

ACCESS TO JUSTICE FOR CHILDREN: ANGOLA

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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?

Angola ratified the CRC on 5 December 1990.¹ Under the Angolan Constitution, fundamental rights include those rights contained in the laws and applicable rules of international law, including the CRC.² Furthermore, constitutional and legal precepts relating to fundamental rights must be “interpreted and incorporated” in accordance with ratified international treaties on the subject.³

The first and second Optional Protocols of the CRC were ratified on 24 March 2005 and 11 October 2007 respectively. The third Optional Protocol concerning the individual complaints mechanism has not yet been signed or ratified by Angola.

B. Does the CRC take precedence over national law?

Treaties are only valid if in accordance with the Constitution.⁴ At the same time, constitutional and legal dispositions relating to fundamental rights must be interpreted in accordance with the CRC and other relevant international treaties.⁵ Hence, the CRC in effect takes precedence over national law.

C. Has the CRC been incorporated into national law?

The UN Committee on the Rights of the Child in 2010 welcomed the entry into force in February 2010 of the new Angolan Constitution that, inter alia, makes specific reference to the rights of children, in particular the best interests of the child. The Committee noted with regret, however, that various pieces of legislation relating to children have not been harmonised with the Convention.⁶

¹ UN Treaty Collection: Convention on the Rights of the Child, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

² Constitution of Angola, Article 26, § 1, available at: <http://www.wipo.int/edocs/lexdocs/laws/en/ao/ao001en.pdf>.

³ Constitution of Angola, Article 26, § 2.

⁴ Constitution of Angola, Article 6, § 1.

⁵ Constitution of Angola, Article 26, § 2.

⁶ UN Committee on the Rights of the Child, *Concluding observations on the combined second, third and fourth periodic reports of Angola*, CRC/C/AGO/CO/2-4, 19 October 2010, para. 8, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAGO%2fCO%2f2-4&Lang=en.

The Angolan Ministry of Justice has been seeking to reform the national justice system for several years, partially to promote harmonisation with international standards, including the CRC.⁷

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

Yes, the CRC can be directly enforced in the courts. Under the Angolan Constitution, judges must apply the relevant international conventions ratified by Angola, including the CRC, in disputes concerning fundamental rights, even if such international conventions have not been raised by the parties involved.⁸

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

Research of a limited selection of decisions of the Constitutional Court of Angola available online showed that the CRC has been applied even without being summoned by the parties. In Decision 326/2014, for instance, the CRC was summoned, together with national legislation, to establish that detention should only be used as a last resort to minors in conflict with the law, even if, as in the case, the defendant subsequently turned 18.⁹

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?

Parents have full power of representation and administration of the child's interests, including representing them in court.¹⁰ At the same time, if abuse is committed by the parents or their acts harm the best interest of the child,¹¹ the Minors' Public Attorney has the responsibility to intervene.¹²

Children who are over 10 years old must be heard in court on all cases which concern their interests.¹³ Children over 14 years of age can bring criminal complaints to the attention of the Public Prosecutor on their own.¹⁴

If a case involves children in social danger, the Court for Minors is competent. Attached to the court are the Minors' Public Prosecutors, which should represent the children judicially and fight for their best interest, in face of the parents or any other representative of the child.¹⁵

⁷ Combined second, third and fourth periodic reports of Angola to the UN Committee on the Rights of the Child, CRC/C/AGO/2-4, 26 February 2010, para. II.A., available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAGO%2f2-4&Lang=en.

⁸ Constitution of Angola, Article 26 § 3.

⁹ Available at: <http://www.tribunalconstitucional.ao/uploads/%7Bf03cb102-223b-4129-9676-c88c4d3fb61a%7D.pdf>.

¹⁰ Family Code, Article 138.

¹¹ *Id.*, Article 140.2 and Article 145.

¹² Minors' Justice Act, Article 7.2.

¹³ Family Code, Article 158.3.

¹⁴ Penal Code, Article 110.3.

¹⁵ Law of the Minor's Court, Article 7.2.

The following have petitioning powers before the Minors' Court:

- a) the Minors' Public Attorney;
- b) the police authority;
- c) the parents, tutors or whoever has responsibility over the minor;
- d) whoever in the exercise of their functions has acquired knowledge of a fact subject to the competence of the Court for Minors;
- e) the representatives of judicial persons whose purpose is the protection of minors, who through the exercise of their powers have acquired knowledge of a fact within the competence of the Court for Minors.

In the interpretation of legislation and judicial issues, the best interest of children, their social status and special conditions as developing human beings must always be taken into consideration.¹⁶

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

Children over 14 years of age can bring criminal complaints to the attention of the Public Prosecutor on their own behalf.¹⁷ All other complaints need to be brought on behalf of the child by a representative or official body.

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

As explained in II.A, cases should be brought by the child's parents or representatives. In case of violence, mistreatment, omission or clear conflict of interests, the Public Prosecutor is responsible for bringing a case.

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

Free legal assistance can be requested from the Minor's Court. The court then decides whether the application for legal assistance is justified.¹⁸ In the case of domestic violence, the victim is entitled to free medical, psychological, social and judicial assistance.¹⁹

- 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 the case of flagrant mistreatment of children, the Minor's Court establishes a comprehensive set of ways a case can be brought to the attention of the court. However, in case of children fighting for civil

¹⁶ Full Protection and Development of the Child Act, Law 25/12, Article 6.1, available at: http://www.scm.gov.ao/diploma_texto.php?diplomaID=112457.

¹⁷ Penal Code, Article 110.3.

¹⁸ Minor's Justice Law, Article 24.2.

¹⁹ Law Against Domestic Violence, Article 17.

interests, there is little room for action outside the representation of the parents or representatives, except if they are the ones directly responsible.

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?

The Constitutional Court has jurisdiction over proceedings of preliminary review, subsequent review, and unconstitutional omission, ordinary appeals of unconstitutionality, and extraordinary appeals of unconstitutionality.²⁰

Petitions to the Constitutional Court are entered and assessed with the Judicial Department before being referred to the Chief Justice of the Constitutional Court to decide on admission or rejection of such petitions. The Constitutional Court can overturn the Chief Justice's decision on appeal.²¹

Individuals, including child victims, his/her parents or legal representatives, groups, or NGOs recognised by the African Union may submit complaints (known as "communications") to the African Committee of Experts on the Rights and Welfare of the Child ("African Committee") about violations of the African Charter on the Rights and Welfare of the Child ("African Children's Charter").²² All available domestic remedies must have been exhausted before bringing a case to the African Committee.²³ 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.²⁴ 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.²⁵

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").²⁶ All available domestic

²⁰ Angola Constitutional Process Law, Law No. 03/08, Article 3

²¹ *Id.* at Article 4 and 5.2-3.

²² 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/>.

²³ African Committee of Experts on the Rights and Welfare of the Child, 'Communications', available at: <http://acerwc.org/the-committees-work/communications/>.

²⁴ 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>.

²⁵ *Id.*

²⁶ African Charter on Human and Peoples' Rights ("African Charter"), Article 55, available at:

remedies must have been exhausted before bringing a case to the African Commission.²⁷ 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.²⁸ 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.²⁹ 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.³⁰

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

If a law violates the Constitution, the President of the Republic or 1/5 of the members of the National Assembly in office may request a preliminary review.³¹ Alternatively, the President of the Republic, 1/5 of the members of the National Assembly in office, the Prime Minister, or the Solicitor General of the Republic may request a subsequent review.³² A law declared unconstitutional in one of these proceedings is automatically nullified.³³ If a law contains an unconstitutional omission, the President of the Republic, 1/5 of the members of the National Assembly in office, or the Solicitor General of the Republic may request a review.³⁴ If a law is found to be unconstitutional, the relevant entity will be given a reasonable period to address the gap or inaction.³⁵

Ordinary appeals of unconstitutionality are appeals of final judgments by other courts that (i) refuse the application of any law on the grounds of unconstitutionality, (ii) apply a law whose unconstitutionality has been challenged during the proceedings, (iii) apply a law which was already previously judged unconstitutional by the Constitutional Court, (iv) refuse the application of a law based on infringement by the same of an

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

²⁷ *Id.*, Article 56(5).

²⁸ 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/>.

²⁹ 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>.

³⁰ 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>.

³¹ Angola Constitutional Process Law, Law No. 03/08, Articles 20 and 21.

³² *Id.* at Articles 26 and 27.

³³ *Id.* at Article 30.

³⁴ *Id.* at Articles 31 and 32.

³⁵ *Id.* at Article 35.

international convention to which Angola is a party, or (v) apply a provision of an international convention that is inconsistent with a prior judgment delivered by the Constitutional Court.³⁶ The Public Prosecutor and persons who raised the issue of unconstitutionality in the initial case have standing to bring an appeal and the state must provide representation for the appellant.³⁷ Appeals must be filed eight days from the notification of judgment.³⁸ A decision of appeal by the Constitutional Court is *res judicata* for the proceeding on the question of unconstitutionality raised and only in the proceeding in which it was raised.³⁹ The decision of the Constitutional Court regarding the constitutionality of the issue in question must then be applied to the proceedings at hand.⁴⁰

Extraordinary appeals of unconstitutionality are appeals of judgments of other courts which contain points of law and decisions contrary to the principles, rights, freedoms and guarantees provided under the Constitution, or administrative actions that are final and enforceable, which contradict principles, rights, freedoms and guarantees provided under the Constitution.⁴¹ The Public Prosecutor and persons who have standing to appeal in the initial case have standing to bring an appeal of judgments to the Court.⁴² Persons who have standing to challenge through litigation may bring an appeal of administrative actions to the Court.⁴³

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 unclear from the provisions of the Angolan Constitution on collective action whether it is possible to challenge a law or administrative action without naming a specific victim.

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

The Constitution establishes the legality of collective legal challenges, individually or represented by an association, to protect diffuse and collective rights, but only when representing specific interests.⁴⁴ As indicated above, it remains unclear whether this means that an individual victim needs to be named when bringing a collective challenge.

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?

³⁶ *Id.* at Article 36.

³⁷ *Id.* at Articles 37 and 40.

³⁸ *Id.* at Article 38.

³⁹ *Id.* at Article 47.

⁴⁰ *Id.*

⁴¹ *Id.* at Article 49.

⁴² *Id.* at Article 50.

⁴³ *Id.*

⁴⁴ Constitution of Angola, Articles 73 and 74.

Pursuant to article 74 of the Angola Constitutional Process Law associations can represent collective and diffuse rights if they were formed with this clear purpose in its statute. Although the collective procedural legislation is not publicly available, examples of organisations such as Mãos Livres intervening in proceedings are common.

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?

Cases can be brought in lower courts and appealed to the Constitutional Court. In case of mistreatment or abuse, the Minors' Court is competent.

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 Constitution of Angola provides that the courts cannot deny justice to a party in judicial proceedings because of the lack of financial means,⁴⁵ but it is unclear whether the Angolan legal aid system is successful in doing so. Representation is provided for all appellants to the Constitutional Court.⁴⁶

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?

Organisations such as the Associação Mãos Livres represent children in court on a pro bono basis. As stated in IV.B, fees can be waived if the complainant has no funds readily available.

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?

If a crime is committed against a child, the limitation period only starts to run after the child turns 18.⁴⁷ Parental acts which harm the best interest of children can be nullified up to one year after the child turns 18 or, if the child still below 18 years of age, the Public Prosecutor can nullify the parental act.

⁴⁵ Constitution of Angola, Article 174, § 5.

⁴⁶ *Id.* at Article 40.

⁴⁷ Penal Code, Article 116.5.

- 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?

We were unable to find English translations of relevant sections of the Criminal Procedure Code and the Civil Procedure Code on the issue of evidence.

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

Research suggests that there is no publicly available information regarding the issue of resolution of court decision in Angola.

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

As discussed in Section III. above, cases can be appealed to the Constitutional Court.

- 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?

Angola's legal system is based on civil law and legislation is the primary source of law. Courts base their judgements on legislation and there is no binding precedent such as in common law systems.⁴⁹ Hence, the ramifications of court decisions are limited.

In many areas of the country, traditional customary law still plays an important role, as do local ways of applying state law.⁵⁰ This may provide difficulties in applying positive decisions or legislative changes.

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

No other concerns or challenges were detected.

- 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 Committee on the Rights of the Child has criticised that the implementation of legislation in Angola continues to be hindered by a lack of adequate resources and capacity building and that there is a large backlog of legislation awaiting

⁴⁸ Family Code, Article 145.

⁴⁹ Paula Rainha, *Republic of Angola - Legal System and Research*, GLOBALEX, para. III., available at: <http://www.nyulawglobal.org/Globalex/Angola.htm>.

⁵⁰ *Id.*

adoption by Parliament, including legislation relating to children. The Committee also urged Angola to ensure that adequate human and financial resources are allocated for the implementation of this legislation.⁵¹

The Angolan Office of the Ombudsperson (Provedor de Justiça) has a mandate to monitor implementation of the Convention and to serve as Ombudsperson for children. However, the Office of the Ombudsperson does not have a clear mandate regarding the protection of children, is not established in full conformity with the Paris Principles and has no presence outside the capital city. Importantly, the Office of the Ombudsperson lacks a clear mandate allowing it to receive and investigate complaints from, or on behalf of children on violations of their rights.⁵²

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

⁵¹ UN Committee on the Rights of the Child, *Concluding observations on the combined second, third and fourth periodic reports of Angola*, para. 8-9.

⁵² UN Committee on the Rights of the Child, *Concluding observations on the combined second, third and fourth periodic reports of Angola*, para. 14-15.