

ACCESS TO JUSTICE FOR CHILDREN: BENIN

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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?

Benin ratified the CRC on 3 August 3 1990¹ and the African Charter on the Rights and Welfare of the Child (ACRWC, the African Charter) on 17 April 1994.² It ratified the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OP-SC), as well as the Protocol to the African Charter, on 30 March 2004.³ It ratified the Optional Protocol to the CRC on the involvement of children in armed conflict (OP-AC) on 31 January 2005.⁴ It has also signed, but not ratified, the third Optional Protocol to the CRC on a communications procedure.⁵

B. Does the CRC take precedence over national law?

Article 147 of the Constitution of 11 December 1990 states that treaties to which Benin is signatory (including the CRC) have authority exceeding that of national legislation.⁶ In Benin's hierarchy of laws, international human rights treaties and agreements take highest precedence.⁷

C. Has the CRC been incorporated into national law?

¹ *Initial report of Benin to the UN Committee on the Rights of the Child*, CRC/C/3/Add.52, 4 June 1997, para. 4. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f3%2fAdd.52&Lang=en.

² See <http://acerwc.org/ratification-data/>

³ Republic of Benin, Ministry of Justice, Legislation and Human Rights, Department of Human Rights, *Periodic Report of the Republic of Benin on the Implementation of the Rights and Freedoms Enshrined in the African Charter on Human and People's Rights*, 2008. Available at:

http://www.achpr.org/files/sessions/45th/state-reports/2nd-2000-2008/staterep2_benin_2008_eng.pdf.

⁴ See

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en.

⁵ See

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en.

⁶ Constitution of the Republic of Benin, Law N° 90-32, 11 december 1990, Article 147. Available at: <http://www.cour-constitutionnelle-benin.org/lacourpresent/decrets/Constitution.pdf>. See also discussion in *Initial report of Benin to the UN Committee on the Rights of the Child*, CRC/C/3/Add.52, 4 June 1997, para. 14. Available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f3%2fAdd.52&Lang=en.

⁷ Representing Children Worldwide (RCW): How Children's Voices are Heard in Child Protective Proceedings: Republic of Benin, para. 1, May 2006. Available at

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

The CRC has not explicitly been incorporated into Benin national law. However, because the CRC has been ratified by Benin, it is part of Benin's national law. The CRC was published in the Official Gazette in 2006⁸ making clear that it is part of Benin's national law as Benin operates a monist system, meaning that its Constitution provides that international law becomes part of the domestic law upon ratification and publication.⁹

In 2015, Benin adopted a new law ("Child Code, 2015"), an original piece of legislation which incorporates most provisions of the CRC.¹⁰ Prior to the adoption of this Code in 2015, dispositions of existing legislation relating to children's rights had simply been collated in 2007 in a document which was also named "Child Code" ("Child Code 2007"). This 2007 Child Code includes the full texts of the CRC, the OP-SC, the OP-AC and the African Charter and its protocol.¹¹

Among the provisions collated in the Child Code 2007, are provisions from several key statutes incorporate principles from the CRC, such as the following:

- Act No. 2002-07 of 24 August 2004 (on the Code of Persons and the Family);¹²
- Act No. 004-98 of 27 January 1998 (the Labour Code);¹³
- Act No. 2006/04 of 5 April 2006 (on the conditions for the displacement of minors and the suppression of trafficking in children in Benin);¹⁴
- Act No. 2006/31 of 5 April 2006 (on prevention, care and support related to HIV/AIDS);¹⁵ and
- Act No. 2006-19 of 17 July 2006 (on the suppression of sexual harassment and protection of victims).¹⁶

⁸ Child Rights International Network, Benin: Children's Rights in the Universal Periodic Review (Second Cycle), para. 7, available at <http://www.crin.org/en/library/publications/benin-childrens-rights-universal-periodic-review-second-cycle>.

⁹ See discussion in Horace Sègnonna Adjolohoun, *ICLA Country Report: Benin*, p. 30, available at http://www.icla.up.ac.za/images/country_reports/benin_country_report.pdf. In a decision dated 19 february 2003 (after ratification but prior to the Convention's publication), the Constitutional Court ruled that the CRC was not part of Benin's positive law as it had not been published, and therefore was not directly enforceable. Cour Constitutionnelle, Décision DCC 03-009, *Case of SINZOGAN CAPO-CHICHI Marguerite*, 19 february 2003. Available at: http://www.cour-constitutionnelle-benin.org/doss_decisions/03029.pdf.

¹⁰ Loi n° 2015-08 portant code de l'enfant en République du Benin, 23 january 2015. Available at: <http://assemblee-nationale.bj/fr/dernieres-lois-votees/370-loi-nd-2015-08/file>.

¹¹ Code de l'enfant au Benin, 2007. Available at: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/benin/benin_children_2007_fr.pdf.

¹² Available at: http://www.law.yale.edu/rcw/rcw/jurisdictions/afw/benin/Benin_Family_Code.pdf. As discussed in detail in UNHCR, refworld, Benin: Forced Marriage, including the frequency, the practice and the groups involved; legislation; protection and assistance provided by the state and civil society (2010 - July 2013) <http://www.refworld.org/docid/52eb83e54.html>.

¹³ Available at: <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/49604/65115/F98BEN01.htm>.

¹⁴ Available at: <http://www.ilo.org/dyn/natlex/docs/SERIAL/73266/74783/F93417100/BEN73266.pdf>.

¹⁵ Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125247.pdf.

¹⁶ Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94850/111466/F-1905608255/BEN-94850.pdf>.

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

Since 2006 and the CRC's publication in the Official Gazette, the CRC is directly enforceable in Benin courts. International treaties are directly enforceable as long as they are specific enough. If the treaty lacks specificity, the State party has the duty to take measures to ensure its applicability.¹⁷

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

The CRC had not been applied by the Benin courts prior to 2005¹⁸ and we have not been able to identify any cases in which rights have been upheld under the CRC since that date.

In lower level courts, judges sometimes refer to principles contained in the Convention (for instance, the best interest of the child) without explicitly citing the instrument.¹⁹ The Constitutional Court often refers to the African Charter on People's and Human Rights (the African Charter) which is part of Benin's Constitution.²⁰

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?

A minor has no standing to bring cases before the courts.²¹ Under civil and Criminal law, minors are children under 18 years of age.²² Minors are represented in legal matters by their parents or guardians.²³

¹⁷ B. Codjovi, 'Communication de la Cour Suprême du Bénin', 'Les Actes du Colloque de Ouagadougou, 24-26 juin 2003', in *Les Cahiers de l'association ouest africaine des hautes juridictions francophones*, p. 147. Available at: <http://democratie.francophonie.org/IMG/pdf/16bis.pdf>.

¹⁸ Child Rights International Network, *Benin: National Laws*, available at <http://www.crin.org/en/library/publications/benin-national-laws>.

¹⁹ B. Codjovi, 'Communication de la Cour Suprême du Bénin', 'Les Actes du Colloque de Ouagadougou, 24-26 juin 2003', in *Les Cahiers de l'association ouest africaine des hautes juridictions francophones*, p. 157. Available at: <http://democratie.francophonie.org/IMG/pdf/16bis.pdf>. The interest of the child was also mentioned in cases relating to child custody before Benin ratified the CRC or the ACRWC. See for instance, Supreme Court, Judiciary chamber, decision 9, *MAHMA Félicien v. AÏNA Véronique Epouse MAHMA Félicien*, 22 July 1977. Available at:

<http://www.juricaf.org/arret/BENIN-COURSUPREME-19770722-9>; Decision 03/ 8, *Dame A. G. née C. v. Monsieur A. E.*, 27 January 1988. Available at: <http://www.jurisprudencebenin.org/content/view/108/85>.

²⁰ See, e.g., Decision DCC 01-082 of the Constitutional Court of 17 August 2001, available at http://www.cour-constitutionnelle-benin.org/doss_decisions/010882.pdf; see also Horace Sègnonna Adjolohoun, *ICLA Country Report: Benin*, p. 30, available at http://www.icla.up.ac.za/images/country_reports/benin_country_report.pdf.

²¹ Loi n° 2002-07 portant Code des personnes et de la famille (Family Code), 24 august 2004, Art. 447. Available at:

http://www.africanchildforum.org/clr/Legislation%20Per%20Country/benin/benin_children_2007_fr.pdf.

²² Family Code, Art. 459.; Ordonnance No. 69-23/PR/MJL relative au jugement des infractions commises par des mineurs de dix huit ans (Juvenile justice ordinance), 10 July 1969. Available at:

http://www.africanchildforum.org/clr/Legislation%20Per%20Country/benin/benin_children_2007_fr.pdf.

²³ Family Code, Art. 447.

It is worth noting that the Constitutional Court has in the past chosen to rule on a case on merits even though it was inadmissible because of the children's lack of capacity. This decision was based on the Court's duty to rule over matters relating to human rights violations, according to article 121 of the Constitution.²⁴

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?

Minors are represented in legal matters by their parents or guardians.²⁵ Article 406 of the Family Code states that "all rights constituting parental authority shall be exercised only in the best interest of the child."

The Civil Procedure Code states that minors may also ask to be heard in cases affecting their best interest. A child can be heard at their own request, at the request of their legal representative or at the request of a judge.²⁶

Pursuant to a statutory right under the Civil Code that ensures educational assistance to minors who feel threatened, minors who have been abused often directly consult social workers, juvenile court judges or the Brigade for the Protection of Minors (BPM) (see II.E below).²⁷

Finally, the recently adopted Child code (2015) goes further in terms of children's standing before specialised courts, stating that children can seize children judges (*Juges des enfants*) themselves through an application.²⁸ It is however too early to tell how this provision will be applied.

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

There appears to be no formal procedure for bringing cases involving young children. Therefore, as is the case for older children, the parents of the child

²⁴ Constitutional Court, Decision DCC 01-082, *Okpeitcha v Okpeitcha*, 17 August 2001. Available at: http://www.cour-constitutionnelle-benin.org/doss_decisions/010882.pdf

²⁵ Family Code, Art. 447.

²⁶ Loi No. 2008-07, portant code de procédure civile, commerciale, sociale et administrative (Civil Procedure Code), 16 October 2008, Art. 399-400. Available at: http://data.over-blog-kiwi.com/0/57/30/82/201309/ob_4353be_code-de-procedure-civile-beninois-vote.pdf

²⁷ See *Initial report of Benin to the UN Committee on the Rights of the Child*, CRC/C/3/Add.52, 4 June 1997, para. 47 (citing Civil Code, Art. 375 and following). Until 2004 and the adoption of the Family Code, Benin's civil law was governed by the French Civil Code (1958 version) and the Customary law of Dahomey (1931). The latter was a compilation of customary laws as collected by the French colonial authorities. In its decision n° DCC 96-0063 dated 26 September 1996, the Constitutional Court declared that the Customary law of Dahomey was not executory anymore, bringing an end to the dualistic and often contradictory civil law system in place. The Family Code now rules on most matters relating to name, nationality, birth, marriage, death and parental authority. It appears that courts still refer to the French Civil Code for matters not covered by other domestic instruments (examples of recent decisions citing the French Civil Code are available here: http://www.juricaf.org/recherche/%22Code+civil%22+/facet_pays%3AB%C3%A9nin). For more information on the history of the Family Code, see G. Boko Nadjo, 'Le code des personnes et de la famille béninois', presentation at the NGO forum in Addis Abeba, Ethiopia, October 2004, available at: <http://jafbase.fr/docAFrique/Benin/PresentationCodeFam.pdf>.

²⁸ Child Code 2015, Art. 233.

would bring a case on his or her behalf or a third party such as the BPM might intervene (see II.E below).²⁹

Cases involving young children often involve child trafficking,³⁰ which is prohibited by statute and would involve criminal proceedings.³⁰ The age of a child victim is an aggravating factor in the severity of punishment for criminal offences in Benin.³¹

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 appear to provide direct legal representation for cases involving an abuse of child rights. Access to legal assistance is governed by Ordinance 73-53 dated 2 August 1973 which as of March 2009, was still not applied, lacking an implementation decree.³² There is no evidence that such decree has since then been passed.

According to the Ordinance on juvenile justice and the Criminal Procedure Code, a lawyer is automatically assigned to a minor charged with breach of a law.³³ However for minor offences (*matière correctionnelle*, adjudicated by the children tribunal of first instance courts), it appears that the child can be represented either by a lawyer or by a parent or guardian.³⁴ Although legal assistance for minors is prescribed by criminal law, NGOs have noted that it is not available in practice.³⁵

In civil cases where a judge hears a child (see above II.B) the child can chose to be heard with a lawyer, and the judge should assign one if the child does not have one.³⁶

In courts of First instance, parties can choose their spouse or parent up the third degree to represent them in courts. In Appeal courts, they have to be represented or assisted by a lawyer, and in the Supreme Court, they have to be represented by a lawyer.³⁷

²⁹ HRTG, AFJB, ESAM & OMCT, *Human Rights Violations in Benin*, Alternative report to the United Nations Committee Against Torture, October-November 2004, at III.2.3, p. 73. Available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&category=&publisher=OMCT&type=&coi=BEN&rid=&docid=46c190c80&skip=0>.

³⁰ Loi n°2006-04, Conditions de déplacement des mineurs et répression de la traite d'enfant en République du Bénin, 5 April 2006. Available at: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/benin/benin_children_2007_fr.pdf.

³¹ HRTG, AFJB, ESAM & OMCT, *Human Rights Violations in Benin*, Alternative report to the United Nations Committee Against Torture, October-November 2004, at III.2.1.2, p. 70. See also relevant provisions of the Penal Code collated in the Child Code, 2007.

³² See interview with Angelo Hounkpatin, lawyer, available at: <http://www.barreaudubenin.fr/index.php/le-barreau-du-benin-2/16-le-fajjub>.

³³ Juvenile justice ordinance, Art. 9.

³⁴ Juvenile justice ordinance, Art. 17.

³⁵ Défense des Enfants International (DEI-Bénin), 'La justice des mineurs au Bénin', in La Nouvelle Tribune internationale des droits de l'enfant, n°8 & 9, September 2005, pp. 26-30. Available at: <http://www.dei-belgique.be/fr/component/k2/item/350-la-justice-pour-mineurs-au-benin-protection-juridique-et-judiciaire-de-l-enfant-au-benin>.

³⁶ Civil Procedure Code, Art. 403.

³⁷ Civil Procedure Code, Art. 23.

- 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 general, a child's parents must give permission for a case to be brought on behalf of the child.³⁸ In principle, third party interventions by the BPM can progress without parental involvement. However, because the BPM combines the functions of child protection and youth justice, children below the age of 13 who are brought into custody by the BPM and who claim or fear abuse (whether by family or others) are typically taken to a center for safeguarding for a few days before being returned to their parents.³⁹

Where parents are unable to assume their responsibilities, the court is empowered to deprive them of their parental authority and confer it on a guardian.⁴⁰

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 automatically reviews the conformity of laws with the Constitution if they relate to fundamental rights and freedoms.⁴¹ Furthermore, any NGO, non-profit organisation or citizen can seize the Constitutional Court to review the constitutionality of a law.⁴² Finally, any citizen can raise an "unconstitutionality exception" during a legal proceeding they are a party of, if they think a law relevant to their matter is unconstitutional. The proceedings are then suspended until the Constitutional Court reaches a decision.⁴³

Complaints alleging violations of a minor's human rights may be brought through the Constitutional Court, which has the power to adjudicate individual human rights violations.⁴⁴ The Constitutional Court has the power to examine abuses of human rights by private persons, the state, state agencies or any other entities. Cases of infringement have been brought in the Constitutional Court against the police and armed forces, judges, ministers, court presidents and registrars, public education bodies, the secretary general of the government and private companies.⁴⁵

³⁸ HRTG, AFJB, ESAM & OMCT, *Human Rights Violations in Benin*, Alternative report to the United Nations Committee Against Torture, October-November 2004, at III.2.3, p.73.

³⁹ HRTG, AFJB, ESAM & OMCT, *Human Rights Violations in Benin*, Alternative report to the United Nations Committee Against Torture, October-November 2004, at III.3.2.2, p.76.

⁴⁰ Family Code, art. 417.

⁴¹ Constitution, art. 121.

⁴² Internal rules of the constitutional court, art.31. Available at: http://www.cour-constitutionnelle-benin.org/lacourpresent/decrets/reglement_interieur.pdf.

⁴³ Constitution, art. 122.

⁴⁴ Horace Sègnonna Adjolohoun, *ICLA Country Report: Benin*, p. 10. Available at: http://www.icla.up.ac.za/images/country_reports/benin_country_report.pdf (citing Constitution of Benin, Article 114).

⁴⁵ *Ibid*, p. 9-10.

Complaints against violations of a minor's human rights may also be brought through a tribunal of first instance (for civil, administrative matters and minor criminal offences).⁴⁶ As mentioned above, the Constitutional Court has the power to suspend proceedings in the ordinary courts pending a decision on receipt of a challenge by a party to the constitutionality of a law considered in the proceedings. In some local jurisdictions, there are specialist judges for children in the tribunals.⁴⁷ Children judges are competent to examine any civil, social or criminal matter involving a child.⁴⁸

In criminal matters, legal action is usually initiated by a public prosecutor. However, direct victim(s) of a criminal act, anyone who has a direct interest to act (even when they haven't suffered from a personal prejudice), and duly registered organisations working on the defense of certain categories of victims can file a private legal action to claim damages.⁴⁹

Offences carried out by an officer of the state may also be challenged by direct complaint to that officer's superior or to an administrative judge.⁵⁰

In 2013, the Parliament adopted a law establishing a National Human Rights Commission. The Commission is not in place yet, but will have the power to review cases of human rights violations filed by individuals or NGOs.⁵¹

Individuals can also bring complaints regarding governmental agencies to the Ombudsman (*Médiateur de la République*).⁵²

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").⁵³ The African Committee will investigate the complaint and decide on

⁴⁶ A. N. Gbaguidi and W. Kodjoh-Kpakpassou, *Introduction au Système Juridique et Judiciaire du Bénin*, Mars-Avril 2009. Available at:

http://www.nyulawglobal.org/globalex/benin.htm#_4_L%E2%80%99organisation_Judiciaire; Law n°2001-37 on the organisation of the judiciary in Benin, 27 August 2002. Available at: <http://track.unodc.org/LegalLibrary/LegalResources/Benin/Laws/Benin%20Portant%20Organisation%20Judiciaire%202002.pdf>.

⁴⁷ HRTG, AFJB, ESAM & OMCT, *Human Rights Violations in Benin*, Alternative report to the United Nations Committee Against Torture, October-November 2004, at III.2.3, p.73 (citing CRC/C/15/Add.106, 24/08/1999, para. 8).

⁴⁸ Child Code 2015, Art. 233.

⁴⁹ Criminal Procedure Code, Art. 2.

⁵⁰ HRTG, AFJB, ESAM & OMCT, *Human Rights Violations in Benin*, Alternative report to the United Nations Committee Against Torture, October-November 2004, at III.2.3, p.73 (citing CRC/C/15/Add.106, 24/08/1999, para. 8).

⁵¹ Loi 2012-36 Portant création de la Commission béninoise des droits de l'homme, 15 February 2013, Art. 31. Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99940/119602/F1780638004/BEN-99940.pdf>.

⁵² Law N° 2009-2 establishing the *Médiateur de la République*, 11 August 2009. Available at:

http://www.aomf-ombudsmans-francophonie.org/fic_bdd/membre_pdf_fr_fichier/Loi_Mediateur_Benin_12877505630.pdf.

⁵³ African Charter on the Rights and Welfare of the Child ("African Children's Charter"), Article 44,

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.⁵⁴

Individuals, groups or NGOs may also submit 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").⁵⁵ 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.⁵⁶ 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.⁵⁷

All available domestic remedies must have been exhausted before bringing a case to the African Committee or the African Commission.⁵⁸ 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.⁵⁹ For complaints to the African Commission, it should also include and the name of the victim, in a case where he/she is not the complainant.⁶⁰

Individuals or NGOs with observer status before the African Commission may

available at:

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

. For more information about communications, see:

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

⁵⁴ 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>.

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

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

⁵⁶ 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>.

⁵⁷ 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>.

⁵⁸ African Committee of Experts on the Rights and Welfare of the Child, 'Communications', available at: <http://acerwc.org/the-committees-work/communications/>; African Charter on Human and Peoples' Rights ("African Charter"), Article 56(5).

⁵⁹ 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>; 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/>.

⁶⁰ 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/>.

bring their case to the African Court on Human and Peoples' Rights⁶¹ alleging violations of the African Charter.⁶² All available domestic remedies must have been exhausted before bringing a case to the Court.⁶³ The complaint must include, amongst other things, details of the applicant's identity, notwithstanding his/her request to remain anonymous.⁶⁴ The complaint must be written in one of the official languages of the Court,⁶⁵ and must be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court.⁶⁶ Applicants are entitled to be represented or to be assisted by legal counsel and/or by any other person of the applicant's choice.⁶⁷ The Court may, in the interest of justice, provide free legal representation and/or legal assistance to the applicant.⁶⁸ 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".⁶⁹

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.⁷⁰ This includes acts or inaction of Community Officials which violate the rights of individuals.⁷¹ 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.⁷² There are, however a number of conditions: the complaint must not be anonymous or be pending before another international court;⁷³ representation

⁶¹ 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>.

⁶² 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>.

⁶³ Ibid., Article 6(2).

⁶⁴ 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.

⁶⁵ Ibid., Rule 34; the official languages of the Court are: Arabic, English, French, Portuguese, Spanish, Kiswahili and any other African language.

⁶⁶ Ibid., Rule 40.

⁶⁷ Ibid., Rule 28.

⁶⁸ Ibid., Rule 31.

⁶⁹ Ibid., Article 27(1).

⁷⁰ Supplementary Protocol A/SP.1/01/05, Articles 3 and 4, available at:

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

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

⁷¹ Ibid., Article 4; Protocol on the Community Court of Justice, Article 10(c).

⁷² 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>.

⁷³ Supplementary Protocol A/SP.1/01/05, Article 4; Protocol on the Community Court of Justice, Article 10(d).

by an agent or lawyer is required,⁷⁴ 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.⁷⁵ Judgments of the Court of Justice are binding on the Member States, Institutions of the Community, individuals and corporate bodies.⁷⁶

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

The Constitutional Court has the power to review violations by all officers of the state, including the President.⁷⁷ It has a clear human rights mandate and considers human rights cases.⁷⁸ Although it has jurisdiction over individual human rights violations, decisions of the Constitutional Court relating to facts rather than laws are not self-executing.⁷⁹ The Constitutional Court also has no clear basis in law to award financial remedies; merely to make declaratory orders and findings of violations. Nevertheless, since 2002, the Constitutional Court has begun to award financial remedies, although the legal basis for this remains uncertain.⁸⁰

In matters relating to constitutionality, the Constitutional Court can suspend the promulgation or application of a law or regulatory act. If the Constitutional Court finds that a law, regulatory or administrative act contains a provision contrary to human rights and public liberties, this act is declared null and void and cannot be applied.⁸¹

Courts can issue provisional measures (*ordonnance de référés*) pending their decision.⁸² It can include for administrative proceedings the suspension of an administrative act.⁸³ In any matter involving a child, whether it regards the child's care, education, placement or custody, the children's judge to whom the matter is referred shall issue provisional measures in the child's best interest.⁸⁴

Civil Courts can award compensations, Criminal Courts can award compensations and order restitutions to the civil party (*Partie civile*).⁸⁵

⁷⁴ Protocol on the Community Court of Justice, Article 12.

⁷⁵ Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).

⁷⁶ Revised Treaty of the Economic Community of West African States, Article 15(4), available at: http://www.courtecowas.org/site2012/pdf_files/revised_treaty.pdf.

⁷⁷ GlobaLex, *Introduction au Système Juridique et Judiciaire du Bénin*. Available at: <http://www.nyulawglobal.org/Globalex/BENIN.htm>.

⁷⁸ Horace Sègnonna Adjolohoun, *ICLA Country Report: Benin*, p. 10 (citing Constitution of Benin, Article 114).

⁷⁹ 10ème Fonds Européen de Développement (FED), *Benin Governance Profile*, September 2009, p. 5. Available at: http://www.eeas.europa.eu/delegations/benin/documents/eu_benin/profil_gouvernance_fr.pdf.

⁸⁰ Horace Sègnonna Adjolohoun, *ICLA Country Report: Benin*, p. 10- 11.

⁸¹ Loi N° 91-009 portant loi organique sur la cour constitutionnelle, 4 March 1991, as modified by the law dated 31 May 2001, art. 33. Available at: http://www.cour-constitutionnelle-benin.org/lacourpresent/decrets/loi_organique.pdf.

⁸² Civil Procedure Code, Art. 549-557.

⁸³ Civil Procedure Code, Art. 832.

⁸⁴ Child Code 2015, Art. 232.

⁸⁵ Loi n° 2012-15 portant code de procédure pénale en République du Bénin (Criminal Procedure Code),

Administrative courts are competent to nullify or give interpretation of administrative decisions.⁸⁶

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

In cases brought before a Civil Court, it appears that proceedings will have to involve one or more child victims directly, since each person bringing an action must have a “legitimate, direct and personal interest” in the matter before the court.⁸⁷ Furthermore, the application must state the name of the applicant.⁸⁸

In criminal courts, as stated above in III.A, direct victim(s) of a criminal act, anyone who has a direct interest to act (even when they haven’t suffered from a personal prejudice), and duly registered organisations working on the defense of certain categories of victims can file a private legal action to claim damages.⁸⁹

The presumption is that proceedings are public, but the judge can order proceedings to take place in private if it will safeguard the “inviolability of family secrets.”⁹⁰ It is general practice that, if the nature of a civil law proceeding is such that it might harm the minor’s dignity, the proceeding will be held in camera.⁹¹ Otherwise, there appears to be no general rule of witness anonymity in civil or administrative proceedings.

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

The Constitutional Court has the jurisdiction to hear actions brought by groups as well as individuals.⁹² There is at least one example of the Constitutional Court ruling that a ‘collective of children’ does not have standing to bring a case, but this was based on them being children, rather than on them being a group. However, in that specific case, the Constitutional Court overlooked inadmissibility grounds and proceeded to rule that the defendant had breached the children’s human rights (See above II.A).⁹³

The procedural rules for civil cases in the tribunals do not appear to prohibit group litigation where each person bringing the action has a legitimate interest in

18 March 2013, Art. 366-370. Available at:

http://ppja.org/countries/benin/Benin%20CPC.pdf/at_download/file.

⁸⁶ Civil Procedure Code, Art. 812.

⁸⁷ Civil Procedure Code, Art. 33.

⁸⁸ Civil Procedure Code, Art. 117.

⁸⁹ Criminal Procedure Code, Art. 2.

⁹⁰ Civil Procedure Code, Art. 500.

⁹¹ HRTG, AFJB, ESAM & OMCT, *Human Rights Violations in Benin*, Alternative report to the United Nations Committee Against Torture, October-November 2004, at III.2.1.2 p. 71.

⁹² See Horace Sègnonna Adjolooun, *ICLA Country Report: Benin*, p. 10 (citing Constitution of Benin, Article 114).

⁹³ Decision DCC 01-082 of the Constitutional Court of 17 August 2001, available at http://www.cour-constitutionnelle-benin.org/doss_decisions/010882.pdf.

the matter brought before the court.⁹⁴

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?

According to the Civil Procedure Code, complaints are admissible only if they come from applicants who have a “legitimate, direct and personal interest in the case”.⁹⁵ A challenge brought by an NGO would therefore generally not be admissible. An NGO can intervene to support a party in a case if it is connected to the parties’ claims by a sufficient tie.⁹⁶

According to the Criminal Procedure Code, duly registered organisations working on the defence of certain categories of victims can file a private legal action to claim damages for a criminal offence.⁹⁷

Human rights NGOs and other non-profit organisations can also apply to the constitutional court to review the constitutionality of a piece of legislation.⁹⁸ NGOs, victims organisations and unions will be able to file cases before the National Human Rights Commission once it is in place (see above in III.A.).

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?

As noted above in III.A, an action to enforce a child’s rights could be brought either in one of the local First Instance Courts⁹⁹ (for civil, administrative, social proceedings and minor criminal offences) or in the Constitutional Court (for human rights violations).¹⁰⁰ There are 28 First Instance Tribunals across Benin’s territory¹⁰¹ and it is necessary to bring an action in the relevant local tribunal. The request must be dated, and specify the name, domicile, nationality, and profession of both the claimant and, if applicable, the defendant. It must also state the subject, motives and, if applicable, the amount at stake. It must include the claimant’s signature and fingerprints.¹⁰²

Under criminal law, matters involving child defendants are heard in specialised

⁹⁴ Civil Procedure Code, Art. 31- 33.

⁹⁵ Civil Procedure Code, Art. 33.

⁹⁶ Civil Procedure Code, Art. 390.

⁹⁷ Loi n° 2012-15 portant code de procédure pénale en République du Bénin (Criminal Procedure Code), 18 March 2013, Art. 2. Available at: http://ppja.org/countries/benin/Benin%20CPC.pdf/at_download/file.

⁹⁸ Internal rules of the constitutional court, art.31.

⁹⁹ HRTG, AFJB, ESAM & OMCT, *Human Rights Violations in Benin*, Alternative report to the United Nations Committee Against Torture, October-November 2004, III.2.3 at p. 73.

¹⁰⁰ See Horace Sègnonna Adjolohoun, *ICLA Country Report: Benin*, p. 10 (citing Constitution of Benin, Article 114).

¹⁰¹ Law No. 2001/37 on the organisation of the judiciary, Art. 36. Available at http://www.jurisprudencebenin.org/component/option,_docman/task_doc_view/gid.9/Itemid.67/.

¹⁰² Civil Procedure Code, Art. 118.

jurisdictions (*Tribunal des enfants, Cour d'assises des mineurs*).¹⁰³ However, children criminal courts' sessions for serious offences (*matière criminelle*) are rare and held only in Cotonou.¹⁰⁴ Only three jurisdictions out of eight have a children tribunal ruling over other matters involving children.¹⁰⁵

- 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?

Although legal aid is compulsory for all proceedings before juvenile courts,¹⁰⁶ NGOs have noted that it is not available in practice (see above II.D.).

Legal aid is also available for all actions before the Supreme Court.¹⁰⁷ Applications must be made to the Prosecutor General (*Procureur général*) of the Supreme Court and must include supporting documents to justify the need of the claimant for legal aid. Eligibility for legal aid is determined by a committee.¹⁰⁸ An application for cassation in the Supreme Court must be brought using a legal representative admitted in Benin.¹⁰⁹ Unless an application for legal aid is made at the same time as the appeal is brought, the sum of 15,000 francs is payable into court. If the appeal is denied, the sum is forfeited.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?

Legal aid is available in theory, as noted at III.B above. Notably, there is no formally prescribed cost of making a complaint to the BPM if the BPM independently takes steps to assist a minor who has complained.¹¹¹

¹⁰³ Civil Procedure Code, Art. 651. See also Ordinance on juvenile justice.

¹⁰⁴ Minister of justice, Statement, November 2012. Available at: <http://www.lanouvelletribune.info/benin/12638-reaction-du-ministere-de-la-justice-suite-a-la-declaration-de-l-unamab#!comment-comment=96168>.

¹⁰⁵ Réseau Francophone de Diffusion du Droit, *Legiglobe: Bénin*, 9 October 2013. Available at: http://www.rf2d.org/informations-generales-benin/#5_8211_justice_des_mineurs.

¹⁰⁶ *Initial report of Benin to the Human Rights Committee*, CCPR/C/BEN/2004/1, 16 April 2004, para. 264. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBEN%2f2004%2f1&Lang=en.

¹⁰⁷ Loi No. 2004/20, 17 August 2007 Portant Regles De Procedures Applicables Devant Les Formations Juridictionnelles De La Cour Supreme (Law on procedures applicable before the Supreme Court), Art. 8. Available at:

https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCMQFjAAahUKEwjI_PmhofIAhWGuBQKHSqqB-c&url=http%3A%2F%2Fwww.aihja.org%2Fimages%2Fusers%2F1%2Ffiles%2Floi.n.2004.20.portant.regles.de.procedures.applicables.doc&usq=AFQjCNElqjlpCTIfqsNQGQlo2ow1uMSMg&bvm=bv.103073922,d.d24

¹⁰⁸ Law on procedures applicable before the Supreme Court, Art. 9 and 10.

¹⁰⁹ Law on procedures applicable before the Supreme Court, Art. 3 and 4.

¹¹⁰ Law on procedures applicable before the Supreme Court, Art. 7.

¹¹¹ HRTG, AFJB, ESAM & OMCT, *Human Rights Violations in Benin*, Alternative report to the United Nations Committee Against Torture, October-November 2004, at III.2.2 at p. 71.

Noticing the failure to apply the rights to legal aid prescribed by ordinance 73-53 (See II. D. above), the Benin Bar Association has put in place a legal assistance fund (*Fonds d'Assistance Judiciaire et Juridique du Barreau*). Lawyers provide advice and representation free of charge. Anyone is eligible for legal advice, and representation is available in cases of flagrante delicto.¹¹²

Several NGOs provide legal assistance. The League for the Defence of Human Rights in Benin is empowered to receive and investigate complaints and to bring cases to court.¹¹³ The Association for the Development of Village Initiatives provides legal advice in certain rural areas.¹¹⁴ The Women Lawyers association (Association des femmes juristes du Bénin¹¹⁵) and Defence for children International (Défense des Enfants International, DEI-Bénin¹¹⁶) also have legal aid centres.

- 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?

Administrative complaints for misuse of power (*recours pour excès de pouvoir*) must be filed within two months of the notification of the administrative act challenged.¹¹⁷

Case-law relating to statutes of limitation appear to focus on conflicts arising between the French civil code and the Customary law of Dahomey (which did not mention any statutes of limitation).¹¹⁸ However, Customary law does not have executory force in Benin anymore, and it is not known which statute of limitations are now applied in civil law, since this is not covered by the Family and Persons Code or the Code of Civil Procedure. It is possible that this is one of the area where the French 1958 Civil Code remains in force.¹¹⁹

In criminal matters, the time limitation for the public prosecution of a crime is 10 years after the offence for serious offences (*crimes*) and 3 years for minor offences (*délits* and *contraventions*).¹²⁰ Private prosecutions relating to criminal matters must be filed within the time period set by the statute of limitations for public prosecution.¹²¹ The running of a statute of limitation can be suspended until the victim's majority when the victim is a minor, only in cases where the

¹¹² See interview with Angelo Hounkpatin, of the Benin Bar Association, available at: <http://www.barreaudubenin.fr/index.php/le-barreau-du-benin-2/16-le-fajjub>.

¹¹³ University of Minnesota, The Status of Human Rights Organisations in Sub-Saharan Africa: Benin, available at <http://www1.umn.edu/humanrts/africa/benin.htm>.

¹¹⁴ University of Minnesota, The Status of Human Rights Organisations in Sub-Saharan Africa: Benin.

¹¹⁵ See <http://afjbenin.net/les-centres-daide-juridique/>.

¹¹⁶ See <http://www.defenceforchildren.org/dci-benin/>

¹¹⁷ Civil Procedure Code, Art. 821.

¹¹⁸ See examples here:

<http://www.juricaf.org/recherche/prescription+!%22chambre+administrative%22+%28+pays%3AB%C3%A9nin+%29+>. These decisions appear to relate to cases initiated before the reform of the civil law in Benin in 2002.

¹¹⁹ See above note 28 on civil law applicable in Benin.

¹²⁰ Criminal Procedure Code, Art. 8.

¹²¹ Criminal Procedure Code, Art. 10.

offender is an ascendant (natural or adoptive) of the victim or has authority over the victim.¹²²

- 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?

In the procedural rules governing civil and administrative proceedings, it is a principle that (in accordance with the CRC) a minor who is capable of understanding may give evidence on questions which concern his own superior interest, whether directly, through an intermediary, or through a legal representative.¹²³ A minor may also give evidence at the request of their legal representative or at the request of the judge.¹²⁴

The Civil Procedure Code also states that anyone can be heard as a witness unless they do not have legal standing as witness. Witnesses without legal standing can still be heard without being sworn in.¹²⁵ The Civil Procedure Code does not set a minimum age for witnesses' legal standing, it is therefore unclear whether a child could be heard as a witness under oath in a civil matter.

In criminal courts, witnesses under the age of 16 are not heard under oath.¹²⁶ However, in the event of a child under 16 being heard under oath without any of the parties opposing it, the testimony would still be considered admissible.¹²⁷

In criminal cases where the minor is a victim and where the infraction is held to harm the minor's dignity, the proceedings will be held in camera.¹²⁸

Concerning legal proceedings generally, the Government of Benin has stated that "great importance is generally attached" to the views of minors.¹²⁹ In Criminal matters, the judge can order closed hearings to preserve "public order and morality".¹³⁰ If the proceedings relate to an offence carrying 5 years imprisonment or more, and if testifying can endanger the witness' life, the judge can gather the testimony without the witness' identity appearing in the trial records.¹³¹

The Constitutional Court may hear any witness that it chooses to appear before it, and its procedure is described in the Benin Constitution as "secret."¹³²

- F. Resolution. How long might it take to get a decision from the court as to

¹²² Criminal Procedure Code, Art. 9.

¹²³ Civil Procedure Code, Article 399.

¹²⁴ Civil Procedure Code, Article 400.

¹²⁵ Civil Procedure Code, Art. 272

¹²⁶ Criminal Procedure Code, Art. 111 and 338.

¹²⁷ Criminal Procedure Code, Art. 339.

¹²⁸ HRTG, AFJB, ESAM & OMCT, *Human Rights Violations in Benin*, Alternative report to the United Nations Committee Against Torture, October-November 2004, at III.2.1.2, p. 71.

¹²⁹ *Initial report of Benin to the UN Committee on the Rights of the Child*, CRC/C/3/Add.52, 4 June 1997, para. 69.

¹³⁰ Criminal Procedure Code, Art. 311.

¹³¹ Criminal Procedure Code, Art. 121.

¹³² La Cour Constitutionnelle du Bénin, *Présentation* Section III, ii, available at <http://www.cour-constitutionnelle-benin.org/?pg=contenu&ssmenu=presentation>.

whether there has been a violation?

Where a judgment in a civil case cannot be given immediately, it can be postponed for two months, and may be postponed longer if there is a “force majeure” event.¹³³ According to the Constitution, the Constitutional Court shall issue decisions in Human Rights violations cases within 8 days.¹³⁴

Delays in notification of civil courts decisions are reported.¹³⁵

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

Appeals of civil courts’ decisions must be filed within one month of the decision for contentious cases and within 15 days for non-contentious matters.¹³⁶

A decision of a first instance tribunal can be referred to one of the three appeal tribunals, and then to the Supreme Court (cassation appeal), from which there is no appeal.¹³⁷ Once the action has been registered with the Supreme Court, the relevant Reporter will impose a deadline of (ordinarily) not less than a month for the parties to file their statements of case. The Reporter may carry out investigations during this time.¹³⁸

In criminal matters involving a child offender, appeals can be filed by the child’s parents, guardian, legal representative or legal counsel, by the civil party, by an approved children’s rights defence organisation or by the public prosecutor.¹³⁹

It is possible that the Constitutional Court might become involved at some stage of the appeals, whether through a referral on the constitutionality of an aspect of law¹⁴⁰ or in separate proceedings afterwards.¹⁴¹ Decisions of the Constitutional Court are final and cannot be appealed.¹⁴²

Few cases make it to the appeal court in Benin. In civil cases, this is mainly due to delays in the notification of the decision. In criminal cases, the majority of appeals come from public prosecutors.¹⁴³

H. Impact. What are the potential short-term and long-term impacts of a negative

¹³³ Civil Procedure Code, Art. 519.

¹³⁴ Constitution, Art. 121.

¹³⁵ 10ème Fonds Européen de Développement (FED), *Benin Governance Profile*, September 2009, p. 24. Available at:

http://www.eeas.europa.eu/delegations/benin/documents/eu_benin/profil_gouvernance_fr.pdf.

¹³⁶ Civil Procedure Code, Art. 617.

¹³⁷ Horace Sègnonna Adjolohoun, *ICLA Country Report: Benin*, p. 20 (citing Constitution of Benin, Article 131(2)).

¹³⁸ Loi No. 2004/20, 17 August 2007 Portant Regles De Procedures Applicables Devant Les Formations Juridictionnelles De La Cour Supreme, Art. 12.

¹³⁹ Criminal Procedure Code, Art. 679.

¹⁴⁰ Horace Sègnonna Adjolohoun, *ICLA Country Report: Benin*, p. 10 (citing Constitution of Benin, Article 122).

¹⁴¹ Horace Sègnonna Adjolohoun, *ICLA Country Report: Benin*, p. 20.

¹⁴² La Cour Constitutionnelle du Bénin, *Présentation*, Section IV. Available at:

<http://www.cour-constitutionnelle-benin.org/?pg=contenu&ssmenu=presentation>

¹⁴³ 10ème Fonds Européen de Développement (FED), *Benin Governance Profile*, September 2009, p. 24. Available at:

http://www.eeas.europa.eu/delegations/benin/documents/eu_benin/profil_gouvernance_fr.pdf.

decision? Is there a possibility for political backlash or repercussions from a positive decision?

Under the Code of Criminal Procedure, if public proceedings end with charges being dropped (*ordonnance de non-lieu*), the defendant can ask for damages to be paid by the *partie civile* (in most cases the victim).¹⁴⁴

While it is established that the Constitutional Court can make declarations on unconstitutionality, the award of reparations by the Constitutional Court is still applied on an inconsistent and unprincipled basis. Enforcement of the few financial awards has been difficult, as enforcement of a monetary award from the Constitutional Court requires separate proceedings in the ordinary courts and, in some cases, the government has refused to pay compensation awarded.¹⁴⁵

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

In addition to the factors discussed at IV.E above, it has been noted that enforcing criminal penalties against state actors, especially police, is difficult.¹⁴⁶

- 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.

Benin had a National Commission of Human Rights which is empowered to receive and investigate complaints from minors.¹⁴⁷ It has been criticised by the United Nations Committee on the Rights of the Child for the limited resources available to it and the limited efforts made to encourage the participation of children.¹⁴⁸ In 2013, the Parliament adopted a law establishing a new National Human Rights Commission. The new Commission is not in place yet, but will have the power to review cases of human rights violations filed by individuals or NGOs.¹⁴⁹

There is currently no Children's Ombudsperson in Benin, although the Committee on the Rights of the Child has recommended that one be appointed.¹⁵⁰

The National Centre for the Protection of Children and Young Persons is concerned with the admission, re-education and social reintegration of minors in

¹⁴⁴ Code of criminal procedure, art. 96.

¹⁴⁵ See Horace Sègnonna Adjolohoun, *ICLA Country Report: Benin*, p. 10-11.

¹⁴⁶ HRTG, AFJB, ESAM & OMCT, *Human Rights Violations in Benin*, Alternative report to the United Nations Committee Against Torture, October-November 2004, at III.2.3, p. 71.

¹⁴⁷ *Ibid.*, p. 73.

¹⁴⁸ UN Committee on the Rights of the Child, *Concluding Observations on the initial report of Benin*, CRC/C/15/Add.106, 24 August 1999, para. 8. Available at:

http://www.africanchildforum.org/clr/pdf/benin-initial-uncrc-co_en.pdf

¹⁴⁹ Loi 2012-36 Portant création de la Commission béninoise des droits de l'homme, 15 February 2013, Art. 31. Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99940/119602/F1780638004/BEN-99940.pdf>

¹⁵⁰ Child Rights International Network, *Benin: Children's Ombudsperson*, available at:

<http://www.crin.org/en/library/publications/benin-childrens-ombudsperson>.

difficult circumstances. However, this is primarily an offshoot of the criminal justice system.¹⁵¹

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

¹⁵¹ *Initial report of Benin to the UN Committee on the Rights of the Child*, CRC/C/3/Add.52, 4 June 1997, para. 211. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f3%2fAdd.52&Lang=en.