

ACCESS TO JUSTICE FOR CHILDREN: COMOROS

This report was produced by White & Case LLP in January 2015 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?

Comoros ratified the CRC in 1993,¹ eight years before its most recent Constitution was adopted in 2001. Comoros affirmed its recognition of its CRC obligations in the Constitution's Preamble, stating that "[t]he Comorian people solemnly affirm their will... to emphasise their commitment to the principles and fundamental rights defined by... the international conventions, particularly those relating to children's' [sic]... rights." Comoros acceded to the Optional protocols to the CRC on the Sale of Children, Child Prostitution and Child Pornography in 2007.² As at June 2015, Comoros is not a party to the Optional Protocols to the CRC on the involvement of children in armed conflict or on a communications procedure.

Comoros operates under a monist system, with the country's international treaties superseding domestic law, so long as the other States Parties adhere to the treaty in question.³ The Comorian Constitution grants the President power to ratify treaties⁴ but also requires most treaties to be ratified by an Act of Parliament.⁵ If the Constitutional Court finds that a treaty violates the Constitution, the Constitution must be amended before the treaty can be ratified.⁶

B. Does the CRC take precedence over national law?

As discussed in part I.A, the CRC and other ratified treaties take precedence over national laws. A treaty's status vis-à-vis the Constitution is not clearly stated. In 2013 in a report submitted to the Human Rights Council (HRC) for the Universal Periodic Review (UPR), the government of Comoros asserted that "primacy is given to international law".⁷ However, according to doctrinal interpretation,⁸ the supreme law is

¹ UN 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&clang=en.

² UN Treaty Collection, 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography', available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&clang=en.

³ Comoros 2001 Constitution (rev. 2009), Article 10, available at: https://www.constituteproject.org/constitution/Comoros_2009 ("Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of the Union or the islands, subject, with respect to each agreement or treaty, to its application by the other party."); *National Report of Comoros to the Working Group on the Universal Periodic Review of the Human Rights Council 18th Session* ("Comoros National Report for 2014 UPR"), A/HRC/WG.6/18/COM/1, 8 November 2013, para. 57, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/KMSession18.aspx>.

⁴ Comoros 2001 Constitution (rev. 2009), Article 12.

⁵ *Ibid.*, Article 10.

⁶ *Ibid.*

⁷ *Comoros National Report for 2014 UPR*, para. 57.

Islam, followed by the Constitution as inspired by Islam, international treaties, laws and finally customs. Therefore, if an inconsistency between Sharia law or the Constitution and the CRC persists even after the control by the Constitutional Court of the CRC, it seems that Sharia law or the Constitution would prevail.

C. Has the CRC been incorporated into national law?

Whether the CRC has been automatically incorporated into national law is unclear. The Preamble to the 2001 Comoros Constitution references the CRC indirectly, noting the state's "commitment to the principles and fundamental rights defined by . . . the international conventions, particularly those relating to children's . . . rights."⁹ Furthermore, the Comoros government stated in 2011 during its review by the Committee for the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) that, within its legal system, "[t]he ratification of any international legal instrument thus implies its automatic incorporation in the domestic legislation."¹⁰ However, according to a submission to the CEDAW Committee, CEDAW ratification occurred after a law was passed to authorise it.¹¹ Implementing legislation for the CRC, however, was not found during research for this report, so the exact status of the CRC is unknown.

In any case, the provisions of the CRC are not reflected in domestic law. A report published by the African Child Policy Forum highlights some of the discrepancies between the 2005 Family Code and Comoros's CRC obligations.¹² Moreover, Comoros noted during the 2014 UPR cycle that its Criminal Code would have to be updated to reflect the country's international obligations.¹³

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

It is unclear if CRC rights are directly enforceable in Comoros courts based on the information found during this research.

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

According to UNICEF, the CRC is used in some capacity within domestic courts. A 2007 report asserted that "[a]s a result of a greater awareness among prosecutors and lawyers, the Convention on the Rights of the Child is increasingly used as a point of reference in court proceedings related to children."¹⁴ No examples of this practice,

⁸ Laurent Sermet, *Une anthropologie juridique ds droits de l'homme: les chemins de l'Océan indien*, page 47, available at: https://books.google.co.uk/books?id=fIKJkOA6XLsC&hl=fr&source=gbs_navlinks_s.

⁹ Comoros 2001 Constitution (rev. 2009), Preamble.

¹⁰ *Report of Comoros to the Committee on the Elimination of Discrimination against Women* ("Comoros 2011 Report to CEDAW"), CEDAW/C/COM/1-4, 21 September 2011, para. 26, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCOM%2f1-4&Lang=en.

¹¹ *Ibid.*, para. 2.

¹² African Child Policy Forum, 'Harmonisation of children's laws in eastern and southern Africa: country briefs', 2012, pp. 34-42, available at: http://www.africanchildforum.org/clr/Harmonisation%20of%20Laws%20in%20Africa/Publications/supplementary-acpf-harmonisation-cb-es_en.pdf.

¹³ *Comoros National Report for 2014 UPR*, paras 60, 92.

¹⁴ UNICEF, 'Comoros: Country programme document 2008-2012', para. 15, available at:

however, could be found as published court decisions were not found during this research.

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?

Constitutional claims can be brought to challenge the unconstitutionality of any law. The French Code of Criminal Procedure of 1972 *as applied to Comoros* allows for a public action and a civil action for damages suffered pursuant to a crime.¹⁵ If a person has suffered damage caused by a criminal offence, he/she can either file a complaint if the Public Prosecutor (*Ministere Public*) has not initiated prosecution¹⁶ or intervene directly during the investigation¹⁷ or court hearing¹⁸ to seek compensation. In the first case, a sum of money has to be deposited (“*consignation*”) for procedural costs but those who are entitled to legal aid are exempt from paying the deposit.¹⁹

According to a representative of Comoros during the 2000 Comoros CRC review, “although it was difficult for children to lodge complaints of abuse directly with the courts, they were permitted to do so under the old French Code of Criminal Procedure, aspects of which had been retained in Comorian law.”²⁰ The Morals and Minors Brigade, a unit of the police force, investigates and prosecutes allegations of child abuse.²¹ Comorian authorities and UNICEF have also established a local NGO, Services d’Ecoute, which “routinely referred child abuse cases to the police for prosecution”.²²

Public servants, state agents and members of the government that commit arbitrary acts, or acts contrary to individual rights, civic rights or the Constitution, will be sentenced to

http://www.unicef.org/about/execboard/files/Comoros_final_approved_CPD.pdf.

¹⁵ French Code of Criminal Procedure of 1972 as applied to Comoros, Article 1, available at: <http://www.droit-afrique.com/upload/doc/comores/Comores-Code-1970-de-procedure-penale.pdf>. (Note that the quality of this document is questionable and it is unclear whether certain articles are currently in effect in Comoros.) Pursuant to Article 34 of the Organic Law on the organisation of the Judiciary of Comoros (2005), the French Code of Criminal Procedure of 1972 is applicable to Comoros, unless it is contrary to Comorian Law, until a new one is adopted. Therefore, the current Code of Criminal Procedure in effect in Comoros is the French Code of Criminal Procedure of 1972 *as applied to Comoros*. The original French Code of Criminal Procedure of 1972 is available at:

<http://legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071154&dateTexte=19720920>.

¹⁶ *Ibid.*, Article 85.

¹⁷ *Ibid.*, Article 87.

¹⁸ *Ibid.*, Article 418.

¹⁹ *Ibid.*, Article 88.

²⁰ UN Committee on the Rights of the Child, *Summary record of the 665th meeting*, CRC/C/SR.665, 19 October 2000, para. 53, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSR.665&Lang=en.

²¹ US Dept of State, ‘2013 Comoros human rights report’, para. 6, available at:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220099>; US Dept of State, ‘Trafficking in persons 2014 report: country narratives’, June 2014, p. 137, available at:

<http://www.state.gov/documents/organization/226845.pdf>; US Dept of Labor, ‘2013 findings on the worst forms of child labor’, Table 5, available at:

<http://www.dol.gov/ilab/reports/child-labor/findings/2013TDA/comoros.pdf>.

²² Two offices were created in 2004, one in Ngazidja and the other in Anjouan. Available at:

http://www.unicef.org/evaldatabase/files/Comoros_2005-006_Rapport_devaluation_des_Services_decoute.pdf.

the loss of civil rights. Individuals who have suffered from illegal or arbitrary detention can ask for monetary compensation in front of either a criminal or civil court. Complaints about illegal or arbitrary detentions are to be made to police officers. Those who do not report the complaints to their superiors are subject to 5 to 10 years of imprisonment, as well as liable to providing monetary compensation.²³ However, *habeas corpus* is not provided. No mechanism to investigate officials exists.

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?

It is likely that representatives, and in some cases the victim, can challenge violations of children's rights. The Comoros Family Code of 2005²⁴ provides that minors lack capacity, which is defined as the "enjoyment and exercise of civil rights",²⁵ therefore minors lack the capacity to sue in civil courts on their own behalf. Indeed, under the Code of Civil Procedure,²⁶ passed in 2001, the lack of capacity to sue invalidates any procedural act.²⁷ The Comoros Family Code establishes that the legal representative of the child is either the child's legal guardian (the parents until the child is 18 years of age),²⁸ testamentary guardian (appointed through the parents' will) or a court-appointed guardian (at the request of one of the parents).²⁹ Since the legal representative is responsible for the child's possessions and person, he/she can act on the child's behalf.

Children under the age of discernment, which is fixed at seven years of age (even if it can be overturned), are completely incapable of exercising their civil rights. Children capable of discernment are partially incapable. A child older than 15 years of age can be authorised by the judge *ex officio* or at the tutor's initiative to administer their own possessions.³⁰

However, Comorian law regarding the age of majority is not clear-cut.³¹ According to a 2012 report by the African Child Policy Forum, the Family Code, Nationality Code, and Muslim Law establish the age of majority as 18, 21, and 14-15, respectively.³² It is

²³ Loi 95-012 AF portant Code pénal ("Criminal Code"), Articles 105, 107 and 109, available at: <http://comoresdroit.comores-droit.com/wp-content/dossier/code/penal.pdf>.

²⁴ See discussion in part V below, regarding the legal status of the Family Code.

²⁵ Union des Comores, Loi relative au Code de la Famille ("Family Code"), 3 June 2005, Articles 118, 120, available at: <http://comoresdroit.comores-droit.com/wp-content/dossier/code/famille.pdf> (translated by L. Liburd).

²⁶ See discussion in part V below, for discussion regarding potential amendments to the Code of Civil Procedure.

²⁷ Ordonnance N 01-0111/CE, Portant nouveau code de procédure civile ("Code of civil procedure"), 19 June 2001, Article 118, available at: <http://comoresdroit.comores-droit.com/wp-content/dossier/code/procedurecivile.pdf> (translated by L. Liburd).

²⁸ Family Code, Articles 133-34, (translated by L. Liburd).

²⁹ Ibid.

³⁰ Ibid., Title IV, Chapter I, Section I *De la minorité*.

³¹ African Child Policy Forum, pp. 35-36; *Report of Comoros to the UN Committee on the Rights of the Child* ("Comoros 1998 Report to CRC"), CRC/C/28/Add.13, 7 October 1998, paras 51-54, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f28%2fAdd.13&Lang=en (noting the various conceptions of when a child reaches the age of majority within Comoros and asserting that, when the report was submitted in 1998, "society and the family continue to treat an individual as a child until he or she enters into marriage").

³² African Child Policy Forum, p. 36.

unclear how these varying standards would interact in the judicial system.

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

The child's parents or legal guardian likely would be responsible for bringing cases to assert the rights of young children, although no information was found to confirm this assumption.

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

Article 88 of Criminal Procedure Code suggests legal aid may be available, but no further details were found.³³

In 2004, the Government of Comoros and UNICEF drafted a strategy document aimed at protecting children that called for the provision of legal aid to indigent families.³⁴ However, there is no indication that this aspiration has been converted into law. Given that provision of free legal counsel for the criminally accused is rarely provided, despite being required by law,³⁵ it is unlikely that the current system grants legal assistance to children for civil claims in which they assert their rights have been violated.

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)?

No other such conditions or limits could be identified. It is unclear if a child's parent or legal guardian has formal veto power over their ability to bring a case.

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?

Civil cases are filed with the appropriate trial court, which is the tribunal of first instance.³⁶ To bring a civil action for damages caused by a criminal offence committed by a child offender, one must submit a claim to the same court as that of the criminal prosecution.³⁷ Regarding criminal proceedings, the judiciary police is responsible for

³³ Note that the quality of this document is questionable and it is unclear whether certain articles are currently in effect in Comoros.

³⁴ Union des Comores and UNICEF, *Stratégie nationale sur la protection des enfants les plus vulnérables aux Comores*, October 2004, p. 37, available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96298/113758/F-1976911261/COM-96298.pdf> ("Pour encourager le recours à la justice il convient de . . . Instaurer l'aide judiciaire au profit des familles démunies.")

³⁵ US Dept of State, '2013 Comoros Human Rights Report' ("Defendants have the right to consult an attorney and indigent local defendants have the right to counsel provided at public expense, although the latter was rarely observed in practice.").

³⁶ Ordonnance N 01-0111/CE, Portant nouveau code de procédure civile ("Code of criminal procedure", Article 759 (translated by L. Liburd).

³⁷ Loi sur la Protection de l'enfance et la répression de la délinquance juvénile ("Law on Protection of Childhood and Repression of Youth Crime"), Article 38, available at:

leading preliminary investigations. The Public Prosecutor's office ("*Ministère public*") carries out the public prosecution.³⁸

The 2001 Constitution of Comoros³⁹ provides that "[e]very citizen may request a ruling of the Constitutional Court on the constitutionality of statutes either directly or by way of objecting to the application of an allegedly unconstitutional statute before a court of the Union or of an island in a case involving him."⁴⁰ Specifically, the Constitutional Court can be referred to in the following ways:

- Unconstitutionality claim ("*Recours en inconstitutionnalité*"): Within a month of the publication of any law, any physical or legal entity can submit a claim to the Constitutional Court challenging the unconstitutionality of such law.⁴¹
- Suspending claim ("*Recours en suspension*"): When an unconstitutionality claim is under examination by the Constitutional Court, anyone involved in an ongoing case in any domestic court who can prove that the application of the legal provision would cause serious and irreparable harm can ask for the suspension of the application of the legal provision.⁴²
- Exception of unconstitutionality ("*Exception d'inconstitutionnalité*"): As a defence, every citizen has the right to submit a claim to the Constitutional Court challenging the constitutionality of a legal provision that is being applied to them during an ongoing trial in front of any domestic court. The court must stay proceedings while awaiting a decision of the Constitutional Court, which must be issued within 30 days.⁴³

The National Commission for Human Rights and Freedoms (CNDHL), established in 2011, theoretically hears complaints of human rights violations.⁴⁴ It can theoretically bring civil suits on behalf of victims of human rights violations,⁴⁵ though it is unclear what process CNDHL would follow for these suits and if CNDHL could aggregate claims or leave victims anonymous. In its most recent UPR submission, the Comorian government noted ongoing problems with providing staff salaries and adequate facilities for the organisation.⁴⁶ Given these basic operational issues, the practical reach of this Commission is likely limited.

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

Individuals, including child victims, their 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

<http://droit-afrique.com/upload/doc/comores/Comores-Loi-2005-protection-de-l-enfance.pdf>.

³⁸ Code of Criminal Procedure, Articles 12 and 31.

³⁹ See discussion in part V below, regarding Constitutional amendments since the 2001 Constitution was adopted.

⁴⁰ Comoros 2001 Constitution (rev. 2009), Article 36.

⁴¹ Loi organique 04-001 sur l'organisation de la Cour constitutionnelle "Law on Organisation and Jurisdiction of the Constitutional Court", Article 24, available at:

<http://droit-afrique.com/upload/doc/comores/Comores-Loi-2004-organisation-Cour-constitutionnelle.pdf>.

⁴² *Ibid.*, Article 34.

⁴³ Constitution, Article 36.

⁴⁴ *Comoros National Report for 2014 UPR*, paras 26-27.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

and Welfare of the Child (“African Children’s Charter”).⁴⁷ All available domestic remedies must have been exhausted before bringing a case to the African Committee.⁴⁸ 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.⁴⁹ 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.⁵⁰ As at June 2015, there have been no cases concerning Comoros.

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”).⁵¹ All available domestic remedies must have been exhausted before bringing a case to the African Commission.⁵² 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.⁵³ 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.⁵⁴ 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.⁵⁵ As at June 2015, there have been no cases concerning Comoros.

⁴⁷ 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/>.

⁴⁸ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at:

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

⁴⁹ 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>.

⁵⁰ Ibid.

⁵¹ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at:

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

⁵² Ibid., Article 56(5).

⁵³ 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/>.

⁵⁴ 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>.

⁵⁵ 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>.

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

Civil courts can grant the following remedies:

- Compensation (“*Dommages et intérêts*”) whenever an obligation is not executed or is executed with delay;⁵⁶
- Penalties in case of delays in complying with a sentence (“*astreintes*”),⁵⁷ which can be combined with compensation; and
- Injunctions to pay and to deliver.⁵⁸

Criminal courts can order sentences including fines, confiscations, forced labour, imprisonment, and death penalty⁵⁹ (for instance, for child kidnapping followed by death, though it has never been applied in this context).⁶⁰ Notably, the current version of the Criminal Code condemns infanticide, child kidnapping, and abandonment. A civil action attached to the criminal action can result in compensation to the victim for any damages he/she may have suffered.⁶¹

The Constitutional Court can suspend the application of a legal provision while it proceeds to examine its constitutionality. Any type of law declared unconstitutional by the Constitutional Court is void and cannot be applied.⁶²

The children’s judge can order protection measures for a child, return the child to his/her parents, tutors or “someone trustworthy”.⁶³

There is currently no separate administrative law in Comoros, therefore the state assumes regular civil liability.⁶⁴

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

In a civil proceeding, the victim needs to be named. The Code of Civil Procedure⁶⁵ requires that the claim state the name of the parties, and no exceptions to this rule are mentioned.⁶⁶ In an unconstitutionality claim, any physical or legal entity can challenge the constitutionality of a law. In such proceedings, there is no need to name a specific victim.

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

⁵⁶ Civil Code, Article 1147.

⁵⁷ Code of Civil Procedure, Article 963, available at: <http://comoresdroit.comores-droit.com/wp-content/dossier/code/procedurecivile.pdf>.

⁵⁸ Ibid., Article 944.

⁵⁹ See <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Comoros>.

⁶⁰ Code of “*contraventions*”, Article 1; Criminal Code, Livre I.

⁶¹ Code of Criminal Procedure, Article 2.

⁶² Constitution, Article 35.

⁶³ Law on the Protection of Childhood and Repression of Youth Crime of 2005, Article 14.

⁶⁴ “*Responsabilité civile de l’État*” mentioned in the General Statute of public servants of 2004, Article 12, available at: www.droit-afrique.com/upload/doc/comores/Comores-Loi-2004-fonction-publique.pdf.

⁶⁵ See discussion in part V below, for discussion regarding potential amendments to the Code of Civil Procedure.

⁶⁶ Code of Civil Procedure, Articles 845, 860.

individual victims?

When there is a sufficient link between two cases in front of two different courts, it is possible to join them to ensure good administration of justice. If one of the courts is superior to the other, it will join the two cases in one.⁶⁷

However, following French tradition, group actions are not permitted.

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?

The 2001 Comorian Code of Civil Procedure⁶⁸ allows for *accessory voluntary intervention*,⁶⁹ whereby anyone can intervene in a trial to support the claim of a party if it is in their interest, in order to protect their rights. According to expert opinion,⁷⁰ the notion of "interest" is very wide and allows for legal entities to intervene as well. Therefore, NGOs could theoretically intervene in civil proceedings within their area of interest.

Any physical or legal entity can submit a claim to the Constitutional Court challenging the constitutionality of any law through an unconstitutionality claim, which would include NGOs.

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?

Civil cases are to be brought in front of first instance tribunals through an "*assignation*", or "*requête conjointe*" or "*simple requête*".⁷¹

In front of the Constitutional Court, unconstitutionality claims, suspending claims and exceptions of unconstitutionality can be brought (see part III.A above).

Administrative cases are to be brought in front of administrative tribunals, but as long as they have not been established, they are to be brought in front of the first instance tribunals.⁷²

Currently, special chambers within first instance tribunals and the Courts of Appeals deal with the protection of children in danger and children in conflict with the law.⁷³

⁶⁷ Code of Civil Procedure, Articles 102 and 103.

⁶⁸ See discussion in part V below, for discussion regarding potential amendments to the Code of Civil Procedure.

⁶⁹ Code of Civil Procedure, Articles 64, 67.

⁷⁰ Pascal Labbé, *Introduction au Droit Processuel*, page 57, available at: https://books.google.co.uk/books?id=l7HCfqsIWuIC&hl=fr&source=gbs_navlinks_s.

⁷¹ Code of Civil Procedure, Article 759.

⁷² Organic Law on the Judiciary Organisation of Comoros (2005), Article 33.

⁷³ Loi sur l'organisation transitoire des juridictions pour mineurs ("Law on the Transitory Organisation of Child Tribunals", 2005, Article 1, available at:

The Law on the Protection of Childhood and Repression of Youth Crime 2005⁷⁴ provides for children's judges ("*Juge des enfants*"). In cases concerning protection measures, the children's judge can be addressed by the Public Prosecutor ("*Procureur de la République*"), the child's representative, the child him/herself, or organisations working for the protection of children.⁷⁵ If the case concerns a "*délit*"⁷⁶ committed by a child, the children's judge can be addressed by the Public Prosecutor or the victim. The competent judge is the one with jurisdiction over the child's place of residence, where the child was found, or where the crime occurred.⁷⁷ The investigating judge ("*Juge d'instruction*") is responsible for investigating cases against children. The Minors Tribunal ("*Tribunal pour mineurs*") is responsible for adjudicating "*contraventions*" and "*délits*" committed by children. The Children's Criminal Court ("*Cour criminelle des enfants*") is responsible for judging "*crimes*" committed by children.

- 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?

The losing party in a civil action is typically required to pay the costs of the winning party.⁷⁸ However, after a finding of good cause, the court can require costs to be paid by "another party".⁷⁹

- 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?

Monetary awards in civil proceedings can, upon request, be paid directly to the lawyer to offset costs incurred during representation.⁸⁰ This provision suggests that obtaining legal counsel without full payment of costs up front is possible.

Avocats sans frontières Comores is an NGO that provides free legal consultations in Comoros.⁸¹

<http://www.droit-afrique.com/upload/doc/comores/Comores-Loi-2005-juridictions-pour-mineurs.pdf>.

Article 33 of the Organic Law on the Organisation of the Judiciary of Comoros (2005) provides for the creation of Minors Tribunals ("*Tribunal pour mineurs*"). Nevertheless, a law has yet to be passed to enforce the Organic Law and effectively create the Tribunals. Therefore, the Law on the Transitory Organisation of Child Tribunals (2005) provides for this mechanism during the interim period, which is currently in effect.

⁷⁴ Available at:

<http://droit-afrique.com/upload/doc/comores/Comores-Loi-2005-protection-de-l-enfance.pdf>.

⁷⁵ Law on the Protection of Childhood and Repression of Youth Crime of 2005, Articles 8 and 9.

⁷⁶ Article 1 of the Criminal Code provides that the offence punishable by police sentences is a "*contravention*", the offence punishable by correctional sentences is a "*délit*", and the offence punishable by a sentence involving the loss of freedom or life is a "*crime*".

⁷⁷ *Ibid.*, Article 7.

⁷⁸ Code of Civil Procedure, Articles 707, 711 (translated by L. Liburd).

⁷⁹ *Ibid.*, Article 707.

⁸⁰ *Ibid.*, 710.

⁸¹ <http://www.asf-network.org/web/fr/160-asf-comores.php>.

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?

According to the Code of Criminal Procedure, the limitation period within which one must bring a criminal action varies according to the gravity of the crime, as follows, commencing on the day of the commission of the crime:

- for “*crimes*”: 10 years;
- for “*délits*”: three years; and
- for “*contraventions*”: one year.⁸²

The limitation period within which one must bring a civil action for damages caused by a criminal offence is 30 years after the criminal sentence was issued.⁸³

According to the Civil Code, the regular limitation period for civil actions is 30 years after the tort was committed,⁸⁴ but this does not apply to non-emancipated children.⁸⁵ The State is subject to regular civil liability. As a consequence, regular civil limitation periods should apply, except as provided otherwise.⁸⁶

Comoros is a member of the International Criminal Court.⁸⁷ The Rome Statute is applicable as national law,⁸⁸ therefore genocide, crimes against humanity, war crimes and crimes of aggression are not subject to any limitations,⁸⁹ including time limitations for prosecution.

See part III.A for constitutional actions.

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 2001 Code of Civil Procedure⁹⁰ addresses evidentiary issues.⁹¹ The Code does not, however, specify the elements of proving a claim, let alone this process as applied to claims involving minors.

⁸² Code of Criminal Procedure, Articles 7 and following.

⁸³ *Ibid.*, Article 10.

⁸⁴ Civil Code, Article 2262 and following.

⁸⁵ *Ibid.*, Article 2252.

⁸⁶ “*Responsabilité civile de l’État*” mentioned in the General Statute of public servants of 2004, Article 12, available at:

<http://www.droit-afrique.com/images/textes/Comores/Comores%20-%20Loi%202004%20fonction%20publique.pdf>.

⁸⁷ https://asp.icc-cpi.int/en_menus/asp/states%20parties/african%20states/Pages/comoros.aspx.

⁸⁸ The “Law authorising the President to ratify the treaty on the Statute of Rome of the International Criminal Court” (2006) states that “[t]he present Law will be executed as a Law of the Union of Comoros”.

⁸⁹ Rome Statute, Article 29, available at:

<http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEngl.pdf>.

⁹⁰ See discussion in part V below, for discussion regarding potential amendments to the Code of Civil Procedure.

⁹¹ See, e.g., Ordonnance N 01-0111/CE, Portant nouveau code de procédure civile, Articles 133-324.

In criminal proceedings, testimony is required to be made under oath,⁹² though children under 16 years old are exempt.⁹³

Neither the Law on the Protection of Childhood and Repression of Youth Crime of 2005 nor the Law on the Transitory Organisation of Child Tribunals (2005) offer child-friendly measures for collecting evidence from children.

Trials are public but the president of a tribunal can order a trial to be private when public peace, order or morality are at stake, *ex officio* or at one of the party's request.⁹⁴ Trials in the Minors Tribunals are always private. The child or his/her lawyer, parents, representative, guardian, judges, representatives of the child rights organisations and witnesses are present. The judge at any time can order that the child leave the premises, or even exempt the child from the audience. The child will be represented by his/her lawyer. The publication of the trial record is strictly forbidden. The sentence can be published but it cannot mention the child's name or initials, at the risk of a fine.⁹⁵

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

Courts of Appeals have one month to issue rulings related to family law.⁹⁶

It is reported that the court system suffers from chronic delays.⁹⁷

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

Decisions of first instance tribunals (*Tribunaux de première instance, Tribunaux du travail, Tribunaux de l'Enfance, Tribunaux administratifs, Tribunaux de famille*) can be appealed to one of the two existing Courts of Appeals. Decisions from the Courts of Appeals can be challenged in front of the Supreme Court, which handles civil, criminal and administrative cases.⁹⁸

Pursuant to the Code of Civil Procedure, the time limitation for an appeal of a contentious decision is 30 days.⁹⁹ Interim measures in civil proceedings may be appealed, except when issued by the first president of the Court of Appeal or as a final decision, within 15 days.¹⁰⁰ Appeals before the Supreme Court must be made within two months of the notification of the decision.¹⁰¹ Decisions concerning family law can be appealed within 15 days of the sentence.¹⁰²

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

⁹² Code of Criminal Procedure, Article 103.

⁹³ *Ibid.*, Article 108.

⁹⁴ *Ibid.*, Article 1.

⁹⁵ Law on the Protection of Childhood and Repression of Youth Crime of 2005, Articles 23 and 24.

⁹⁶ Family Code of 2005, Article 149.

⁹⁷ Articles from Comoresdroit.centerblog.net. See pages 11, 19, 61, 62 and 73, available at: <http://comoresdroit.comores-droit.com/wp-content/dossier/comoresdroit/Le%20dossier%202013%20de%20Comoresdroit.pdf>.

⁹⁸ Comoros 2001 Constitution (rev. 2009), Article 29.

⁹⁹ Code of Civil Procedure, Article 543.

¹⁰⁰ *Ibid.*, Article 493.

¹⁰¹ *Ibid.*, Article 617.

¹⁰² Family Code of 2005, Article 149.

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

The following discussion is not a comprehensive list, but it is meant to highlight a particularly egregious example of unexpected consequences from filing a case in court.

In a recent human trafficking case, a 14-year-old girl was removed from “domestic servitude” in the home of a government official, after which the individuals who took her in were subject to “a sustained campaign to intimidate them,” carried out by various government officials.¹⁰³ Although no decision had been reached in this matter at the time the cited report was released,¹⁰⁴ it highlights potential backlash from filing a case, before a decision was ever reached.

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

In 2013, the US State Department reported that the Comorian judiciary faced problems with “inconsistency” and “unpredictability”, and that “[c]ourt orders were inconsistently enforced”.¹⁰⁵ High levels of corruption within the government are also reported.¹⁰⁶

- 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.

State of the laws

Constitution

The current Comorian Constitution was adopted on 23 December 2001.¹⁰⁷ It was amended in both 2009 and 2014.¹⁰⁸ The 2009 version of the Constitution was used in compiling this report as the 2014 version was not available in English. The 2014 amendment altered election timing and the process of amending the Constitution,¹⁰⁹ which does not affect the accuracy of references to the Constitution.

Criminal Code and Code of Criminal Procedure

A new Criminal Code and a new Code of Criminal Procedure that incorporate Comoros's international obligations, including under the CRC, have not yet been adopted by the Parliament. Therefore, the criminal courts still operate under the old French Code of Criminal Procedure (1972) and the old French Criminal Code (1995).

¹⁰³ US Dept of State, ‘Trafficking in persons 2014 report: country narratives’, p. 138.

¹⁰⁴ Ibid.

¹⁰⁵ US Dept of State, ‘2013 Comoros human rights report’, section 1.e.

¹⁰⁶ Ibid.; Transparency International, ‘Corruption by Country: Comoros’, available at: <http://www.transparency.org/country#idx99>.

¹⁰⁷ Central Intelligence Agency, ‘Africa: Comoros - Government’, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/cn.html>.

¹⁰⁸ Ibid.

¹⁰⁹ Union des Comores Journal Officiel, Décret N°14-045/PR Portant promulgation de la loi constitutionnelle N° 13-013/AU, portant révision de certaines dispositions de la Constitution, available at: <http://jocomores.gouv.km/spip.php?article278>.

Code of Civil Procedure

The Code of Civil Procedure referenced in this report was enacted in 2001.¹¹⁰ It was found as a complete PDF file, as passed in 2001. However, access to legislation of Comoros is limited, and any amendments made to this Code since 2001 are not reflected in this report. Although no information regarding amendments was found during this report, it is unknown if amendments have been passed.

Family Code

In 2011, the Government of Comoros stated that it “adopted” a new Family Code in June 2005,¹¹¹ but “some provisions of the Family Code are not yet applicable for lack of the relevant implementing legislation.”¹¹² Given this caveat, it is unclear which provisions of the publicly available Family Code are effectively in force.¹¹³ References to the Family Code in this report were used to discuss when children reach the age of majority and guardianship over minors, however, it is unclear if these provisions are part of the law in force today.

Sharia law and customary law

There is no strict separation between statutes, Sharia law and customary law (*Milanantsi*).¹¹⁴ Therefore, conflicts of law may happen. An example of integration between statute and Sharia law is that inside the Courts of Appeals, there is a Muslim Chamber which handles appeals from decisions of Muslim tribunals. A “*cadi*” will then be part of the judges.¹¹⁵

Traditional justice mechanisms

Families may avoid the Comorian court system in favour of traditional mechanisms of justice. According to the representatives of Comoros during both the 2000 CRC hearings and 2009 UPR process, crimes against children, including sexual assault, are often handled outside of the court system.¹¹⁶ In 2000, a state representative at the CRC hearing noted that “[f]inancial compensation in the event of rape... was a widespread practice. Very often, parents did not lodge a complaint unless it was impossible to

¹¹⁰ Ordonnance N 01-0111/CE, Portant nouveau code de procédure civile, Article 1.

¹¹¹ *Comoros 2011 Report to CEDAW*, para. 42.

¹¹² *Ibid.*, para. 265.

¹¹³ See Union des Comores, Relatif au Code de la Famille; Décret N°05-090/PR, Portant promulgation de la loi organique N°85-008/AU du 3 juin 2005, Relative au code de la Famille dated 29 Sept. 2005 in Union des Comores, *Recueil des Textes Legislatifs D’ordre General 1979-30 Septembre 2005*, at 49, available at:

<http://comoresdroit.comores-droit.com/wp-content/dossier/recueil/RECEUIL%20DES%20TEXTES%20LEGISLATIFS.pdf> (noting that the Family Code is named “la loi organique N°05-00/AU du 4 juin 2005 relative au code de la Famille”).

¹¹⁴ https://www.rjoi.fr/docannexe/file/3069/rjoi_03_actualites.pdf.

¹¹⁵ Organic Law on the organisation of the Judiciary of Comoros (2005), Articles 6 and 7.

¹¹⁶ UN Committee on the Rights of the Child, *Summary record of the 666th meeting*, CRC/C/SR.666, 4 October 2000, para. 18, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSR.666&Lang=en.

come to an arrangement at the family or community level.”¹¹⁷ According to the 2009 UPR report, resort to traditional versus formal mechanisms of justice varies between the islands themselves. On the main island, Grand Comore, use of traditional methods is more common, resulting in early marriages or financial compensation.¹¹⁸ However, on Anjouan, another island, use of the court system is favoured over traditional methods.¹¹⁹ These issues were not addressed during the 2014 UPR process, so it is unclear what, if anything, has changed in the past five years.

Right to be heard

Practically, the traditional view of children in Comoros does not afford great respect to the child’s views or opinions. For example, the 1998 Comoros report to the CRC stated that “the child’s views are *a priori* dismissed and have no validity” in Comorian society.¹²⁰ In 2012, the African Child Policy Forum noted that, although a child’s right to participation was not enshrined in Comorian law, some notable changes to Comorian law required a child’s views to be heard in limited circumstances.¹²¹ It is unclear how quickly the traditional views in Comoros are changing, if at all, and the extent to which they would practically limit a child’s legal options.

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

¹¹⁷ Ibid.

¹¹⁸ *Oral Presentation of Comoros to the Human Rights Council at the Universal Periodic Review*, 13 May 2009, pp. 4-5, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/KMSession5.aspx>.

¹¹⁹ Ibid., p. 5.

¹²⁰ *Comoros 1998 Report to CRC*, para. 67.

¹²¹ African Child Policy Forum, pp. 36-37.