de%20la%20Republique%20ou%20de%20l%20equivalent\\_Gabon\\_1998.pdf](http://www.juriscope.org/uploads/etudes/Gabon/Droit%20administratif_Statut%20du%20Mediateur%20de%20la%20Republique%20ou%20de%20l%20equivalent_Gabon_1998.pdf).

<sup>46</sup> African Charter on the Rights and Welfare of the Child (“African Children’s Charter”), Article 44, available at:

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

. For more information about communications, see:

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

<sup>47</sup> Ibid.

<sup>48</sup> African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at:

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

<sup>49</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>50</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>51</sup> African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at:

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

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>52</sup> For complaints to the African Commission, it should also include and the name of the victim, in a case where he/she is not the complainant.<sup>53</sup>

Finally, once all domestic remedies have been exhausted, complaints against violations of children's rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC,<sup>54</sup> which Gabon has ratified. Complaints can be made directly by both an individual child or a group of children, or indirectly, on their behalf by an adult or an organisation.<sup>55</sup> The violations must concern a right granted by either the CRC, the Optional Protocol on the sale of children or the Optional Protocol on the involvement of children in armed conflict<sup>56</sup> and must have occurred after the entry into force of the Protocol on 25 december 2012.<sup>57</sup> Anonymous complaints are inadmissible and so are complaints not made in writing.<sup>58</sup> In addition, only complaints made in one of the working languages of the UN will be accepted.<sup>59</sup> After examining the complaint, the Committee can make recommendations to the State, which are not legally binding.<sup>60</sup>

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

Courts can award damages and reparation to the victim of an offence.<sup>61</sup>

In procedures relating to a misuse of power (“*excès de pouvoir*”) opposing an individual and a public body, administrative courts and tribunals can annul an act taken by the public institution incriminated by the individual to whom the act applies.<sup>62</sup>

---

<sup>52</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>53</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>54</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2013, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en).

<sup>55</sup> Ibid., Article 5.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid., Article 7(g).

<sup>58</sup> Ibid.

<sup>59</sup> Office of the United Nations High Commissioner for Human Rights, ‘23 FAQ about Treaty Body complaints procedures’, available at: <http://www2.ohchr.org/english/bodies/petitions/individual.htm#contact>.

<sup>60</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Article 10.

<sup>61</sup> See: ClientEarth, *Droit d'accès à la justice des communautés locales et autochtones (Gabon)*, August 2014.

<sup>62</sup> C. Keutcha Tchapnga, ‘Le juge constitutionnel, juge administratif au Bénin et au Gabon ?’, in *Revue française de droit constitutionnel* 2008/3, n° 75, Presses universitaires de France, para.86. Available at:



If a law, ordinance or regulatory act is ruled non-compliant with the Constitution by the Constitutional court, it is not enacted if the Court rules prior to the law's enactment. If the Constitutional Court rules *a posteriori* (for instance during an unconstitutionality claim), the law ceases to apply and the Parliament has to remedy the issue.<sup>63</sup>

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 general, in criminal matters, only individuals who personally suffered a damage caused by the offence can bring a civil action for damages.<sup>64</sup> Although NGOs can under certain conditions (see below in IV.E) bring an action, the Code does not specify if a victim needs to be named, although this is likely to be required.

In civil and administrative matters, legal action is available to natural or legal persons who can demonstrate a "legitimate interest" in the claim.<sup>65</sup> This implies "i) that a sufficiently important and serious interest to act exist ; ii) that this interest is grounded in a legitimate right ; iii) to be a direct victim of the damage caused."<sup>66</sup>

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

As discussed above, legal actions are generally brought by individual victims. However, it appears that in civil and administrative matters, "case-law can under certain conditions declare admissible actions based on public interest."<sup>67</sup> Such case-law could not be located.

The Environment code provides that in cases relating to environmental matters, public prosecution can be set in motion by local communities.<sup>68</sup>

Groups can also bring complaints to the National Human Rights Commission regarding violations of their human rights.<sup>69</sup>

E. Are non-governmental organisations permitted to file challenges to potential

---

[www.cairn.info/zen.php?ID\\_ARTICLE=RFDC\\_075\\_0551#re98no98](http://www.cairn.info/zen.php?ID_ARTICLE=RFDC_075_0551#re98no98).

<sup>63</sup> ACCPUF, *Cour Constitutionnelle du Gabon : Présentation générale*, 1999, p.10-11. Available at: [http://www.accpuf.org/images/pdf/cm/gabon/022-ic-pres\\_gen.pdf](http://www.accpuf.org/images/pdf/cm/gabon/022-ic-pres_gen.pdf).

<sup>64</sup> Code of criminal procedure, art.7.

<sup>65</sup> Code of civil procedure, art. 3.

<sup>66</sup> ClientEarth, *Droit d'accès à la justice des communautés locales et autochtones (Gabon)*, August 2014, p.14.

<sup>67</sup> Id. p.14.

<sup>68</sup> Environment Code, art. 82, quoted in ClientEarth, *Droit d'accès à la justice des communautés locales et autochtones (Gabon)*, August 2014, p.15.

<sup>69</sup> *Second periodic report of Gabon to the UN Committee on the rights of the child*, CRC/C/GAB/2, 29 December 2014, para. 39. Available at:

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

children's rights violations or to intervene in cases that have already been filed?

In general, in criminal matters, only individuals who personally suffered a damage caused by the offence can bring a civil action for damages.<sup>70</sup>

However, such an action can also be brought by regularly registered organisations whose purpose is to “defend public interests, defend or assist battered children, fight against corruption of minors, against obstructions to the exercise of parental authority, against incitement of minors to debauchery, alcohol and drug use, defend and ensure respect for human rights”.<sup>71</sup> This is confirmed in the law on child trafficking, which states that in cases relating to child trafficking, NGOs working against child trafficking and exploitation can exercise the same rights as civil parties (*parties civiles*).<sup>72</sup>

The Environment code provides that in cases relating to environmental matters, public prosecution can be set in motion by NGOs, organisation defending the environment, local governments or communities.<sup>73</sup>

**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 cases are typically filed in lower courts (*tribunal de première instance* or *tribunal de grande instance*).<sup>74</sup>

Administrative courts or tribunals (depending on the nature of the act challenged) rule over conflicts between individuals and public bodies.<sup>75</sup>

Criminal matters are filed in Criminal courts, ruling over serious criminal offences (*crimes*, and *délits*) or Correctional tribunals, ruling over misdemeanours and minor infractions (*délits* and *contraventions*). Special courts exist for offences committed by military forces.<sup>76</sup>

As described above in III.A, the Constitutional court reviews claims relating to compliance of legislation with the Constitution.

B. Legal aid / Court costs. Under what conditions would free or subsidised

---

<sup>70</sup> Code of criminal procedure, arts.7 and 80.

<sup>71</sup> Id., art. 7.

<sup>72</sup> Law on child trafficking, art. 24. Available at: [www.africanchildforum.org/clar/Legislation%20Per%20Country/gabon/gabon\\_trafficking\\_2004\\_fr.pdf](http://www.africanchildforum.org/clar/Legislation%20Per%20Country/gabon/gabon_trafficking_2004_fr.pdf).

<sup>73</sup> Environment Code, art. 82, quoted in ClientEarth, *Droit d'accès à la justice des communautés locales et autochtones (Gabon)*, August 2014, p.15.

<sup>74</sup> E. Folefack and J.-P. Bozec, *The Gabonese Legal System and Legal Research*, Globalex, June/July 2013, available at: <http://www.nyulawglobal.org/globalex/gabon1.htm#Judiciary>.

<sup>75</sup> See: M.Akendengue, 'L'organisation de la justice administrative au Gabon', in *La Revue administrative*, 52e Année, No. 6, 1999, p. 47.

<sup>76</sup> F. Nkea Ndzigue, *La procédure pénale au Gabon*, L'Harmattan, 2012, p.16- 17

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 civil and administrative matters, the party engaging the legal action needs to pay a fee when filing the application.<sup>77</sup> Claimants and defendants who are unable to exercise their rights because of a lack of resources are entitled to legal aid. Legal aid includes exemption from court fees, and the assistance of a lawyer. It extends to procedures relating to the enforcement of the judgement.<sup>78</sup>

Legal aid can be partial or total, and is available to Gabonese nationals and to foreigners residing in Gabon, provided that their country signed a mutual agreement with Gabon.<sup>79</sup> The application procedure is reportedly easy, but little known. It includes a verbal or written declaration to the public prosecutor (*Procureur de la République*) along with a tax-exemption certificate or a declaration approved by the local government confirming the applicant's lack of resources.<sup>80</sup>

Finally, the civil code states that a lawyer who would take advantage of child by claiming excessive fees risks disqualification or temporary exclusion from the bar.<sup>81</sup>

In criminal matters, the civil party setting the prosecution in motion needs to pay a court fee upon filing, failing which the complaint is declared inadmissible.<sup>82</sup> Furthermore, if a witness requires expenses to be paid, these are paid by the party who summoned the witness.<sup>83</sup>

Minors under 18 years old are exempted from paying the fee to appeal decisions to the Cassation court (the highest court in the judiciary).<sup>84</sup>

Court-appointed lawyers are available for suspects who cannot afford a lawyer.<sup>85</sup> In cases where the suspect is a minor, the judge in charge of the investigation (*juge d'instruction*) must appoint a lawyer to defend the child, in consultation with the bar association. In areas where there is no lawyer, the *juge d'instruction* appoints another qualified person to defend the child.<sup>86</sup>

---

<sup>77</sup> Code of civil procedure, art.422, quoted in ClientEarth, *Droit d'accès à la justice des communautés locales et autochtones (Gabon)*, August 2014, p.18.

<sup>78</sup> Code of civil procedure, arts. 50 & 51, quoted in ClientEarth, *Droit d'accès à la justice des communautés locales et autochtones (Gabon)*, August 2014, p.19.

<sup>79</sup> Law n°4/82 on legal aid, 22 July 1982, quoted in ClientEarth, *Droit d'accès à la justice des communautés locales et autochtones (Gabon)*, August 2014, pages 19 & 20.

<sup>80</sup> Decree N°1271/PR/MJ, 8 September 1982, art.4, quoted in ClientEarth, *Droit d'accès à la justice des communautés locales et autochtones (Gabon)*, August 2014, p.20.

<sup>81</sup> Civil code, art. 609.

<sup>82</sup> Code of criminal procedure, art. 83.

<sup>83</sup> Code of criminal procedure, art. 201.

<sup>84</sup> Id., art. 437.

<sup>85</sup> Code of criminal procedure, art. 54, quoted in ClientEarth, *Droit d'accès à la justice des communautés locales et autochtones (Gabon)*, August 2014, pages 20 & 21.

<sup>86</sup> Code of criminal procedure, art. 369.

The Code of criminal procedure does not appear to detail the possibilities of legal assistance available to victims. However, a victim joining the public prosecution as a “civil party” (*partie civile*, see below in III.A) is exempted from court fees if he or she provides a tax-exemption certificate. However this exemption is available only if the victim brings the complaint to the the investigation judge who will launch the investigation (*plainte avec constitution de partie civile*). It does not appear to be available to victims bringing the complaint directly to the tribunal with their own evidence to support the claim (*citation directe*).<sup>87</sup>

Proceedings before the Constitutional court are free.<sup>88</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?

There is little information on pro bono activities in Gabon.

The local NGO Samba Mwanas, member of the National network for the promotion and protection of children’s right (*Réseau National pour la Promotion et la Protection des droits de l’enfant au Gabon*) provides legal support for children victims of violence<sup>89</sup>.

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

In criminal matters, statutes of limitations for public prosecution vary from one year for minor offences (*contraventions*)<sup>90</sup> to three years for misdemeanours (*délits*)<sup>91</sup> and 20 years for serious offences (*crimes*).<sup>92</sup> This period starts on the day of the crime, unless legal action has been engaged, in which case the period starts on the day of the last act of investigation or proceedings.<sup>93</sup>

Unconstitutionality claims brought to the Constitutional court during a trial in a lower court must be raised at the opening of the trial.<sup>94</sup>

---

<sup>87</sup> Code of criminal procedure, art. 83, quoted in ClientEarth, *Droit d'accès à la justice des communautés locales et autochtones (Gabon)*, August 2014, p.20.

<sup>88</sup> Association des Cours Constitutionnelles ayant en Partage l'Usage du Français (ACCPUF), *Cour Constitutionnelle du Gabon : Présentation générale*, 1999, p.3. Available at: [http://www.accpuf.org/images/pdf/cm/gabon/022-ic-pres\\_gen.pdf](http://www.accpuf.org/images/pdf/cm/gabon/022-ic-pres_gen.pdf).

<sup>89</sup> See their annual report 2013-1014 available at: [http://www.sambamwanas.com/uploads/1/5/0/7/15074718/rapport\\_annuel\\_dactivits\\_2014\\_\\_en\\_ligne.pdf](http://www.sambamwanas.com/uploads/1/5/0/7/15074718/rapport_annuel_dactivits_2014__en_ligne.pdf).

<sup>90</sup> Code of criminal procedure, art.6.

<sup>91</sup> Code of criminal procedure, art.5.

<sup>92</sup> Code of criminal procedure, art.4.

<sup>93</sup> Id.

<sup>94</sup> Law n°9/91 on the Constitutional Court, 26 September 1991, as amended by law n°13/94, 17 September 1994, art. 45, available at: [http://www.accpuf.org/images/pdf/cm/gabon/042-tri-txt\\_leg.pdf](http://www.accpuf.org/images/pdf/cm/gabon/042-tri-txt_leg.pdf).

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?

Unless otherwise specified in legal texts, offences may be demonstrated by any form of evidence, as long as they are presented to the tribunal and subjected to a contradictory debate during the hearings.<sup>95</sup> The evaluation of confessions, as of any other piece of evidence, is left to the judges' appreciation.<sup>96</sup>

Investigation judges (*juges d'instruction*) order expert opinions at their own initiative, at the prosecutor's, the defence's or the civil party's request. The national list of accredited experts is reviewed every year. Requests for the opinion of an expert who does not figure on the list need to be motivated.<sup>97</sup> Experts can be heard in court.<sup>98</sup>

Children under 15 are heard without being sworn in, whether they are heard during the investigation<sup>99</sup> or during the trial.<sup>100</sup>

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

In cases brought to the Constitutional Court under the 'unconstitutionality claim' procedure (see above in III.A), the Court must come to a decision within a month.<sup>101</sup>

Administrative courts have reportedly observed reasonable length of times to issue decisions, with time frames varying between two months and two years, however this information is based on rather dated case-law.<sup>102</sup>

No information could be located regarding the time taken by other courts to issue a decision. However, the Committee against torture expressed concerns over the lack of information regarding the maximum length of pretrial detention. According to the US department of State, "prolonged pretrial detention was [*in 2014*] common due to overburdened dockets and an inefficient judicial system. (...) There were instances in which the length of detention exceeded the maximum sentence for the alleged crime".<sup>103</sup>

Furthermore, the justice system is generally perceived as slow and unfair by the

---

<sup>95</sup> Code of criminal procedure, art. 313.

<sup>96</sup> Id.

<sup>97</sup> Id., arts. 134 & 135.

<sup>98</sup> Id., art. 137.

<sup>99</sup> Id., art. 96.

<sup>100</sup> Id., art. 328.

<sup>101</sup> Constitution of the Republic of Gabon, art. 86. Available at:

<http://www.assemblee-nationale.ga/36-connaitre-l-assemblee-nationale/76-la-constitution/>.

<sup>102</sup> O. Fandjip, Thesis: *Les juridictions administratives et le temps; cas du Cameroun et du Gabon*, 2009. Available at:

[http://www.memoireonline.com/10/09/2798/m\\_les-juridictions-administratives-et-le-tempscas-du-Cameroun-et-du-Gabon20.html](http://www.memoireonline.com/10/09/2798/m_les-juridictions-administratives-et-le-tempscas-du-Cameroun-et-du-Gabon20.html).

<sup>103</sup> US department of State, *Gabon 2014 Human Rights report*, p.5, available at:

<http://www.state.gov/documents/organization/236572.pdf>.

general public in Gabon.<sup>104</sup>

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

The Cassation Court hears appeals from first instance courts and courts of appeals relating to civil, commercial and criminal matters. The State Council (*Conseil d'Etat*) hears appeals from administrative courts.<sup>105</sup>

In criminal matters, appeals courts hears appeals from first instance courts relating to minor offences and some misdemeanours. Appeals can be filed by defendants, the civil parties (*parties civiles*) for the civil side of the prosecution and by the Public prosecutor for the public side of the prosecution.<sup>106</sup> Petitions for appeal must be filed within 10 days of the decision, unless the party was not present at the hearing, or has not been duly notified of the decision, in which cases the appeal must be filed within 10 days of the notification.<sup>107</sup>

During the investigation, the civil party can also appeal decisions of the investigation judge affecting his civil interests.<sup>108</sup>

Serious offences (some misdemeanours and serious crimes) are appealed directly to the Cassation Court, the highest court in the judiciary. Cassation appeals must be filed within five days of the decision being issued or being notified to the civil party.<sup>109</sup>

Decisions by Children's judges or courts can be appealed to the Cassation court. Appeals can be filed by the child himself, his/her parents or guardian.<sup>110</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?

As a civil law jurisdiction, precedent is not binding in Gabon, but courts do refer to existing case-law.

Under the Code of Criminal Procedure, if public proceedings end with charges being dropped (*ordonnance de non-lieu*), the defendant can ask for damages to be paid by the *partie civile* (in most cases the victim).

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

---

<sup>104</sup> P. Moundounga Mouity, *Le Gabon et le nouveau partenariat africain au développement: pour une sociologie politique des institutions en Afrique*, Editions Publibooks, 2009, p.226. See also: 'Rentrée judiciaire - Sauvegarder l'indépendance de la justice', in *Gabon News*, 8 October 2013, available at: <http://fr.allafrica.com/stories/201310081243.html>.

<sup>105</sup> See E. Folefack, updated by J.-P. Bozec, *The Gabonese Legal System and Legal Research*, June-July 2013. Available at: <http://www.nyulawglobal.org/Globalex/Gabon1.htm>.

<sup>106</sup> Code of criminal procedure, art. 383.

<sup>107</sup> Id. Art. 384.

<sup>108</sup> Id. Art. 153.

<sup>109</sup> Id. Art. 423 & 424.

<sup>110</sup> Ministry of Justice, *Guide juridique et institutionnel de protection de l'enfant au Gabon*, p. 14. Available at: <http://www.africanlawlibrary.net/fr/web/gabon/legal-writings?layoutPlid=15428622>.

As stated above in II.E and IV.F, the high level of corruption in the Gabonese judiciary casts doubts over the enforcement of judicial decisions. The UN Committee against Torture has expressed concerns over “breaches and misconduct on the part of judicial officials, including ‘corruption, ... fraudulent removals of evidence from files; paroles for frivolous reasons of dangerous criminals without guarantee that they will appear in court; ... disappearances of files removed by judges or court officials; disappearances of sealed documents and other evidence’ (...) and over the absence of safeguards for the protection of the effective independence of the judiciary.”<sup>111</sup>

**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 located.

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

---

<sup>111</sup> UN Committee Against Torture, *Concluding observations on the initial report of Gabon*, CAT/C/GAB/CO/1, 17 January 2013, para.14. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGAB%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGAB%2fCO%2f1&Lang=en).