

ACCESS TO JUSTICE FOR CHILDREN: BURKINA FASO

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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?

The CRC was signed by Burkina Faso on 26 January 1990 and ratified on 31 August 1990.¹ It was published in the Official Journal on 30 August 1990.

Burkina Faso has also signed and ratified the Optional Protocols to the CRC on the Involvement of Children in Armed Conflict, on the Sale of Children, Child Prostitution and Child Pornography.²

B. Does the CRC take precedence over national law?

Pursuant to Article 151 of the Constitution, ratified international treaties take precedence over national law, subject to a condition of reciprocity by the other parties.³

C. Has the CRC been incorporated into national law?

Yes, the CRC was incorporated by virtue of being published in the Official Journal. Furthermore, some of its provisions are also reflected in national law, in particular the right to be heard and the principle of best interest of the child.⁴

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

The CRC can be directly enforced in the courts, and it can be referenced in decisions.

E. Are there examples of domestic courts using or applying the CRC or other

¹ See

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

² *Combined third and fourth periodic reports of Burkina Faso to the UN Committee on the Rights of the Child*, CRC/C/BFA/3-4, 30 March 2009, para. 29. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBFA%2f3-4&Lang=en

³ Constitution du Burkina Faso, 2 June 1991, Art. 151. Available at:

http://www.accpuf.org/images/pdf/cm/burkinafaso/031-tf-txt_const.pdf.

⁴ Law 015-2014/AN on the protection of children in conflict with the law and in danger, 13 May 2014. Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98010/116488/F295552665/BFA-98010.pdf>.

relevant international instruments?

Local counsel confirmed that the CRC and other international instruments have sometimes been cited by courts. However, no example of domestic courts using or applying the CRC or other relevant international instruments could be located.

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?

Under the Code of Civil Procedure,⁵ children are entitled to bring civil cases in courts to challenge violations of their rights.⁶ However, the Code of Civil Procedure does not provide for any particular procedure or guidelines for the participation of children in civil court proceedings.

The Family Code (*Code de la Personne et de la Famille*) provides that under the age of 20, a child does not have any legal capacity.⁷ According to local counsel, this provision means that children would need to be represented by a parent, guardian, tutor or adult to bring a case before a domestic court. We have not identified any provision to that effect in the Code of Civil Procedure or the Family Code.

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?

We understand that the practice in Burkina Faso is that children are permitted to bring cases only with the assistance of a representative. According to local counsel, such representative does not necessarily need to be a parent or guardian; any adult can assist a child.

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

There is no distinction between infants, young children and children in the way cases would be brought in the domestic courts.

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

As set forth in Question IV.B below, children are eligible to receive free legal assistance for all matters that they bring to the courts.

⁵ Law No. 022/99/AN relating to the Code of Civil Procedure. Available at http://www.cabinetneya.com/docu/Loi_portant_code-de_procedure_civile.pdf.

⁶ Code of Civil Procedure, Article 3.

⁷ Family Code, Articles 552 and 554 (available at http://www.justice.gov.bf/files/Documents%20en%20lign/Textes%20juridiques/Codes%20et%20Lois/L_e_code_des_personnes_et_de_la_famille.pdf).

- 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)?

We have not identified any formal limiting factors for a child to bring a case. However, in some regions of Burkina Faso, practical constraints (including economic factors), limit access to courts for children. Furthermore, children who are not registered at birth could face difficulties in accessing the justice system.⁸

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?

According to the Code of Civil Procedure, any interested party may initiate legal proceedings in civil courts to challenge violations of their rights under domestic law. There is no explicit restriction for children but children are not explicitly referred to in the Code of Civil Procedure. Most civil cases are brought before the First Instance Tribunal (*Tribunal de Grande Instance*),⁹ although claims for compensation under a particular amount defined in the Law No. 010/93/ADP regarding the organisation of the judiciary in Burkina Faso may be brought in the Instance Tribunal (*Tribunal d'Instance*)¹⁰ or the local court (*Tribunal Départemental*).¹¹

In addition to bringing a case on the merits, children may also seek to obtain a summary judgment from the court in an expedited procedure (*procédure de référé*).¹²

The Children's Judge (*Juge des Enfants*) has jurisdiction to issue any orders when a child under 18 years old is in danger.¹³

Children may also initiate administrative proceedings and seek the annulment or modification of a decision issued by an administrative body that is contrary to domestic law.¹⁴

Criminal courts are otherwise competent to prosecute individuals for crimes and violations of children's rights when such violations are defined as crimes

⁸ See http://www.rf2d.org/informations-generales-burkina-faso/#5-justice_des_mineurs

⁹ Law No. 010/93/ADP on the organisation of the judiciary in Burkina Faso, 17 May 1993, amended by law 028-2004/AN, 8 September 2004, (Law on the organisation of the judiciary), Article 21. Available at: <http://www.wipo.int/edocs/lexdocs/laws/fr/bf/bf014fr.pdf>.

¹⁰ Law on the organisation of the judiciary in Burkina Faso, Article 41.

¹¹ Law on the organisation of the judiciary in Burkina Faso, Article 48.

¹² Law on the organisation of the judiciary in Burkina Faso, Articles 25-30.

¹³ Law on the organisation of the judiciary in Burkina Faso, Article 64.

¹⁴ *Common core document forming part of the reports of Burkina Faso to the UN Human Rights Instruments*, HRI/CORE/BFA/2012, 26 November 2012, para. 98 Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2FCORE%2FBFA%2F2012&Lang=fr.

in the Criminal Code.¹⁵

The National Human Rights Commission (*Commission Nationale des Droits Humains*) was established with the mandate to examine complaints regarding violations of human rights.¹⁶ The National Human Rights Commission is responsible for the application of international/regional instruments pertaining to human rights. It is responsible for investigating claims brought by individuals, associations or non-governmental organisations concerning any allegations of breaches of human rights.

The Constitutional Court of Burkina Faso also has jurisdiction to decide on the conformity of the laws with the Constitution. It may however only be seized by (i) the President of the Faso, (ii) the Prime Minister, (iii) the President of the National Assembly, (iv) the President of the Chamber of Representatives, and (iv) 1/5th of the members of the National Assembly.¹⁷

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”).¹⁸ 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.¹⁹

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”).²⁰ 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.²¹ If the case

¹⁵ Law No. 043/96/ADP regarding the Criminal Code.

¹⁶ Law No. 062-2009/AN relating to the constitution of the National Human Rights Commission, 21 December 2009, available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/84056/93211/F1290685082/BFA-84056.pdf>, and Decree No. 2010–559/PRES/PM/MPDH relating to the organisation of the National Human Rights Commission, 21 September 2010. Available at:

http://www.legiburkina.bf/m/Sommaires_JO/D%C3%A9cret_2010_00815.htm.

¹⁷ See <http://www.conseil-constitutionnel.gov.bf>.

¹⁸ 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-acrwc/acrwc-charter-full-text>.

For more information about communications, see:

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

¹⁹ Ibid.

²⁰ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at:

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

²¹ 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>.

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.²²

All available domestic remedies must have been exhausted before bringing a case to the African Committee or the African Commission.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 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.²⁵

Individuals or NGOs with observer status before the African Commission may bring their case to the African Court on Human and Peoples' Rights²⁶ alleging violations of the African Charter.²⁷ All available domestic remedies must have been exhausted before bringing a case to the Court.²⁸ The complaint must include, amongst other things, details of the applicant's identity, notwithstanding his/her request to remain anonymous.²⁹ The

²² 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>.

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 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/>.

²⁶ 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>; Burkina Faso has ratified this Protocol. Coalition for an Effective African Court on Human and Peoples' Rights, 'Ratification status: Protocol on the Statute of the African Court of Justice and Human Rights', 12 July 2014, available at: http://www.african-court-coalition.org/index.php?option=com_content&view=article&id=87:ratification-status-protocol-on-the-statute-of-the-african-court-of-justice-and-human-rights&catid=7:african-union&Itemid=12.

²⁷ 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>.

²⁸ Ibid., Article 6(2).

²⁹ 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.

complaint must be written in one of the official languages of the Court,³⁰ and must be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court.³¹ Applicants are entitled to be represented or to be assisted by legal counsel and/or by any other person of the applicant's choice.³² The Court may, in the interest of justice, provide free legal representation and/or legal assistance to the applicant.³³ 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".³⁴

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.³⁵ This includes acts or inaction of Community Officials which violate the rights of individuals.³⁶ 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.³⁷ There are, however a number of conditions: the complaint must not be anonymous or be pending before another international court;³⁸ representation by an agent or lawyer is required;³⁹ 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.⁴⁰ Judgments of the Court of Justice are binding on the Member States, Institutions of the Community, individuals and corporate bodies.⁴¹

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

Civil courts have the power either to award monetary compensation or to issue an injunction.

It is possible to request that the court issue a summary judgment at the outset of the proceedings (*procédure de référé*).⁴² The President of the First

³⁰ Ibid., Rule 34; the official languages of the Court are: Arabic, English, French, Portuguese, Spanish, Francoph and any other African language.

³¹ Ibid., Rule 40.

³² Ibid., Rule 28.

³³ Ibid., Rule 31.

³⁴ Ibid., Article 27(1).

³⁵ 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.

³⁶ Ibid, Article 4; Protocol on the Community Court of Justice, Article 10(c).

³⁷ 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>.

³⁸ Supplementary Protocol A/SP.1/01/05, Article 4; Protocol on the Community Court of Justice, Article 10(d),

³⁹ Protocol on the Community Court of Justice, Article 12.

⁴⁰ Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).

⁴¹ 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.

⁴² Law No. 010/93/ADP regarding the organisation of the judiciary in Burkina Faso, Articles 25-30.

Instance Tribunal has exclusive jurisdiction over summary proceedings irrespective of the amount at stake.

- 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?

Bringing legal proceedings requires the identification of a specific claimant, although hearings may be held in private where necessary.

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

The Code of Civil Procedure does not contemplate collective action or group litigation with or without naming individual victims.

However, several complainants may file a claim against the same defendant when the alleged breach arises from the same set of facts.

In some administrative cases, victims may be able to bring a case as an association.⁴³

- E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Non-government organisations may file challenges to potential children's rights violations before the civil courts only if they have a "sufficient interest" to do so. According to case-law, this is interpreted in a rather restrictive way: for instance, an administrative court decided that an NGO working on freedom of expression did not have the capacity to challenge the censoring of radio and television programmes by the information agency.⁴⁴ The Council of State, discussing environmental law, stated that in the case of a NGO bringing a challenge in an administrative court, there would be "no presumption of interest to act, except when considering the specific case of a victims' association, whose mere purpose justifies the interest to act."⁴⁵

⁴³ See Council of State of Burkina Faso, *Le juge administratif et le droit de l'environnement*, Burkina Faso's contribution at the Carthagène Congress organised by the International association of Supreme administrative jurisdictions, 2013, p.6, available at: http://www.aihja.org/images/users/114/files/Congres_de_Carthagene_-_Rapport_du_Burkina_Faso_2013-BURKINAFASO-FR.pdf

⁴⁴ See Conseil Supérieur de la Communication, *Rapport du panel sur les émissions d'expression directe*, 22 september 2010, pp. 23-24. Available at: http://www.faso-tic.net/IMG/pdf/Rapport_du_panel_sur_la_gestion_des_émissions_d'expression_directe.pdf.

⁴⁵ Council of State of Burkina Faso, *Le juge administratif et le droit de l'environnement*, Burkina Faso's contribution at the Carthagène Congress organised by the International association of Supreme administrative jurisdictions, 2013. Available at: http://www.aihja.org/images/users/114/files/Congres_de_Carthagene_-_Rapport_du_Burkina_Faso_2013-BURKINAFASO-FR.pdf.

In criminal cases, only victims can file actions, and organisations cannot act on victims' behalf or out of public interest.⁴⁶

In cases brought in civil courts, the Code of Civil Procedure provides for the possibility of a third party intervening in a proceeding.⁴⁷ The third party may intervene in support of one party to the dispute (*intervention accessoire*) or claim a right (*intervention principale*) in the proceedings.

According to local counsel, interventions of non-governmental organisations in cases involving children are not common but should be possible.

NGOs and other civil society organisations can bring complaints about individual violations before the National Human Rights Commission. However the Commission cannot investigate cases which were reviewed by the judiciary.⁴⁸

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 above, civil cases are usually filed in the First Instance Tribunal. The Code of Civil Procedure provides some guidance on how to initiate civil proceedings.

Administrative proceedings may be brought by parties with a “sufficient interest”. Before applying to the competent administrative court, the applicant needs to contact the relevant administration in writing and request that the administration review its decision (*recours gracieux*). If this review fails, the applicant needs to file a request with the administrative tribunal (*Tribunal Administratif*) which has jurisdiction and request the annulment or the modification of the administrative decision.⁴⁹

The law states that each First Instance Tribunal (*Tribunal de Grande Instance*) has one or several children's judges competent to order any necessary measure to protect a child at risk.⁵⁰ However in practice, such judges are only appointed in Ouagadougou and Bobo Dioulasso.⁵¹ The Children's Judge also has jurisdiction to hear cases where children are accused of committing minor criminal offences (*contraventions* and *délits*).⁵²

⁴⁶ Amnesty International, Burkina Faso, La compétence universelle pour mettre fin à l'impunité, No Safe Haven n°7, 21 November 2012. AI Index: AFR 60/002/2012. Available at <http://amnesty.org/fr/library/info/AFR60/001/2012/fr>.

⁴⁷ Code of Civil Procedure, Article 114.

⁴⁸ Law establishing the Human Rights Commission, article 9.

⁴⁹ For more information on the administrative proceedings in Burkina Faso, see www.ahja.org/images/users/1/files/burkina_faso.fr.0.pdf?PHPSESSID=f83dg63dqj61vokoep4kk44fu1.

⁵⁰ Law on the organisation of the judiciary in Burkina Faso, article 64.

⁵¹ Ministère de la Justice, *Tableau de bord statistique 2012 de la justice*, April 2013, pp. 46-47. Available at: http://www.cns.bf/IMG/pdf/tb_justice_2012-version_finale.pdf.

⁵² Law on the organisation of the judiciary in Burkina Faso, article 64.

The *Tribunal pour enfants*, attached to the criminal court (*Cour d'appel*) is competent to hear cases where a minor is accused of a crime. It also hears cases on appeal from the children's judge. There are two Children Courts, attached to the two Courts of appeal (Ouagadougou and Bobo Dioulasso).⁵³

- 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?

Legal aid is available in principle to persons who do not have sufficient resources to exercise their rights in civil, administrative, commercial and penal matters. Legal aid includes representation by an attorney, exemption from paying the bailiff's fees and other judicial costs.⁵⁴

Decree N° 2009-558/PRES/PM/MJ/MEF/MATD of 22 July 2009⁵⁵ relating to the organisation of legal aid provides some guidance on an individual's eligibility for legal aid. Article 5 provides that children qualify as a person with insufficient resources to exercise their rights and are therefore are entitled to legal aid without having to prove their need for it.

However, in practice, the fund created to provide legal aid does not have enough resources to satisfy the needs for legal aid. Legal aid may therefore not be available in practice although the complainant would qualify for it.

- 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?

There is no institutionalised legal service focused organisation in Burkina Faso. However, private practitioners sometimes agree to provide legal assistance and represent clients on a pro bono basis.

In addition, non-governmental organisations dedicated to the child's welfare in Burkina Faso may also provide assistance. A list of associations dedicated to the protection of human rights in Burkina Faso is available on the website of the Ministry of Human Rights and Civic Promotion (*Ministère des Droits Humains et de la Protection Civique*).⁵⁶

- 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

⁵³ Ministère de la Justice, *Tableau de bord statistique 2012 de la justice*, April 2013, pp. 46-47.

⁵⁴ Code of Civil Procedure, Articles 62 to 64.

⁵⁵ Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/82387/90171/F772652731/BFA-82387.pdf>.

⁵⁶ The list is available at <http://www.mpdh.gov.bf/index.php/le-ministere/les-partenaires>.

violations of their rights that occurred when they were children?

Administrative review proceedings must usually be brought within three months' time of the issuance of the administrative decision to be challenged.

In civil proceedings, the time limit for bringing cases depends on the type of claim brought.⁵⁷ Unless otherwise stated in the Civil Code, claims involving violations of rights would need to be brought within 30 years of the violation.⁵⁸ Under article 2252 of the Civil Code, statutes of limitations are suspended when the victim is a minor, except in cases set in the legislation. In criminal proceedings, the limitation period is seven years for offences (*délits*) and 10 years for crimes.⁵⁹

- 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 Code of Civil Procedure provides guidance on the sort of evidence admissible to prove a violation.⁶⁰ All evidence is admissible provided that it is in accordance with the law. Both documentary evidence and affidavits are acceptable evidence.⁶¹ The judge may decide to conduct an investigation and hear witnesses.⁶² The judge is also entitled to draw an adverse inference from one party's failure to produce evidence.⁶³ The Code of Civil Procedure does not provide whether a child is allowed to submit an affidavit to the court.

The criminal court cannot hear sworn testimonies of children under the age of 16.⁶⁴ The presiding judge exercises his discretion to decide whether to hear their unsworn testimony for information purposes. In the event that a child under 16 nonetheless testifies under oath, the testimony is not null if none of the parties opposed their swearing-in.⁶⁵

⁵⁷ Civil Code, Titre XX, De la prescription. The Civil code in force in Burkina is the French civil code of 1804, available at:

http://www.justice.gov.bf/files/Documents%20en%20ligne/Textes%20juridiques/Codes%20et%20Lois/Le_code_civil_de_1804.pdf.

⁵⁸ Civil Code, Article 2262.

⁵⁹ *Initial report of Burkina Faso to the UN Committee against torture*, CAT/C/BFA/1-4, 29 January 2013, para. 33. Available at:

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

⁶⁰ Code of Civil Procedure, Articles 25 to 28.

⁶¹ Code of Civil Procedure, Articles 235 to 239.

⁶² Code of Civil Procedure, Articles 240 to 241.

⁶³ Code of Civil Procedure, Article 27.

⁶⁴ Law n°51-93 ADP dated 16 December 1993 relating to the procedure applicable before the criminal chamber, article 81. Available at:

http://fasolex.univ-ouaga.bf/Graphiques/Legislation/detail1.php?&fichier=http://fasolex.univ-ouaga.bf/Ba seDeDonnees/Legislation/ProcEDURE_penale/Loi5193.xml

⁶⁵ Law n°51-93 ADP dated 16 December 1993 regarding the procedure applicable before the criminal chamber, article 82. Available at:

http://fasolex.univ-ouaga.bf/Graphiques/Legislation/detail1.php?&fichier=http://fasolex.univ-ouaga.bf/Ba seDeDonnees/Legislation/ProcEDURE_penale/Loi5193.xml

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

According to local counsel, first instance tribunals usually issue their decisions between three to six months after a claim is brought.

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

Decisions by the children's judge (see above IV.A) are reviewed in appeal by the Children's tribunal.⁶⁶

First instance decisions are reviewed by the Court of Appeal. In criminal matters, the criminal chamber of the Court of Appeal hears both the first instance proceedings and the appeal. The Court of Appeal's decisions are in turn (subject to some conditions) reviewed by the Court of Cassation.

The default rule is that all decisions by the lower courts may be subject to an appeal. However, in some cases where the amount at stake is below a certain threshold, the decision issued is not subject to an appeal.

In most circumstances, appeals must be filed within two months of the issuance of the decision by the lower court.⁶⁷

The Court of Cassation review of decisions issued by the Court of Appeal is limited to a number of grounds listed in Article 597 of the Code of Civil Procedure. The Court of Cassation will only review the legal reasoning of the Court of Appeal and will not review or revisit the facts of the case.

In most circumstances, a request to the Court of Cassation must be filed with within two months of the issuance of the decision by the Court of Appeal.⁶⁸

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?

Burkina Faso having a civil law legal system, previously decided cases are not binding on the lower courts. However, Courts can still consider previously decided cases.

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

The Committee on the Rights of the Child described law enforcement in Burkina Faso as weak.⁶⁹ A report of the US State department underlines a

⁶⁶ Law on the organisation of the judiciary, Article 71.

⁶⁷ Code of Civil Procedure, Article 536.

⁶⁸ Code of Civil Procedure, Article 602.

⁶⁹ *Combined third and fourth periodic reports of Burkina Faso to the UN Committee on the Rights of the Child*, CRC/C/BFA/3-4, 30 March 2009, para. 8. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBFA%2f3-4&Lang=en

continuing shortage of magistrates and court-appointed lawyers, which could impact the enforcement of decisions.⁷⁰

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.

In October 2012, a children's rights section within the National Human Rights Commission (*Commission Nationale des Droits Humains*) was established with the mandate to examine complaints regarding violations of children's rights (see above III.A).⁷¹ The Commission has the power to review claims for breach of human rights filed by individuals.

A violation of children's rights could also be brought before the Ombudsman of Burkina Faso. The claim should be made in writing, and it is free.⁷² In July 2009, the Ombudsman of Burkina Faso together with the International Francophonie Organisation (*Organisation Internationale de la Francophonie*) organised a workshop dedicated to mediation procedures aimed at the promotion and protection of children's rights.

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

⁷⁰ U.S. Dep't of State, Burkina Faso 2012 Human Rights Report. Available at: <http://www.state.gov/documents/organization/204304.pdf>.

⁷¹ UN Committee on the Rights of the Child, *Concluding observations on the the initial report of Burkina Faso, under article 12 of the Optional Protocol on the sale of children, child prostitution and child pornography*, CRC/C/OPSC/BFA/CO/1, 10 July 2013, part II.(c). Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPSC%2fBFA%2fCO%2f1&Lang=en.

⁷² See <http://www.mediateur.gov.bf/SiteMediateur/demarches/saisine.html>.