

ACCESS TO JUSTICE FOR CHILDREN: CHAD

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I. What is the legal status of the United Nations Convention on the Rights of the Child (the “CRC”)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system of Chad?

Chad signed the CRC on 30 September 1990 and ratified it on 2 October 1990, without reservations.¹ It signed the Optional Protocol on the involvement of children in armed conflict (OPAC) and the Optional Protocol on the sale of children, child prostitution and child pornography on 3 May 2002 and ratified both Protocols on 28 August 2002. Although Chad ratified the OPAC in 2002, it has not yet submitted its OPAC initial report to the Committee on the Rights of the Child.² Chad has not signed or ratified the third Optional Protocol of the CRC allowing children to submit complaints to the Committee.³

Examples of other relevant international agreements ratified by Chad include:

- The Rome Statute of the International Criminal Court, which Chad ratified in November 2006. Chad is required to adopt legislation to implement the Statute, which defines as a war crime the recruitment or use of children to participate actively in hostilities.⁴
- The African Charter on the Rights and Welfare of the Child, which was ratified on March 30, 2000 and signed on 6 December 2004;⁵
- The ILO Convention No. 138 (1973) concerning the Minimum Age for

¹ See United Nations Treaty Collection – *Convention on the Rights of the Child*, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en#EndDec.

² See Child Soldiers International, *Chad: Submission to the UN Universal Periodic Review*, Second Cycle, 17th Session, March 2013. Available at: <http://www.refworld.org/docid/5208b7994.html>.

³ Office of the High Commissioner for Human Rights, *Ratification Status for Chad*, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=34&Lang=en; see also UNICEF, *Advancing the CRC*, available at: http://www.unicef.org/crc/index_protocols.html.

⁴ *Rome Statute of the International Criminal Court*, UN document A/CONF.183/9, 17 July 1998, entered into force 1 July 2002, Articles 8(2)(b)(xxvi) and 8(2)(e)(vii). Available at: http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

⁵ See <http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acerwc/ratifications/>.

Admission to Employment, in March 2005;⁶

- The ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, in November 2000;⁷ and
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United National Convention against Transnational Organized Crime, which was ratified on 18 August 2009.⁸

Chad's ratification of treaties or international agreements means that they have, upon publication, an authority superior to its national law without the requirement for further implementing legislation.⁹ Chad's ratification of the CRC therefore automatically results in it coming into force.

B. Does the CRC take precedence over national law?

The CRC takes precedence over Chadian national law, with the exception of the Chadian constitution.¹⁰

C. Has the CRC been incorporated into national law?

As mentioned above in I.A, the CRC forms national law by virtue of its ratification and it takes effect without further implementing action being required.

There is no consolidated statute addressing children's rights in Chadian law,¹¹ and although a number of draft laws affecting children's rights are being elaborated, progress is slow in their adoption and entry into force.¹²

⁶ UN Committee on the Rights of the Child, *Concluding observations on the combined second periodic report of Chad*, CRC/C/TCD/CO/2, 12 February 2009. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTCD%2fCO%2f2&Lang=en.

⁷ Ibid.

⁸ See <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>; see also Status of ratification of the United Nations Convention against Transnational Organized Crime and the Protocols, CTOC/COP/2012/CRP.1, 1 October 2012. Available at: https://www.unodc.org/documents/treaties/organized_crime/COP6/CTOC_COP_2012_CRP/CTOC_COP_2012_CRP1.pdf.

⁹ Constitution du Tchad (Chad Constitution), 30 March 1996, revised through 2005, Article 222. Available at: http://www.wipo.int/wipolex/fr/text.jsp?file_id=200560. English translation available at: https://www.constituteproject.org/constitution/Chad_2005.pdf.

¹⁰ Chad Constitution, Articles 221 and 222; see also Child Rights International Network (CRIN), *Chad: National Laws*, available at: <http://www.crin.org/en/library/publications/chad-national-laws>.

¹¹ *Chad: National Laws*, available at <http://www.crin.org/en/library/publications/chad-national-laws>.

¹² UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Chad*, CRC/C/TCD/CO/2, 12 February 2009. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTCD%2fCO%2f2&Lang=en.

- A draft code on the protection of children, (*Projet de code de protection de l'enfant*) which compiles child protection rights contained in the various conventions, protocols, and laws that Chad has ratified or adhered to, has been approved by the Council of Ministers and is pending ratification at the National Assembly.¹³
- A draft Code on the person and the family is pending before the Assembly. However it sets the minimum age for marriage at 18 for boys and 17 for girls.¹⁴
- Finally the Criminal Code was revised, but has not yet been promulgated.¹⁵ The draft Criminal Code addresses FGM and child trafficking¹⁶ (there is currently no specific law on human trafficking in Chad).¹⁷

Examples of national law relevant to the rights of children are, among others:¹⁸

- Chapter I of the Constitution provides a small number of provisions that address the rights of children¹⁹:
 - Article 36 requires the State and the Decentralised Territorial Collectivities to create the conditions and the institutions which assure and guarantee the education of children; and
 - Article 38 recognises the natural right and duty of parents to raise and educate their children, while requiring the State and Decentralised Territorial Collectivities to provide support. Furthermore, children may only be separated from their parents or from those responsible for them when these fail in their duty.

¹³ Bireme Hamid A., *Rapport de la Cour Suprême du Tchad*, Association des Hautes juridictions de cassation des pays ayant en partage l'usage du français (AHJUCAF). Available at: <http://www.ahjucaf.org/Rapport-de-la-Cour-supreme-du.html>; see also United States Department of Labor – Bureau of international Labor Affairs, *Chad: 2012 Findings on the Worst Forms of Child Labor*, available at <http://www.dol.gov/ilab/reports/child-labor/chad.htm>.

¹⁴ UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Chad*, CRC/C/TCD/CO/2, 12 February 2009. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTCD%2fCO%2f2&Lang=en.

¹⁵ See 'Tchad : les homosexuels dans la tourmente avec un nouveau code pénal' in *La Nouvelle Tribune*, 16 September 2014.

Available at: <http://www.lanouvelletribune.info/international/annonces/21240-tchad-les-homosexuels-dans-la-tourmente-avec-un-nouveau-code-penal>.

¹⁶ *Second periodic report of Chad to the UN Committee on the Rights of the Child*, CRC/C/TCD/2, 14 December 2007, paras. 16 and 20. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTCD%2f2&Lang=en.

¹⁷ United States Department of Labor – Bureau of international Labor Affairs, *Chad: 2012 Findings on the Worst Forms of Child Labor*, available at <http://www.dol.gov/ilab/reports/child-labor/chad.htm>.

¹⁸ *Chad: National Laws*, available at <http://www.crin.org/en/library/publications/chad-national-laws>.

¹⁹ Chad Constitution, Articles 36 and 38; See also CRIN, *Chad: National Laws*, available at: <http://www.crin.org/en/library/publications/chad-national-laws>.

- Labour Code, which regulates child labour, but sets the minimum age at 14;²⁰
- Law on the promotion of reproductive health, promulgated in 2002, which *inter alia* addresses female genital mutilation/cutting;²¹
- Law on the education system;²²
- Law concerning criminal procedures for juvenile offenders aged 13-18;²³
- Law on the organisation of the Judiciary, which creates a Children Chamber in First instance tribunals;²⁴
- Ordinance No. 6-67 on reform of the judicial system, affecting the inheritance rights of children, by referring to customary law which favours boys over girls;²⁵ and
- the 2006 Law on the Reorganisation of Armed and Security Forces, which sets the minimum age for voluntary enrolment in the army at 18 and the minimum age for conscription at 20. Note that this remains on the statute books, but it is not fully enforced.²⁶

However, without sanctions for abuses of children's rights within the relevant national law, the protection of children's rights cannot be guaranteed.²⁷ For instance the practice of female genital mutilation/cutting is widespread in Chad, especially in rural areas.²⁸ FGM/C could be prosecuted as a form of assault under the penal code and charges could be brought against the parties involved. However, prosecution is hindered by the lack of specific penalty provisions in the penal code.²⁹ Therefore, although Act No. 06/PR/2002 on the promotion of reproductive health prohibits, among others, all forms of violence such as female genital mutilation, combating FGM/C will remain a challenge while there are no real sanctions against FGM/C.³⁰

²⁰ Loi n°038/PR/96, Code du Travail, 11 December 1996, Articles 52, 206. Available at:

<http://www.droit-afrique.com/images/textes/Tchad/Tchad%20-%20Code%20du%20travail.pdf>.

²¹ Loi n°006/PR/2002 portant promotion de la Santé de Reproduction, 20 March 2002. Available at:

<http://www.hsph.harvard.edu/population/domesticviolence/chad.reprohealth.02.doc>.

²² Loi n°016/PR/06 portant orientation du Système éducatif Tchadien, 13 March 2006. Available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/79409/85373/F-30051095/TCD-79409.pdf>.

²³ Loi n°07/PR/99 portant procédure de poursuite et de jugement des infractions commises par les mineurs de 13 à moins de 18 ans, 6 April 1999 (Law on juvenile justice), Available in French at:

<http://www.oijj.org/fr/docs/general/loi-n-007pr99-portant-procedure-de-poursuites-et-jugement-des-infract-tions-commises-par->

²⁴ Loi N°04/PR/98 portant organisation judiciaire (Law on the judiciary), 7 August 1998, Article 24.

Available at: <http://legitchad.cefod-tchad.org/texte/100>.

²⁵ *Second periodic report of Chad to the UN Committee on the Rights of the Child*, CRC/C/TCD/2, 14 December 2007, para. 64. Available at:

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

²⁶ Child Soldiers International, *Chad - Submission to the UN Universal Periodic Review*, Second Cycle, 17th Session, March 2013. Available at: <http://www.refworld.org/docid/5208b7994.html>.

²⁷ *Chad: National Laws*, available at <http://www.crin.org/en/library/publications/chad-national-laws>.

²⁸ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Chad 2012 Human Rights Report*, available at <http://www.state.gov/documents/organization/204315.pdf>.

²⁹ *Ibid.*

³⁰ UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of*

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

Yes.

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

Information on the application of international instruments concerning the protection of children is particularly rare. As a result, we have not been able to find examples of Chadian courts citing 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?

By law, minors do not have the right to initiate legal proceedings in court.³¹ Court proceedings must be brought by the parent or guardian of the child. Under the Civil Code³², minors are individuals under 21 years old³³. However, the same Civil Code sets the minimum age for marriage at 15 for a girl and 18 for a boy.³⁴

The Constitution also allows to apply customary laws in communities where they are recognised, as long as they are not “contrary to public order” and do not “promote inequality”.³⁵ Therefore, the authority of traditional leaders over some civil matters may affect the definition of the child in some communities.

Chad, CRC/C/TCD/CO/2, 12 February 2009. Available at:

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

³¹ Droits de l’homme Sans Frontières, *Rapport Alternatif en Vertu du Rapport Périodique du Gouvernement Tchadien sur la Mise en Œuvre de la Convention Relative aux Droits de l’Enfant*, 4 November 2007. Available at:

<http://dhsf-afrique.org/wp-content/uploads/2011/10/rapport-alternatif-CDE-Tchad-DHSF.pdf>; see also

UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Chad*, CRC/C/TCD/CO/2, 12 February 2009. Available at:

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

³² The Civil Code in force in Chad is the French civil code of 1958. Available at:

<https://criminocorpus.org/fr/legislation/civil/1958-01-01>.

³³ Civil Code, Article 388. 21 years old is the age of majority under the French civil code of 1958, however it seems that regarding legal capacity, the minimum age in use is 18 years old, which is the age set out in the current French civil code. See Avocats Sans Frontières, *Textes légaux et mécanismes de prise en charge judiciaire des mineurs en difficulté*, June 2013, pp.29-30. Available at:

<http://www.asf.be/blog/publications/vade-mecum-a-lattention-des-avocats-textes-legaux-et-mecanismes-d-e-prise-en-charge-judiciaire-des-mineurs-en-difficulte/>.

³⁴ Civil Code, Article 144.

³⁵ Constitution, Articles 157.

Finally, according to the law on juvenile justice, children courts have jurisdiction over offences committed by minors between 13 and 18 years old.

Children of a certain age/maturity have the right to express their point of view on certain questions, such as divorce, adoption or custody issues.³⁶ However, contrary to Article 12 of the CRC, there is no obligation under the legal system in Chad for children to be heard in decisions and/or matters affecting them.³⁷

Therefore, children are solely dependent on their representatives to challenge violations of their rights and to bring cases to the courts.

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

Children under the age of 18 cannot bring cases to court.³⁸

As stated above, children are not regarded as a subject of law,³⁹ and cases in domestic courts in Chad must be initiated with the assistance of a representative of the child.⁴⁰

In criminal matters, a child victim is not able to join the action as *partie civile* without the assistance of a representative. However, a child victim can file a complaint (without acting as *partie civile*) to the police or the public prosecutor who will then, if necessary, start the criminal proceedings.⁴¹

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

As stated above, in the case of infants and young children, any kind of court

³⁶ See: <http://www.humanium.org/en/chad>.

³⁷ *Second periodic report of Chad to the UN Committee on the Rights of the Child*, CRC/C/TCD/2, 14 December 2007, para. 86. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTCD%2f2&Lang=en.

³⁸ Avocats Sans Frontières, *Textes légaux et mécanismes de prise en charge judiciaire des mineurs en difficulté*, June 2013, pp.29-30. Available at: <http://www.asf.be/blog/publications/vade-mecum-a-lattention-des-avocats-textes-legaux-et-mecanismes-de-prise-en-charge-judiciaire-des-mineurs-en-difficulte/>.

³⁹ Ibid.

⁴⁰ Droits de l'homme Sans Frontières, *Rapport Alternatif en Vertu du Rapport Périodique du Gouvernement Tchadien sur la Mise en Œuvre de la Convention Relative aux Droits de l'Enfant*, 4 November 2007, para. 7. Available at: <http://dhsf-afrique.org/wp-content/uploads/2011/10/rapport-alternatif-CDE-Tchad-DHSF.pdf>.

⁴¹ Avocats Sans Frontières, *Textes légaux et mécanismes de prise en charge judiciaire des mineurs en difficulté*, June 2013, pp.29-30.

action must be brought by the child's legal representative, meaning either a parent or guardian.

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

Children and representatives who do not have the financial means to pay for legal fees and litigation costs or who do not have the capacity to initiate action are eligible for free or subsidised legal assistance provided by the Government, whether they are defendant or plaintiff.⁴² Subsidised/free legal assistance covers a court fee waiver, the costs of executing decisions and possibly the assistance from a lawyer.⁴³ The conditions of eligibility for free assistance or legal aid are determined by presidential decree, which has not been adopted yet.⁴⁴

However, there are only about a hundred lawyers - most of whom are based in the capital city - for a total population of over 12 million inhabitants. This suggests that legal assistance is mostly theoretical, but does not happen in practice, especially in rural areas.⁴⁵

In 2012, in an attempt to improve this situation, Chad adopted a decree creating an access to justice department (*Direction de l'Accès au droit*) within the Ministry of Justice. It is in charge of examining requests for legal aid and the decree provides that it shall have an office in every Court of appeal.⁴⁶

Children and representatives who are not eligible for free legal assistance must bear any court costs and other expenses themselves.

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)?

⁴² Code de procédure civile, (Code of Civil Procedure), Articles 38-39. Available at: <http://minjustice.org/codeprocedurecivile.pdf> [last accessed in April 2015]; See also: Avocats Sans Frontières, *Promouvoir le système du Statut de Rome et accroître l'effectivité de la Cour Pénale Internationale (CPI), Etude de base pour le Tchad*, April 2012, p.24. Available at: http://www.asf.be/wp-content/uploads/2012/07/ASF_IJ_BaselineSurveyReport_Tchad_2012.pdf.

⁴³ Code of Civil Procedure, Article 39.

⁴⁴ Code of Civil Procedure, Article 40; See also: Programme d'appui à la justice au Tchad (PRAJUST), *Réflexion sur un mécanisme pérenne d'aide juridique et d'assistance judiciaire (AJJ)*, available at: http://www.minjustice.org/prajust/index.php?option=com_content&view=article&id=84&Itemid=91.

⁴⁵ Avocats Sans Frontières, *Tchad : la société civile se mobilise pour un meilleur accès à la justice*, 12 November 2014, available at: <http://www.asf.be/fr/blog/2014/11/12/chad-civil-society-is-rallying-together-for-better-access-to-justice/>; See also: UN Human Rights Committee, *Concluding observations on the second periodic report of Chad*, CCPR/C/TCD/CO/2, 15 April 2014, para. 18. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCO%2fTCD%2f2&Lang=en.

⁴⁶ Décret n°12-438 PR/PM/MJAPBG/12 portant Organigramme du Ministère de la Justice, De l'Assainissement Public et de la Promotion De la Bonne de Gouvernance, 22 March 2012, Article 4. Available at: <http://legitchad.cefod-tchad.org/texte/3969#h1.2>.

As stated above, children themselves cannot bring cases to court. They must be represented by their parents or legal guardians. This can limit the recourse available for minors. One potential issue is where the representatives on which the child relies are the ones who have violated the child's rights.⁴⁷ Although a judge can appoint administrators on an *ad hoc* basis to represent the child in court if the child's interest conflicts with those of his parent,⁴⁸ it is not clear how effectively this has been implemented in practice.

Efforts to promote the CRC are constrained by the powerful influence of customs and traditions and by difficulties with the adoption and application of the new instruments which have been drafted.⁴⁹ Customary laws can be dominant where they are recognised as long as they do not conflict with national laws.⁵⁰ Some crimes in rural areas are dealt with under traditional and tribal justice systems. For example, contrary to international instruments, a boy between the age of 13 and 18 is considered to be an adult in Eastern Chad.⁵¹ Customary law is not only problematic in criminal law. Application of customary law by the courts in civil cases can also give rise to problems with respect to the protection of the rights of children, for instance in matters of inheritance.⁵²

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?

Most civil cases are brought in the Court of First Instance (*Tribunal de première instance*) which has jurisdiction over the claimant's place of

⁴⁷ Droits de l'homme Sans Frontières, *Rapport Alternatif en Vertu du Rapport Périodique du Gouvernement Tchadien sur la Mise en Œuvre de la Convention Relative aux Droits de l'Enfant*, 4 November 2007, para 7. Available at:

<http://dhsf-afrique.org/wp-content/uploads/2011/10/rapport-alternatif-CDE-Tchad-DHSF.pdf>.

⁴⁸ Ibid.

⁴⁹ *Second periodic report of Chad to the UN Committee on the Rights of the Child*, CRC/C/TCD/2, 14 December 2007, para. 23. Available at:

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

⁵⁰ N. F. Ngarhodjim, *An Introduction to the Legal System and Legal Research in Chad*, New York University Hauser Global Law School, January 2012. Available at:

<http://www.nyulawglobal.org/globalex/Chad1.htm>.

⁵¹ Amnesty International, *A Compromised Future – Children recruited by armed forces and groups in Eastern Chad*, AFR 20/001/2011, February 2011. Available at:

http://www.amnesty.nl/sites/default/files/public/chad_-_a_compromised_future.pdf.

⁵² *Second periodic report of Chad to the UN Committee on the Rights of the Child*, CRC/C/TCD/2, 14 December 2007, para. 64. Available at:

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

residence. This includes cases where the State can be held accountable for alleged violations committed by a public servant, and decisions on the interpretation or legality of an administrative act.⁵³ In areas where there is no Court of First Instance, and in every district of N'Djaména, Justices of Peace (*Juges de Paix*) rule over civil matters.⁵⁴

Tribunal of First Instance, or Justices of Peace rule over minor criminal offences (*délits*).⁵⁵

Criminal courts are otherwise competent to prosecute individuals for crimes and violations of children's rights.

Cases pertaining to labour rights and social security are brought before a specialised tribunal.⁵⁶

As noted above in II.A, traditional leaders have the authority to settle some civil matters.⁵⁷

Normally, individuals cannot apply directly to the Constitutional Council. However, an individual who is a party in court proceedings can challenge the constitutionality of the law being applied by raising an "exception of unconstitutionality" claim, which will be reviewed by the Constitutional Council.⁵⁸

Individuals can bring a complaint to the Ombudsman (*Médiature*) in any matter affecting them, where they think a government agency, a collectivity or another entity delivering a public service has failed to comply with its mission.⁵⁹

A 1996 decree extended the competency of the National Human Rights Commission (*Commission Nationale des Droits de l'Homme* or CNDH) to examining complaints relating to violations of human rights which are not already examined by the justice system (unless there is a "manifest denial of justice").⁶⁰ However, according to civil society organisations, the

⁵³ Law on the judiciary, Articles 31 and 32.

⁵⁴ Ibid. Articles 42-53.

⁵⁵ Ibid., Articles 33 and 49.

⁵⁶ Ibid., Article 35.

⁵⁷ See: Institut de recherche et débat sur la gouvernance, "Les sources de légitimité du pouvoir en Afrique centrale : une "diversité concurrentielle" in *Parcours international de propositions et de débat sur la gouvernance*, September 2013. Available at: <http://www.institut-gouvernance.org/fr/chapitrage/fiche-chapitrage-142.html#h1.2>.

⁵⁸ Loi organique n° 019/PR/98 portant organisation et fonctionnement du Conseil constitutionnel, Articles 12 and 19. Available at: http://www.accpuf.org/images/pdf/cm/tchad/042-tri-txt_leg.pdf.

⁵⁹ Loi 09-031 2009-12-11 PR portant création de la Médiature de la République (Law creating the Ombudsman), 26 November 2009, Article 12. Available at: <http://legitchad.cefod-tchad.org/texte/1388>.

⁶⁰ Décret n°095/PM/96 du premier Ministre (Règlement d'ordre intérieur de la CNDH), 31 December 1996. Quoted in Human Rights Watch, *Tchad, Commission Nationale des Droits de l'Homme*. Available at: http://www.hrw.org/legacy/french/reports/hrc/chad.html#P31_7120.

Commission has since 1997 ceased to take strong stances on human rights violations and is now focusing on human rights promotion.⁶¹

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”).⁶² 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.⁶³

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”).⁶⁴ 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.⁶⁵ 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.⁶⁶

All available domestic remedies must have been exhausted before bringing a case to the African Committee or the African Commission.⁶⁷ The complaint must include, amongst other things, the name of the person filing it or, in the

⁶¹ For a history of the Commission, See *Human Rights Watch*, Tchad, Commission Nationale des Droits de l’Homme.

⁶² 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/>.

⁶³ Ibid.

⁶⁴ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at:

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

⁶⁵ 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>.

⁶⁶ 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>.

⁶⁷ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at: <http://acerwc.org/the-committees-work/communications/>.

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.⁶⁸ 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.⁶⁹

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

The courts have powers to award sentences, grant damages, quash decisions or issue an order depending on whether it is a civil or criminal matter.

Chad does not have an official compensation scheme for victims.⁷⁰ The Chadian Penal Code provides for the prosecution of anyone who infringes on individual freedoms, including arbitrary detention and prosecution (Article 143), illegal arrests and abduction of persons (Article 149) and unlawful violence (Article 156), and victims of these crimes have the possibility, as a civil party, to request damages in the trial court.⁷¹

Courts of First Instance can issue a summary judgment at the outset of the proceedings in case of emergency (*procédure de référé*).⁷² They can give an interpretation or decide on the legality of an administrative act.⁷³

The Ombudsman can suggest disciplinary action against a public servant and request to be updated on measures taken to remedy a violation. Where a government agency does not comply with a judicial decision, the Ombudsman can refer the matter to the President or the Prime Minister.⁷⁴

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?

Each individual victim must be specified when challenging a violation of a

⁶⁸ 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>.

⁶⁹ 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/>.

⁷⁰ Cours Judiciaires Suprêmes Francophones, *Atelier sur la Parole de l'Enfant Devant la Justice*, available at: <http://www.ahjucaf.org/Atelier-sur-la-parole-de-l-enfant.7192.html>.

⁷¹ *Second periodic report of Chad to the UN Human Rights Committee*, CCPR/C/TCD/2, 28 January 2013, paras 285-286. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fTCD%2f2&Lang=en.

⁷² Code of Civil Procedure, Article 160.

⁷³ Law on the judiciary, Article 32.

⁷⁴ Law creating the Ombudsman, Article 16.

law.⁷⁵

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

Collective action is possible only when the victims have the same interest in one claim. No other form of collective action seems to be possible under Chadian law.

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

According to the Code of Civil Procedure, civil actions can only be exercised by bearers of the violated right or by their legal representative.⁷⁶

In administrative proceedings, the plaintiff needs to be someone with “interest to act”. This would for instance include, in a challenge against an administrative act impacting on the environment, NGOs competent in the field of environment.⁷⁷

According to the Code of Criminal Procedure, public prosecution is similarly set in motion by the victim.⁷⁸ However, nothing in the Code of Criminal Procedure prevents non-governmental organisations with interest to act to participate in the prosecution as *partie civile*, and claim damages. They can do so from the outset (*partie civile initiale*) or join in later (*partie civile par voie d'intervention*).⁷⁹

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?

⁷⁵ Code of Civil Procedure, Article 3.

⁷⁶ Ibid.

⁷⁷ Association Internationale des Hautes Juridictions Administratives, “Le juge administratif et le droit de l’environnement: Contribution de la Cour Suprême du Tchad”, in *Actes du Congrès de Carthagène*, 2013, p.3. Available at: http://www.aihja.org/images/users/114/files/Congres_de_Carthagene_-_Rapport_du_Tchad_2013-TCHA-D-FR.pdf.

⁷⁸ Ordonnance n°13-PR-MJ, portant Code de procédure pénale (Code of Criminal Procedure), 9 juin 1967, updated as of 2009, Article 1. Available in French at: http://www.vertic.org/media/National%20Legislation/Chad/TD_Code_Procedure_Penale.pdf.

⁷⁹ Code of Criminal Procedure, Articles 284-294. Available in French at: http://www.vertic.org/media/National%20Legislation/Chad/TD_Code_Procedure_Penale.pdf.

As detailed above (III.A), civil and administrative matters are filed in Courts of First Instance, as well as claims pertaining to minor criminal offences (*délits*). The initial filing shall mention the claimant's and the defendant's name, profession and address. The claimant's identity must be evidenced by documents or witness statements. It should state the object of the request, and list the evidences that the claimant intends to use to support the claim. The request shall be filed in as many copies as there are parties to the matter.⁸⁰

Criminal prosecutions are initiated by the magistrates in charge, and can be set in motion by the victim's complaint.⁸¹ The victim can also file a claim as *partie civile* alongside the public action.

Chad adopted Law No. 4/PR/98 of 20 May 1998, creating a children's chamber in Courts of First Instance.⁸² These chambers are competent in cases where the defendant is aged 13 to 18.⁸³ Cases where the claimant or victim is a child are filed in ordinary courts.

- 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?

Based on the Code of Civil Procedure, legal aid can be granted by the Government to children and their representatives if they lack the financial means to bring their case before domestic courts. Legal aid covers free assistance from attorneys appointed by the Government and free assistance in the execution of decisions.⁸⁴ However, the lack of qualified lawyers, and the lack of decree setting out the eligibility conditions prevent the effective delivery of free legal assistance.⁸⁵

All child offenders are able to receive legal assistance in theory. However, in practice, the right to a defence counsel remains precarious due to the lack of

⁸⁰ Code of Civil Procedure, Articles 42 and 43.

⁸¹ Code of Criminal Procedure, Article 1, Articles 284-294.

⁸² Law on the judiciary, Article 24.

⁸³ *Rapport de la Cour Suprême du Tchad*, Cours Judiciaires Suprêmes Francophones, available at <http://www.ahjucaf.org/Rapport-de-la-Cour-supreme-du.html>.

⁸⁴ Code of Civil Procedure, Articles 38 to 40.

⁸⁵ See Légiglobe, *Tchad*, part 4. Available at: <http://legiglobe.rf2d.org/tchad/> and Programme d'appui à la justice au Tchad (PRAJUST), *Réflexion sur un mécanisme pérenne d'aide juridique et d'assistance judiciaire (AJJ)*, available at: http://www.minjustice.org/prajust/index.php?option=com_content&view=article&id=84&Itemid=91.

interest by local practitioners appointed by judges, to defend minors who are being prosecuted. Also, legal aid is often restricted to criminal cases, contrary to the spirit of the law, which means children involved in civil law matters often do not receive such assistance.⁸⁶

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Legal assistance from practising lawyers on a pro bono basis is possible. A special service for legal and juridical assistance for children has been made available by the Ministry of Justice and Human Promotion and Protection. However, due to bureaucratic difficulties, it is very challenging to obtain assistance from the Government. A good alternative is the services provided by children's rights organisations. These services tend to be free. Examples of relevant NGOs in this regard are the Public Interest Law Center,⁸⁷ Avocats Sans Frontières,⁸⁸ Association for Promotion of Fundamental Liberties in Chad, the Chadian Association for the Promotion of Human Rights, the Chadian League for Human Rights Defence, and the Collective of Lawyers for the Defence of Vulnerable Persons.

- 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?

In general, proceedings regarding a violation of children's rights must be initiated as soon as possible before the courts. The time limit depends on whether it is a civil, criminal or commercial matter. According to the Code of Criminal Procedure, the time limit is determined by the nature of violation and varies from 1 year to 10 years for criminal cases.⁸⁹ Under the French civil code of 1958, the time limit for civil cases is normally 30 years.⁹⁰ Statutes of limitations do not generally run against minors.⁹¹ This suspension generally does not apply to actions for payment of all that is payable within a period of a year or less, such as rent, interest on money lent and alimony, unless the action is brought against the minor's guardian.⁹²

⁸⁶ *Second periodic report of Chad to the UN Committee on the Rights of the Child*, CRC/C/TCD/2, 14 December 2007, para. 120. Available at:

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

⁸⁷ <http://rfkcenter.org/rfk-center-making-a-difference-in-chad>

⁸⁸ <http://www.asf.be/blog/2014/11/12/chad-civil-society-is-rallying-together-for-better-access-to-justice>.

⁸⁹ Code of Criminal Procedure, Articles 3 to 5.

⁹⁰ French Civil Code of 1958, Article 2262.

⁹¹ French Civil Code of 1958, Article 2252.

⁹² French Civil Code of 1958, Articles 2277-2278.

- 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 Criminal Procedure do not set out a list of evidence that is admissible or required, but it confirms that any kind of evidence can potentially be admitted, apart from communication between the accused and their legal counsel.⁹³ Therefore, any kind of documents, reports, physical evidence, photographs or video recordings, witness statements or testimony and expert opinions can potentially be admitted as evidence.

Regarding child testimony, article 93 of the Criminal procedure code prescribes that children under the age of 16 cannot be sworn in.

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

Lack of human and financial resources make the justice system slow. In particular, the UN human rights committee is concerned about the excessive length of pretrial detention. It also notes that access to justice is not effective. This indicates that the period of time necessary to obtain a decision from the court can be long.⁹⁴ In high-profile cases, such as the case of the orphans abducted by a French NGO, high-level authorities may intervene, in which case a court decision may take as short as a few weeks.⁹⁵ For complex cases, it sometimes can take years before a court ruling is given.

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

All county and high court judgements can be appealed. The Court of Appeals hears appeals introduced in all cases initially heard by Courts of First Instance in civil, administrative, social and commercial matters. It also hears appeals of criminal cases heard initially by Courts of First Instance, i.e. cases of minor criminal offences (*contraventions*).⁹⁶ Some civil cases appeals, under a certain threshold of financial interest in the matter, are heard by Courts of First Instances.⁹⁷ The Supreme Court has the highest authority

⁹³ Code of Criminal Procedure, Article 70-73.

⁹⁴ UN Human Rights Committee, *Concluding observations on the second periodic report of Chad*, CCPR/C/TCD/CO/2, 15 April 2014, paras. 15 and 18. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCO%2fTCD%2f2&Lang=en.

⁹⁵ Agence Française de Presse, ‘Arche de Zoé: la justice tchadienne se dit toujours soumise au tempo politique’ in *20 minutes*, 11 December 2007. Available at: <http://www.20minutes.fr/france/200270-20071211-arche-zoe-justice-tchadienne-dit-toujours-soumise-te-mpo-politique>.

⁹⁶ Law on the judiciary, Chapter 2.

⁹⁷ Law on the judiciary, Article 29.

and is the court of last instance hearing appeals against decisions of the courts of appeals.⁹⁸

The time limit for appeal is 2 months from the day of the ruling.⁹⁹ For parties who live outside of Chad, the time limit may be extended for an additional few days. In criminal cases, the time limit is 10 days after the decision is given at the seat of the tribunal, or 20 days if the tribunal sits in a mobile court (*Audience foraine*).¹⁰⁰

- 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?

In general, civil law courts only take past decisions into account if there is sufficient uniformity in previous case law.¹⁰¹ In Chad, in civil matters, judges can cite and refer to case law when applying the law.

Under the Code of Criminal Procedure, if the public proceedings ends with charges being dropped (*ordonnance de non-lieu*), the defendant can ask for damages to be paid by the *partie civile* (in most cases the victim).¹⁰²

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

According to the *Programme d'Appui à la Justice au Tchad* (PRAJUST), only 20% of judicial decisions are enforced in Chad.¹⁰³ This is due, according to PRAJUST, to the interference of other actors (local administrative agencies, executive power, law enforcement etc.) in the judicial system.

- 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.

No additional factors were found.

⁹⁸ Law on the judiciary, Chapter 1; See also Légiglobe, *Tchad*, part 3. Available at: <http://legiglobe.rf2d.org/tchad/>.

⁹⁹ Code of Civil Procedure, Article 195.

¹⁰⁰ Code of Criminal Procedure, Article 382.

¹⁰¹ Vincy Fon and Francesco Parisi, 'Judicial precedents in civil law systems: A dynamic analysis' in *International Review of Law and Economics* 26, 2006, pp. 519-535. Available at: <http://www.egov.ufsc.br/portal/sites/default/files/anexos/33111-41760-1-PB.pdf>.

¹⁰² Code of Criminal Procedure, Article 295.

¹⁰³ PRAJUST, *Contexte sectoriel*, available at: http://www.minjustice.org/prajust/index.php?option=com_content&view=article&id=96&Itemid=108.

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