

ACCESS TO JUSTICE FOR CHILDREN: DOMINICAN REPUBLIC

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

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

The CRC was ratified by the Dominican Republic (the “DR”) in 1991.¹ The DR has also ratified or acceded to the Optional Protocols to the CRC on children in armed conflict² and on the sale of children.³

According to the DR Constitution, the rules of ratified international treaties have domestic legal force once they have been published in the official manner.⁴ Therefore the CRC forms part of the DR’s national law.

B. Does the CRC take precedence over national law?

Under Article 74.3 of the Constitution, human rights treaties, such as the CRC, have constitutional status. If a conflict arises between the CRC and a law, the CRC prevails. However, should a conflict between a provision of the CRC and a constitutional provision arise, the doctrine is uncertain as to which provision would prevail.⁵ The DR Constitutional Court, created in 2010, has not yet had the opportunity to clarify the matter for the CRC or human rights treaties in general.

C. Has the CRC been incorporated into national law?

The CRC was automatically incorporated into national law upon the DR ratifying and publishing the Convention (see part I.A above). Additionally, based on the CRC, in 2004 the DR Congress issued Law No. 136-03 establishing the Code for the System of

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&lang=en.

² UN Treaty Collection, ‘Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict’, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en.

³ 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&lang=en.

⁴ Article 26 of the Constitution of the Dominican Republic 2010.

⁵ The doctrine is divided as to what value human rights conventions have: a part of the doctrine believes they have supra constitutional value, another part believes that the best protection should prevail, and another part believes it cannot have supra constitutional value: Prof. Jorge Prats in ‘Derecho constitucional’, volumen I, p. 303; Omar Ramos in ‘El Control a posteriori de los Tratados Internacionales’ and President of the DR Constitutional Court Milton Ray Guevara, available at:

<http://www.tribunalconstitucional.gob.do/sites/default/files/documentos/CONFERENCIA%20CONSTITUCI%C3%93N%20Y%20TRATADOS%20EN%20UCSD.pdf>.

Protection of the Fundamental Rights of Children and Adolescents.

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

Yes, the CRC and other international human rights treaties signed and ratified by the DR have constitutional status and may be directly applied by the courts.⁶

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

The Supreme Court of the DR has cited the CRC in a number of cases, including in relation to the duty of courts to consider the views of the child (*Bencosme v. Devers*)⁷ and in relation to the establishment of paternity for children born out of wedlock (*Hermida v. Berta*⁸ and *Pereyra Sorrentino v. Pereyra Gullien*).⁹ The Constitutional Court of the DR has also cited the CRC, including in a case concerning the best interests of the child in a domestic violence matter.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?

Yes, children and/or their representatives may bring cases to challenge violations of children's rights in domestic courts (see part III.A below).¹¹

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?

Regarding civil cases, the general rule is that a person under the age of 18 should file any case through his/her legal representative.¹² However, children who have been declared by a court as emancipated may bring cases directly before domestic courts. The causes for emancipation are marriage, petition for emancipation filed by the father of a child aged 15, and petition for emancipation filed by an orphan child aged 16.

Furthermore, violations of children's rights protected by Law 136-03 that entail a pecuniary sanction can be brought by the child him or herself (as well as by the parents or "related authorities") in front of the Criminal Chamber of the Children and

⁶ Article 74 of the Constitution.

⁷ CRIN summary available at: <https://www.crin.org/Law/instrument.asp?InstID=1551>.

⁸ CRIN summary available at: <https://www.crin.org/Law/instrument.asp?InstID=1552>.

⁹ CRIN summary available at: <https://www.crin.org/Law/instrument.asp?InstID=1528>.

¹⁰ See

<http://tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200109-13%20C.pdf>

¹¹ Law No. 136-03 establishing the Code for the System of Protection of the Fundamental Rights of Children and Adolescents, Article 208, available at:

http://www.unicef.org/republicadominicana/Ley136_06.pdf.

¹² DR Civil Code, Articles 388, 389 and 488, available at:

<http://www.poderjudicial.gob.do/documentos/PDF/codigos/Codigocivil.pdf>.

Adolescents Tribunal.¹³

Regarding criminal cases, the DR's Code of Criminal Procedure¹⁴ provides that any person (including a child) deprived of his/her liberty may, without the formalities required by law, file personally or through any other person in his/her name a *habeas corpus* petition before the courts of the DR.¹⁵

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

Cases would typically be brought by parents or legal representatives.

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

According to Article 177 of the Constitution, the State is responsible for providing free legal aid to those who cannot afford legal representation, particularly for the protection of the rights of victims. However, a law has yet to be passed to provide for a state legal aid system, therefore the constitutional protection remains only a theoretical possibility.¹⁶

Children who are involved in a criminal case as a defendant¹⁷ are entitled to free legal assistance from the beginning of the investigation to the end of the trial or the sentence, as the case may be.¹⁸ If the victim of the crime is also a child and desires to take part in the trial, an attorney is provided for free should he/she be unable to afford one.¹⁹

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)?

There are no other conditions or limits applicable.

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 may be brought by filing a case in the corresponding court, which may be any of the following (see part III.B below):²⁰

- Children and Adolescents Tribunals: Civil and Criminal Chambers

¹³ Article 386 and following of Law 136-03.

¹⁴ Law 76-02, which entered into force on 27 September 2004.

¹⁵ Ibid., Articles 381 and 382.

¹⁶ See

<http://vjrabogados.com/wp-content/uploads/2014/12/Proyecto-de-Ley-de-Atenci%C3%B3n-Art..pdf>

¹⁷ Article 246 of Law 136-03.

¹⁸ Ibid., Articles 253, 254 and 255.

¹⁹ Ibid., Article 251.

²⁰ Ibid., Article 208.

- Children and Adolescents Courts of Appeals
- Supreme Court of Justice
- Children Enforcement Courts
- Criminal Courts (for offences under the Criminal Code²¹ or violations of children's rights protected by Law 136-03)
- Civil Courts (for all other civil actions that do not fall under the jurisdiction of the civil chamber of the Children and Adolescents Tribunal)
- Contentious Administrative and Tax Tribunal²² (for administrative claims regarding state responsibility).

According to Law 136-03, children are entitled to *habeas corpus* and *amparo*.²³ A child who has been deprived of his/her liberty has the right to *habeas corpus*, which is to be conducted in front of the Children and Adolescents Tribunal or Court of Appeal. A child who has been injured in the exercise of his/her right established by the Constitution, a treaty or Law 136-03 has the right to *amparo*. *Amparo* is an action aiming to reestablish or preemptively protect a fundamental right, which has been violated due to the action or omission of a public authority or a private person.²⁴ A child would bring such an action themselves or through their legal representative to protect their individual rights.

Inter-American Commission on Human Rights

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),²⁵ on their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights.²⁶ A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.²⁷ The petition 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, the name(s) of the victim(s) if possible, and whether the petitioner wishes to remain anonymous and the respective reasons.²⁸ The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.²⁹ When a petition is declared

²¹ The DR Criminal Code was updated by Law 550-14, which took into consideration Law 136-03 (which replaced Law 14-94), available at: http://www.iin.oas.org/badaj_v/docs/lcodd094.htm.

²² Law 13-07, available at:

http://www.tribunalconstitucional.gob.do/sites/default/files/documentos/Ley_13-07.pdf

²³ Articles 324 and 325 of Law 136-03.

²⁴ Article 72 of the Constitution.

²⁵ The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a "dual role" as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at:

http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm; American Convention on Human Rights, 'Pact of San Jose, Costa Rica', Chapter VII, available at:

http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

²⁶ American Convention on Human Rights, Article 44.

²⁷ Rules of Procedure of the Inter-American Commission on Human Rights, Articles 31-32, available at:

<http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

²⁸ Ibid., Article 28.

²⁹ Ibid., Article 23.

admissible, the IACHR attempts to reach a “Friendly Settlement” between the parties concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the human rights violations, making reparations, and/or making changes to the law.

Inter-American Court of Human Rights

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).³⁰ Individuals do not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACtHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.³¹ The Court’s judgments are legally binding on the State against which they are made.

Note, however, the DR’s recent non-compliance with the IACtHR (see part IV.H below).

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

The Children and Adolescents Civil Chamber can review claims regarding children’s and family law matters, including children’s civil documents, parental authority and custody, emancipation, adoption, violations of protection measures, and child abandonment.³² It also deals with civil liability for torts committed by children, for which it can award civil compensation.³³

The Children and Adolescents Criminal Chamber handles on the one hand juvenile justice matters and claims arising out of the criminal acts committed by children³⁴ and on the other hand violations of children’s rights protected by Law 136-03 that entail pecuniary sanctions.³⁵

The Children and Adolescents Court of Appeals handles appeals from decisions of the civil and criminal divisions of the Children and Adolescents Tribunal.³⁶

The Supreme Court has jurisdiction over appeals and revisions of decisions rendered by the Children and Adolescents Court of Appeals.³⁷

Children Enforcement Courts are responsible for dealing with the execution of sentences within the scope of Law 136-03.³⁸

³⁰ Ibid., Article 45.

³¹ American Convention on Human Rights, Article 63.

³² Article 211 of Law 136-03.

³³ Article 215.r) and Article 315, paragraph 2 of Law 136-03.

³⁴ Ibid.

³⁵ Ibid., Article 386.

³⁶ Ibid., Article 217.

³⁷ Ibid., Article 218.

³⁸ Ibid., Article 219.

Criminal courts deal with violations of Law 136-03 that have criminal sanctions, including those committed by public officers.³⁹

Civil courts handle all other civil actions that are not covered by the Civil Chamber of the Children and Adolescents Tribunal. It can offer damages and injunctions.

In regular criminal proceedings, a civil action for damages resulting in a criminal offence can either be undertaken separately in front of a civil court, or together with a criminal case in front of a criminal court.⁴⁰ In criminal proceedings in front of the Criminal Chamber of the Children and Adolescents Tribunal, the civil action is attached to the criminal case.⁴¹

In proceedings concerning *amparo*, the judge has the power to order the violations to be stopped, which can be accompanied by penalty payments in case of delays.⁴²

The recently created DR Constitutional Court⁴³ has the power to revise sentences that violate fundamental rights, if all other remedies have been exhausted.⁴⁴ The Constitutional Court can declare the unconstitutionality of laws, decrees, resolutions, regulations or acts.⁴⁵ Any law, decree, resolution, regulation or act that is contrary to the Constitution is automatically void⁴⁶ and will be removed from the DR legal order. To date, this Court has not yet been used to condemn a CRC violation. Nevertheless, it would be possible since the CRC, as a human rights treaty, has constitutional status.⁴⁷ In the sentence TC/0168/13,⁴⁸ the claimant had invoked a CRC violation but the Constitutional Court ruled against it.

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?

The current DR regulations do not provide for the possibility to challenge a law or action without naming a specific victim.

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

The Constitution expressly acknowledges “collective and diffused rights” that are the basis for collective action and group litigation.⁴⁹ Children’s rights are to be considered

³⁹ Ibid., Articles 394 and following, especially Article 416.

⁴⁰ Criminal Procedure Code, Article 50.

⁴¹ Law 136-03, Article 243.

⁴² See Law 437-06, available at:

<http://www.consultoria.gov.do/spaw2/uploads/files/Ley%20No.%20437-06.pdf>.

⁴³ 26 February 2010, available at:

http://www.tribunalconstitucional.gob.do/sobre-el-tc?_ga=1.200195182.1352475289.1433425909.

⁴⁴ Article 184 of the Constitution; Law 137-11.

⁴⁵ Article 185 of the Constitution.

⁴⁶ Ibid., Article 6.

⁴⁷ In some Latin American countries, such as Ecuador, all rights protected by human rights treaties are considered to be “fundamental rights”. See

http://www.scielo.cl/scielo.php?pid=S0718-97532012000100012&script=sci_arttext

⁴⁸ TC/0168/13, available at: <http://www.tribunalconstitucional.gob.do/node/1764>.

⁴⁹ The following cases are expressly listed: (i) matters relating to the preservation of ecological balance,

as collective rights, as they are rights owned by an identifiable group of people.⁵⁰ Therefore, collective action is possible to challenge children's rights violations.

In criminal proceedings, a judge can join different cases when there is a link between them.⁵¹

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?

Non-governmental organisations (NGOs) are permitted to file challenges to potential criminal violations of “collective and diffused” rights in their field of action.⁵² Therefore, children's rights NGOs have the right to file challenges to children's rights violations when they concern multiple children. Physical and legal entities, such as NGOs, as well as the Ombudsperson can also bring *amparo* actions to protect “collective and diffused” rights.⁵³

Children Enforcement Courts can be referred to by organisations or individuals concerned with the child's interests, in a breach of rights claim (see part IV.I below).

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?

A claim by the child or his/her legal representative before a regular civil court is initiated by filing a “*demanda inicial*”.

A claim by the child or his/her legal representative before the Civil Chamber of the Children and Adolescents Tribunal is initiated by filing an “*instancia motivada*” in front of the Court, or a “*declaration of interested party*” in front of the Tribunal's secretariat.

A criminal case (either against a child offender before the Criminal Chamber of the Children and Adolescents Tribunal or against others before a regular criminal court) may be filed by:

1. The Attorney General: When the prosecution is public, the case can be submitted to the Attorney General through a “*demanda*” (a claim) or “*querella*” (a complaint) unless it starts an investigation *ex officio* (at its own initiative). When the prosecution is public upon a private complaint, the alleged victim (or his/her representative) has to submit a “*demanda*” (a claim) or “*querella*” to the Attorney General, which will proceed with the investigation; or

wildlife and flora; (ii) environmental protection; and (iii) the conservation of cultural, historic, urban, artistic, architectural and archaeological heritage: Constitution, Article 66.

⁵⁰ For the definition of “collective rights”, see

<http://tribunalconstitucional.gob.do/sites/default/files/documentos/Resumen%20relatoria%2028.11.14.pdf>

⁵¹ Criminal Procedure Code, Article 64, available at:

http://www.poderjudicial.gob.do/documentos/PDF/codigos/Codigo_Procesal_Penal.pdf

⁵² Ibid., Article 85.

⁵³ Law 137-11, Articles 68 and 69.

2. The alleged victim (or his/her legal representative) when the prosecution is private (only in front of regular criminal courts; private prosecutions are not possible in front of the Criminal Chamber of the Children and Adolescents Tribunal): The case can be submitted through a *demanda* or *querrela*. Nevertheless, the Attorney General pursues the case him/herself when the alleged victim is an “incapable” person without representation or when the crime was committed by a parent, a representative, or a tutor.⁵⁴

An administrative case in the Contentious Administrative and Tax Tribunal⁵⁵ can be initiated by filing an action for damages (*acción reclamatoria de daños y perjuicios*).

Amparo actions must be brought before a civil or administrative court of first instance that has territorial jurisdiction, or before the Children and Adolescents Tribunal as the case may be, according to the place where the rights violation occurred.⁵⁶

A *habeas corpus* action can be filed at any time during the child’s imprisonment before the Children and Adolescents Tribunal, and is free of any formalities.⁵⁷

Denunciations of violations of Law 136-03 are to be made to a local unit of protection and restitution of rights (*Juntas locales de protección y restitución de derechos*).⁵⁸

B. Legal aid / Court costs. Under what conditions would free or subsidized legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above.

The DR’s Code of Criminal Procedure establishes that any person facing a threat to his or her personal freedom will not be obliged to pay any fees for the filing of a *habeas corpus* petition. If the responsible party is a public officer, the victim will also be entitled to an indemnity for damages at the State’s cost.⁵⁹

The tenth principle of Law 136-03 states that all requests, motions, lawsuits and other proceedings related to Law 136-03, including *amparo*, are free of cost. There is no need to engage a lawyer to bring an *amparo* action, though if the claimant is unable to produce a written claim, help is offered by the Children and Adolescents Courts. *Habeas corpus* actions are also free of any charges.⁶⁰

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

⁵⁴ Ibid., Articles 236 and 237; Articles 29 and following of the Criminal Procedure Code.

⁵⁵ Law 13-07, available at:

http://www.tribunalconstitucional.gob.do/sites/default/files/documentos/Ley_13-07.pdf

⁵⁶ See Law 437-06.

⁵⁷ Articles 381 and following of the Criminal Code.

⁵⁸ Created by Law 136-03, Article 464.

⁵⁹ Articles 390 and 391 of Law 76-02.

⁶⁰ Articles 381 and following of the Criminal Code.

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?

Child complainants or their representatives may obtain legal assistance from pro bono lawyers. Fundación Pro Bono República Dominicana⁶¹ is the main pro bono lawyers' office for legal action in the DR.

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?

A case before the Criminal Chamber of the Children and Adolescents Tribunal must be brought within the amount of years equivalent to the maximum penalty for that violation, without that period exceeding five years or being less than three years, or six months for public prosecution upon a private complaint.⁶²

Following a violation under the Criminal Code, a case must be brought:

- For crimes subject to prison sentences: within the amount of years equivalent to the maximum prison penalty for that violation, without that period exceeding 10 years or being less than three years; or
- For all other crimes: within one year.⁶³

Genocide, war crimes and crimes against humanity are not subject to time limitations.⁶⁴

In front of the Civil Chamber of the Children and Adolescents Tribunal, claims concerning family affiliation have no time limitation. They can be pursued by the mother during their child's minority.

The regular time limitation for a civil action is 20 years. A civil liability action is prescribed within one year after the tort was committed. Nevertheless, it is suspended while a legal or "judicial" impossibility to exercise it lasts. Under Article 2278 of the Civil Code, time limitations also run for children, so they must act through their tutors. If the tutor does not act within the time limitation, the child can bring an action against the tutor for not having brought the action within the time limitation.⁶⁵

Amparo actions must be brought within 30 days of the day the claimant became aware of the violation of his/her rights.⁶⁶

There are no special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children.

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

⁶¹ <http://www.probonord.org/index.php/contenido/servicios/>.

⁶² Article 240 of Law 136-03.

⁶³ Criminal Procedure Code, Article 45.

⁶⁴ *Ibid.*, Article 49.

⁶⁵ Civil Code, Chapter 5.

⁶⁶ See Law 437-06.

presented by children?

Any sort of evidence is admissible to prove a violation of the CRC, as provided by Article 470(g) of Law 136-03.

Article 233 of Law 136-03 establishes the principle of participation, according to which, during the investigation, trial and execution of a sentence, all children are entitled to be heard, to participate, to ask and produce evidence. Within the scope of Law 136-03, under no circumstances is a child required to testify under oath.⁶⁷ Furthermore, the judges and Public Prosecutor will not wear a cap or gown, so as to facilitate communication with the child.⁶⁸ The judge will verify that the child understands what he/she is accused of, or otherwise will explain at another time before the trial begins.⁶⁹ Trials are held in private. It is prohibited to publish a child's information or image in a way that damages their physical or moral growth, reputation, or right to private life, or in a way that stigmatises them.⁷⁰ Cases involving children can however contribute to jurisprudence, though their privacy remains protected.⁷¹

According to the DR's most recent report to the Committee on the Rights of the Child, under the provisions of Article 282 of Law 136-03, the judiciary is putting in place specialised interview centres to facilitate the taking of evidence from child victims or witnesses while safeguarding their rights.⁷² However, it is reported that their use is limited, their effectiveness and impact have not been demonstrated and they have not been set up in most regions.⁷³

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

While there is no rule that determines the maximum duration of civil proceedings, Article 148 of the Code of Criminal Procedure establishes a maximum duration for any criminal proceeding of three years, counted from the beginning of the investigation. This deadline can only be extended for six months in the event of a conviction, for the purpose of allowing appeals.

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

Any judicial decision of the Civil and Criminal Divisions of the Children and

⁶⁷ Law 136-03, Article 248.

⁶⁸ Ibid., Article 210, paragraph 3.

⁶⁹ Ibid., Article 305.

⁷⁰ Ibid., Article 26.

⁷¹

<http://www.matosmateo.com/index.php/articulos/47-la-publicidad-en-los-procesos-judiciales-vs-el-derecho-a-la-intimidad-y-privacidad-en-los-casos-de-menores-de-edad-y-familia>.

⁷² *Third to fifth periodic reports of the Dominican Republic to the UN Committee on the Rights of the Child*, CRC/C/DOM/3-5, 31 October 2013, para. 41. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDOM%2f3-5&Lang=en.

⁷³ UN Committee on the Rights of the Child, *Concluding observations on the third to fifth periodic reports of the Dominican Republic*, CRC/C/DOM/CO/3-5, 6 March 2015, para. 73. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDOM%2fCO%2f3-5&Lang=en.

Adolescents Tribunal may be appealed to the Children and Adolescents Courts of Appeals.⁷⁴ Decisions of the Children and Adolescents Court of Appeals may be appealed to the Supreme Court.⁷⁵

Any decision of first instance regular tribunals can be appealed to the Court of Appeals. Any decision of the Court of Appeals can be appealed to the Supreme Court.⁷⁶

An appeal to the Constitutional Court can also be made in matters of fundamental rights if all other means have been exhausted (see part III.B above).

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?

Although the DR Constitution provides for a separation of powers between the judicial and executive powers, recent accusations of corruption⁷⁷ raise questions concerning the impartiality of the DR judicial system.

Decisions of the Inter-American Court against the DR concerning the rights of children of Haitian origin have led to political backlash in the past decade. In a 2003 decision against the DR concerning the State's denial to issue birth certificates to two children of Haitian origin born in the DR, the Inter-American Commission recommended that the Dominican Republic create a legal mechanism that, in case of dispute, would allow individuals to file their reports directly before a judge at first instance, so that their complaints can be reviewed by an independent and impartial court. The Commission recommended that this legal mechanism provide a "simple, fast and inexpensive recourse" for individuals without birth certificates.⁷⁸ The Inter-American Court in 2005 reiterated the need for an "effective remedy" in cases where a request for a birth certificate is rejected.⁷⁹ Dominican authorities called this decision "unacceptable", and the Dominican Senate rejected the ruling. Similar backlash followed the IACtHR decision in the 2014 *Case of Expelled Dominican and Haitian people v. Dominican Republic*.⁸⁰

In 2014⁸¹ the IACtHR condemned the DR for a decision of its Constitutional Court⁸²

⁷⁴ Law 136-03, Article 217.

⁷⁵ Ibid., Article 218.

⁷⁶ <http://www.somospatria.org/products/poder-justicia-organigrama-2010/>.

⁷⁷ See

http://www.transparency.org/news/pressrelease/the_justice_system_in_the_dominican_republic_needs_to_show_independence_fro.

⁷⁸ *Dilcia Yean y Violeta Bosico Cofi*, Case 12.189, IACHR, available at:

http://www.cidh.org/countryrep/AccessoDESC07sp/Accessodesci-ii.sp.htm#_ftnref25.

⁷⁹ *Case of the Girls Yean and Bosico v. Dominican Republic*, Judgment of September 8, 2005, Inter-American Court of Human Rights, available at:

http://www.corteidh.or.cr/docs/casos/articulos/seriec_130_%20ing.pdf.

⁸⁰ Center for Justice and International Law, 'Inter-American Court condemns unprecedented situation of statelessness in the Dominican Republic', 27 October 2014, available at:

<http://www.statelessness.eu/blog/inter-american-court-condemns-unprecedented-situation-statelessness-dominican-republic#sthash.S268AqRq.dpuf>; decision available at:

http://corteidh.or.cr/docs/casos/articulos/seriec_282_esp.pdf.

⁸¹ Decision of 28 August 2014, available at:

http://corteidh.or.cr/docs/casos/articulos/resumen_282_esp.pdf.

refusing to give “in transit” individuals from Haiti - mainly children - Dominican nationality, which was found to be inconsistent with CRC provisions. As a result, the DR Constitutional Court declared in a subsequent decision⁸³ that the Dominican ratification of the IACtHR was unconstitutional. The Office of the UN High Commissioner for Human Rights expressed its concern over the possibility of the DR confirming its decision to withdraw from the IACtHR.⁸⁴ Such an event would greatly affect the enforcement of the CRC as well as other human rights treaties.

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

Children Enforcement Courts operate in the DR to enforce irrevocable judgments and solve any matter related to the enforcement of judgments within the scope of Law 136-03.⁸⁵

Two different claims can be brought before Children Enforcement Courts during the execution of a sanction: a revision of the sanction or a breach of rights claim. Both of them can be brought by the child themselves or by parents, legal representatives, the defence lawyer, or the Public Prosecutor's office. The revision of the sanction can also be requested by the execution staff involved. The breach of rights claim can also be brought by an organisation or individual concerned with the child's interests. No formality is required; the claim can be either oral or written. The possible outcomes are either to substitute the sanction with a lighter one or to cease it completely. Appeals from Children Enforcement Court decisions are to be submitted to the Children and Adolescents Court of Appeal. Every six months, the Children Enforcement Court will *ex officio* revise the sanction.⁸⁶

Law 136-03⁸⁷ also provides for protection and restitution measures, which are provisional and non-legal, to enforce children's rights. They consist mainly of injunctions that can be addressed to public or private institutions, parents, legal representatives, individuals, or the children themselves, to comply with their duties arising from the CRC as set out in the law in question.

V. **Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Relevant laws

The most relevant laws when contemplating legal action to challenge a violation of children's rights are the following:

⁸² TC/0168/13, available at: <http://www.tribunalconstitucional.gob.do/node/1764>.

⁸³ TC/0256/14, available at: <http://www.tribunalconstitucional.gob.do/node/2762>.

⁸⁴ See <http://www.un.org/apps/news/story.asp?NewsID=49285#.VXH8xKH8ubk>.

⁸⁵ Article 219 of Law 136-03.

⁸⁶ Resolution 1618-2004, available at:

<http://ojd.org.do/Normativas/Penal%20NNA/Resoluciones%20SCJ.%20NNA/Res.%20No.1618-2004.%20Dispone%20reglas%20minimas%20para%20el%20procedimiento%20ante%20los%20TCES%20para%20menores%20de%20edad.pdf>.

⁸⁷ Articles 461, 462 and 463.

- The Convention on the Rights of the Child
- The Constitution of the Dominican Republic
- The Law 136-03, which creates the Code for the System for the Promotion and Rights of Children and Adolescents, and resolution 1618-2004, which institutes the procedure under the Children Enforcement Courts
- The Civil Code of the Dominican Republic
- The Code of Civil Procedure of the Dominican Republic
- The Criminal Code of the Dominican Republic
- The Code of Criminal Procedure of the Dominican Republic

In its 2015 review of the DR, the Committee on the Rights of the Child expressed its concern over the low rate of implementation of laws, and stated that accountability for children’s rights violations is not systematically ensured. It recommended that the DR “[g]uarantee systematic accountability for all children’s rights, including by facilitating effective access to justice and ensuring that the relevant laws, policies and programmes are monitored and evaluated.”⁸⁸

Ombudsperson

An Ombudsperson was created by the Constitution of 2010⁸⁹ and appointed in 2013.⁹⁰ To date, however, the Ombudsperson has only dealt with one case involving a child, and a deputy ombudsperson for children has not yet been appointed.⁹¹ In 2015, the Committee on the Rights of the Child recommended that the DR appoint a deputy ombudsperson for children to receive, investigate and address complaints by children.⁹²

Specific violations

According to the Committee on the Rights of the Child in 2015, the DR has failed to properly condemn violence against children, including sexual exploitation and abuse of children. The Committee recommended that the DR “investigate all cases [of violence against children], prosecute the alleged perpetrators, punish the convicted and adequately compensate and rehabilitate the victims”; “[e]nsure children’s access to justice, including by providing legal support and making available child-friendly and confidential complaint mechanisms in institutions, schools, detention centres, hospitals and any other relevant setting”; and “ensure adequate quality services and resources to protect, compensate and rehabilitate child victims of sexual abuse and exploitation and to facilitate their access to justice”, including in cases involving abuse by clergy.⁹³

Regarding children with disabilities, the Committee recommended that the DR “[s]trengthen administrative remedies for children with disabilities whose rights have been violated and facilitate their access to justice, including by providing free legal aid”.

⁸⁸ UN Committee on the Rights of the Child, paras 7-8.

⁸⁹ Constitution, Articles 190 and following.

⁹⁰ UN Committee on the Rights of the Child, para. 13.

⁹¹ *Ibid.*, para. 13.

⁹² *Ibid.*, para. 14.

⁹³ *Ibid.*, paras 31-36.

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

⁹⁴ Ibid., para. 48.