

ACCESS TO JUSTICE FOR CHILDREN: Côte d'Ivoire

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

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

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

Côte d'Ivoire signed the CRC on 26 January 1990¹ and ratified it on 4 February 1991.²

Côte d'Ivoire also ratified the Optional Protocols on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the involvement of children in armed conflict on 7 September 2011³ and has signed but not ratified the third Optional protocol on a communications procedure.⁴

The CRC and other ratified international instruments do not automatically become part of the national law in Côte d'Ivoire. The President of the Republic negotiates and ratifies treaties, which then must be published and incorporated by passing legislation.⁵ Research did not reveal that the Convention has been published or incorporated through passing legislation, so it cannot be assumed that it has force of law.

Although the Constitution of 2001 contains provisions for the protection of children's right, there is no single piece of legislation that implements the Convention into domestic law in its entirety. However, various pieces of domestic legislation have been created, since the ratification of the CRC, that reflect the values set out therein.⁶

B. Does the CRC take precedence over national law?

Under Article 87 of the Constitution, a ratified treaty is considered superior authority to domestic law upon publication.⁷ In theory, the Convention would

¹ OHCHR, 'Reporting Status for Côte d'Ivoire' available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=CIV&Lang=EN.

² *Ibid.*

³ Decree No. 2011-220 of 7 September 2011, as mentioned in <https://www.crin.org/en/library/publications/ivory-coast-childrens-rights-references-universal-periodic-review/#National%20report>

⁴ Optional Protocol to the Convention on the Rights of the Child, December 2011, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en.

⁵ Constitution, Articles 84-85, available at: http://abidjan.usembassy.gov/ivoirian_constitution2.html.

⁶ Please see part I.C of this report.

⁷ Constitution of Côte d'Ivoire, Article 87. For more information, see

take precedence over national law but given the lack of evidence to show that it has been published, this is not certain.

C. Has the CRC been incorporated into national law?

The CRC has only been partially implemented into national law. Côte d'Ivoire has not taken adequate steps to implement the CRC due to economic, political, and social unrest.⁸ The legislation does not fully reflect all the provisions of the CRC, and in particular does not contain a comprehensive code on the rights of the child.⁹

While the national law does not include a comprehensive Children's Act, the following provisions reference children's rights:

- Act No. 81-640 of 31 July 1981, the Penal Code
- Act No. 95-15 of 12 January 1995, the Labour Code
- Act No. 68-595 of 20 December 1968, the Code of Social Welfare
- Act No. 61-415 of 14 December 1961, on the Nationality Code
- Act No. 95-685 of 7 September 1995, on education
- Act No. 64-375 of 7 October 1964, on marriage
- Act No. 83-799 of 2 August 1983, on civil status, amending act No. 64-373 of 7 October 1964, on naming
- Act No. 70-483 of 3 August 1970, the Minority Act
- Decree No. 2000-830 of 22 November 2000, establishing a National Human Rights Commission
- Decree No. 72-747 of 24 November 1972, concerning the regulation and control of films and sound recordings.

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

Since the CRC does not have the force of law, it is improbable that individual rights within the Convention could be directly enforced in national courts without further national legislation.

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

There are no examples available of domestic courts using or applying the CRC or other relevant international instruments. However, even in cases where the legislation may not be specifically referred to, international instruments may

http://www.nyulawglobal.org/globalex/cote_divoire.htm.

⁸ *Initial report of Côte d'Ivoire to the UN Committee on the rights of the child*, CRC/C/8/Add.41, 27 April 2000, para. 70-73, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f8%2fAdd.41&Lang=en.

⁹ *ibid.*

still act as a substantial point of reference for the court in reaching a decision.¹⁰

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Article 6 of the Constitution ensures the protection of children.¹¹ The Code of Civil, Commercial and Administrative Procedure asserts that any person or entity, personally or by representative, can ensure the protection of their interests before all courts.¹² As such, children or their representatives may challenge violations in the domestic 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?

In Côte d'Ivoire, children are defined as minors below the age of 18 for civil matters and below the age of 21 for criminal matters.¹³ In all court proceedings, children, as defined, must be represented by an adult.¹⁴ Specifically, parents (even if they are a minor) are qualified to represent their children before the courts.¹⁵ A child who is over the age of 16 must give consent in matters of personal interest, particularly those concerning their status or physical state.¹⁶

From the analysis of the legislation in force it is not possible to determine a fixed minimum legal age for consulting a lawyer without parental consent. The child under the age of 21 may consult a lawyer without the consent of his or her legal representative, but since the child does not enjoy legal capacity, they cannot appear in court unless assisted by a legal representative.

As an exception, under the Minority Act, a judge can take protective measures

¹⁰ *Initial report of Côte d'Ivoire to the UN Committee on the rights of the child*, CRC/C/8/Add.41, 27 April 2000, para 43. available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f8%2fAdd.41&Lang=en

¹¹ Constitution, Article 6.

¹² Code of Civil, Commercial and Administrative Procedure, Title II, Chapter 1, Article 19, available at: <http://www.loidici.com/codeprocecivilecentral/codeprocivileintroductiongeneralite.php>

¹³ *Initial report of Côte d'Ivoire to the UN Committee on the rights of the child*, CRC/C/8/Add.41, para 78; But the Minority Act, Article 1 defines children as below 21 years of age.

¹⁴ *Initial report of Côte d'Ivoire to the UN Committee on the rights of the child*, CRC/C/8/Add.41 27 April 2000, para 35.

¹⁵ See Minority Act of 3 August 1970, Article 81. Available at: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/cotedevair/cotedivoire_minority_1970_fr.pdf.

¹⁶ Yale Law, 'Côte D'Ivoire', November 2005, para 1, available at: <http://www.law.yale.edu/rcw/jurisdictions/afw/cotedivoire/frontpage1.htm>; see also Minority Act of 3 August 1970, Article 29.

when minors' "health, security, morals, or education are compromised or insufficiently safeguarded owing to the immorality or incapacity of the mother or father or the person invested with the right of guardianship."¹⁷ These are known as 'protective proceedings'. However, the details of the proceedings are not clear. It is not expressly stated if minors must be represented by a representative or can act on their own. Article 139 of the Minority Act allows minors to be assisted by a lawyer. Finally minors are allowed to challenge the decision reached under the 'protective proceedings'.¹⁸

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

There do not appear to be specific provisions for infants and young children, who would be considered minors for civil and criminal matters. Under the Minority Act, minors must be represented by either of the child's parents, or the child's guardian in the event both parents are deceased.¹⁹

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

The Code of Civil, Commercial and Administrative Procedure states that judicial assistance is available in order to enable those who do not have sufficient resources, to exercise their rights to justice, as plaintiff or defendant, without any charge.²⁰ According to the Code, judicial assistance may be granted to any physical person or civil personality.²¹ However, there are no provisions that relate specifically to children bringing a case. The mechanisms that allow access to legal assistance are severely lacking.²² It has been reported that children do not benefit from an adequate legal and judicial system. The families receive, at most, advice and information about how to file a complaint.²³ There is little prospect of specialised support for either the initiation or the duration of the entire judicial procedure. Access and monitoring of children in contact with the justice system are affected by the absence of any mechanism which ensures that their status as minors, and their specific needs, are taken into account.²⁴

In criminal cases, the juvenile magistrate must appoint counsel for a minor if the parent has not elected to do so.²⁵ In criminal cases the parent may make use of

¹⁷ *ibid*; see also the Minority Act, 3 August, 1970, Article 10.

¹⁸ see Minority Act, 3 August 1970, Article 142

¹⁹ see Minority Act, 3 August 1970, Article 10

²⁰ Code of Civil, Commercial and Administrative Procedure, Article 27.

²¹ *ibid*

²² UNICEF, 'West and Central Africa: Côte D'Ivoire', 2011, page 2, available at:

http://www.unicef.org/arabic/hac2011/files/HAC2011_4pager_Cote_dIvoire_rev1.pdf

²³ Joint Project ONUCI/PNUD/UNICEF/UE 'Improving access to Justice in Côte d'Ivoire'»- 2013-2015, page 2, available at:

http://eeas.europa.eu/delegations/cote_ivoire/documents/press_corner/ficheprojet_palaj_fr.docx.

²⁴ *ibid*.

²⁵ Code of Criminal Procedure, Article 769, available in French at :

the legal assistance provided for by law. Indeed, article 769 of the Code of Criminal Procedure obliges the juvenile magistrate to appoint counsel for a delinquent minor if the child's parents have not elected to do so.

- 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)?

Research did not reveal any other conditions or limits on children or chosen legal representatives bringing cases.

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?

A legal challenge can be brought to the first instance courts. The Code of Civil, Commercial and Administrative Procedure states that any legal person or entity may act before the jurisdiction of the court to obtain recognition, protection or punishment of the law.²⁶ The case can be initiated voluntarily by one of the parties, or by court summons.²⁷ To bring a case in a civil court, the applicant must have a legitimate and direct interest; standing to sue; and capacity to take legal action.²⁸

Alternatively, a challenge could be brought to the administrative section of the Supreme Court, which handles cases of alleged abuse of administrative power, involving individuals in public administration.²⁹

The Constitutional Council, a judicial body separate from the Court hierarchy, judges the constitutionality of the law, and is the regulating organ of public powers.³⁰ The conditions for seizing the Constitutional Council are determined by law. The council can be seized to amend the law in question either before or after it has been implemented.³¹ Citizens can also raise constitutional matters incidentally or in concreto.³² According to the Constitution, any applicant can

http://www.unodc.org/res/cld/document/civ/1960/loi-no-60-366-du-14-novembre-1960-portant-code-de-procedure-penale_html/Cote_dIvoire_Loi_No_60-366_du_14_Novembre_1960_portant_code_de_procedure_penale.pdf

²⁶ Code of Civil, Commercial and Administrative Procedure, Article 1.

²⁷ *ibid*, Article 32.

²⁸ *ibid*, Article 3.

²⁹ US Library of Congress, Country Studies, available at: <http://countrystudies.us/ivory-coast/62.htm>

³⁰ Constitution, Article 88.

³¹ Law No. 2001-303 of 5 June 2001, Determining the organisation and functioning of the Constitutional Council, Article 26, available at: <http://www.loidici.com/Conseilconstitutionnel/conseilconsfonctsaissine.php>

³² Kanga, Serges. 'An assessment of the possibility for impact litigation in Francophone African countries', 2014, available at: <http://www.ahrj.up.ac.za/table-of-contents-volume-14-no-2-2014/42-issues/volume-14-no-2-2014/452-an-assessment-of-the-possibilities-for-impact-litigation-in-francophone-african-countries>.

raise the exception of unconstitutionality of a law before any jurisdiction.³³ This means that during the hearing of a particular case, parties can raise the unconstitutionality of a law that they believe violates the Constitution. The administrative or judicial judge in charge of the case then postpones the verdict and submits the issue of constitutionality to the constitutional court which is the sole authority to deal with constitutional disputes of any nature.³⁴

The following regional mechanisms are also available:

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

Individuals, including child victims, his/her parents or legal representatives, groups, or NGOs recognised by the African Union may submit complaints (known as “communications”) to the African Committee of Experts on the Rights and Welfare of the Child (“African Committee”) about violations of the African Charter on the Rights and Welfare of the Child (“African Children’s Charter”).³⁵ All available domestic remedies must have been exhausted before bringing a case to the African Committee.³⁶ 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.³⁷ 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.³⁸

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”).³⁹ All available domestic remedies must have been exhausted before bringing a case to the African Commission.⁴⁰ The complaint must include, amongst other things: the name of the person filing it

³³ Constitution, Article 96.

³⁴ *ibid.*

³⁵ African Charter on the Rights and Welfare of the Child (“African Children’s Charter”), Article 44, available at: <http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acrwc/acerwc-charter-full-text/>. For more information about communications, see: <http://acerwc.org/the-committees-work/communications/>.

³⁶ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at: <http://acerwc.org/the-committees-work/communications/>.

³⁷ 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>.

³⁸ *Ibid.*

³⁹ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

⁴⁰ *Ibid.*, Article 56(5).

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.⁴¹ 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.⁴² 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.⁴³

African Court on Human and Peoples' Rights

Individuals or NGOs with observer status before the African Commission may bring their case to the African Court on Human and Peoples' Rights⁴⁴ alleging violations of the African Charter.⁴⁵ All available domestic remedies must have been exhausted before bringing a case to the Court.⁴⁶ The complaint must include, amongst other things, details of the applicant's identity, notwithstanding his/her request to remain anonymous.⁴⁷ The complaint must be written in one of the official languages of the Court,⁴⁸ and must be filed within a reasonable time from the date local remedies were exhausted or from the date

⁴¹ 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/>.

⁴² 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>.

⁴³ 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>.

⁴⁴ The African Court on Human and Peoples' Rights will be incorporated into the African Court of Justice and Human Rights once the Protocol on the Statute of the African Court of Justice and Human Rights comes into force. The Court's Human Rights Section will have jurisdiction over human rights instruments including the African Charter on the Rights and Welfare of the Child and the African Charter on Human and Peoples' Rights. Individuals and NGOs accredited to the African Union or its organs will be able to submit complaints to the Court provided that the State concerned has made a declaration recognising the Court's competence to receive such complaints: see A4ID, 'African Court of Human and Peoples' Rights', 27 February 2012, available at: <http://www.a4id.org/sites/default/files/user/African%20Court%20of%20Human%20and%20People%27s%20Rights.pdf>;

⁴⁵ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, Articles 5(3) and 34(6), available at: <http://www.achpr.org/instruments/court-establishment>.

⁴⁶ Ibid., Article 6(2).

⁴⁷ African Court on Human and Peoples' Rights - Rules of Court, Rules 34 and 40, available at: http://www.african-court.org/en/images/documents/Court/Interim%20Rules%20of%20Court/Final_Rules_of_Court_for_Publication_after_Harmonization_-_Final_English_7_sept_1_.pdf.

⁴⁸ Ibid., Rule 34; the official languages of the Court are: Arabic, English, French, Portuguese, Spanish, Kiswahili and any other African language.

set by the Court.⁴⁹ Applicants are entitled to be represented or to be assisted by legal counsel and/or by any other person of the applicant's choice.⁵⁰ The Court may, in the interest of justice, provide free legal representation and/or legal assistance to the applicant.⁵¹ If the Court finds that there has been a violation of the African Charter, it will make "appropriate orders to remedy the violation, including the payment of fair compensation or reparation".⁵²

ECOWAS Community Court of Justice

Individuals can bring complaints about violations of human rights that occur in any Member State of the Economic Community of West African States (ECOWAS) to the Community Court of Justice.⁵³ This includes acts or inaction of Community Officials which violate the rights of individuals.⁵⁴ There is no requirement to exhaust domestic remedies, therefore individuals do not need to pursue national judicial remedies before filing a case with the Community Court of Justice.⁵⁵ There are, however a number of conditions: the complaint must not be anonymous or be pending before another international court;⁵⁶ representation by an agent or lawyer is required;⁵⁷ and any action by or against a Community Institution or the Member State must be brought within three years of when the right of action arose.⁵⁸ Judgments of the Court of Justice are binding on the Member States, Institutions of the Community, individuals and corporate bodies.⁵⁹

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

Citizens can bring lawsuits seeking damages for, or cessation of, a human rights violation.⁶⁰

⁴⁹ *Ibid.*, Rule 40.

⁵⁰ *Ibid.*, Rule 28.

⁵¹ *Ibid.*, Rule 31.

⁵² *Ibid.*, Article 27(1).

⁵³ Supplementary Protocol A/SP.1/01/05, Articles 3 and 4, available at:

http://www.courtecowas.org/site2012/pdf_files/supplementary_protocol.pdf; Protocol on the Community Court of Justice, Articles 9(4) and 10(d), available at:

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

⁵⁴ *Ibid.*, Article 4; Protocol on the Community Court of Justice, Article 10(c).

⁵⁵ War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, 'ECOWAS Community Court of Justice', 2012, available at: <http://co-guide.org/mechanism/ecowas-community-court-justice>.

⁵⁶ Supplementary Protocol A/SP.1/01/05, Article 4; Protocol on the Community Court of Justice, Article 10(d),

⁵⁷ Protocol on the Community Court of Justice, Article 12.

⁵⁸ Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).

⁵⁹ Revised Treaty of the Economic Community of West African States, Article 15(4), available at: http://www.courtecowas.org/site2012/pdf_files/revised_treaty.pdf.

For an example, see *Amouzou Henry v. Côte d'Ivoire*, Judgment No. ECW/CCJ/JUG/04/09, 17 December 2009, on the rights of women and children, available at:

http://www.worldcourts.com/ecowasccj/eng/decisions/2009.12.17_Henry_v_Cote_d%27Ivoire.pdf

⁶⁰ US Department of State, Bureau of Democracy, Human Rights and Labour, '2012 Human Rights Reports:

The Constitutional Council cannot award damages, but has the power to stop the enforcement of a law, or repeal a law if already enforced.⁶¹

The High Court of Justice is empowered to impeach the President of the Republic for treason and to judge other members of the government for crimes or misdemeanors committed in the exercise of their official duties.⁶²

In administrative matters, appeals are directly transmitted to the administrative chamber of the Supreme Court for appeals in excess of power.⁶³ The main remedy is to cancel the administrative act due to a ruling of illegality.⁶⁴

Civil and criminal cases can run simultaneously. The courts have power to summon the person against whom the action is filed.⁶⁵ In the pretrial phase, judges can order a full investigation of the case.⁶⁶ Judges can then hold a hearing, conduct a social investigation, and consult with the Board of Guardians.⁶⁷ In addition, judges can order a medical or psychiatric examination to investigate the minor's situation.⁶⁸

Judges are granted powers under the Minority Act to deprive parents of their parental rights if convicted of (1) prostituting, if the victim is their child or (2) as perpetrators, co-perpetrators, or accomplices of a crime committed against the person of one or several of their children.⁶⁹

In criminal cases, the principal forms of punishment for an offence are a fine, or deprivation of liberty, either perpetual or up to 20 years.⁷⁰ This can be complemented by additional penalties including sequestration, military dismissal or loss of rank, deprivation of certain rights, or the publication of the sentence.⁷¹ Further security measures can also be taken by the courts, including prevention detention, confinement in a nursing home, closure of an establishment, prohibition of professional activity, travel ban, monitoring and assistance, or a good behaviour bond.⁷² However, the Penal Code states that, except in cases expressly prohibited by law, the judge may provide the defendant with the benefit of extenuating circumstances without having to give

Côte d'Ivoire', April 2013, available at: <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204112.htm>.

⁶¹ Constitutional Council, 23 July 2000, <http://www.accpuf.org/cote-d-ivoire/conseil-constitutionnel>

⁶² Winslow, Robert. 'Crime and Society: A comparative criminology tour of the world', available at: http://www-rohan.sdsu.edu/faculty/rwinslow/africa/cote_divoire.html.

⁶³ Dr Kouable Clarisse Guege, 'The Legal System in Côte d'Ivoire: Where do we stand?', April 2009, para 4.3, available at: http://www.nyulawglobal.org/globalex/Cote_dIvoire.htm#_3.3_The_Judiciary.

⁶⁴ *ibid.*

⁶⁵ Yale Law, 'Côte D'Ivoire', November 2005, para 1; see also the Minority Act, 3 August 1970, Art. 146.

⁶⁶ The Code of Civil Procedure, Article 48.

⁶⁷ Yale Law, 'Côte D'Ivoire', November 2005, para 1.

⁶⁸ The Code of Civil Procedure, Art. 140.

⁶⁹ *ibid.*; see also the Minority Act, 3 August 1970, Art. 20.

⁷⁰ Penal Code Article 34

⁷¹ Penal Code Article 36

⁷² Penal Code Article 37

reason.⁷³

- 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 protection proceedings where the child's safety, health or security has been jeopardised by their parent or guardian, challenges have to name a specific victim. research could not determine whether it possible to initiate other proceedings without naming a specific victim.

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

Research did not identify any provisions of national law that allow for group litigation.

- 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?

In contrast to most Francophone African countries, Côte d'Ivoire allows standing for human rights organisations to challenge the constitutionality of laws relating to of human rights, prior to its publication.⁷⁴ However, this possibility has yet to be used. NGOs have the legal standing to carry out strategic litigation in their own name.⁷⁵

There are several reported case of national or international NGOs filing challenges to rights violations, in the national courts, on behalf of the victims or their families.⁷⁶ There are three NGOs which have taken an active role in supporting the victims, or their families, of the most serious crimes before national courts. These are the LIDHO (Ivorian League of Human Rights)⁷⁷, MIDH (Ivorian movement for Human Rights)⁷⁸, and the FIDH (International Federation for Human Rights).⁷⁹

In administrative matters, NGOs' legal capacity appears to be limited. Filing a legal action requires to demonstrate one's interest to act, and the administrative

⁷³ Penal Code Article 117

⁷⁴ Kamga, Serges. 'An assessment of the possibilities for impact litigation in Francophone African countries;', 2014 available at:

<http://www.ahrj.up.ac.za/table-of-contents-volume-14-no-2-2014/42-issues/volume-14-no-2-2014/452-an-assessment-of-the-possibilities-for-impact-litigation-in-francophone-african-countries>

⁷⁵ *ibid.*

⁷⁶ FIDH, 'Ivory Coast: FIDH, MIDH, and LIDHO support the justice system and assist victims of the post electoral crisis', May 2012, available at:

<https://www.fidh.org/International-Federation-for-Human-Rights/Africa/cote-d-ivoire/Ivory-Coast-FIDH-MIDH-and-LIDHO>

⁷⁷ <http://www.achpr.org/network/ngo/63/>

⁷⁸ <http://www.midhci.org/>

⁷⁹ <https://www.fidh.org/International-Federation-for-Human-Rights/>

chamber of the Supreme Court appears to adopt a restrictive approach, requiring a personal interest to act.⁸⁰

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?

The court system consists of two levels. The lower courts include the courts of appeals, the courts of first instance and their detached sections, and the courts of assize.⁸¹ The five courts of first instance, which handle the bulk of trials, hear misdemeanor and minor criminal cases (with a maximum sentence of three months or less), juvenile cases, administrative, civil and commercial cases.⁸² In civil and commercial matters, the claims cannot exceed 500,000 francs.⁸³

Normally, an initial challenge would be brought to one of the courts of first instance. A request to the court can be written or oral and is presented to the clerk of the court by the applicant in person or by his representative or agent.⁸⁴ Civil proceedings are introduced by a summons, except for voluntary appearance of the parties.⁸⁵ The summons served shall contain information as to the subject of the application, a summary of the means, and the date and time of the hearing.⁸⁶

The superior courts are mandated by the Constitution and have nationwide jurisdiction. They include the Supreme Court, the High Court of Justice and the State Security Court. The Supreme Court is separated into four sections handling, respectively, constitutionality of laws, administrative appeal, criminal appeal, and financial control of government services.⁸⁷

Individuals can also take the case to the appeal courts or the Supreme Court if they are dissatisfied with the lower court decisions.⁸⁸

B. Legal aid / Court costs. Under what conditions would free or subsidised legal

⁸⁰ Supreme Court of Côte d'Ivoire, questionnaire of the International Association of Supreme Administrative Jurisdictions, « Le juge administratif et le droit de l'environnement », Congress of Cartagena, 2013. Available (in French) at:

http://www.aihja.org/images/users/114/files/Congres_de_Carthagene_-_Rapport_de_la_Cote_dIvoire_2013-COTE-IVOIRE-FR.pdf

⁸¹ UN operation in Côte d'Ivoire, Rule of Law unit, L'organisation judiciaire en Côte d'Ivoire, June 2007, p. 15 and following. available at: <http://www.onuci.org/pdf/rulesrapport6.pdf>.

⁸² Code of Civil Procedure, Article 5.

⁸³ Code of Civil Procedure, Article 6.

⁸⁴ The Code of Civil Procedure, Article 35.

⁸⁵ *Ibid* at Article 32.

⁸⁶ *ibid* at Article 33.

⁸⁷ *ibid*.

⁸⁸ *ibid*, page 8, para 34.

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?

In civil cases, the Code of Civil Procedure states that legal aid may be granted to those without sufficient resources and is applicable to all litigation before all courts and protective actions.⁸⁹ In criminal cases before courts of assizes, defendants accused of felonies have the right to legal counsel, and the judicial system provides for court-appointed attorneys.⁹⁰ However, in practice, free legal assistance does not appear to be available, except infrequently when members of the bar advise to defendants for limited time periods. While the Bar previously provided free legal assistance to the poor, they discontinued this service when the government ceased to pay their travel and lodging expenses.⁹¹ Therefore, the cost of legal assistance is often an insurmountable barrier for children claimants.

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

As mentioned in IV.B, there is substantially limited access to legal services. According to the United Nations Office on Drugs and Crime (UNODC), there are only 420 lawyers in Côte d'Ivoire, despite a population of 21 million.⁹²

Free legal assistance is now available in the District of Abidjan through a new United Nations Operation in Côte d'Ivoire ("UNOCI") project.⁹³ The Ivorian Ministry of Justice and the Order of Lawyers signed an agreement in 2012, whereby UNOCI committed free legal assistance to the vulnerable Abidjan population every Wednesday for three years.⁹⁴

Also, Kindermissionswerk, an NGO, has collaborated with the International Catholic Bureau for the Dignity and Rights of Children ("BICE") to provide legal services to children.⁹⁵ As mentioned in III.E, LIDHO (Ivorian League of Human Rights), MIDH (Ivorian movement for Human Rights), and the FIDH

⁸⁹ See The Code of Civil Procedure, Article 27; see also The Code of Civil Procedure, Articles 28-30 for additional information on legal aid by law.

⁹⁰ Code of Criminal Procedure, Articles 274 and 275..

⁹¹ UN operation in Côte d'Ivoire, Rule of Law unit, L'organisation judiciaire en Côte d'Ivoire, June 2007, p. 15 and following. available at: <http://www.onuci.org/pdf/rulesrapport6.pdf>.

⁹² United Nations Office on Drugs and Crime, 'Handbook on Improving access to legal aid in Africa', 2011, see the table page 12, available at:

http://www.unodc.org/pdf/criminal_justice/Handbook_on_improving_access_to_legal_aid_in_Africa.pdf.

⁹³ UNOCI, 'UNOCI supports project to provide free legal assistance to vulnerable people in Abidjan', 2013, available at: <http://www.onuci.org/spip.php?article9433>.

⁹⁴ *ibid.*

⁹⁵ United States Department of Labour's Bureau of International Labour Affairs, 'Côte D'Ivoire', page 23, available at: <http://www.refworld.org/pdfid/4e8c4f492.pdf>.

(International Federation for Human Rights), have been active in representing victims and their families in cases challenging human rights violations.

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

There is not sufficient information available to respond to this question.

- 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?

Children are allowed to be present at protective proceedings and given a chance to present evidence directly to a judge.⁹⁶ However, a judge may ask the child to temporarily withdraw if he feels the child should not hear part of the proceedings.⁹⁷ Evidence is admissible from the child, their legal representative, and anyone whose testimony is considered useful.⁹⁸

In relation to criminal proceedings, there are no special procedures designed to facilitate the giving of evidence by children.

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

The length of time it takes to obtain a decision varies widely depending on the type of claim brought and is not specified in the rules of procedure. When a decision has been made, a judge must also inform the child and his or her parents or guardian that they can request a modification or revocation of an order.⁹⁹ It has been reported that there is often backlog in the judicial system with cases being moved within the different courts, and decisions being delayed for up to a decade.¹⁰⁰

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

Any person who believes that he or she has been wronged by the decision of the court of first instance may take the matter to one of three appeal courts divided into civil, correctional, and social chambers.¹⁰¹ A litigant who is dissatisfied with the decisions of the lower courts may take the case to the Supreme Court,

⁹⁶ Yale Law, 'Côte D'Ivoire', November 2005, para 1.

⁹⁷ *Ibid* see also Minority Act of 3 August, 1970, Article 141.

⁹⁸ *ibid*.

⁹⁹ *ibid*.

¹⁰⁰ US Department of State, '2013 Investment Climate Statement', April 2013, available at:

<http://www.state.gov/e/eb/rls/othr/ics/2013/204626.htm>

¹⁰¹ *Initial report of Côte d'Ivoire to the UN Committee on the rights of the child*, CRC/C/8/Add.41 27 April 2000, para 35.

which is the highest court, and considered a third level of jurisdiction.¹⁰² Any appeal of a decision must be filed with the court within 15 days of a decision.¹⁰³

- 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?

Because the judiciary is susceptible to corruption and prejudice due to family and ethnic ties, individuals are often discouraged from bringing lawsuits for human rights violations.¹⁰⁴ Following the electoral crisis of 2010, there was much violence, corruption and abuse of power. Since the crisis, there have been very few steps taken to prosecute government officials for gross human rights abuses.¹⁰⁵ The lack of civilian indictments for alleged crimes committed during the post electoral crisis indicates high levels of corruption and impunity.

Following the electoral crisis in 2010, there were many reports that human rights defenders were subject to death threats, harassment, media smear campaigns, intimidation and arbitrary arrest.¹⁰⁶ Many were forced to flee the country, or discontinue their investigations.

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

Although by law, the judiciary is independent from the other government branches, in practice judges are political appointees without tenure susceptible to political influence.¹⁰⁷ There has been numerous reports of difficulties enforcing domestic court orders.¹⁰⁸

While Côte d'Ivoire has signed the United Nations Convention Against Corruption in 2012, it is unclear whether resources operating locally exist to help a child and their guardians deal with the corruption risk.

Perpetrators are punished in only 8% of cases of child rights violations.¹⁰⁹ This

¹⁰² *ibid*

¹⁰³ See Minority Act of 3 August, 1970, Article 153; see also the Code of Civil Procedure, Articles 164-67 for additional information on appeal procedure.

¹⁰⁴ US Department of State, 'Country Reports on Human Rights Practices for 2012: Côte D'Ivoire', available at: <http://www.state.gov/j/drl/rls/hrrpt/2012humanrightsreport/index.htm?year=2012&dliid=204112#wrapper>.

¹⁰⁵ *ibid*.

¹⁰⁶ FIDH, 'Côte D'Ivoire: Situation of Human Rights defenders', May 2011, available at: <https://www.fidh.org/International-Federation-for-Human-Rights/Africa/cote-d-ivoire/COTE-D-IVOIRE-2010-2011>

¹⁰⁷ *ibid*.

¹⁰⁸ *ibid*.

¹⁰⁹ UNICEF and Save The Children, 'Vulnerabilities, Violence & Serious Violations of Child Rights', November 2011, Page 30, available at: http://www.protectingeducation.org/sites/default/files/documents/vulnerabilities_violence_and_serious_violations_of_child_rights_report_on_the_impact_of_the_post-election_crisis_on_the_protection_of_children_in_cote_divoire.pdf

lack of sanction or accountability means that violations continue to occur on a widespread basis.

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.

The judicial system is very much dictated by status and political affiliation. In the pursuit of justice for human rights abuses committed during the post-election crisis, only those of the former regime have been prosecuted.¹¹⁰ This fundamental inequality before the law has a large impact on how a rights violation may be treated.

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

¹¹⁰ UN Security Council, *Thirty Sixth progress report of the Security General on the United Nations Operation in Côte D'Ivoire*, S/2015/320, May 2015, para 81, available at: <http://www.refworld.org/country,...CIV,..5555e2eb4,0.html>.