

ACCESS TO JUSTICE FOR CHILDREN: BURUNDI

Report prepared by White & Case LLP for Child Rights International Network in September 2014 but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.

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?

Burundi ratified the CRC in 1990. The Burundi Constitution adopted in 2005 has specifically incorporated key human rights instruments in its constitution, including the CRC.

Article 19 of the Burundi Constitution provides:

“The rights and duties proclaimed and guaranteed, among others, by the Universal Declaration of Human Rights, the International Covenants on Human Rights, the African Charter on Human and Peoples Rights, the Convention on the Elimination of all Forms of Racial Discrimination against Women and the Convention on the Rights of the Child are an integral part of the constitution of the Republic of Burundi.”¹

However the State, according to local counsel, this provision lacks strength for failure to adopt a specific law to ensure the enforcement of the CRC.

Other international instruments enter into force after ratification.² The executive power is responsible for ratifying international instruments, however, for peace treaties, commercial treaties, treating engaging the State’s resources, amending the legislation or treaties relating to the status of person, ratification requires the adoption of a law.³

Burundi ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OP-AC) on 24 June 2008, and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OP-SC) on 6 November 2007.

¹ English translation of Constitution of Burundi, Art. 19 : « Les droits et devoirs proclamés et garantis, entre autres, par la Déclaration universelle des droits de l’homme, les Pactes internationaux relatifs aux droits de l’homme, la Charte africaine des droits de l’homme et des peuples, la Convention sur l’élimination de toutes les formes de discrimination à l’égard des femmes et la Convention relative aux droits de l’enfant font partie intégrante de la Constitution de la République du Burundi. » Available at: http://justice.gov.bi/IMG/pdf/Constitution_de_la_Republique_du_Burundi.pdf.

² Constitution, Article 292.

³ Constitution, Article 290.

B. Does the CRC take precedence over national law?

The Constitution is the highest source of law in Burundi.⁴ Furthermore, as mentioned above, the CRC is incorporated into the Constitution. Therefore, the CRC takes precedence over national law.

C. Has the CRC been incorporated into national law?

The CRC has been incorporated into national law through reference to it in the Constitution. While some provisions of the CRC are incorporated in national legislation, the Committee on the rights of the child expressed concerns about the lack of a “comprehensive legal instrument gathering all provisions relating to the rights of children” and about the fact that “customary laws and practices are not in conformity with the provisions and principles of the Convention, in particular that the Persons Family Code contains some restrictions to succession rights for girls.”⁵ A Child protection code is being elaborated and a draft version was presented by the government in May 2014.⁶

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

The CRC can in theory be directly enforced in the courts but some commentators argue that while, *prima facie*, the CRC could be directly enforced in courts, this has not been tested and courts may render a different opinion.⁷

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

Only few judgments in cases involving children in conflict with the law refer to the CRC and the best interest of the child⁸. We have not identified other examples of domestic courts using or applying the CRC.

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?

The Persons and Family Code, which forms part of the Civil Code (*Code des personnes*

⁴ Constitution, Article 48.

⁵ UN Committee on the Rights of the Child, *Concluding Observations on the second periodic report of Burundi*, CRC/C/BDI/CO/2, 20 October 2010, para. 9. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBDI%2fCO%2f2&Lang=en.

⁶ ‘La première au Burundi : code de protection de l’enfant enfin !’ in *Burundi Eco*, 2 May 2014. Available at: <http://www.burundi-eco.com/index.php/societe/un-regard-aux-besoins-des-enfants-et-des-jeunes/301-la-premiere-au-burundi-code-de-protection-de-l-enfant-enfin>.

⁷ J-C. Barakamfitye, J. Ncamatwi and S. Bizimana, *The Burundi Legal System and Research*, November-December 2012, p.8 Available at: <http://www.nyulawglobal.org/globalex/burundi1.htm>.

⁸ T. De Blauwe for Avocats Sans Frontières, *Analyse jurisprudentielle de la justice pour mineurs en conflit avec la loi au Burundi*, Mars 2011. Available at: http://justice.gov.bi/IMG/pdf/ASF-AnalyseJurispr-_JustiJuven_2011.pdf.

et de la famille) provides that the age of majority is 21 years old.⁹ However, in many areas of the daily life, minors over a certain age can act as adults. This is the case for instance for the right to vote, which starts at 18 years old.

An individual has full legal capacity when he/she reaches 21 years old.¹⁰ Prior to that age, the Persons and Family Code distinguishes minors capable of judgment (*capable de discernement*) and minors incapable of judgment.¹¹ Any legal act undertaken by a minor incapable of judgment is deemed null and void.¹² A minor capable of judgement can conduct some legal acts (conservatory and daily life administrative acts) provided these acts are compatible with his status and resources.¹³

Children under the age of 21 need to be represented by a parent or a guardian to bring cases in domestic courts to challenge violations of children's rights. The Code does not specify an age from which a child is considered capable of judgment, but in its report to the UN Committee on the rights of the child in 2010, the government states that: "Under Burundian legislation, a child may not bring a case before the courts unless he or she is declared to be of full age and capacity, i.e., is of sound judgement, which in accordance with Burundian law cannot be acquired until the age of 16 years."¹⁴

In the same report, the Burundian government mentioned a project of reform that would formally bring the age of majority to 18 years old.¹⁵

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

The assistance of a representative is required for a child to bring a case because as explained above, children under the age of 21 do not have legal capacity to do so.

According to local counsel, the practice in Burundi is to permit children as of 18 years to bring cases without the assistance of a representative.

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?

⁹ Décret-Loi n° 1/024 portant réforme du code des personnes et de la famille (Persons and Family Code), 28 April 1993, Articles 335 and 337. Available at:

http://justice.gov.bi/IMG/pdf/C_L_-_T1_-_2_Code_civil_COMPLET.pdf.

¹⁰ Persons and Family Code, Article 336.

¹¹ Persons and Family Code, Arts 338 and 339.

¹² Persons and Family Code, Art. 341.

¹³ Persons and Family Code, Art. 338.

¹⁴ *Second periodic report of Burundi to the UN Committee on the Rights of the Child*, CRC/C/BDI/2, 7 January 2010, para. 95. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBDI%2f2&Lang=en.

¹⁵ Id., para. 94.

A legal framework for legal aid in Burundi is lacking, and discussions to draft a bill on legal aid appear to have reached an impasse.¹⁶ Details on court appointed lawyers can be found in section IV.B below.

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)?

The Code of Criminal Procedure specifies that in challenges to children rights violations brought by NGOs (as authorised by the same code for certain types of violation, see details below in section III.E), the child victim's parent or guardian must give their agreement for the case to be brought.¹⁷

Practical constraints, including economic factors, and a lack of legal knowledge in effect limit the access to courts for children in some regions of Burundi. It is also notable that there are approximately only 200 registered qualified lawyers with the Burundi Bar, in a country with approximately 10.4 million people, 65% of whom are under 25 years old.

The Committee notes that years of war and armed conflict continue to have a negative impact on the situation of children and hamper progress in the effective implementation of the rights enshrined in the Convention.¹⁸

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 with full legal capacity may initiate legal proceedings in civil courts to challenge violations of their rights under domestic law, which includes the CRC by incorporation.¹⁹ Most civil cases are brought before the First Instance Tribunal (*Tribunal de Grande Instance*),²⁰ although claims for compensation under a particular amount defined in the Law regarding the organisation of the judiciary in Burundi may be brought in the local court (*Tribunal de Résidence*).²¹

¹⁶ J. M. Cueto pour Avocats Sans Frontières, *Propositions pour une stratégie nationale d'aide légale au Burundi*, 5 avril 2012, pp. 8-9. Available at:

http://www.asf.be/wp-content/uploads/2012/07/ASF_BUR_PropositionSNAL_2012.pdf.

¹⁷ Law n° 1/10 revising the Code of Criminal Procedure (Code of Criminal Procedure), 3 April 2013, Articles 65, 163. Available at: <http://www.wipo.int/edocs/lexdocs/laws/fr/bi/bi018fr.pdf>.

¹⁸ UN Committee on the Rights of the Child, *Concluding Observations on the second periodic report of Burundi*, CRC/C/BDI/CO/2, 20 October 2010, para. 6. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBDI%2fCO%2f2&Lang=en.

¹⁹ Law n° 1/010 establishing a Code of Civil Procedure (Code of Civil Procedure), 13 may 2004, Article 3. Available at: <http://justice.gov.bi/IMG/pdf/T2-COCPJ-Procéd-Civile.pdf>.

²⁰ Law regarding the organisation of the judiciary, Article 22. Available at: http://justice.gov.bi/IMG/pdf/T2-COCPJ-Org-competence_judiciaires.pdf.

²¹ Law regarding the organisation of the judiciary, Article 12.

In addition to the case brought on the merits, and in case of emergency, plaintiffs may also seek to obtain a summary judgment from the court in an expedited procedure (*procédure de référé*).²²

Individuals 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.²³

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

Two national human rights institutions can receive complaints on human rights violations. The National independent human rights commission (*Commission indépendante nationale des droits de l'homme*) can receive complaints and investigate any allegation of human rights violations. It can refer the case to the Public prosecutor if necessary. Its mission also encompasses "delivering or facilitating legal assistance to victims of human rights violations, in particular for women, children and other vulnerable people."²⁴ The Ombudsman of Burundi is responsible for mediation between citizens and administrative bodies. It can receive complaints and investigate alleged violations of human rights by civil servants, members of the judiciary, local governmental bodies, public institutions and any other institutions delivering a public service.²⁵

Any legal person who has an interest in doing so can challenge the constitutionality of an ordinary law.²⁶ They can do so by direct application to the Constitutional Court or through the "exception of unconstitutionality procedure", i.e. when a party in court proceedings challenges the constitutionality of the law being applied. The 2005 Constitution restricted the capacity of the Constitutional Court, allowing only challenges against ordinary laws and not against regulatory acts such as orders from the President or Ministers.²⁷ The Court thus denies to examine cases on the merits on the ground that the challenged instrument is an order rather than a law.²⁸

Individuals, including child victims, his/her parents or legal representatives, groups, or

²² Code of Civil Procedure, Articles 162-166.

²³ Law regarding the organisation of the judiciary, Article 60.

²⁴ Law n° 1/04 establishing the National independent human rights commission, 5 January 2011, Article 4. Available at: http://icoaf.org/docs/Burundi/Loi_No_1-04_du_5.01.11.pdf

²⁵ Law n° 1/03 establishing and organising the Ombudsman institution, 25 January 2010, Article 6. Available at: http://icoaf.org/docs/Burundi/Loi_No_1-03_du_25.01.10.pdf.

²⁶ Constitution, Art 230. "Toute personne physique ou morale intéressée ainsi que le Ministère Public peuvent saisir la Cour Constitutionnelle sur la constitutionnalité des lois, soit directement par voie d'action soit indirectement par la procédure d'exception d'inconstitutionnalité invoquée dans une affaire soumise à une autre juridiction."

²⁷ Law n° 1/03 of 11 January 2007 later confirmed this restriction by amending accordingly Article 10 of the law 1/018 on the Constitutional Court's organisation, functioning and procedure, 19 December 2002. Both laws are available at:

<http://www.accpuf.org/images/pdf/cm/burundi/lois-19-12-2002-et-11-01-2007-CC.pdf>.

²⁸ For an example of a human rights case declared inadmissible on this ground, see request RCCB 174, 22 August 2006, where NGOs attempted to challenge a Ministry order extending the detention of some political prisoners. Available at:

<https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Constitution/Cour%20Constitutionnelle/CC%202005/RCCB174.pdf>.

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”).²⁹ 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.³⁰

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”).³¹ 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.³² 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.³³

All available domestic remedies must have been exhausted before bringing a case to the African Committee or the African Commission.³⁴ 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.³⁵ 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.³⁶

²⁹ 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/>.

³⁰ 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>.

³¹ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at:

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

³² 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>.

³³ 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>.

³⁴ 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).

³⁵ 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>.

³⁶ Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rule 93,

Any individual or NGO who is resident in Burundi may file a complaint with the East African Court of Justice about the legality of any Act, regulation, directive, decision or action of the State on the grounds that it is unlawful or violates the rule of law.³⁷ The Court has jurisdiction over the interpretation and application of the Treaty Establishing the East African Community (EAC Treaty), and will have human rights jurisdiction at a later date.³⁸ Despite the current lack of explicit jurisdiction over human rights, the Court has decided cases involving individual rights.³⁹ A complaint must be lodged within two months of the decision or action complained of.⁴⁰ There is no requirement to exhaust domestic remedies before bringing a complaint to the Court. The Court issues declarations as to whether particular acts or laws infringe the EAC Treaty, and can recommend specific amendments to laws to bring them in conformity with the Treaty. Court judgments can be appealed to the Appeals Chamber of the Court,⁴¹ and are binding.⁴²

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 the court to issue a summary judgment at the outset of the proceedings in case of emergency (*procédure de référé*).⁴³

Criminal Courts can order restitutions or damages to be paid to the *partie civile*.⁴⁴

Administrative judges can prevent administrative bodies from taking an action or applying a decision.⁴⁵ In cases where an administrative act is found to be contrary to the legislation, administrative decisions can order reparation (benefits in kind or monetary damages). These decisions detail the actions to be taken by the person responsible for the incriminated administrative body in order to comply with the decision. If that person does not comply, then he or she becomes personally liable.⁴⁶

When the Constitutional Court finds that a law or a provision in a law is unconstitutional, this law or disposition is declared void.

available at: <http://www.achpr.org/instruments/rules-of-procedure-2010/>.

³⁷ Treaty Establishing the East African Community, Article 30(1), available at: <http://www.eac.int/treaty/>.

³⁸ Ibid., Article 27; In May 2005, the Council of Ministers issued a Draft Protocol to Operationalise the Extended Jurisdiction of the East African Court of Justice, but the protocol has not yet been approved: <http://www.ijrcenter.org/regional-communities/east-african-court-of-justice/>.

³⁹ See Open Society Justice Initiative, 'Human rights decisions of the East African Court of Justice', June 2013, available at: <http://www.opensocietyfoundations.org/sites/default/files/east-african-court-digest-june-2013-20130726.pdf>.

⁴⁰ Treaty Establishing the East African Community, Article 30(2).

⁴¹ Ibid., Article 35A.

⁴² Open Society Foundations, 'East African Court of Justice', June 2013, available at: <http://www.opensocietyfoundations.org/fact-sheets/east-african-court-justice>.

⁴³ Code of Civil Procedure, Articles 162-166.

⁴⁴ Law n° 1/05 revising the Criminal Code (Criminal Code), 22 April 2009, Article 94. Available at: http://justice.gov.bi/IMG/pdf/Code_Penal_Burundi_2009_-_FR.pdf.

⁴⁵ Law regarding the organisation of the judiciary, Article 61.

⁴⁶ Law regarding the organisation of the judiciary, Articles 62-63.

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?

Legal persons (which includes companies or organisations) can bring challenges to the Constitutional Court if they can prove a personal, current and legally protected interest to take action.⁴⁷ It is unclear how “personal interest” is interpreted by the Court, and whether a challenge could be brought without the applicant being a victim (see III.D below for examples of jurisprudence).

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, legal persons (which includes companies or organisations) can bring challenges to the Constitutional Court if they can prove a personal interest in the matter. For instance, in 2014, the Court ruled that a request from the Burundian Journalists Union (UBJ) challenging provisions of a law regulating the press was admissible on the ground that UBJ’s statutes include a mission of protection of the freedom of the press.⁴⁸ However, requests from the Burundian Bar Association challenging a reform of the status of legal professional was ruled inadmissible in 2012, on the ground that the Burundian Bar association had failed to demonstrate that it had an interest to act.⁴⁹

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 local counsel, non-governmental organisations are not entitled to file challenges or to intervene in civil cases that have already been filed.

In criminal cases, non-governmental organisations sometimes appear as *partie civile* with the victim and request compensation. The Criminal Code specifically provides that a non-governmental organisation duly authorised for a period of a minimum of five years prior to the occurrence of the facts in cases of sexual abuse or other violation of the physical integrity may file a challenge on behalf of a victim. It would have to obtain the authorisation of the victim to do so, or, if the victim is a minor, the authorisation of the victim’s guardian.⁵⁰

⁴⁷ See for instance request RCCB 261, 7 September 2012, available at:

<https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Constitution/Cour%20Constitutionnelle/CC%202005/RCCB261.pdf>.

⁴⁸ Request RCCB 271, 7 January 2014, available at:

<https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Constitution/Cour%20Constitutionnelle/CC%202005/RCCB271.pdf>

⁴⁹ Request RCCB 241, 6 september 2010, available at:

www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Constitution/Cour%20Constitutionnelle/CC%202005/RCCB241.pdf ; Request RCCB 228, 19 April 2010, available at:

<https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Constitution/Cour%20Constitutionnelle/CC%202005/RCCB228.pdf>.

⁵⁰ Code of Criminal Procedure, Articles 65, 163.

NGOs are allowed to file complaints on human rights violations to the national human rights institution (*Commission Nationale Indépendante des Droits de l'Homme*).⁵¹

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 discussed in item III.A 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. A plaintiff may also file a claim before the Administrative Tribunal for a challenge of a decision issued by the administration or to file a complaint against the acts of the administration.

At the local level (hills are the smallest administrative entity in Burundi), the Hill or Neighbourhood councils (*Conseil de Colline ou de quartier*) can settle disputes between individuals, but cannot decide on a sentence.⁵² It is not known how easy it would be for children to access this arbitration mechanism.

Criminal courts are otherwise competent to prosecute individuals for crimes and violations of children's rights when such violations are defined as crimes in the Criminal Code. In such cases the prosecution is brought by the public prosecutor, with the victim appearing as *partie civile*.⁵³

Criminal proceedings involving minors are held in camera.⁵⁴ Under the revised Code of Criminal Procedure, proceedings relating to minors should be heard by specialised chambers of the first instance and appeal courts.⁵⁵ However, it appears that such specialised chambers are not necessarily widely available in the country. Provisions on specific procedures in juvenile justice cases are very new in Burundese criminal law, having only been added in the latest revision of the Code of Criminal Procedure in 2013. In 2011, there was just one chamber dedicated to children in conflict with the law, attached to the *Tribunal de Grande Instance* in Ngozi.⁵⁶

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?

⁵¹ Law establishing the National independent human rights commission, Article. 36.

⁵² Law n°1/33 (28 november 2014) revising law n°1/02 (25 january 2010) on the organisation of the municipality, Article 46.2. Available at: http://www.ceniburundi.bi/IMG/pdf/Notes_non_classees.pdf.

⁵³ Code of Criminal Procedure, Article 163.

⁵⁴ Code of Criminal Procedure, Article 170.

⁵⁵ Code of Criminal Procedure, Article 357.

⁵⁶ T. De Blauwe for Avocats Sans Frontières, *Analyse jurisprudentielle de la justice pour mineurs en conflit avec la loi au Burundi*, Mars 2011. Available at: http://justice.gov.bi/IMG/pdf/ASF-AnalyseJurispr-_JustiJuven_2011.pdf.

Legal aid is not formally available in Burundi. Notwithstanding this lack of formal legal aid, a court may request the President of the Bar to appoint a lawyer if a defendant lacks resources.⁵⁷

In Criminal matters, the court can appoint a lawyer to a defendant, provided that the defendant agrees to be represented. However, child defendants should always be represented by a lawyer, and the Court therefore does not need the child's agreement to appoint a lawyer.⁵⁸

According to the information available on the Burundi Bar Association website,⁵⁹ the Burundi Bar only counts approximately 200 registered lawyers for the entire population of Burundi. As a result of (i) the small number of lawyers, (ii) the limited funds available to finance legal aid, and (iii) the needs for legal aid expressed by the population, legal aid in Burundi is scarce and insufficient.⁶⁰

The Bar Council (*Conseil de l'Ordre*) is formally responsible for organising legal aid.⁶¹ However, due to a lack of resources, the Burundi Bar cannot afford to finance legal aid.⁶²

Under the Code of Civil Procedure, indigents are exempted from paying court fees.⁶³ The Code of Civil Procedure does not specify what the requirements are to qualify as "indigent" and does not specifically provide that minors are automatically exempted from court fees.

Applications to the Constitutional Court, and applications to the Human Rights commission are free.⁶⁴

As discussed in section II.D above, the Ministry of Justice has sought to adopt a law on legal aid, but the draft was never enacted.⁶⁵

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

⁵⁷ Loi N° 1/014 dated 29 November 2002 « portant réforme du statut de la profession d'avocat », Article 55. Available at

http://www.barreauduburundi.org/index.php?option=com_content&view=article&id=22&Itemid=61).

⁵⁸ Code of Criminal Procedure, Article 166.

⁵⁹ Barreau du Burundi, www.barreauduburundi.org.

⁶⁰ J. Moriceau, C. Niyonzima for Avocats Sans Frontières, *Etude de base sur l'aide légale au Burundi*, June 2011, p. 9. Available at:

www.burunditransparence.org/201107_EtudeAideLegaleBurundi_JMoriceau.pdf.

⁶¹ Loi N° 1/014 dated 29 November 2002 « portant réforme du statut de la profession d'avocat », Article 56.

⁶² See « Avant projet de loi portant cadre légal de l'aide juridique et de l'assistance judiciaire au Burundi et propositions de mise en œuvre », Ministère de la Justice, Burundi, p. 17 (available at http://justice.gov.bi/IMG/pdf/BINUB-_Avant-projet_de_loi_aide_jurid-_et_judic-.pdf).

⁶³ Code of Civil Procedure, Article 405.

⁶⁴ Association des Cours Constitutionnelles ayant en Partage l'Usage du Français, *Présentation de la Cour Constitutionnelle du Burundi*. Available at:

http://www.accpuf.org/images/pdf/cm/burundi/PRESENTATION_DE_LA_COUR_CONSTITUTIONNELLE.pdf ; Law establishing the independent national human rights commission, Article 47.

⁶⁵ See « Avant projet de loi portant cadre légal de l'aide juridique et de l'assistance judiciaire au Burundi et propositions de mise en œuvre », Ministère de la Justice, Burundi (available at http://justice.gov.bi/IMG/pdf/BINUB-_Avant-projet_de_loi_aide_jurid-_et_judic-.pdf).

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 Burundi. However, private practitioners sometimes agree to provide legal assistance and represent clients on a pro-bono basis.

The Burundi Bar has a legal assistance service restricted to Bujumbura.⁶⁶

Several organisations, including Lawyers Without Borders, are actively working on improving the access to justice in a country where people seeking justice, including children, often lack the necessary resources.⁶⁷

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?

For civil proceedings, the time limit for bringing cases depends on the type of claim brought.⁶⁸ Unless otherwise stated in the Civil Code, claims involving violations of rights would need to be brought within 30 years of the violation.⁶⁹

In criminal cases, the time limit for bringing cases depends on the type of criminal offence.⁷⁰ According to the Criminal Code, the statute of limitation begins to run after the child reaches the age of civil majority (i.e., 21 years old).⁷¹

Applications to the ombudsman should be made within one year of the alleged violation.⁷²

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. All evidence is admissible provided that it is in accordance with the law. Both documentary evidence and affidavits are acceptable evidence.⁷³ The tribunal can also order a site visit or appoint court-appointed experts to assess the damages allegedly incurred and provide an estimate of the compensation.⁷⁴ The tribunal can also appoint one to three technical experts on a technical issue.⁷⁵ One party can request the judge to order the opposing party, or a third party to produce a document.⁷⁶ The Code of

⁶⁶ J. Moriceau, C. Niyonzima for Avocats Sans Frontières, *Etude de base sur l'aide légale au Burundi*, June 2011, p. 9. Available at:

www.burunditransparence.org/201107_EtudeAideLegaleBurundi_JMoriceau.pdf

⁶⁷ See e.g.

<http://www.asf.be/blog/publications/pour-un-acces-effectif-a-la-justice-au-burundi-contribution-dasf-a-le-xamen-periodique-universel-2013/>.

⁶⁸ Civil Code, Articles 652-659.

⁶⁹ Civil Code, Article 647.

⁷⁰ Criminal Code, Article 149.

⁷¹ Criminal Code, Article 149.

⁷² Law on the Ombudsman, Article 11.

⁷³ Code of Civil Procedure, Articles 98-105.

⁷⁴ Code of Civil Procedure, Article 110.

⁷⁵ Code of Civil Procedure, Articles 111-116.

⁷⁶ Code of Civil Procedure, Articles 80-83.

Civil Procedure does not provide whether a child is allowed to submit an affidavit to the court, nor does it set conditions under which a child could be heard by a court.

In criminal cases as well, all evidence is admissible provided that it is in accordance with the law.⁷⁷ The burden of proof lies upon the public prosecutor, and, if the need arises, on the victim (*partie civile*).⁷⁸ The court can also decide to hear witnesses who are compelled to appear in court.⁷⁹

Children under the age of 16 are not authorised to appear as sworn witnesses before a criminal court.⁸⁰ They may nevertheless provide information. During the investigation, children under the age of 18 cannot be sworn in⁸¹, and any interview must be held in the presence of a lawyer or another court-approved person with knowledge of juvenile justice matters.⁸² Other rules, procedures or practices relating to evidence that is produced or presented by children were not found.

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 within 60 days after the last hearing in the case. There is no information available on the average length of a court proceeding before the courts in Burundi. According to Avocats Sans Frontières, criminal proceedings involving child offenders take as long as similar cases involving adults.⁸³

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

First instance decisions are reviewed by the Court of Appeal; the Court of Appeal's decisions are in turn (subject to some conditions) reviewed by the Supreme Court.

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 30 days of the issuance of the decision by the lower court.⁸⁴

The Supreme Court's review of decisions issued by the Court of Appeal is limited to legal issues.⁸⁵ The Supreme Court will only review the legal reasoning of the Court of Appeal and will not review or revisit the facts of the case.

⁷⁷ Code of Criminal Procedure, Article 172.

⁷⁸ Code of Criminal Procedure, Article 171.

⁷⁹ Code of Criminal Procedure, Articles 186-189.

⁸⁰ Code of Criminal Procedure, Article 192.6.

⁸¹ Code of Criminal Procedure, Article 80.7.

⁸² Code of Criminal Procedure, Article 224.

⁸³ T. De Blauwe for Avocats Sans Frontières, *Analyse jurisprudentielle de la justice pour mineurs en conflit avec la loi au Burundi*, Mars 2011, p. 8. Available at: http://justice.gov.bi/IMG/pdf/ASF-AnalyseJurispr-JustiJuven_2011.pdf.

⁸⁴ Code of Civil Procedure, Article 197.

⁸⁵ Law regarding the organisation of the judiciary, Article 84. (« Tout pourvoi en cassation à l'appui duquel ne sont invoqués que des moyens de pour fait supposant un réexamen quant au fond, est déclaré irrecevable par ladite chambre. »)

In most circumstances, a request to the Supreme Court must be filed with the Supreme Court within two months of the issuance of the decision by the Court of Appeal.⁸⁶ For minors, this deadline runs from the moment the parent or guardian is notified of the lower court's decision.⁸⁷

In criminal cases involving a child defendant, appeals can be filed by the child's parents, guardian or lawyer, or, "if applicable" by the child himself, although there are no further information as to conditions under which a child could appeal a decision.⁸⁸

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?

No information available.

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

According to various NGOs, the lack of material, financial and human resources in the justice system hinders the enforcement of judgements.⁸⁹

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.

One major concern is the illiteracy rate within the country, preventing people to properly access justice. Furthermore most of the people know Kirundi whereas all the laws are written in French.

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

⁸⁶ Law regarding the organisation of the judiciary, Article 87.

⁸⁷ Code of Civil Procedure, Article 170.

⁸⁸ Code of Criminal Procedure, Article 239.

⁸⁹ Niyonkuru, A. P. , 'L'impunité au Burundi : Causes, conséquences et issues', in *Revue de jurisprudence de la Cour Suprême du Burundi*, 2012, pp. 76-89. Available at: http://justice.gov.bi/IMG/pdf/1JURISCS_2012_RB170412_bat_2_.pdf. The article quotes Avocats Sans Frontières and the Ligue des droits de la personne dans la région des Grands Lacs.