

ACCESS TO JUSTICE FOR CHILDREN: HAITI

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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?

Haiti signed the CRC on 26 January 1990, and ratified in on 23 December 1994.

¹ It was then published in *Le Moniteur*, the official gazette of the Republic of Haiti, on 7 July 1995.² Together, these actions officially incorporated the CRC into Haitian law.³

The Haitian Constitution states that “once international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the legislation of the country and abrogate any laws in conflict with them.”⁴ According to Article 276-1 of the Constitution, “international treaties, conventions and agreements are ratified in the form of a decree.”⁵

On 15 August, 2002, Haiti signed two of the three optional protocols to the CRC - the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography. Whilst Haiti ratified the latter on 9 September 2014⁶, it is yet to ratify the former.⁷ However, Haiti has not signed the third Optional Protocol to the CRC on a communications procedure.⁸

¹ *Combined second and third reports of Haiti to the UN Committee on the Rights of the Child*, CRC/C/HTI/2-3, 9 March 2015, Introduction, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fHTI%2f2-3&Lang=en.

² *Initial report of Haiti to the UN Committee on the Rights of the Child*, CRC/C/51/Add.7, 21 June 2002, para 9, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f51%2fAdd.7&Lang=en.

³ *ibid*, para 10.

⁴ 1987 Constitution of Haiti, Art. 276-2, available at: https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en.

⁵ 1987 Constitution of Haiti, Art. 276-1.

⁶ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, United Nations Treaty Collection, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en.

⁷ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, United Nations Treaty Collection, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en.

⁸ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, United Nations Treaty Collection, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en.

B. Does the CRC take precedence over national law?

Under the Constitution, the CRC, as a duly approved and ratified international treaty, abrogates any national laws in conflict with it.⁹

C. Has the CRC been incorporated into national law?

The CRC has been incorporated by virtue of being ratified and published, as explained above in part I.A.

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

Because the CRC has been fully incorporated into Haitian law, all its provisions can be directly enforced in Haitian courts.¹⁰

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

According to information provided by a local source, the CRC has been invoked in some cases.¹¹ Although trials are public, no decision has been published in legal reporters or otherwise since 1968, making it difficult to determine precisely how courts have used or applied the CRC or other relevant international instruments.¹² In addition, the law of 1961 on juvenile courts has made children's files confidential.¹³ The only way to learn the details of a given case in which the CRC was invoked is to consult the registers in the court clerk's office of the Court for Minors in Port au Prince.¹⁴

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?

Cases can be brought to challenge violations of children's rights, subject to the provision outlined in parts II.B and III.A below.

Various domestic laws have established specialised juvenile justice institutions to hear cases involving children accused of crimes.¹⁵ However, research did not

⁹ 1987 Constitution of Haiti, Arts. 276, 276-2.

¹⁰ *Initial report of Haiti to the UN Committee on the Rights of the Child*, CRC/C/51/Add.7, 21 June 2002, para 10.

¹¹ E-mail Interview with Judge Joël Cesar (16 July, 2013) ("Yes, there are some cases in which the Children's Rights Convention has been invoked because the Republic of Haiti has signed and ratified the Children's Rights Convention.").

¹² E-mail Interview with Judge Joël Cesar (19 July, 2013) ("Cases have not been published for some time in Haiti. But the trials are public. The constitution of Haiti said all the international conventions signed by Haïti set for law and are above of all the national law. Thus, lawyers invoke all the times the international conventions in the defense of their clients.")

¹³ Comments by Norah A. Jean-François, judge at the Appellate Court of Port-au-Prince.

¹⁴ E-mail Interview with Judge Joël Cesar (July 19, 2013) ("The only way you could learn the details of such cases is to consult the registers in the greffe of child court in Port au Prince.")

¹⁵ Act of July 1952 establishing a section for juvenile delinquency in each civil court; and the Act of September 1961 establishing a juvenile court within each appeal court. These are set out in: International

reveal any domestic laws that specifically facilitate cases involving children as victims of crime or rights violations.

There are several government agencies established to provide social assistance, including children's protection, as discussed in further detail in part III.A. However, these agencies reportedly lack crucial funding and resources and their impact is therefore severely limited.¹⁶

B. If so, are children of any age permitted to bring these claims by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

In Haiti, minors cannot bring lawsuits or consult lawyers by themselves.¹⁷ Article 392 of the Haitian Civil Code defines a minor as a child who has not yet reached the age of 18, which is the age of civil and political majority and matrimonial capability.¹⁸ Majority is a condition that must be satisfied to have the right to bring a case before the courts.¹⁹ Thus, a parent or guardian must bring cases in the domestic courts to challenge violations of the minor's rights on their behalf.²⁰

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

A parent or guardian must bring cases on behalf of infants and young children.²¹

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

The state does not subsidise any form of legal assistance for victims.²² The Legal Assistance Bureau (BAL) which works under the authority of the Ministry of Justice, offers such services but is currently operating in Port-au-Prince only.²³ It has limited capacity and only appears to offer counsel to the accused, not victims bringing a case.²⁴

Human Rights Program University of Toronto Faculty of Law, *Children's Legal Rights in Haiti*, 2008, para 2.3.1, available at:

http://ihrp.law.utoronto.ca/utfl_file/count/documents/Final%20Haiti%20Report.pdf.

¹⁶ *ibid.*

¹⁷ *Initial report of Haiti to the UN Committee on the Rights of the Child*, CRC/C/51/Add.7, 21 June 2002, para 33.

¹⁸ Haitian Civil Code, Article 392, available at: <https://archive.org/details/codécivildhaitia03hait>.

¹⁹ E-mail Interview with Judge Joël Cesar (16 July 2013) (“[A] parent or guardian must always bring a case on behalf of a minor. In Haiti, majority is a condition to have the right to bring a case before courts.”).

²⁰ *Initial report of Haiti to the UN Committee on the Rights of the Child*, CRC/C/51/Add.7, 21 June 2002, para 33.

²¹ *ibid.*

²² Boston Law School, Bureau des Avocats Internationaux, and others, *Access to Judicial Remedies in Haiti*, 12 September 2014, para 5, available at:

http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HTI/INT_CCPR_CSS_HTI_18243_E.pdf.

²³ MINUSTAH, ‘Bureau d’aide Legale: La Justice pour les plus demunis’, 2013, available at: <http://www.minustah.org/bureaux-daide-legale-la-justice-pour-les-plus-demunis/>

²⁴ United Nations Development Program, ‘Legal Aid for Women Victims of Gender Violence in the Caribbean’, January 2014, page 58, available at:

Although the law of 1961 orders the Bar association to provide legal assistance to indigent minors, the reality of this measure is in question.²⁵

Only a small number of civil society organisations, discussed below in Part IV.C, offer legal assistance to victims.

- 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)?

Research did not reveal any further limits on children or legal representatives bringing cases.

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?

Article 261 of the Constitution states that “the law ensures protection for all children.”²⁶ A legal challenge, either civil or criminal, can be initiated by filing a claim in a Peace Court or in a Court of First Instance. According to the 1995 decree on judicial organisation, the Public Prosecutor protects minors and must be involved in all cases relating to minors.²⁷

The Superior Court of Auditors and Administrative Disputes, which acts as an administratively and financially independent court, hears claims by individuals about state administration and public finance.²⁸

An individual can question the constitutionality of a provision during legal proceedings before a court. The matter would then be referred to the Constitutional Council (created in 2011) through the Court of Cassation.²⁹

Lastly, the Senate may constitute itself as the High Court of Justice, with jurisdiction to indict the President, Prime Minister, Ministers, Supreme Court Justices and Members of the Permanent Electoral Council for high treason, abuse of power, or any other serious crimes or offences committed during the discharge of their duties.³⁰ Unfortunately, due to the high levels of corruption, impunity, and severe lack of security for judges, these mechanisms are very

http://www.tt.undp.org/content/dam/trinidad_tobago/docs/DemocraticGovernance/Publications/Legal%20Aid%20and%20Gender%20Violence%20Study.%20UNDP%20RBLAC.%20JAN.%202014.pdf

²⁵ Comments by Norah A. Jean-François, judge at the Appellate Court of Port-au-Prince.

²⁶ Haiti Constitution of 1987, Article 261, available at:

https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en.

²⁷ Decree on the organisation of the judiciary, 22 August 1995, Art. 32, available in French at:

<http://haitijustice.com/pdf/legislation/D%C3%A9cret-relatif-a-l-organisation-judiciaire-haiti-jude-baptiste-avocat.pdf>.

²⁸ Constitution of Haiti, Article 200.

²⁹ Constitution of Haiti, Article 190ter-8.

³⁰ Constitution of Haiti, Articles 185-190.

rarely used in reality.³¹

Outside of the formal legal hierarchy, a complaint could be addressed by one of the available mediation procedures. Children may be able to obtain help through the Office of Citizen Protection, an ombudsman service set up by the Constitution to protect citizens from abuse by the government.³² However, the Committee on the Rights of the Child has pointed out certain significant flaws in the service, namely that it is not fully operational and that there is no independent monitoring mechanism, nor power to receive and address individual complaints of children's rights violations.³³

The Police service BPM (Brigade for the Protection of Minors), which receives government training with the assistance of UNICEF, is a specialised child protection unit.³⁴ It is responsible for all matters in which a minor is involved, and may be of assistance in investigating children's rights violations.³⁵ The BPM is an informational entity, that refers to the Public Prosecutor and does not itself has the power to prosecute children's rights violators.³⁶ However, informants from the BPM noted that there was a lack of follow-up by an ineffective judiciary for any human rights cases submitted.³⁷

Individuals may also have recourse to remedies via various regional mechanisms:

1. Inter-American Commission on Human Rights

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),³⁸ on

³¹ Organisation of American States Inter-American Commission of Human Rights, *Haiti: failed justice or the rule of law? Challenges ahead for Haiti and the International Community*, OEA/Ser/L/V/II.123, October 2005, page 73, available at:

<http://www.cidh.org/countryrep/HAITI%20ENGLISH7X10%20FINAL.pdf>

³² Article 207, Constitution, 'An Office known as the office of Citizen Protection is established to protect all individuals against any form of abuse by the government'.

³³ UN Committee on the Rights of the Child, *Concluding observations on the initial report of Haiti*, CRC/C/15/Add202, 18 March 2003, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.202&Lang=en.

see also: International Human Rights Program University of Toronto Faculty of Law, *Children's Legal Rights in Haiti*, 2008, para 3.2.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ Criminal Instruction Code, Articles 8-9, available in French at :

http://www.oas.org/juridico/mla/fr/hti/fr_hti_mla_instruction.html#_Toc37075854.

³⁷ Duramy, Benedetta Faedi, *Gender and Violence in Haiti*, Rutgers University Press, 2014, page numbers unavailable, available at:

<https://books.google.co.uk/books?id=M-1nAwAAQBAJ&pg=PT106&lpg=PT106&dq=is+the+Brigade+de+protection+de+mineurs+in+Haiti+effective&source=bl&ots=2HtalyAmCy&sig=9PiwVIYp9XJPTB2Yn68r6VZM--o&hl=en&sa=X&ved=0CCgQ6AEwAWoVChMIqbr8m6XYxgIV6QfbCh0NKAF7#v=onepage&q=is%20the%20Brigade%20de%20protection%20de%20mineurs%20in%20Haiti%20effective&f=false>.

³⁸ The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a "dual role" as its mandate

their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights.³⁹ A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.⁴⁰ The petition 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(s) of the victim(s) if possible, and whether the petitioner wishes to remain anonymous and the respective reasons.⁴¹ The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.⁴² When a petition is declared admissible, the IACHR attempts to reach a “Friendly Settlement” between the parties concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the human rights violations, making reparations, and/or making changes to the law.

2. Inter-American Court of Human Rights

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).⁴³ Individuals do not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACtHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.⁴⁴ The Court’s judgments are legally binding on the State against which they are made.

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

Victims of alleged human rights abuses can bring their case before the courts, which have powers to order the cessation of the violation and order damages to be awarded in civil claims.⁴⁵ However, seeking these remedies is reportedly very difficult and rarely successful.⁴⁶ Research did not reveal any further powers available to the courts of first instance or justice of peace courts in the incidence of children’s rights violation. It is unclear whether they can repeal any laws or policies, or ensure that the violation will not be repeated.

is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at: http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm; American Convention on Human Rights, ‘Pact of San Jose, Costa Rica’, Chapter VII, available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

³⁹American Convention on Human Rights, Article 44.

⁴⁰ Rules of Procedure of the Inter-American Commission on Human Rights, Articles 31-32, available at: <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

⁴¹ *Ibid.*, Article 28.

⁴² *Ibid.*, Article 23.

⁴³ *Ibid.*, Article 45.

⁴⁴ American Convention on Human Rights, Article 63.

⁴⁵ United States Department of State, Bureau of Democracy, Human Rights and Labour, *Haiti 2013 Human Rights Report*, page 15, available at: <http://www.state.gov/documents/organization/220661.pdf>.

⁴⁶ *Ibid.*

In the case of a constitutionality challenge, the Constitutional Council can declare a law unconstitutional. It is then transferred to the Parliament which will decide sovereignly on the case. The new provision will then be promulgated.⁴⁷

When hearing cases of abuse of power by the State, the Senate (sitting as the High Court of Justice), may not impose any other penalties than dismissal, disqualification or deprivation of the right or exercise any public office for no less than five years and no more than 15 years.⁴⁸

- C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

It is not possible to challenge a law or action without naming a specific victim.⁴⁹ A challenge involving a violation of children's rights must directly involve one or more individual child victims.

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

Although a specific victim must be named in order to challenge a law or action, group litigation is possible.⁵⁰

- 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 can intervene in cases involving children's rights violations.⁵¹ In order to do so, it is essential that the organisation demonstrates that it has an interest in the dispute.⁵² There is no evidence to suggest that an NGO can file a challenge.

- 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?

The Haitian judicial branch is based on the French system, and is comprised of four tiers. The highest court is the Cour de Cassation (Supreme Court). This is followed by five appeals courts, and 18 first instance tribunals that are spread

⁴⁷ Constitution of Haiti, Article 189ter-8.

⁴⁸ Constitution of Haiti, Article 189-1

⁴⁹ E-mail Interview with Judge Joël Cesar (July 16, 2013) ("Yes, a challenge has to directly involve one or more individual child victims. No, it is not possible to challenge a law or action without naming a specific victim.").

⁵⁰ E-mail Interview with Judge Joël Cesar (July 16, 2013).

⁵¹ *Ibid* ("Yes, NGOs and other third parties can intervene.").

⁵² E-mail Interview with Judge Joël Cesar (July 19, 2013) ("In Haiti, to participate in a trial you must demonstrate some interests. If an NGO intervenes in a domain where children's rights are violated, it can claim some rights. The essential is to demonstrate it has an interest.").

throughout 10 districts.⁵³ The Courts of First Instance have original jurisdiction in civil, commercial and criminal matters, while justices of the peace have jurisdiction in minor claims in these matters.⁵⁴

The Courts of First Instance are equipped to handle civil, criminal, commercial and maritime cases that are not attributed to another court.⁵⁵

The Peace Courts have jurisdiction over misdemeanor cases and may try minor civil and commercial matters in which the amount in controversy does not exceed Gd 25,000 (approximately 690 USD).⁵⁶ Many Justices of the Peace operate out of their homes, do not have a law degree, have not otherwise received sufficient training, and may not be well-versed in current law, including law relating to children's rights.⁵⁷

The law of 1961 mandated the establishment of five children's courts across the country, but to date only one Court for Minors, located in Port-au-Prince, appears to be functioning.⁵⁸ The law provided the Court for Minors with jurisdiction over both civil and criminal matters, and gave the Court authority to treat children who appear before it differently than adults in order to promote their development.⁵⁹ The decree of 20 November 1961 which created the Port-au-Prince Minors Court gave it jurisdiction over the whole country, whilst waiting for the others courts to be set up.⁶⁰ To this day, only two Minors Courts exist - in Port-au-Prince and in Cap-Haïtien.⁶¹ Their magistrates have received no specific training and the Minors Courts lack in human and material resources.⁶²

- 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

⁵³ United Nations Development Program, 'Legal Aid for Women Victims of Gender Violence in the Caribbean', January 2014, page 66.

⁵⁴ Floren-Romero, Marsol, 'Update: Researching Haitian Law,' February 2012, available at: <http://www.nyulawglobal.org/globalex/Haiti1.htm#thelegalsys> and Chapter IV of the Constitution.

⁵⁵ Floren-Romero, Marsol, 'Update: Researching Haitian Law,' February 2012

⁵⁶ ILAC Report: Haiti, International Legal Assistance Consortium, page 17, 2005, available (in French) at: <http://www.ilacnet.org/ilac-work/previous-work/haiti/>

⁵⁷ *Ibid.*

⁵⁸ MINUSTAH and UNOHCHR, *Bi-Annual Report on Human Rights in Haiti: January-June 2012*, October 2012, para 53. Available at: http://www.ohchr.org/Documents/Countries/HT/MINUSTAH-OHCHRJanuaryJune2012_en.pdf.

⁵⁹ Ismene Zarifis, *Minors in Haiti's Prisons*, 2000, page 37, available at: <http://www.wcl.american.edu/hrbrief/08/3zarifis.pdf>

⁶⁰ See article 6 of the Decree, available in French at: http://www.memoireonline.com/09/11/4806/m_Le-systeme-judiciaire-en-Haiti-et-les-obstacles-qui-paraly-sent-son-developpement2.html.

⁶¹ Norah A. Jean-François, *JUSTICE HAITIENNE DES MINEURS (7 septembre 1961- 7 septembre 2011)*, 14 septembre 2011, available in French at: <http://lenouvelliste.com/lenouvelliste/article/96938/Kiyes-ka-rele-pou-timoun-yo>.

⁶² Organisation of American States Inter-American Commission of Human Rights, *Haiti: failed justice or the rule of law? Challenges ahead for Haiti and the International Community*, OEA/Ser/L/V/II.123, October 2005, para 218, available at: <http://www.cidh.org/countryrep/HAITI%20ENGLISH7X10%20FINAL.pdf>

representatives be expected to pay court costs or cover other expenses?

Court clerks and judges impose filing fees and court costs at their complete discretion, making it difficult to predict legal expenses for any given matter.⁶³

Haiti does not have a public defender's office, and child complainants or their representatives are expected to pay court costs and other expenses unless they are able to secure legal aid from outside organisations.⁶⁴

There is a very weak system of legal assistance initiatives which are largely inaccessible to most vulnerable citizens who require them.⁶⁵ What was formerly the National System of Legal Assistance, which ran nationwide programs, is now the Bureau of Legal Aid (BAL) and operates only in Port-au-Prince.⁶⁶ According to local sources, there is insufficient political will to support the BAL which was established predominantly to please international actors.⁶⁷ The lawyers are reportedly under-qualified and poorly remunerated.⁶⁸ Further, the BAL mostly provides assistance for criminal defendants, rather than victims of rights abuses.⁶⁹

- 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 organization, or under an agreement that does not require the payment of legal fees up front?

Child complainants or their representatives may be able to obtain pro bono legal assistance through legal aid organisations operating in Haiti. Two of the most prominent organisations providing free legal aid to Haitians are the PROJUSTICE⁷⁰ project and the Institute for Justice and Democracy in Haiti⁷¹.

Legal costs and lawyers are too expensive for the vast majority of Haitians to pay, creating a large obstruction to justice.⁷² Interviews conducted with locals revealed that the majority believed that victims must pay an 'informal' fee to ensure that their complaint be processed by the court.

- 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

⁶³ Mapping Justice and Rule of Law in Haiti, Interuniversity Institute for Research and Development, at 11 (July 2012) http://www.inured.org/uploads/2/5/2/6/25266591/mapping_justice_and_rule_of_law.pdf.

⁶⁴ E-mail Interview with Judge Joël Cesar (July 16, 2013) ("Apart legal aid which was available through organizations like SYNAL or now a little bit through PROJUSTICE, there is no other kind of legal aid available for minors or their representatives.").

⁶⁵ United Nations Development Program, *Legal Aid for Women Victims of Gender Violence in the Caribbean*, 2014, page 76, available at: http://www.tt.undp.org/content/dam/trinidad_tobago/docs/DemocraticGovernance/Publications/Legal%20Aid%20and%20Gender%20Violence%20Study.%20UNDP%20RBLAC.%20JAN.%202014.pdf

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ Projustice, <http://www.projustice.ht/>

⁷¹ IJDH <http://www.ijdh.org/>

⁷² *Ibid.*

their rights that occurred when they were children?

Pursuant the 2014 law against human trafficking, the minority of the victim is an aggravating circumstance which removes any limitation periods.⁷³ Research could not locate any other child-specific provisions.

- 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 rules of evidence do not usually vary with respect to evidence produced by children.⁷⁴ The ordinary evidence required in criminal law, including witnesses, confession, presumption, and expertise, is needed to prove a violation.⁷⁵

The law against human trafficking states that all measures taken in regards to children victims or witnesses to such acts must follow the principles of the CRC, and in particular the child's right to be heard and the primacy of the child's best interests.⁷⁶

Research did not reveal any other special conditions or limits regarding children testifying in court, nor any special procedures for cases challenging children's rights violations.

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

The Haitian judicial suffers from severe backlog, due to corruption, lengthy procedures, and lack of resources.⁷⁷ Further, cases are often prioritised in accordance with bribes given to the judges or clerks taking the cases.⁷⁸ However, it seems unlikely that juvenile justice, which is extremely reduced in Haiti, works under the same principle.

Overall, the Haitian judicial system suffers from a severe lack of resources and personnel.⁷⁹ It is not uncommon for courts to be physically dilapidated or to lack electricity, computers, faxes or telephones.⁸⁰ Court employees have a high volume of work and receive low salaries, which has been reported to reduce

⁷³ Law on the fight against human trafficking, 28 May 2014, Articles 21 & 30, available in French at : http://www.healthpolicyproject.com/pubs/740_HaitiAntiTraffickingLawFINAL.pdf.

⁷⁴ E-mail Interview with Judge Joël Cesar (July 16, 2013) (“[T]he rules of evidence don’t vary with respect to evidence produced by children.”)

⁷⁵ E-mail Interview with Judge Joël Cesar (July 16, 2013) (In order to prove a violation, the plaintiff must provide “the ordinary classic evidence required in criminal law (witness, confession, presumption, expertise, etc.)”).

⁷⁶ Law on the fight against human trafficking, 28 May 2014, Article 8.

⁷⁷ Boston Law School, Bureau des Avocats Internationaux, and others, *Access to Judicial Remedies in Haiti*, 12 September 2014, para 4, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HTI/INT_CCPR_CSS_HTI_18243_E.pdf.

⁷⁸ *Ibid.*

⁷⁹ MINUSTAH and UNOHCHR, *Bi-Annual Report on Human Rights in Haiti: January-June 2012*, October 2012, para 52.

⁸⁰ *Ibid.*

their ability and motivation to move cases through the system in a timely manner.⁸¹

The situation is particularly dire in Gonaïves, where the major courts were burnt down by rebels, destroying files, and placing extra pressure on staff already severely overburdened with backlogged cases.⁸²

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

Parties must appeal a verdict within ten days of receiving the judgment.⁸³ A decision of a Court of First Instance may be appealed to a Court of Appeal and then to the Supreme Court.⁸⁴ A decision rendered by a Peace Court in a matter with an amount in controversy in excess of Gd 5,000, or approximately 135 USD, may be appealed to a Court of First Instance and then up through the court hierarchy, first to a Court of Appeal and then to the Supreme Court.⁸⁵

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?

According to Haitian law, judicial decisions are considered binding precedent on subsequent cases.⁸⁶ However, judges only refer to case law when the cases are published at the bottom of a code and do not have access to recent precedent or definitive means of knowing if the law they are applying is current.⁸⁷

Furthermore, there are reports that many human rights defenders, or victims attempting to challenge a violation, have reportedly been subjected to incessant death threats, intimidation techniques, and arbitrary detention.⁸⁸ There have also been reports of threats, harassment and intimidation by the police, security forces and political authorities against human rights defenders, journalists and members of the opposition and lack of protection provided by the State.⁸⁹

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

Impunity is a major issue in Haiti because of the systemic corruption that

⁸¹ *Ibid.*

⁸² *Ibid.*, para 25.

⁸³ Embassy of the United States: Port Au Prince, Haiti, *Victims of Crime Assistance*, available at: <http://haiti.usembassy.gov/service/victim-of-crime-assistance.html>

⁸⁴ *Ibid.*

⁸⁵ ILAC Report: Haiti, International Legal Assistance Consortium, page 18, 2005

⁸⁶ E-mail Interview with Judge Joël Cesar (July 19, 2013) (“[A]ccording to Haitian law, judicial decisions are considered binding precedent on cases that follow.”).

⁸⁷ E-mail Interview with Judge Joël Cesar (July 19, 2013) (“[P]recedents are used by judges only when they are published in the bottom of a code. That’s mean judges can’t get access to recent precedents.”).

⁸⁸ Human Rights Watch, World Report 2013: Haiti, available at: <https://www.hrw.org/world-report/2014/country-chapters/haiti>

⁸⁹ UN Human Rights Committee, *Concluding observations on the initial report of Haiti*, CCPR/C/HTI/CO/1, para 19, 21 November 2014. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fCO%2fHTI%2fCO%2f1&Lang=en.

permeates through the Haitian judicial system.⁹⁰ The refusal of the Haitian courts to prosecute former dictator Jean-Claude Duvalier for the wide-spread human rights abuses he committed during his regime, highlights the lack of independence of the judiciary.⁹¹ Further, it shows a lack of political will to hold authority figures accountable, perpetuating the culture of impunity and fear. The international community has condemned Haiti for failing to bring justice to the thousands of people who suffered.⁹²

The justice system reinforces social, political and economic exclusion that prevents the poor from asserting their fundamental rights.⁹³ Class discrimination and elitist legal training condition lawyers, judges and prosecutors to give preferential treatment to the powerful, either based on class prejudice or in search of bribes, while they discount the testimonies and legal needs of the poor.⁹⁴

Poor women and children in particular are extremely marginalised by the justice system due to deep-rooted gender discrimination.⁹⁵ The result is that the administrators of justice at all levels of the judiciary do not consider incidents of violence against women and children as a priority, and do not take these claims seriously.

- 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.

The absence of collected jurisprudence—no decisions have been published since 1968—and the loss of the archives destroyed in the 2010 earthquake are expected to limit the Court's ability to protect human rights.⁹⁶

Haiti's criminal law is based on the 'Napoleonic codes' inherited from the French colonial power.⁹⁷ The penal and procedure codes have significant gaps, internal inconsistencies, and pre-date the development of international human rights developments.⁹⁸ Being so outdated, Haiti's criminal codes do not provide remedies that adequately address many of the crimes committed against children today.⁹⁹ The process of constitutional reform which led to the 1987 Constitution included a catalogue of human rights, yet these have not been systematically represented in the criminal code.¹⁰⁰

⁹⁰ MINUSTAH and UNOHCHR, *Bi-Annual Report on Human Rights in Haiti: January-June 2012*, October 2012, paras 12-14.

⁹¹ Boston Law School, Bureau des Avocats Internationaux, and others, *Access to Judicial Remedies in Haiti*, 12 September 2014, para 26.

⁹² *Ibid.*

⁹³ *Ibid*, para 3.

⁹⁴ *Ibid.*

⁹⁵ Beyond Borders et al submitted to UN Human Rights Committee, *The Plight of Restavèk (Child Domestic Servants)*, 12 September, 2014, para 21.

⁹⁶ MINUSTAH and UNOHCHR, *Bi-Annual Report on Human Rights in Haiti: January-June 2012*, October 2012, para 21.

⁹⁷ United States Institute of Peace, *Building the Rule of Law in Haiti: New laws for a new Era*, 2009, page 2, available at: http://www.usip.org/sites/default/files/haiti_rol.pdf

⁹⁸ *Ibid*, page 3.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

However, significant changes were made to the Labour Code in 2003, which now prohibits forced labor and the use of children in armed conflict and for criminal activities, as well as criminalizes sexual exploitation of children.¹⁰¹

Haiti officially recognises two languages: Creole, which Haitians speak, and French, which only about twenty percent of the population speaks.¹⁰² The lack of French language skills is a significant barrier to full access to the formal judicial system.¹⁰³ Although Article 40 of the Constitution mandates the publication of all laws, orders, decrees and international treaties in both French and Creole, this often does not happen.¹⁰⁴ All court cases are heard and recorded in French and most judicial training is in French.¹⁰⁵

The Government is working to implement the CRC's provisions in practice, including through the codification of protective measures for children through the Family Code.¹⁰⁶ Previously, Haiti intended to institute a separate Children's Code, but such a code was never enacted due to the delay in the review of draft legislation submitted in 1998 and the absence of a functioning Parliament from 1998 until at least 2002.¹⁰⁷ During a Universal Periodic Review session in 2012, Haiti rejected the recommendation to adopt and implement a Children's Code on the basis that the currently developing Family Code is the proper vehicle for children's rights issues.¹⁰⁸

Several government agencies have been established with the task of providing social assistance, which includes children's protection services. In June 2000, the IBESR (Institut de Bien-etre Social et de Recherche) established a service called SOS Timou (SOS Child).¹⁰⁹ The service aims to assist children who are witness or victims of violence or abuse. It has been reported that although the service has managed to remove a significant number of children from domestic servitude or abuse, their inspections have never resulted in fines, penalties, or convictions for the perpetrators.¹¹⁰ A severe lack of human and financial

¹⁰¹ Act on the Prohibition and the Elimination of All Forms of Abuse, Violence, Ill Treatment or Inhuman Treatment Against Children of 2003, published in *Le Moniteur*, May 15, 2003 (available via www.glin.gov).

¹⁰² ILAC Report: Haiti, International Legal Assistance Consortium, 2005, page 20.

¹⁰³ United Nations Development Program, 'Legal Aid for Women Victims of Gender Violence in the Caribbean', 2014, page 76

¹⁰⁴ *Ibid*; see also Constitution of Haiti, Article 40.

¹⁰⁵ ILAC Report: Haiti, International Legal Assistance Consortium, 2005, page 20.

¹⁰⁶ *Initial report of Haiti to the UN Committee on the Rights of the Child*, CRC/C/51/Add.7, 21 June 2002, para 100, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f51%2fAdd.7&Lang=en.

¹⁰⁷ *Initial report of Haiti to the UN Committee on the Rights of the Child*, CRC/C/51/Add.7, 21 June 2002, para 112 ; see also Representing Children Worldwide - Haiti, Yale Law School, http://www.law.yale.edu/rcw/rcw/jurisdictions/caribbean/haiti/frontpage.htm#_edn3 (last edited Dec. 2005).

¹⁰⁸ MINUSTAH and UNOHCHR, *Bi-Annual Report on Human Rights in Haiti: January-June 2012*, October 2012, para 52.

¹⁰⁹ Institut de Bien-etre Social et du Recherche (institute of Social Wellbeing and Research), SOS Timou, available at: <http://ibesr.com/sos%20timoun.html>.

¹¹⁰ US Department of Labour, Bureau of International Labour Affairs, '2001 Findings on the Worst Forms of Child Labour', page 165, available at:

<https://books.google.co.uk/books?id=hobnBY4W8gMC&pg=PA163&lpg=PA163&dq=SOS+timoun&so>

resources mean that it does not facilitate access to justice for victims.¹¹¹

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¹¹¹ International Human Rights Program University of Toronto Faculty of Law, *Children's Legal Rights in Haiti*, 2008, para 3.1, available at:

http://ihrp.law.utoronto.ca/utfl_file/count/documents/Final%20Haiti%20Report.pdf