

ACCESS TO JUSTICE FOR CHILDREN: MALI

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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?

Mali ratified the CRC on 20 September 1990.¹ Upon ratification, Mali made the following reservation: “The Government of the Republic of Mali declares that, in view of the provisions of the Mali Family Code, there is no reason to apply article 16 of the Convention”.² Article 16 of the CRC concerns children’s right to privacy. Provisions in Malian law grant parents, in the exercise of their parental duties, the right to supervise the company their children keep and to censor their correspondence.³

Mali has also ratified or acceded to the Optional Protocols to the CRC on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography, on 16 May 2002.⁴ As at the date of this report, Mali has signed but not yet ratified the Optional Protocol to the CRC on a communications procedure.⁵

Mali is a monist state, meaning that duly ratified treaties and agreements have, from the time of their publication, superior authority over laws of the State.⁶ Therefore, the CRC forms part of national law.

B. Does the CRC take precedence over national law?

¹ *Ratification Status of the Convention on the Rights of the Child*, UNITED NATIONS TREATY COLLECTION, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en.

² *Ibid.*

³ *Second periodic report of Mali to the UN Committee on the Rights of the Child*, CRC/C/MLI/2, 11 April 2006, para. 19 and 228-233, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMLI%2f2&Lang=en.

⁴ *Ratification Status of the Optional Protocol on the involvement of children in armed conflict*, UNITED NATIONS TREATY COLLECTION, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&clang=en; and *Ratification Status of the Optional Protocol on the sale of children, child prostitution and child pornography*, UNITED NATIONS TREATY COLLECTION, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&clang=en.

⁵ *Ratification Status of the Optional Protocol on a communications procedure*, UNITED NATIONS TREATY COLLECTION, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&clang=en.

⁶ 1992 Constitution of Mali, article 116, available at: https://www.constituteproject.org/constitution/Mali_1992.pdf?lang=en.

The CRC takes precedence over national legislation in Mali.⁷

C. Has the CRC been incorporated into national law?

The CRC was automatically incorporated into national law upon ratification. In addition, certain legislative and regulatory steps have been taken to give effect to the CRC, such as the Child Protection Code,⁸ Act n°01-081 of 24 August 2001 concerning the age of criminal responsibility and the establishment of juvenile courts,⁹ and the 2011 Individuals and Family Code.¹⁰

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

According to the 2006 State report to the Committee on the Rights of the Child, the CRC is directly applicable and enforceable in Mali courts.¹¹

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

The CRC has not been invoked in the courts in Mali prior to 2006, and research could not identify any cases citing the Convention since. However, legal professionals do refer to the Child Protection Code, which addresses most of the measures called for by the CRC.¹²

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?

Yes, cases may be brought in domestic courts to challenge violations of children's rights according to the procedures outlined in part III.A below.

Most notably, the Child Protection Code establishes children's courts. The children's judge can be called upon directly by the child who is in danger,¹³ as explained in part III.A below. According to the Child Protection Code, any child (or their representative) can enforce the respect of the rights of the child recognised by that text.¹⁴ However it bears remembering that the Individuals and Family Code, which states that children do not have legal capacity,¹⁵ was

⁷ Ibid.

⁸ Child Protection Code, from the ordonnance No. 02-062 / P-RM of 5 June 2002, available in French at : http://www.law.yale.edu/rcw/rcw/jurisdictions/afw/mali/mali_law.pdf

⁹ Provisions of this Act can be found in: "Recueil sur la minorité - Analyse et commentaires de la législation applicable aux enfants contrevenants, en danger ou victimes d'infraction - MALI", BICE Mali and Kinderrechte Afrika, 2010, available in French at : https://www.crin.org/docs/MALI_Recueil_sur_la_minorite%C3%A9_2010.pdf

¹⁰ Individuals and Family Code, available in French at : http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Mali/mali_family_2011_fr.pdf

¹¹ *Second periodic report of Mali to the UN Committee on the Rights of the Child*, CRC/C/MLI/2, 11 April 2006, para. 26-27.

¹² *Ibid*, para. 31.

¹³ Child Protection Code, Title II, Chapter IV, art. 78.

¹⁴ *Ibid*, Title I, Chapter I, art. 37.

¹⁵ Individuals and Family Code, Book V, Title I, Chapter I, art. 562.

adopted after this provision of the Child Protection Code.

Children who are victims of crimes can report them.¹⁶ However, they will need a representative during legal proceedings, should they wish to start a public action and/or a civil action (see part II.B below).

- 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?

The 2002 Child Protection Code and the 2011 Individuals and Family Code define minors as children under 18.¹⁷ However, children under 18 can be emancipated by marriage,¹⁸ since the minimum age for marriage is 16 for girls. In addition, it is possible in some circumstances for the head of the administrative locality to grant permission to children over 15 to get married.¹⁹ Children over 16 can be emancipated by the declaration of their parents.²⁰ Minors are under their parents' authority and do not have legal capacity,²¹ except for some exceptional cases (such as requesting educative assistance measures, requesting a different administrator for their property...²²

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

Cases regarding the violation of infants and young children's rights would have to be brought by their parents.

Article 3 of the Child Protection Code states that the child's best interest must be the most important consideration in every measure taken by courts or state institutions.²³ To this end, children must be given an occasion to express their opinion during every social or judicial proceedings concerning them.²⁴ The Individuals and Family Code states that the judge can appoint a representative to the child if during legal proceedings it appears that the child's interests are in contradiction with those of their legal representative.²⁵

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

Article 9 of the Constitution grants the right for Malian citizens to access justice.

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¹⁶ Criminal Procedure Code, Title II, Chapter VI, art. 62, available in French at : https://www.unodc.org/res/cld/document/mli/loi-n-01-080-du-20-aout-2001-portant-code-de-procedure-penale_html/Mali_Code_de_procedure_penale.pdf

¹⁷ Child Protection Code, Preliminary Title, Chapter I, art. 2; and Individuals and Family Code, Book VI, Title I, art. 609.

¹⁸ Individuals and Family Code, Book VI, Title III, art. 698.

¹⁹ Ibid, Book II, Title II, Chapter I, art. 281.

²⁰ Ibid, Book VI, Title III, art. 699.

²¹ Ibid, Book V, Title I, Chapter I, art. 562.

²² Ibid, Book VI, Title I, art. 612.

²³ Child Protection Code, Preliminary Title, Chapter I, art. 3.

²⁴ Ibid, art. 9.

²⁵ Individuals and Family Code, Book VI, Title I, art. 611.

²⁶ Comments provided by Kadidia Sangaré, President of the Mali National Human Rights Commission,

Mali has legislated on the organisation of legal aid for people who do not have sufficient resources to bring a legal claim or defend themselves in court,²⁷ by voting a law on legal aid in 2001.²⁸ Legal aid covers the court and the lawyer fees, in civil, criminal and administrative trials, the enforcement costs for the judgement and the appeal costs.²⁹ The legislation provided for the creation of legal assistance offices in every lower level court in order to decide upon the requests for legal aid;³⁰ however this has only been acted upon in a few courts.³¹ The decisions of these offices cannot be appealed.³² Legal aid is granted to those who can demonstrate indigency,³³ through the production of several official documents. Associations and NGOs can apply for legal aid.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)?

Research did not identify other conditions or limits. The consent of the parents is not necessary for the child to bring a case before the children's judge.

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?

Individuals and organisations may seek civil remedies for human rights violations.³⁵ Civil claims may be brought by any individual by way of a writ of summons filed with the competent tribunal.³⁶

In regards to criminal matters, a public action (*l'action publique*) can be brought by the public prosecutor or by the victim of the criminal offense.³⁷ When a public action is initiated by the public prosecutor, the victim has the right to

on 7 September 2015. See also Constitution, art. 9.

²⁷ "Access to Justice assessment for Mali", American Bar Association, January 2012, p. 26, available at : http://www.americanbar.org/content/dam/aba/directories/roli/mali/mali_access_to_justice_assessment_2012.authcheckdam.pdf.

²⁸ Comments provided by Kadidia Sangaré, President of the Mali National Human Rights Commission, on 7 September 2015.

²⁹ *Ibid.*

³⁰ Decree No. 06-426 fixing the Methods of Application of the Law on Legal Assistance, 6 October 2006, art. 2 and 12, available in French at : http://demarchesadministratives.gouv.ml/files/upload/justice/mali_decret_assistance_judiciaire.pdf.

³¹ "Access to Justice assessment for Mali", American Bar Association, January 2012, p. 25.

³² Comments provided Kadidia Sangaré, President of the Mali National Human Rights Commission, on 7 September 2015.

³³ "Access to Justice assessment for Mali", American Bar Association, January 2012, p. 27.

³⁴ Decree No. 06-426 fixing the Methods of Application of the Law on Legal Assistance, 6 October 2006, art. 13.

³⁵ "Human Rights Report - Mali", US Department of State, 2014, available at :

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236380>.

³⁶ "Vers une nouvelle culture judiciaire au Mali : La réécriture du Code de Procédure Civile, Commerciale et Sociale (CPCCS)", Jurifis Consult, May/June 2009, p. 3, available in French at : http://www.jurifis.com/wp-content/uploads/2014/06/Rev_Jurifis_Info_N_3.pdf.

³⁷ Criminal Procedure Code, Title I, Chapter I, art. 3.

form a civil action (*l'action civile*). This civil action for the damages caused directly by the crime belongs to all who have personally suffered from these damages,³⁸ and the damages claimed can be corporal, material and/or moral.³⁹ The victim can either join the criminal proceedings as a civil party (*partie civile*),⁴⁰ or bring civil action separately from the public action. It is then dealt with as a civil case, but is deferred until the public action has been definitively adjudicated.⁴¹ If the state fails to properly investigate or prosecute a crime, a victim can also initiate a prosecution by bringing a complaint directly to the competent court. A concurrent civil action is then automatically filed alongside of it.⁴²

Child protection proceedings regarding a child at risk may be commenced in a children's court at the request of the child themselves, a parent, tutor or guardian, any agency regarding children's rights, the public prosecutor, one of various government agencies, or any public or private institution that has taken in the child.⁴³ Several situations are referred to by the Child Protection Code as difficult and threatening to the child's health, development, and moral or physical integrity :

- the death of the child's parents, who then remains without familial support;
- the child's abandonment;
- the child's exposure to negligence or vagrancy;
- the renowned and continuous lacking in the child's education and protection;
- regular abuse of the child;
- the child's sexual exploitation;
- the child's exposure to sexual abuse, to begging and economic exploitation, to organised crime, to armed conflict, or to unhealthy practices;
- the parents or tutors' inability to ensure the child's protection and education.⁴⁴

In addition, the children's court can seize itself.⁴⁵

Administrative claims can be filed with one of Mali's three administrative courts. They have the power to verify the legality of administrative acts, to receive cancellation requests for acts taken by administrative authorities, as well as claims for damages caused by the administration's acts.⁴⁶

Individuals and organisations in conflict with an administrative entity who have already carried out the necessary appeals to the administration may at any time file a complaint with the Mediator of the Republic (*Médiateur de la*

³⁸ Ibid, art. 4.

³⁹ Ibid, art. 5.

⁴⁰ Ibid.

⁴¹ Ibid, art. 6.

⁴² Ibid, Title II, Chapter VI, art. 62.

⁴³ Child Protection Code, Title II, Chapter IV, article 78.

⁴⁴ Ibid, Chapter I, art. 50.

⁴⁵ Child Protection Code, Title II, Chapter IV, article 78.

⁴⁶ "Guide to legal research in Mali", Globalex, July 2008, available at :

<http://www.nyulawglobal.org/Globalex/Mali1.htm>.

République).⁴⁷ It is reported that “prisoners and detainees may submit complaints, either directly or through the office of the Mediator, to judicial authorities without censorship to request investigation of credible allegations of inhuman conditions”.⁴⁸

The National Commission for Human Rights (*Commission Nationale des Droits de l’Homme* “CNDH”) is a monitoring and consultative entity which can also receive complaints of human rights violations from individuals, or examine such situations of its own accord.⁴⁹

Moreover, the following regional mechanisms are available to challenge children’s rights violations:

1. *African Committee of Experts on the Rights and Welfare of the Child*
Individuals, including child victims, their parents or legal representatives, groups, or NGOs recognised by the African Union may submit complaints (known as “communications”) to the African Committee of Experts on the Rights and Welfare of the Child (“African Committee”) about violations of the African Charter on the Rights and Welfare of the Child (“African Children’s Charter”).⁵⁰ All available domestic remedies must have been exhausted before bringing a case to the African Committee.⁵¹ The complaint must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, and whether or not the complainant wishes to remain anonymous and the reasons for this.⁵² 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.⁵³

2. *African Commission on Human and Peoples’ Rights*
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”).⁵⁴ All available domestic remedies must

⁴⁷ Law n° 97-022 creating the Mediator of the Republic, 14 March 1997, art. 9, available in French at : <http://www.sgg.gov.ml/Journal0/L97022.pdf>.

⁴⁸ “*Human Rights Report - Mali*”, US Department of State, 2014.

⁴⁹ Law n° 09-042 on the National Commission for Human Rights, 19 November 2009, art. 2, available in French at : <http://www.cndhmali.org/images/stories/PDF/loic.pdf>.

⁵⁰ 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/>.

⁵¹ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at: <http://acerwc.org/the-committees-work/communications/>.

⁵² 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>.

⁵³ Ibid.

⁵⁴ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

have been exhausted before bringing a case to the African Commission.⁵⁵ 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.⁵⁶ 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.⁵⁷ 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.⁵⁸

3. *African Court on Human and Peoples' Rights*

Individuals or NGOs with observer status before the African Commission may bring their case to the African Court on Human and Peoples' Rights⁵⁹ alleging violations of the African Charter.⁶⁰ All available domestic remedies must have been exhausted before bringing a case to the Court.⁶¹ The complaint must include, amongst other things, details of the applicant's identity, notwithstanding his/her request to remain anonymous.⁶² The complaint must be written in one of the official languages of the Court,⁶³ and must be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court.⁶⁴ Applicants are entitled to be represented or to be assisted by legal counsel and/or

⁵⁵ Ibid., Article 56(5).

⁵⁶ 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/>.

⁵⁷ 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>.

⁵⁸ 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>.

⁵⁹ The African Court on Human and Peoples' Rights will be incorporated into the African Court of Justice and Human Rights once the Protocol on the Statute of the African Court of Justice and Human Rights comes into force. The Court's Human Rights Section will have jurisdiction over human rights instruments including the African Charter on the Rights and Welfare of the Child and the African Charter on Human and Peoples' Rights. Individuals and NGOs accredited to the African Union or its organs will be able to submit complaints to the Court provided that the State concerned has made a declaration recognising the Court's competence to receive such complaints: see A4ID, 'African Court of Human and Peoples' Rights', 27 February 2012, available at: <http://www.a4id.org/sites/default/files/user/African%20Court%20of%20Human%20and%20People%27s%20Rights.pdf>; Mali has ratified this Protocol.

⁶⁰ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, Articles 5(3) and 34(6), available at: <http://www.achpr.org/instruments/court-establishment>.

⁶¹ Ibid., Article 6(2).

⁶² African Court on Human and Peoples' Rights - Rules of Court, Rules 34 and 40, available at: http://www.african-court.org/en/images/documents/Court/Interim%20Rules%20of%20Court/Final_Rules_of_Court_for_Publication_after_Harmonization_-_Final_English_7_sept_1_.pdf.

⁶³ Ibid., Rule 34; the official languages of the Court are: Arabic, English, French, Portuguese, Spanish, Kiswahili and any other African language.

⁶⁴ Ibid., Rule 40.

by any other person of the applicant's choice.⁶⁵ The Court may, in the interest of justice, provide free legal representation and/or legal assistance to the applicant.⁶⁶ If the Court finds that there has been a violation of the African Charter, it will make "appropriate orders to remedy the violation, including the payment of fair compensation or reparation".⁶⁷

4. ECOWAS Community Court of Justice

Finally, 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.⁶⁸ This includes acts or inaction of Community Officials which violate the rights of individuals.⁶⁹ 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.⁷⁰ There are, however a number of conditions: the complaint must not be anonymous or be pending before another international court,⁷¹ representation by an agent or lawyer is required,⁷² 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.⁷³ Judgments of the Court of Justice are binding on the Member States, Institutions of the Community, individuals and corporate bodies.

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

Civil claims, in civil courts and in criminal courts, can lead to restitution and compensation.⁷⁵ In criminal cases, should the defendant's funds be insufficient to cover the totality of their debts, the payment to the victim of the restitution and/or compensation will take priority over fines.⁷⁶ In addition, the civil judge may take urgent temporary measures, at the request of one party, to preserve

⁶⁵ Ibid., Rule 28.

⁶⁶ Ibid., Rule 31.

⁶⁷ Ibid., Article 27(1).

⁶⁸ 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.

⁶⁹ Ibid., Article 4; Protocol on the Community Court of Justice, Article 10(c).

⁷⁰ 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>.

⁷¹ Supplementary Protocol A/SP.1/01/05, Article 4; Protocol on the Community Court of Justice, Article 10(d),

⁷² Protocol on the Community Court of Justice, Article 12.

⁷³ Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).

⁷⁴ 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.

⁷⁵ Civil Procedure Code, 1999 version, Title XI, Chapter IV, art. 533, available in French at: <http://www.droit-afrique.com/images/textes/Mali/mali%20-%20procedure%20civile%20commerciale%20et%20sociale.pdf>; for some amendments introduced by the decree n°09-220/P-RM of 11 May 2009, see: *Recueil sur la minorité - Analyse et commentaires de la législation applicable aux enfants contrevenants, en danger ou victimes d'infraction - MALI*, BICE Mali et Kinderrechte Afrika, 2010. See also Criminal Procedure Code, Title I, Chapter I, art. 6.

⁷⁶ Criminal Procedure Code, Title I, Chapter II, art. 21.

their rights.⁷⁷

In the situation where a child is at risk, the children's judge may decide during the instruction of the case that the child be taken away from their family as an urgent and temporary safety measure.⁷⁸ If the familial environment is deemed too dangerous for the child to stay in, the judge can order, for a determined period of time, for the child to be placed under the responsibility of a guardian, another family, a public or private specialised educational institution, the delegate for child welfare, a medical establishment, psycho-educational institution, place the child in an appropriate training centre or educational institution, and/or request that medical or psychiatric checks be carried out.⁷⁹

Administrative courts have the power to annul administrative acts, and can sentence the administration to pay the claimant monetary damages.⁸⁰

The Mediator cannot intervene in judicial proceedings nor question a legal judgement. He can give out recommendations to the administrations involved in the complaints brought to him/her. He is helped in his investigations by the administration.⁸¹

The CNDH examines the complaints it receives and can refer them to the appropriate entities⁸² (courts, NGOs etc).⁸³

- 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?

No specific provisions could be found permitting the challenge of a law or action without the naming of a specific victim.

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

Research could not identify any specific provision relating to collective action.

- 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?

⁷⁷ Civil Procedure Code, Title X, Chapter II, art. 490.

⁷⁸ Child Protection Code, Title II, Chapter IV, art. 80.

⁷⁹ Child Protection Code, Title II, Chapter IV, art. 86.

⁸⁰ "Guide to legal research in Mali", Globalex, July 2008.

⁸¹ Law n° 97-022 creating the Mediator of the Republic, 14 March 1997, art. 11-16.

⁸² Law n° 09-042 on the National Commission for Human Rights, 19 November 2009, art. 2.

⁸³ "Annual report of the CNDH", 2013, p. 67, available in French at :

<http://www.cndhmali.org/images/stories/PDF/rapport2013.pdf>.

Child protection proceedings in a children's court can be initiated following a request, whether written or otherwise, from organisations focused on the defence or protection of children's rights or from private institutions taking care of an abandoned child.⁸⁴ In addition, according to the Child Protection Code, the child who committed a crime will be appointed counsel. If no lawyer is appointed, any individual or legal person (aka organisation) with an interest in children's issues may fulfil the office.⁸⁵

Legal persons are allowed to file civil claims according to the Civil Procedure Code.⁸⁶ They may also be called to intervene in civil proceedings.⁸⁷

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 or criminal proceedings may be brought in courts of first instance (*Tribunaux de Première Instance*) or before justices of the peace (*Justices de Paix à Compétence Étendue*). The courts of first instance are lower level courts which hear civil cases that do not exceed 100,000 francs CFA. They also have competence to try criminal cases that are classified as “*délits*” (offences punishable by a short prison sentence and/or fine) and “*contraventions*” (misdemeanors).⁸⁸ Justices of the peace have the same jurisdiction as courts of first instance, but are staffed by a single judge, who also acts as prosecutor and examining magistrate. They exist in areas where there are no courts of first instance.⁸⁹ The Court of Assizes (*cour d'assises*) tries the most serious category of criminal offences by jury trial.⁹⁰

As stated in part III.A, the plaintiff (*demandeur*) begins a civil action by serving a subpoena on the opposing party (*défendeur*).⁹¹ In criminal matters, the public action is started by the public prosecutor or by the victim filing a complaint with the court of first instance or the justice of peace.

Proceedings involving children in conflict with the law or children in need of protection are brought before children's judges (*juges pour enfants*).⁹² Children's

⁸⁴ Child Protection Code, Title II, Chapter IV, art. 78.

⁸⁵ See in “*Recueil sur la minorité - Analyse et commentaires de la législation applicable aux enfants contrevenants, en danger ou victimes d'infraction - MALI*”, BICE Mali and Kinderrechte Afrika, 2010: Act No. 01-081 concerning the age of criminal responsibility and the establishment of juvenile courts, 24 August 2001, art. 30-31.

⁸⁶ Civil Procedure Code, Title IV, Chapter I, art. 55.

⁸⁷ *Ibid.*, Title V, Chapter III, art. 207.

⁸⁸ “*Guide to legal research in Mali*”, Globalex, July 2008.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ “*Vers une nouvelle culture judiciaire au Mali : La réécriture du Code de Procédure Civile, Commerciale et Sociale (CPCCS)*”, Jurifis Consult, May/June 2009, p. 3.

⁹² Child Protection Code, Title II, Chapter IV, art. 77, and Title II, Chapter I, art. 98.

judges are supposed to have special knowledge in children's issues,⁹³ but unfortunately due to lack of training, it isn't true for all children's judges.⁹⁴ When a child is at risk, the people listed in part III.A can ask the children's judge to step in, through a written or oral request.⁹⁵

The administrative courts have jurisdiction over all claims relating to administrative issues.⁹⁶

The Courts of Appeals (*cours d'appel*) hears appeals from all lower level civil, criminal and administrative courts.⁹⁷

The Supreme Court is the highest court for administrative and judicial matters. The Supreme Court's judicial section reviews the legality of court decisions, and determines whether Malian laws have been properly interpreted and applied. The judicial section is divided into five chambers, including for civil, criminal and administrative matters.⁹⁸

It must be noted that Mali is one of the biggest countries in Africa. As courts are generally located in the regional capital, the rural population must often travel a great distance to access justice. In addition, most of the judicial claims are not definitively settled at first instance and are usually referred to a Court of Appeal, of which there are only three in Mali. It is particularly difficult in the north of the country : the competent Court of Appeal in Mopti covers a territory which amounts to about two thirds of the whole of Mali. A litigant from the north of the country appealing his/her case could very well travel a thousand kilometers to the Court of Appeals.⁹⁹ In criminal matters, for misdemeanors and lesser crimes, the law provides for the possibility to hold "*audiences foraines*", where a judge is sent to rural locations to give justice.¹⁰⁰

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

The legislative provisions on eligibility for legal aid are vague: the law does not define the exact criteria for a person to be considered indigent. As the majority of Mali's population lives under the extreme poverty level, there is a risk that the legislation is applied inconsistently.¹⁰¹ Applicants must provide several

⁹³ Ibid, Title III, Chapter II, art. 126.

⁹⁴ "Recueil sur la minorité - Analyse et commentaires de la législation applicable aux enfants contrevenants, en danger ou victimes d'infraction - MALI", BICE Mali and Kinderrechte Afrika, 2010, p. 62-63.

⁹⁵ Child Protection Code, Title II, Chapter IV, art. 78.

⁹⁶ "Guide to legal research in Mali", Globalex, July 2008.

⁹⁷ Ibid.

⁹⁸ Law n° 96-071 on the functioning of the Supreme Court, 16 December 1996, available in French at : <http://www.sgg.gov.ml/Journal0/L96-071.pdf>.

⁹⁹ "Access to Justice assessment for Mali", American Bar Association, January 2012, p. 32-33.

¹⁰⁰ Criminal Procedure Code, Title XI, Chapter VII, art. 603.

¹⁰¹ "Access to Justice assessment for Mali", American Bar Association, January 2012, pp. 26-27; see also "Annual report of the CNDH", 2013, p. 28.

documents for their demand to be valid, which is a further obstacle considering the low literacy level in Mali.¹⁰² The legal aid system is not yet fully operational, and legal assistance offices are located only in a limited number of courts. Those that are operational only cover court fees and do not pay for lawyers' fees.¹⁰³

The cost of filing legal claims, which would often include bribes as well as the official fees, is reported to be a significant obstacle to access to justice.¹⁰⁴

In all criminal matters, the civil party must pay the court costs upfront.¹⁰⁵ If the accused is acquitted, the party that initiated the public action may also be required to pay further costs and even to pay damages to the accused.¹⁰⁶

In civil cases, the claimant is also required to pay the court costs prior to the start of the procedure.¹⁰⁷ If a party loses, they may be required to pay the costs incurred by the court and an opponent.¹⁰⁸

Under the legal aid system, when a party is declared indigent, an attorney should be provided at public expense and all court fees are waived (including the fees that a civil party must pay in criminal cases if he or she initiates the public action). However, if the decision sentences the party who benefitted from legal aid to pay costs, he/she will have to reimburse the state.¹⁰⁹ Of course, this system depends on the implementation of legal assistance offices, which have yet to be installed in most jurisdictions.¹¹⁰

- 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?

As of 2012, Mali has nearly 315 lawyers to serve a population of over 14 million. Most of them are located in the capital, Bamako, with very few operating in the rest of the country. Lawyers' fees are "set freely by the lawyer and his client in compliance with the rules and customs of the profession".¹¹¹

A system of paralegal services has been developed in Mali to provide legal assistance at the community level. Paralegals are not necessarily academically trained lawyers, but have sufficient legal knowledge to assist people with their legal problems and work on a voluntary basis.¹¹² As of February 2015, 123 community-based paralegals are currently active in seven regions in Mali.¹¹³

¹⁰² *Ibid.*

¹⁰³ "Access to Justice assessment for Mali", American Bar Association, January 2012, p. 26.

¹⁰⁴ *Ibid.*, p. 33.

¹⁰⁵ Criminal Procedure Code, Title II, Chapter VI, art. 63.

¹⁰⁶ *Ibid.*, art. 64.

¹⁰⁷ Civil Procedure Code, Title I, Chapter IV, art. 35.

¹⁰⁸ "Access to Justice assessment for Mali", American Bar Association, January 2012, p. 33.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*, p. 26.

¹¹² "Guide to legal research in Mali", Globalex, July 2008.

¹¹³ "Report highlights important role of paralegals in post-crisis Mali", Danish Institute for Human Rights, 6 February 2015, available at :

Several associations in Mali frequently replace ailing public institutions that lack sufficient resources to serve children in need of legal assistance. NGOs such as *Avocat sans Frontières* (Lawyers Without Borders),¹¹⁴ BNCE Mali,¹¹⁵ and DEME-SO,¹¹⁶ offer services that range from counselling to legal education and legal advice consultations.

- 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, the limitation periods to bring about criminal proceedings differ depending on the seriousness of the crime : 10 years from the date of the crime for major crimes, three years for lesser crimes, and one year for misdemeanours.¹¹⁷ A civil action for the damages resulting of those crimes cannot be started after the end of these limitation periods.¹¹⁸ In addition, international crimes (war crimes, crimes against humanity and genocide) are imprescriptible.¹¹⁹

Research did not identify any provisions suspending limitation periods during minority.

- 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 Child Protection Code states that children are allowed to testify in all judicial proceedings concerning them.¹²⁰

In the case of a child in danger, the children's judge typically hears testimony from the child as well as the parents or guardian.¹²¹ The judge may decide that the child will not attend the oral pleadings if the judge believes that the child's absence from oral pleadings is in the child's best interest. However, in such a case, the legal representative of the child must attend the pleadings.¹²² When a child is in conflict with the law, police officers cannot question him/her without first notifying either the public prosecutor or a children's judge. The child must be accompanied by his/her parents, guardian, tutor or legal counsel.¹²³ The child's trial is closed to the public and strictly personal (only one defendant at a

<http://www.humanrights.dk/news/report-highlights-important-role-paralegals-post-crisis-mali>.

¹¹⁴ <http://www.asf-network.org/web/fr/43-avocats-sans-frontieres-mali.php>.

¹¹⁵ <http://bice.org/en/bureau-national-catholique-de-l-enfance-mali-bnce-mali/>.

¹¹⁶ <http://www.agirpourlesdesc.org/francais/qui-sommes-nous/article/clinique-juridique-deme-so?lang=fr> ; see also: <http://www.cnpcpmali.org/pages/demeso.html>.

¹¹⁷ Criminal Procedure Code, Title I, Chapter II, art. 9 to 11.

¹¹⁸ Ibid, art. 12.

¹¹⁹ Penal Code, Book III, Title I, art. 29 to 32, available in French at :

<http://www.droit-afrique.com/images/textes/Mali/mali%20-%20code%20penal.pdf>.

¹²⁰ Child Protection Code, Preliminary Title, Chapter I, art. 9.

¹²¹ Ibid, Title II, Chapter IV, art. 85.

¹²² Ibid.

¹²³ Ibid, Title III, Chapter III, art. 139.

time).¹²⁴

In criminal trials, evidence can be brought about in any form, and the judge will rule according to his/her conviction.¹²⁵ Anyone can be heard as witness, and children under 18 do not swear an oath.¹²⁶

In civil trials, each party must prove his/her own claim.¹²⁷ Anyone can be heard as a witness.¹²⁸

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

Civil courts must issue a judgment within three months following trial.¹²⁹ Aside from this regulation, there are few limits in law on how long courts may take to decide cases.¹³⁰

In general, the judicial process in Mali is slow, which is considered to be a significant obstacle to access to justice. According to the American Bar Association, while there are no reliable statistics on the average duration of civil or criminal cases in Mali, cases can take years to resolve, which dissuades many litigants from filing claims.¹³¹ Delays in the judicial process are caused by a number of factors, including “the difficulty of serving parties who have no fixed address; the failure of clerks to schedule cases for hearings; the difficulty that magistrates face in collecting the evidence necessary to decide a case; time taken by courts to draft judgments”; neglect and mismanagement within the Malian judiciary; and insufficient staffing and logistical constraints.¹³²

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

Decisions of first instance courts (*Tribunaux de Première Instance* and *Justices de Paix à Compétence Étendue*) in civil and criminal cases, and administrative courts, may be appealed to the Court of Appeal. There are currently three Courts of Appeal, which are located in Bamako, Kayes and Mopti.¹³³ Decisions made by children’s courts may be appealed to the special minors division of the Court of Appeal.¹³⁴ Such appeals may be filed by the child themselves or by the child’s legal representative, protection representative, parent or guardian.¹³⁵

When a party is not satisfied with a judgment of an appeals court, they can start a cassation procedure at the Supreme Court. Decisions of the Court of Assizes

¹²⁴ Ibid, art. 162.

¹²⁵ Criminal Procedure Code, Title VII, Chapter III, art. 412.

¹²⁶ Ibid, Title VI, Chapter V, art. 317.

¹²⁷ Civil Procedure Code, Title I, Chapter I, art. 9.

¹²⁸ Ibid, Title V, Chapter IV, art. 219.

¹²⁹ Civil Procedure Code, art. 458, in: “*Vers une nouvelle culture judiciaire au Mali : La réécriture du Code de Procédure Civile, Commerciale et Sociale (CPCCS)*”, Jurifis Consult, May/June 2009, p. 4.

¹³⁰ “*Access to Justice assessment for Mali*”, American Bar Association, January 2012, p. 33-34.

¹³¹ Ibid.

¹³² “*Human Rights Report - Mali*”, US Department of State, 2014.

¹³³ “*Guide to legal research in Mali*”, Globalex, July 2008.

¹³⁴ Child Protection Code, Title III, Chapter III, art. 135

¹³⁵ Ibid, Title II, Chapter IV, art. 87.

regarding serious crimes may also be appealed to the Supreme Court.¹³⁶

- 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 the Constitution, the judicial power is independent from the executive and legislative powers.¹³⁷ It appears however that the executive exerts influence over the judicial system, with bribery, corruption and influence peddling being widespread in the courts.¹³⁸ In those circumstances, political backlash seems likely.

Although the Constitution provides for the protection of the independence of the magistrature through the High Judicial Council, its effectiveness can be doubted. Magistrates' salaries are very low, which favours corruption, and acts of corruption go unpunished.¹³⁹

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

It is reported that there were problems enforcing court orders as sometimes judges were absent from their assigned areas for months at a time.¹⁴⁰

The enforcement of a decision is further complicated by the level of poverty in Mali as often the losing party will not have the funds to satisfy a judgement. Moreover, there are costs tied with the enforcement of a decision: the fee for the court document stating that the judgement can be enforced, the payment to the execution officer which usually amounts to 10% of the sum recovered, and the possible costs for the involvement of law enforcement. Finally, corruption and social conventions make it difficult to enforce judgements against people in a position of power.¹⁴¹

- 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.

Customary law

Customary law is widely used in rural areas. Although there are many variations of it, it usually consists of local versions of Sharia law and sometimes of ethnic customs. It is invoked through informal justice and can lead to discriminatory decisions against vulnerable populations, such as women and children.¹⁴²

¹³⁶ "Guide to legal research in Mali", Globalex, July 2008.

¹³⁷ Constitution, art. 81.

¹³⁸ "Freedom in the World 2015 - Mali", Freedom House, 2015, available at : <https://freedomhouse.org/report/freedom-world/2015/mali#.VZYcNUbZV-Q>; "Human Rights Report - Mali", US Department of State, 2014.

¹³⁹ "Access to Justice assessment for Mali", American Bar Association, January 2012, pp. 38-39.

¹⁴⁰ "Human Rights Report - Mali", US Department of State, 2014.

¹⁴¹ "Access to Justice assessment for Mali", American Bar Association, January 2012, pp. 43-44.

¹⁴² "Guide to legal research in Mali", Globalex, July 2008.

Traditional courts and authorities

With only a single first instance court for each circle (the subdivisions of Mali's eight regions), the distance that litigants must travel to court is a significant obstacle to access to justice. As a result, traditional or informal authorities, including family elders, religious leaders, traditional communicators (*griots*) and local government actors, such as village chiefs, decide the vast majority of disputes, particularly in rural areas. Informal authorities tend to use mediation to resolve conflicts. Litigation is only, if ever, utilised when a conflict cannot be resolved by informal authorities.¹⁴³ While informal authorities are convenient and cost-effective, they do not provide the same rights as civil and criminal courts.¹⁴⁴ For example, where domestic violence occurs, traditional authorities are concerned with preserving family unity rather than respecting the rights of the victims.¹⁴⁵

Current political situation

After a decade of being praised as a model African democracy, Mali fell to civil war in 2012. Tuaregs independentists and Islamic groups fought against the army and each other in the northern part of the country, and a coup took place soon after. Quickly, the islamists took control of the north of Mali and enforced their form of Sharia law. In 2013, with French military support control over most of the territory of Mali was regained. Presidential elections took place in the summer of 2013 and since then the political situation has been more or less stable.¹⁴⁶ The Alger peace agreement, negotiated between the government and the Tuaregs, was signed in June 2015.¹⁴⁷ A year later, fighting had resumed in the north of Mali between hostile groups.¹⁴⁸

According to Human Rights Watch, during 2014, there was progress in re-establishing the judiciary in the northern regions Timbuktu and Gao, as some courts were reopened. However, despite the continuous presence of French and African countries' forces on the ground, the security situation is still precarious and it is near impossible to conduct investigations outside major towns.¹⁴⁹ Moreover, the national justice system remains largely absent in the North.¹⁵⁰

¹⁴³ "Freedom in the World 2015 - Mali", Freedom House, 2015; "Human Rights Report - Mali", US Department of State, 2014; "Access to Justice assessment for Mali", American Bar Association, January 2012, pp 34-35.

¹⁴⁴ "Human Rights Report - Mali", US Department of State, 2014.

¹⁴⁵ "Access to Justice assessment for Mali", American Bar Association, January 2012, pp 34-35.

¹⁴⁶ "Mali crisis: key players", BBC, 12 March 2013, available at :

<http://www.bbc.co.uk/news/world-africa-17582909>.

¹⁴⁷ "Mali: les défis de la mise en œuvre de l'accord de paix", RFI, 21 June 2015, available in French at :

<http://www.rfi.fr/afrique/20150621-signature-accord-paix-mali-maintenant-mise-oeuvre>.

¹⁴⁸ "Au Mali, la situation se dégrade au nord et au centre du pays", *Le Monde*, 22 July 2016, available in French at :

http://www.lemonde.fr/afrique/article/2016/07/22/au-mali-la-situation-se-degrade-au-nord-et-au-centre-du-pays_4973538_3212.html#dsZXduty9LtXpiqA.99.

¹⁴⁹ "World report 2015 - Mali", Human Rights Watch, 2015, available at :

<http://www.hrw.org/world-report/2015/country-chapters/mali>.

¹⁵⁰ "Freedom in the World 2015 - Mali", Freedom House, 2015.

According to reports, the Malian justice system has so far largely failed to provide justice to victims of the 2012–13 conflict.¹⁵¹ Supreme Court orders passed in 2013 permitted a Bamako court to hear criminal cases from the three northern provinces, and during 2014, dozens of families filed complaints to judicial authorities. With few exceptions, these authorities failed to investigate any of these cases or others that human rights groups and journalists brought to their attention.¹⁵²

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

¹⁵¹ *Ibid*; “What is next for Mali”, Oxfam, 5 february 2014, available at :

<https://www.oxfam.org/sites/www.oxfam.org/files/bn-mali-four-priorities-governance-050214-en.pdf>.

¹⁵² “World report 2015 - Mali”, Human Rights Watch, 2015.