

ACCESS TO JUSTICE FOR CHILDREN: CABO VERDE

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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?

Article 12 of the Cabo Verde Constitution provides that international treaties and agreements, validly approved and ratified, shall be in force in the judicial system after their official publication, as long as they are in force in the international legal system.¹

Cabo Verde formally adopted the CRC in 1991 through Act. No. 29/IV/91 of 30 December 1991 (Official Gazette No. 53, supplement No. 4).²

In 2002, Cabo Verde also ratified the Optional Protocols of the CRC on the involvement of children in armed conflict and on the sale of children, child prostitution, and child pornography. Furthermore, it has signed the third optional Protocol on a communications procedure in 2012, but has not yet ratified it.³

Cabo Verde also ratified the African Charter on the Rights and Welfare of the Child⁴.

B. Does the CRC take precedence over national law?

Once it was properly ratified, as explained in section I.A., international instruments enter into force in the Cabo Verdian legal order prevailing over infra-constitutional legislation.⁵

In case of conflict between the Statute of Children and Adolescents (hereby SCA) and other child protective legislation, such as the CRC, the most favorable will be applied⁶.

C. Has the CRC been incorporated into national law?

The CRC was properly ratified and published, and has henceforth become part of the national legal order. Furthermore, the SCA is progressive in its language and enshrines many of the substantive provisions of the CRC, such as the best interest of the child as a principle, petitioning powers for minors and multi-level actions of guaranteeing the integral protection of the child, while maintaining that its application and interpretation

¹ Constitution of Cape Verde, 2010 revision, available in portuguese at: <http://www.wipo.int/edocs/lexdocs/laws/pt/cv/cv008pt.pdf>

² *Initial report of Cape Verde to the UN Committee on the Rights of the Child*, CRC/C/11/Add.23, 9 January 2001, at para. 15, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f11%2fAdd.23&Lang=en.

³ See: <http://indicators.ohchr.org/>.

⁴ Available at: http://www.au.int/en/sites/default/files/Charter_En_African_Charter_on_the_Rights_and_Welfare_of_the_Child_AddisAbaba_July1990.pdf

⁵ Constitution of Cape Verde, Article 11.

⁶ SCA, article 12.4.

must be made in accordance with the CRC and, furthermore, that the most beneficial legal instrument will be used⁷.

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

As elaborated above, the CRC has supra-legal strength and can be summoned to counter legislation with exception of the Constitution. However, a more likely avenue of litigation might be the recently enacted SCA.⁸

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

We have not been able to locate any examples of domestic courts using or applying the Convention as the only reliable source of court cases in Cape Verde, as well as other Portuguese-speaking countries in Africa, is the www.legis-palop.org portal, which is a paid service.

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?

Article 11.1 of the SCA guarantees access to justice and expedite response for children when their rights have been violated. The effective judicial protection is guaranteed in accordance with the following principles: the best interest of the minor; priority in the legal system; promoting the dignity of minors suspected of committing crimes; privacy; hearing of victims of sexual abuse for the least amount of times, with the use of child-friendly tools.

Article 20 of the Constitution provides the writ of Amparo, directed at the Constitutional Court (currently the Superior Court of Justice), for the protection of any rights, liberties and guarantees established in the Constitution. Furthermore, Article 18 establishes that all constitutional provisions are directly enforceable, regardless of further regulation.

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?

Under the Code of Civil Procedure, a child must be represented by a legal representative. Children are generally inept to exercise civil rights such as bringing a case⁹. If there is a dispute between a child and his or her parent, a guardian ad litem will be appointed to represent the child.¹⁰

Children and adolescents, in accordance with their capacities, are apt to personally demand the fulfilment of their rights before public and private institutions¹¹, including

⁷ Ibid, Article 12.1.

⁸ Law n. 50/VIII/2013; Bulletin n. 70, Series I, Dec 26 2013.

⁹ SCA, Article 7.

¹⁰ Code of Civil Procedure, Article 12.

¹¹ SCA, Article 8.

bringing the matter to the attention of the authorities¹². There is wide petitioning powers established for children to exercise directly before any public institution, but this is balanced by the lack of civil capacity to bring judicial cases on their own.¹³

However, children have the right to be heard and have their opinion considered in any setting, including legal or administrative procedures that may affect their rights. This right can only be limited if in discordance with the principle of the superior interest of the child¹⁴.

An exception to this rule is the possibility for children over the age of 12 to require support from their progenitors on their own names, with the assistance of the Public Ministry¹⁵.

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

If the child can be represented by his or her parents, they may bring forth a case. Education professionals, civil servants, health workers, have the duty to be vigilant and communicate any suspicion of abuse to the authorities¹⁶, in which case the Public Ministry is responsible to represent children in court.

The Cape Verdean Institute of Children and Adolescents (hereby CVICA) is the public entity designed to protect the rights of children, in collaboration with the Public Ministry and Judicial Police. The Institute is a government organization charged with the promotion and execution of social policies in support of children and adolescents¹⁷. Besides policy promotion, the Institute coordinates Municipal Committees for the Protection of the Rights of Children and Adolescents, which provide support to at-risk children, as long as being the safety net for any notice of abuse.¹⁸

One of the initiatives of the Institute, in collaboration with UNICEF, is the creation of “safe-zones” in Judiciary Police facilities. The zones have child-friendly decoration and aim to limit the exposure of the child to multiple authorities in case of sexual abuse¹⁹.

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

The Constitution guarantees that people will not be impeded from protection of the law due to economic, social, or cultural limitations.²⁰ Cape Verdeans have the right to know and defend their legal rights, through universal access to the courts, regardless of economic condition.²¹

¹² Ibid, Article 26.2.

¹³ Ibid, Article 27.

¹⁴ Ibid, Article 21.

¹⁵ Ibid, Article 135.1.

¹⁶ Ibid, Article 39.3.

¹⁷ *Análise de Situação da Criança e do Adolescente em Cabo Verde*, UNICEF (2011), 26, available at: <http://www.un.cv/files/crianca2011.pdf>.

¹⁸ *Análise de Situação da Criança e do Adolescente em Cabo Verde*, UNICEF (2011), 28.

¹⁹ Ibid.

²⁰ Constitution of Cape Verde, Article 22.

²¹ Constitution of Cape Verde, Article 20.

The SCA guarantees that children and adolescents have the right to defend their rights. This includes the provision of free legal assistance and representation for children who lack the necessary funds²².

The House of Justice (*Casa de Justiça*) is an initiative under the Ministry of Justice that provides legal support to victims of gender based violence and other vulnerable groups. This support includes legal assistance and counseling.²³

See IV.B below for more information on subsidized legal assistance available directly from the courts.

- 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)?

Under the Civil Procedure Code, both parents have to agree on a case being brought²⁴. If there is abuse to the rights of the child, particularly those clearly pointed out in the SCA or CRC, the child has access to the Institute or the Public Ministry, which can represent the child in court. However, in crimes that require a private complaint or action, the Public Ministry may not act without the acquiescence of the parents. This is problematic as there is no provision, in civil or criminal law, that suspends the statute of limitation until the child reaches adulthood.

There is a bill in progress to reform the Penal Procedure Code to assure the responsibility of the Public Ministry to bring criminal charges in the name of children when their parents fail to do so.

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 most comprehensive challenge is the “Action for the Restitution of Fundamental Rights”, which consists in ‘obtaining a judicial decision that ceases the threat or order the restitution of the fundamental right of the child or adolescent²⁵. And does not limit the possibility for further civil and penal actions. It can be filed by the parents, legal representative or Public Ministry, which in turn can be summoned directly by the minor or any institution that is established for the protection of minors.

The SCA prescribes a range of “Civil Tutelary” actions, for measures relating to: the regulation and/or inhibition of the paternal power; fixation of support; preserving the patrimony of the minor; institutionalisation and placement under a foster family of minors; any precautionary measures needed for the full protection of the child²⁶.

²² SCA, Article 26.

²³ See: <http://www.casasdireito.cv/index.php?paginas=27>.

²⁴ Civil Procedure Code, Article 12.2.

²⁵ SCA, Article 76.1.

²⁶ Ibid, Article 130.

African Committee of Experts on the Rights and Welfare of the Child

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”).²⁷ All available domestic remedies must have been exhausted before bringing a case to the African Committee.²⁸ 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.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

African Commission on Human and Peoples’ Rights

Individuals, groups or NGOs may submit complaints (known as “communications”) to the African Commission on Human and Peoples’ Rights (“African Commission”) about violations of the African Charter on Human and Peoples’ Rights (“African Charter”).³¹ All available domestic remedies must have been exhausted before bringing a case to the African Commission.³² The complaint must include, amongst other things: the name of the person filing it or, in the case of an NGO, the name of the legal representative; whether or not the complainant wishes to remain anonymous and the reasons for this; and the name of the victim, in a case where he/she is not the complainant.³³ 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.³⁴ 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

²⁷ 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/>.

²⁸ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at:

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

²⁹ 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>.

³⁰ Ibid.

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

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

³² Ibid., Article 56(5).

³³ 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/>.

³⁴ 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>.

the complaint to the African Court on Human and Peoples' Rights.³⁵

ECOWAS Community Court of Justice

Individuals can bring complaints about violations of human rights to the Economic Community of West African States (ECOWAS) to the Community Court of Justice.³⁶ This includes acts or inaction of Community Officials which violate the rights of individuals.³⁷ 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.³⁸ There are, however a number of conditions: the complaint must not be anonymous or be pending before another international court,³⁹ representation by an agent or lawyer is required;⁴⁰ 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.⁴¹ Judgments of the Court of Justice are binding on the Member States, Institutions of the Community, individuals and corporate bodies.⁴²

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

The judge has ample powers to reconstitute the full enjoyment of rights by the offended, namely compelling any public or private entity to act or cease to act, in the present or future.⁴³

The Action for Restitution of Fundamental Rights does not limit the possibility to pursue criminal or civil liability of the offenders, but only aims to guarantee the immediate fulfilment of rights.

In case of a flagrant threat to the rights of the child and the parents or guardian fail to address the situation, the CVICA is responsible for 'adopting any measure for the immediate protection of the child, including limitations to the parental power, as well as alerting the police and Public Ministry⁴⁴. Any measure established in urgency by the

³⁵ 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>.

³⁶ Supplementary Protocol A/SP.1/01/05, Articles 3 and 4, available at:
http://www.courtecawas.org/site2012/pdf_files/supplementary_protocol.pdf; Protocol on the Community Court of Justice, Articles 9(4) and 10(d), available at:

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

³⁷ Ibid., Article 4; Protocol on the Community Court of Justice, Article 10(c).

³⁸ 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>.

³⁹ Supplementary Protocol A/SP.1/01/05, Article 4; Protocol on the Community Court of Justice, Article 10(d),

⁴⁰ Protocol on the Community Court of Justice, Article 12.

⁴¹ Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).

⁴² Revised Treaty of the Economic Community of West African States, Article 15(4), available at:
http://www.courtecawas.org/site2012/pdf_files/revised_treaty.pdf.

⁴³ SCA, Article 84.

⁴⁴ Ibid, Article 113.1.

CVICA or the Public Ministry will be reevaluated by a court of law in under 48 hours.

In case of infringement of children's labour rights, a fine between 10.000 and 100.000 escudos can be imposed⁴⁵.

- 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?

According to article 77 of the SCA, the claim must contain the name of the child or adolescent, and also that of the perpetrator.

Violations of the Constitution must be alleged in the course of the proceedings. Abstract control of the constitutionality of norms can only be made by a handful of public officers, such as the Attorney General⁴⁶.

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

The new Civil Procedure Code establishes the possibility of legal action for the protection of diffuse rights related, but not limited to, "the environment, public health, quality of life, [...], and can be filed by, along with those directly involved, the Public Ministry, local autarchies and collective institutions that are destined to the protection of said interests".⁴⁷ This provision comes from Article 22.2 of the Constitution, with similar content.

In a systemic interpretation, there appears to be no limitation to group Actions of Restitution of Fundamental Rights regulated by the SCA. Although the language is individual, there is no provision stating the action must be so. In opposition to, for instance, the Process for the Restitution of Family Coexistence, which the Statute states is eminently individualistic⁴⁸.

- 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?

NGO's are allowed to summon the Public Ministry to file a Fundamental Rights Action and several other legal actions, as explained in III.A.

Also, as explained in III.D, they are allowed to represent multiple individuals in legal actions relating to diffuse rights.

IV. Practical considerations.

- A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

⁴⁵ SCA, Article 196.

⁴⁶ Constitution, Article 277.

⁴⁷ Code of Civil Procedure, Article 26.1.

⁴⁸ SCA, Article 91.

Within the domestic legal system, all cases must begin in the District Courts. The Constitution states that the judicial courts of first instance must be the district courts⁴⁹ and specialised courts, besides the Court of Audit, Military Court and Fiscal and Customs Court shall not be permitted.⁵⁰ Therefore, all child advocacy claims must be undertaken in the District Courts. Furthermore, cases must be submitted to the courts without specifying judges for certain areas of competency.⁵¹

- B. Legal aid / Court costs. Under what conditions would free or subsidized 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?

Article 26.1 of the SCA establishes the full provision of juridical assistance to children for the protection of their rights.

When the case is presented through the parents or guardian, free assistance will be determined on a case by case basis, following the Decree 99/88⁵². Cabo Verde has created a “General Account of the Justice System (*Cofre Geral de Justica*) to provide legal aid to indigent litigants and defendants.⁵³ The funds are distributed through the Bar of Cabo Verde (*Ordem dos Advogados de Cabo Verde* or OACV) based upon need and in the amount described in the schedules in the pertinent regulatory decree.⁵⁴

- 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 practicing 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?

Pro bono assistance in Cabo Verde typically occurs when attorneys volunteer their time to clients through civil organisation intermediaries.

- 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?

There is no provision that suspends the statutes of limitations for children until they become adults. The statute of limitation for criminal procedures attached to a private complaint is of six months⁵⁵, and minors are generally inept to bring these complaints on their own.

- 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?

⁴⁹ Constitution of Cape Verde, Article 228 (3).

⁵⁰ Constitution of Cape Verde, Article 228(1).

⁵¹ Law N. 3/81, March 2 (Law of Judicial Organization), Article 18.

⁵² Available at www.mj.gov.cv.

⁵³ Regulatory Decree 10/2004, December 4.

⁵⁴ Regulatory Decree 1/2005, January 10.

⁵⁵ Penal Code, Article 108.

Any direct and indirect evidence may be used, including key importance to the hearing of the child. The procedures must be presented in a manner comprehensible to the child. Furthermore, the judge can determine the intervention of professionals such as psychologists or any person of the child's confidence in any hearing pertaining to the interests of the child⁵⁶.

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

Several periodicals report the long periods for obtaining a final decision, such as 10 years for a criminal case. However, there are no official statistics for the duration of legal proceedings.

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

The second and final instance in Cabo Verde for all cases is the Supreme Court of Justice, which serves as a Constitutional Court and District Tribunals until these are established^{57,58}.

This can severely limit the accessibility of needy plaintiffs to appeals, specially from remote islands that have poor access to the Capital, Praia.

- 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?

There is not enough publicly available information to answer this question.

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

There is not enough publicly available information to answer this question.

- 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.

Generally the Cape Verdean courts are extremely backlogged and not equipped to handle the number of cases brought forth.⁵⁹

The judicial system of Cabo Verde is somewhat improvised. After 15 years of the insertion of the Supreme Constitutional Court in the Constitution, political struggles prevent its implementation; Second Instance Courts suffer from the same problem. That means the Superior Court of Justice accumulates the function of second instance as well as being the highest level of legal and constitutional justice.

⁵⁶ SCA, Article 101.

⁵⁷ Constitution of Cape Verde, Article 228.

⁵⁸ Law N. 3/81, March 2 (Law of Judicial Organization), Article 21. For appeal procedures, see Articles 634 – 672 of the Code of Civil Procedure and Articles 436 – 487 of the Code of Criminal Procedure.

⁵⁹ See: <http://www.washingtontimes.com/news/2014/mar/9/volunteers-help-revamp-cape-verde-legal-system/?page=all>.

Furthermore, Family Courts, generally established by the Catholic Church, are the main source of jurisdiction in large fractions of the territory, and there are reports it can be lenient to abuses of children in the household.

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