

ACCESS TO JUSTICE FOR CHILDREN: GUINEA-BISSAU

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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?

Guinea-Bissau ratified the UN Convention on the Rights of the Child (the “CRC”) in April 1990 and submitted its first report to the UN Committee on the Rights of the Child in July 2001.¹ In November 2012, Guinea-Bissau acceded to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Additionally, Guinea-Bissau ratified the African Charter on the Rights and Welfare of the Child (the “Charter”) in June 2008.²

The Constitution of the Republic of Guinea-Bissau (the “Constitution”) does not specify the relationship between these international treaties, the Constitution and national law, which makes the relationship between these international obligations and national law somewhat unclear.³ Article 29 of the Constitution does, however, provide that the fundamental rights contained within the Constitution do not negate the other rights granted in national law or applicable rules of international law.⁴ The Constitution also requires that the fundamental rights addressed in the Constitution and national law be interpreted in accordance with the Universal Declaration of Human Rights.⁵

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law. However, as noted above, the Constitution indicates that applicable rules of international law will be given due consideration in conjunction with the rights granted in the Constitution and national law. This suggests an understanding of the Constitution that gives general weight and deference to international agreements which Guinea-Bissau has ratified.⁶

C. Has the CRC been incorporated into national law?

Ratified international human rights treaties, including the CRC, are not automatically

¹ Yale Law School, *How Children’s Voices are Heard in Child Protective Proceedings*, REPRESENTING CHILDREN WORLDWIDE, available at:

<http://www.law.yale.edu/rcw/rcw/jurisdictions/afw/guineabissau/frontpage.htm>.

² UN Committee on the Rights of the Child, *Concluding observations on the second to fourth periodic reports of Guinea-Bissau*, CRC/C/GNB/CO/2-4, 14 June 2013, p. 2. Available at:

<http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-GBN-CO-2-4.pdf>.

³ Yale Law School.

⁴ Guinea-Bissau Constitution, Article 29, available at:

<http://www.wipo.int/edocs/lexdocs/laws/pt/gw/gw001pt.pdf>

⁵ Ibid.

⁶ Yale Law School.

incorporated into national law. Rather, Guinea-Bissau has harmonised parts of its existing laws in order to bring national legislation increasingly in line with its commitments as a party to the CRC.⁷ For example:

(a) Act on Reproductive Health 2011, which raises the minimum age for marriage to 18 years;

(b) Law on the Prevention and Fight Against Trafficking in Persons, Particularly Women and Children (Law no. 12/2011), which incorporated most of the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

(c) Law to Prevent, Fight and Suppress Female Genital Mutilation (Law no. 14/2011), which prohibits and criminalises the practice of female genital mutilation; and

(d) Law on Nationality (Law no. 6/2010), which contains several provisions designed to prevent statelessness and protect stateless persons.⁸

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

As the CRC has not been automatically incorporated into national law, the CRC cannot be directly enforced in national courts. When attempting to bring a claim regarding the violation of a child's rights, it is necessary to look to the national law of Guinea-Bissau, particularly the Statute for the Judicial Assistance to Minors 1976, Penal and Civil Codes and Organic Law of the Sector Courts; there is no indication that this legislation has been harmonised with the CRC.^{9,10}

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

There are no specific instances of domestic courts using or applying the CRC or any other relevant international instruments.¹¹ Recent legislation inspired by international obligations are beginning to be applied. For instance, there are criminal convictions of individuals under the Law to Prevent, Fight and Suppress Female Genital Mutilation.¹²

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge

⁷ Combined second, third and fourth periodic reports of Guinea-Bissau to the UN Committee on the Rights of the Child, CRC/C/GNB/2-4, 7 December 2011, para. 62. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGNB%2f2-4&Lang=en.

⁸ UN Committee on the Rights of the Child.

⁹ UNDP, 'Study on access to justice in Guinea-Bissau', available in Portuguese at: http://www.gw.undp.org/content/dam/guinea_bissau/docs/DocGovernance/UNDP_GW_estudo_acesso_juistica_PT.pdf; UN Committee on the Rights of the Child.

¹⁰ Guinean Human Rights League, 'Report on the situation of human rights in Guinea-Bissau 2010-2012', available in Portuguese at: http://globalvoicesonline.org/wp-content/uploads/2013/02/relatorioLGDH2012_versaoDigital.pdf

¹¹ CRIN, 'Guinea-Bissau: National Laws', available at: <http://web61388.aiso.net/resources/infoDetail.asp?ID=28571>.

¹² Guinean Human Rights League.

violations of children's rights?

The Constitution grants all citizens the right to recourse in domestic courts.¹³ The laws of Guinea-Bissau also specifically provide children with the right to recourse in domestic courts to defend their physical and moral integrity.¹⁴

Crimes against children are treated as public, meaning prosecution will not be conditioned on parental authorisation or request.¹⁵ The Public Ministry is still the sole body responsible for criminal prosecution,¹⁶ however some crimes can only be prosecuted after the victim files a complaint (“*queixa*”).¹⁷ The right to file such a complaint belongs to the child's legal representative until the child turns 14 years old, and to the child him/herself from then on.¹⁸ Private prosecution strictly speaking, which exists in some countries of Portuguese law tradition as “*acusação particular*”, is not provided by the Code of Criminal Procedure in Guinea-Bissau.

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?

Even though cases can be brought in the child's name, children cannot bring cases on their own behalf and must do so with the assistance of a representative. Law No. 5/76 states that “[a]ny individual, either female or male, when he/she reaches 18 years, has full capacity to use his/her rights and to govern himself/herself and to dispose of his/her properties”, thereby indicating that a person under 18 years of age lacks legal capacity to bring legal proceedings.¹⁹ The Civil Procedure Code states that individuals who are legally incompetent may not appear in court without a legal representative.²⁰ A specific legal representative may be requested by a relative, but the judge ultimately decides who the child's representative should be.²¹

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

Children under 14 are represented by the Children's Guardianship of the Public Ministry.²² In civil cases involving infants and young children, a request for the appointment of a special guardian should be made by a relative at the outset of the case.²³ The judge overseeing the case will then decide who to appoint to represent the child

¹³ Guinea-Bissau Constitution, Articles 29, 30, 32, 34, 37, 38.

¹⁴ *Initial report of Guinea-Bissau to the UN Committee on the Rights of the Child*, CRC/C/3/Add.63, 26 July 2001, para. 108. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f3%2fAdd_63&Lang=en.

¹⁵ UNDP.

¹⁶ Code of Criminal Procedure, Article 48, available in Portuguese at: <http://www.ilo.org/dyn/natlex/docs/SERIAL/95418/112316/F457585444/GNB95418.pdf>

¹⁷ *Ibid.*, Article 180.

¹⁸ *Ibid.*

¹⁹ *Initial report of Guinea-Bissau to the UN Committee on the Rights of the Child*, para. 135.

²⁰ Code of Civil Procedure (*Código de Processo Civil de Guiné-Bissau*), Article 10, available at: http://www.rjcppl.org/sections/informacao/anexos/legislacao-guine-bissau4332/codigos-e-estatutos9979/codigo-de-processo-civil6045/downloadFile/file/Proc_civil.pdf?nocache=1366629988.66

²¹ *Código de Processo Civil de Guiné-Bissau*, Article 10.

²² UNDP, p. 75.

²³ *Código de Processo Civil de Guiné-Bissau*, Articles 10-12.

during the proceedings.²⁴

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

The Constitution guarantees that “[c]hildren [and] youth . . . shall have the right to the protection of the society of the State” and that “[e]very citizen shall have the right to appeal to jurisdictional organs against acts that violate their rights which are recognized by the Constitution and by law . . . justice may not be denied for reasons of insufficient financial means.”²⁵

Decree-Law no. 11/2010 guarantees citizens access to law and justice.²⁶ Specifically, it implements Articles 32 and 34 of the Constitution, establishing the bodies responsible for the provision of: (1) legal consultation, that is, the “provision of knowledge about rights and duties regarding a specific case”;²⁷ and (2) legal aid, that is, the waiver of court costs, and the provision of legal representation through the appointment of an attorney paid by the court.²⁸ The Decree specifies children as one of the groups in need of special attention. In order to have free access to justice, any citizen can prove poverty through any lawful piece of evidence available.²⁹

The most significant recent development has been the establishment of the Office of Information and Legal Advice (*Gabinete de Informação e Consulta Jurídica*) and implementation of Centres of Access to Justice (*Centros de Acesso à Justiça* or CAJs) in six different regions of the country under the supervision of the Ministry of Justice.³⁰ These centres provide legal counselling and awareness to the general public and vulnerable groups, as well as training to local NGOs about the protection of human rights. They work in conjunction with courts, commissions and police stations, detention centres and prisons.³¹ They are the first official body to reach remote regions, adopting holistic solutions to integrate traditional justice into formal procedures.³² CAJs have had the most success in spreading and guaranteeing basic rights for children in recent years.³³ In two particular cases, a local non-governmental organisation was able to assist a child to resist a forced marriage and a man to prove his ownership of land.

²⁴ Ibid.

²⁵ Guinea-Bissau Constitution, Articles 30, 40.

²⁶ *Report of Guinea-Bissau to the UN Human Rights Council Universal Periodic Review*, A/HRC/WG.6/21/GNB/1, 9 January 2015, para. 14. Available at: http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_wg_6_21_gnb_1.pdf.

²⁷ Decree-Law no. 11/2010, Article 10.

²⁸ Ibid., Articles 13-14.

²⁹ UNDP, *Study about Access to Justice in Guinea-Bissau: Cacheu and Oio Regions and Autonomous Sector of Bissau*, p. 135, available at: http://www.gw.undp.org/content/dam/guinea_bissau/docs/DocGovernance/UNDP_GW_estudo_acesso_justica_PT.pdf.

³⁰ Ibid., p. 136.

³¹ *Report of Guinea-Bissau to the UN Human Rights Council Universal Periodic Review*, para. 35.

³² *MDG-F Justice Program Helps Guinea-Bissau Girl Avoid Child Marriage*, MDG ACHIEVEMENT FUND, available at: <http://www.mdgfund.org/country/guineabissau/story/MDG-FjusticeprogrammehelpsGuinea-Bissaugirlavoidchildmarriage>.

³³ Ibid.

Practically, however, very few financial resources are available to aid children in bringing claims. Indeed, even in criminal cases, Amnesty International has noted that there is a serious lack of resources in the judicial system, including funding to provide free legal counsel for defendants unable to afford it and assistance for juvenile offenders.³⁴

- 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)?

In cases involving children, requests of relatives with a closer degree of relation to the child will be given greater weight by the courts, in comparison to requests of relatives less closely related to the child.³⁵ In instances when there are conflicting requests of relatives with the same degree of relation, the courts will determine which relative's requests are most appropriate.³⁶

The father is the legal representative of the child by law.³⁷ Nevertheless, some actions that significantly compromise the patrimony of the child require authorisation from the Children's Tribunal.³⁸ Furthermore, if there is a conflict of interest between the parents and the child, a tutor is named by the Tribunal to represent the child.³⁹

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?

Civil

Pursuant to the Code of Civil Procedure, causes of action that are not assigned by law to any particular jurisdiction are to be heard, in the first instance, in the regional courts (i.e. formal courts).⁴⁰ Thus, to the extent that a child or his or her legal representative wishes to pursue a claim for a violation of law and the legal provision does not specify that a particular court has exclusive jurisdiction over such claims, the claim should be filed in the regional courts.

Constitutional

The Constitution provides for the protection of certain human rights listed in Part II.

³⁴ *Legal Assistance for Children in Conflict with the Law: Guinea Bissau*, INTERNATIONAL JUVENILE JUSTICE OBSERVATORY, available at: <http://www.ojj.org/legal/situation.php?c=1&p=78>.

³⁵ Código de Processo Civil de Guiné-Bissau, Articles 1426.

³⁶ *Ibid.*

³⁷ Civil Code, Article 1885, available at:

https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCMQFjABahUKewiN1_2TvYXHAhVRcNsKHQLVAYo&url=https%3A%2F%2Ftrack.unodc.org%2FLegalLibrary%2FLegalResources%2FGuinea-Bissau%2FLaws%2FC%25C3%25B3digo%2520Civil%2520%282000%29.pdf&ei=cHi7VY3fEdHg7QaCqofQCA&usg=AFQjCNEJsgg0fBaNZtAxUs2QnQVuJN6R2g&bvm=bv.99261572.d.ZGU

³⁸ *Ibid.*, Articles 1887 and 1890.

³⁹ *Ibid.*, Article 1885.

⁴⁰ Código de Processo Civil de Guiné-Bissau, Articles 66, 67.

However, individuals may not bring cases about violations of their constitutional rights directly before a court,⁴¹ and there is no mechanism to check the constitutionality of a law before its enactment.⁴² Instead, a case may be referred to the Supreme Court of Justice (*Supremo Tribunal de Justiça*)⁴³ by another court if a party challenges the constitutionality of a norm⁴⁴ that is being applied to them in the case. The norms subject to this constitutionality control are legislative acts, normative administrative acts, collective labour agreements, international agreements, normative presidential decrees, among others. Administrative acts, judicial decisions, political acts, and private acts and omissions fall outside of the scope of an unconstitutionality claim. If the unconstitutionality claim is accepted, the question is transferred to the Supreme Court of Justice, which will issue a binding ruling.

Although the CRC is not an integral part of the Constitution and children's rights are not expressly protected,⁴⁵ Article 29 states that other principles found in international treaties are not excluded from the scope of the Constitution. Therefore the constitutionality control includes the conformity of norms to international treaties, including the CRC.⁴⁶

Administrative

Pursuant to Article 33 of the Constitution, the state and all other public bodies are subject to civil liability for actions or omissions in the exercise of their duties that have violated a person's rights, liberties and guarantees, or caused damage. As a result, these actions are to be brought in front of regular civil courts.

Regional mechanisms

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").⁴⁷ All available domestic remedies must have been exhausted before bringing a case to the African Commission.⁴⁸ 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.⁴⁹ The African

⁴¹ *Constitutionality check and status of Constitutional courts - Portuguese speaking countries - Guinea Bissau Report*, May 2010, page 7, item 2.1, available at: <http://www2.stf.jus.br/cjcplp/lassembleia/pdfs/GuineBissau.pdf>.

⁴² *Ibid.*, page 6, item 3. stating that the control is *a posteriori*, that is, after the enactment of the law (The control is also concrete, as opposed to abstract, since it happens in *limine litis*, that is during an ongoing trial.).

⁴³ Guinea-Bissau does not have an autonomous Constitutional Court. The plenary of the Supreme Court of Justice assumes the role of Constitutional Court. *Ibid.*, page 11, item V, available at: <http://www2.stf.jus.br/cjcplp/lassembleia/pdfs/GuineBissau.pdf>.

⁴⁴ *Ibid.*, page 5.

⁴⁵ The Articles of Title II on 'Fundamental rights, liberties, guarantees and duties' protect human rights in general but not children's rights specifically.

⁴⁶ Pursuant to the interpretation made in *Constitutionality check and Status of Constitutional courts - Portuguese speaking countries - Guinea Bissau Report*, page 6, item 2.2.

⁴⁷ African Charter on Human and Peoples' Rights ("African Charter"), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

⁴⁸ *Ibid.*, Article 56(5).

⁴⁹ Rules of Procedure of the African Commission on Human and Peoples' Rights of 2010, Rule 93,

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.⁵⁰ 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.⁵¹

Individuals can bring complaints about violations of human rights that occur in any Member State of the Economic Community of West African States (ECOWAS) to the Community Court of Justice.⁵² This includes acts or inaction of Community Officials which violate the rights of individuals.⁵³ There is no requirement to exhaust domestic remedies, therefore individuals do not need to pursue national judicial remedies before filing a case with the Community Court of Justice.⁵⁴ There are, however a number of conditions: the complaint must not be anonymous or be pending before another international court;⁵⁵ representation by an agent or lawyer is required;⁵⁶ and any action by or against a Community Institution or the Member State must be brought within three years of when the right of action arose.⁵⁷ Judgments of the Court of Justice are binding on the Member States, Institutions of the Community, individuals and corporate bodies.⁵⁸

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

Sector and Regional Courts in Guinea-Bissau may review alleged rights violations and award damages,⁵⁹ restitution⁶⁰ or temporary support,⁶¹ or issue injunctions.⁶² The Statute

available at: <http://www.achpr.org/instruments/rules-of-procedure-2010/>.

⁵⁰ 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>.

⁵¹ 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>.

⁵² Supplementary Protocol A/SP.1/01/05, Articles 3 and 4, available at:

http://www.courtecawas.org/site2012/pdf_files/supplementary_protocol.pdf; Protocol on the Community Court of Justice, Articles 9(4) and 10(d), available at:

http://www.courtecawas.org/site2012/pdf_files/protocol.pdf.

⁵³ Ibid., Article 4; Protocol on the Community Court of Justice, Article 10(c).

⁵⁴ War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, 'ECOWAS Community Court of Justice', 2012, available at:

<http://co-guide.org/mechanism/ecowas-community-court-justice>.

⁵⁵ Supplementary Protocol A/SP.1/01/05, Article 4; Protocol on the Community Court of Justice, Article 10(d),

⁵⁶ Protocol on the Community Court of Justice, Article 12.

⁵⁷ Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).

⁵⁸ Revised Treaty of the Economic Community of West African States, Article 15(4), available at:

http://www.courtecawas.org/site2012/pdf_files/revised_treaty.pdf.

⁵⁹ Aprova a Lei Orgânica dos Tribunais de Sector, Decreto-Lei nº 6/93, Article 18 (13 Outubro 1993).

⁶⁰ Código de Processo Civil de Guiné-Bissau, Article 393.

⁶¹ Ibid., Article 388.

⁶² Ibid., Article 384.

for the Judicial Assistance to Minors, from 1976, provides some measures to be taken by courts to regulate guardianship and parental power, such as compulsory attendance of classes or placement in a foster home.

The Supreme Court of Justice is empowered to review unconstitutionality claims referred to it. Under Article 126 of the Constitution, a norm that violates the Constitution or its principles is unconstitutional. The effect of a declaration of unconstitutionality by the Supreme Court of Justice is the annulment of the norm either retroactively (*ex tunc*) or from the day of the decision (*ex nunc*), depending on the importance of the matter.⁶³

- 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?

Any claims in the courts of Guinea-Bissau must be made by a specific claimant who has standing to bring the claim. A plaintiff has standing to pursue a claim when he or she has a direct interest in the claim, and a defendant has standing to defend a claim when he or she has a direct interest in rebutting the claim.⁶⁴ Therefore it does not appear possible to bring a challenge to court without naming a specific victim.

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

Pursuant to Guinea Bissau's Civil Procedure Code, multiple plaintiffs may file claims against multiple defendants in the same proceedings when the causes of action are the same or dependent upon each other.⁶⁵ Multiple plaintiffs may also file claims in the same proceeding if the claims will require essentially the same assessment of facts or the interpretation or application of the same rules of law.⁶⁶ The Supreme Court of Justice has the prerogative to combine cases and provide consistent decisions.⁶⁷

- 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 and other third parties are not allowed to file challenges, but may intervene in cases that have already been filed.⁶⁸ Generally, third party intervention requires that the party wishing to intervene has an interest equal to the plaintiff or that the claim by the third party shares a close relationship to the original claim by the plaintiff.⁶⁹ Intervention may occur at any time before final judgment in the case.⁷⁰

⁶³ *Constitutionality check and status of Constitutional courts - Portuguese speaking countries - Guinea Bissau Report*, page 7, item 5.

⁶⁴ Código de Processo Civil de Guiné-Bissau, Article 26.

⁶⁵ *Ibid.*, Article 30.

⁶⁶ *Ibid.*, Article 30.

⁶⁷ Law n° 3/2002, Institutional Law of the Courts, available in Portuguese at:

http://www.rjcplp.org/sections/informacao/anexos/legislacao-guine-bissau4332/codigos-e-estatutos9979/codigo-de-processo-civil6045/downloadFile/file/Proc_civil.pdf?nocache=1366629988.66.

⁶⁸ See generally Código de Processo Civil de Guiné-Bissau, Capítulo III, Secção III, Intervenção de terceiros.

⁶⁹ *Ibid.*, Article 351.

⁷⁰ *Ibid.*, Article 353.

Third parties may also provide assistance to a party in a case at any time by submitting an application to the court.⁷¹ The court will then review the application and the nature of the assistance to determine whether the requested assistance is permissible.⁷²

IV. Practical considerations.

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

Civil and criminal cases related to children are usually heard at one of the four Regional Courts (North, South, East and West). These courts are based in the regions' capitals. Small claims courts are called Sector Courts ("*Tribunal de sector*"); their rulings are based on customs and equity and are more spread out throughout the territory.⁷³

In civil matters, cases are filed through a complaint ("*queixa*") or an initial petition ("*requerimento inicial*").⁷⁴ Pleadings in these courts must be submitted to the court, signed by the party offering the pleading or its legal representative, and specify the foundations of the action.⁷⁵ A duplicate of the pleading must also be sent to the opposing party in the dispute.⁷⁶

Constitutional claims can be submitted in front of any tribunal during an ongoing trial (see part II.A above).

Even though legislation from 1976 provides for the establishment of Youth Courts to deal with cases related to children in conflict with the law and the special protection of children, to date these courts have not yet been created.

- 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?

See part II.D above.

- 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?

Decree-Law no. 11/2010 provides that the government will cooperate with the National Bar Association to provide legal support to those who cannot afford it. As most lawyers

⁷¹ Ibid., Articles 335, 336.

⁷² Ibid., Article 336.

⁷³ Organic Law of the Courts, Article 51, available at:

http://www.rjcpplp.org/sections/informacao/anexos/legislacao-guine-bissau4332/codigos-e-estatutos9979/codigo-de-processo-civil6045/downloadFile/file/Proc_civil.pdf?nocache=1366629988.66.

⁷⁴ Organic Law on the District Courts, available at: http://www.stj.pt/ficheiros/fpstjptlp/guine_lots.pdf

⁷⁵ Código de Processo Civil de Guiné-Bissau, Articles 150, 151.

⁷⁶ Ibid., Article 152.

reside in Bissau, the rural areas are severely under-served.⁷⁷

- 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?

The right to bring a civil action is limited to three years from the day when the claimant became aware of his/her right, but it can never exceed the 20-year general limitation, which starts from the day of the tort. If the tort constitutes a criminal offence for which there is a longer prescription period, the longer prescription period will apply.⁷⁸

Nevertheless, special provisions apply to children. If the child does not have someone to represent them, the limitation period does not run except for acts for which they have legal capacity. If the child does have legal capacity, the limitation period does not expire until one year after the child acquired the capacity. When it comes to “presumed prescriptions”, the limitation period is not suspended but does not expire until one year after the child has acquired legal capacity or has appointed a legal representative.⁷⁹

If the father does not respect the conditions set out in the Civil Code concerning actions that significantly compromise the patrimony of the child, the child has up to one year after attaining majority to annul these actions.⁸⁰

Actions seeking the recognition of paternity or maternity can be pursued by the child for up to two years after attaining majority.⁸¹ Actions seeking to annul an adoption (“*perfilhação*”) can be pursued by the child for up to one year after attaining majority.⁸²

The right to bring a criminal action is limited at:⁸³

- 20 years for crimes punishable with prison sentences of 10 or more years and others;
- 15 years for crimes punishable with prison sentences of between five and 10 years;
- 7 years for crimes punishable with prison sentences of between one and five years; and
- 3 years for all other cases.⁸⁴

The right to make a complaint (“*queixa*”) is limited to six months after the victim became aware of the crime.

- 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?

⁷⁷ UNDP, Study About Access to Justice in Guinea-Bissau, p. 130.

⁷⁸ Civil Code, Article 498.

⁷⁹ Ibid., Article 320.

⁸⁰ Ibid., Article 1891.

⁸¹ Ibid., Article 1854.

⁸² Ibid., Articles 1837 and 1838.

⁸³ These periods begin on the day of the commission of the crime, rather than on the day the when the victim became aware of the crime: Criminal Code, Article 88, available at: http://www.rjcppl.org/sections/informacao/anexos/legislacao-guine-bissau4332/codigos-e-estatutos9979/codigo-penal-e/downloadFile/file/Dir_Penal.pdf?nocache=1366630286.62 (from page 17).

⁸⁴ Ibid., Article 87.

In civil proceedings, both documentary evidence and witness testimony are admissible to prove a violation. However, no more than three witnesses will be permitted to establish each fact.⁸⁵ Also, if a document is introduced as evidence, the falsity of that document must be challenged, if at all, within eight days.⁸⁶

In criminal proceedings, every person has the capacity to testify, though a tribunal can evaluate a witness's physical and mental aptitude to testify whenever it is deemed necessary.⁸⁷ Children under 14 years of age and those suffering from a "psychic disturbance" are exempt from taking an oath.⁸⁸

Privacy

The rule in Guinea-Bissau is that criminal trials are held in public,⁸⁹ but publicity can be wholly or partially restricted if moral or human dignity requires it. Furthermore, the judge can prohibit certain individuals from attending the whole or part of a trial when the security of children is at stake, but this does not have any effect on the publicity of the trial.⁹⁰

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

The available resources have yielded no statistics or case law that addresses the length of time a typical case may require. There exists a general lack of faith in timely responses from the judiciary.⁹¹

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

Cases initiated at Sector Courts can be appealed to one of the four Regional Courts. Cases initiated at the Regional Courts can only be appealed to the Supreme Court of Justice, in Bissau.⁹² There is only one Circle Court, in Bissau, responsible for appeals from the Bissau Regional Court.⁹³ If there is a constitutional matter in discussion, the case will be referred to the Supreme Court of Justice's plenary.

- 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?

The judicial system of Guinea-Bissau relies upon precedent. As a result, a negative decision could have a significant impact if it is followed in subsequent court decisions.

⁸⁵ Código de Processo Civil de Guiné-Bissau, Article 304.

⁸⁶ Ibid., Article 360.

⁸⁷ Code of Criminal Procedure, Article 119.1.

⁸⁸ Ibid., Article 122.

⁸⁹ Ibid., Article 78.

⁹⁰ Ibid., Article 79.

⁹¹ UNDP, Study on Access to Justice in Guinea-Bissau.

⁹² Hierarchy of Guinean Courts. Ministry of Justice of Portugal. Available at: http://www.rjcppl.org/sections/organizacao-judiciaria/anexos/guine-bissau2536/downloadFile/attachedFile_f0/Guine_Bissau.pdf?nocache=1358937793.33

⁹³ Organic Law of the Courts, available at: http://www.rjcppl.org/sections/informacao/anexos/legislacao-guine-bissau4332/codigos-e-estatutos9979/codigo-de-processo-civil6045/downloadFile/file/Proc_civil.pdf?nocache=1366629988.66

The judiciary is completely dependent on the executive in terms of the allocation of funds, and on the armed forces for protection and implementation of decisions. Therefore, cases involving these agents are rarely resolved.⁹⁴

Given the country's history of executive interference in the affairs of the judiciary,⁹⁵ there is some cause for concern regarding any positive decision that is ultimately politically unpopular. However, recent reports indicate that the newly elected post-coup government is seeking to promote domestic reconciliation and inclusion, and re-engagement with the international community.⁹⁶

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

The laws of Guinea-Bissau provide that a judgment is enforceable only after a final judgment has been rendered in the case.⁹⁷ That is, if a decision is appealed, the execution of the judgment will be delayed until the conclusion of the appeal, unless the appeal results in a remand of that decision.⁹⁸

The country has been reported to lack a truly independent judiciary. Indeed, at times, the executive has wielded tremendous influence over the judiciary by removing judges from office.⁹⁹

- 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.

Recent developments

Beginning in 2012, Guinea-Bissau experienced a coup¹⁰⁰ and only recently, in 2014, held post-coup elections.¹⁰¹ As a result, the legal system likely has poor efficiency at this time. Close attention should be paid to any legal reforms or other developments related to children's rights in the wake of the country's most recent post-coup elections.¹⁰²

Traditional justice

⁹⁴ Guinean Human Rights League, Report 2010-2012.

⁹⁵ UNHCR, *Guinea-Bissau: Attack on the Independence of the Judiciary*, available at: <http://www.refworld.org/pdfid/3c2afe610.pdf>.

⁹⁶ Guinée Bissau: Une Conférence de Réconciliation Nationale Prévüe Début 2015, STAR AFRICA, available at: <http://fr.starafrika.com/actualites/guinee-bissau-une-conference-de-reconciliation-nationale-prevue-debut-2015.html>.

⁹⁷ Código de Processo Civil de Guiné-Bissau, Article 48.

⁹⁸ Ibid.

⁹⁹ UNHCR.

¹⁰⁰ *Guinea-Bissau's Acting President, Prime Minister Arrested in Military Coup*, CNN, available at: <http://www.cnn.com/2012/04/13/world/africa/guinea-bissau-coup-attempt>.

¹⁰¹ *Guinea-Bissau Holds First Post-Coup Election*, HNK NEWS, available at:

<http://www.hnknews.com/2014/04/12/guinea-bissau-holds-first-post-coup-election>.

¹⁰² Ibid.

Distance to courts, lack of infrastructure and funds, lack of trust in the justice system and delayed responses mean that many people in Guinea-Bissau rely on traditional justice for resolving conflicts.

Traditional courts are called “*Tribunais de sector*”. Their goal is to “administer justice in a simplified form and based on wide popular participation”. Their decisions are based on consensus and equity, as well as customs as long as they do not contradict express laws. There are no specific child-friendly provisions, and it is understood that children have no voice or even a status as a party in these courts.¹⁰³

National human rights institution

As at the date of this report, Guinea-Bissau does not have a national human rights institution that can receive complaints about children’s rights violations. The Committee on the Rights of the Child has urged Guinea-Bissau to establish an independent monitoring body, in full compliance with the Paris Principles.¹⁰⁴

Child-specific laws and bodies

To date, Guinea-Bissau does not have a Children’s Code or similar,¹⁰⁵ a “comprehensive child rights policy”,¹⁰⁶ or an “independent national human rights institution with a child focus to monitor the fulfilment of children’s rights under the Convention”.¹⁰⁷ The National Council for Childhood, which comprises officials from different ministries in order to coordinate children’s rights issues and push them forward on the government agenda, is in the process of being re-established.¹⁰⁸

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

¹⁰³ UNDP, Report on the Access to Justice in Guinea-Bissau; UN Committee on the Rights of the Child, paras 30-31.

¹⁰⁴ UN Committee on the Rights of the Child, para. 21.

¹⁰⁵ Ibid., para. 11.

¹⁰⁶ Ibid., para. 12.

¹⁰⁷ Ibid., para. 20.

¹⁰⁸ Ibid., para. 14.