

# **ACCESS TO JUSTICE FOR CHILDREN: DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (NORTH KOREA)**

*This report was produced by White & Case LLP in November 2013 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?**

North Korea acceded to the CRC on 21 September 1990 without any reservations.<sup>1</sup> Ratified international instruments automatically have the force of law in the country.<sup>2</sup>

### **B. Does the CRC take precedence over national law?**

The CRC does not take precedence over national law, although national law is interpreted and created where possible in a manner consistent with the CRC and other international human rights obligations.

According to State reports, if the CRC is in conflict with national legislation, the provision which is more favourable to the child is applied, following the principle of the best interests of the child. Furthermore, if certain requirements of the CRC are not reflected in domestic legislation, the principle is to settle an arising issue in conformity with the CRC.<sup>3</sup>

### **C. Has the CRC been incorporated into national law?**

The CRC has been incorporated into national law.<sup>4</sup> The Government also states that it has focused on ensuring “the fullest possible conformity of national laws with the provisions of the Convention” and adopted new laws and amended and supplemented existing laws to give “more practical effect to the Government’s commitments to the Convention.”<sup>5</sup>

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

According to State reports, the provisions of the CRC can be directly enforced in domestic courts.<sup>6</sup>

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<sup>1</sup> *Second periodic report of the Democratic People’s Republic of Korea to the UN Committee on the Rights of the Child*, CRC/C/65/Add.24, 5 November 2003, para. 5. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f65%2fAdd\\_24&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f65%2fAdd_24&Lang=en).

<sup>2</sup> *Ibid.*, para. 10.

<sup>3</sup> *Ibid.*, para. 11.

<sup>4</sup> *Ibid.*, para. 10.

<sup>5</sup> *Combined third and fourth periodic reports of the Democratic People’s Republic of Korea to the UN Committee on the Rights of the Child*, paras 7-8. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPRK%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPRK%2f4&Lang=en).

<sup>6</sup> *Second periodic report of the Democratic People’s Republic of Korea to the UN Committee on the Rights of the Child*, para. 10.

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

The Government states that “judicial decisions applying the principles and provisions of the [CRC] may be found in civil court hearings”.<sup>7</sup> However, case law citing the CRC could not be found online, as it appears the North Korean government does not provide public access to case law.

## 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?

According to Article 69 of the Constitution, “[c]itizens are entitled to submit complaints and petitions. The state shall fairly investigate and deal with complaints and petitions as fixed by law.” Under the Law on Complaints and Petitions, citizens are entitled to submit complaints or petitions to restore, prevent violations of, or seek compensation for the violations of, the rights and interests of the complainant as against the practices of institutions, enterprises, organisations or individual officials.<sup>8</sup> According to State reports, children or their representatives can file complaints through a network of complaints mechanisms that includes all government bodies from the centre to local areas, each of which has a complaints box.<sup>9</sup> An inquiry into such complaints or petitions must be conducted by a meeting at the locality in question or at a suitable place for the complainant, witnesses and the relevant official.<sup>10</sup> It is unclear whether this complaints mechanism grants access to a court or an administrative review body.

According to State reports, any person can lodge a complaint against their arrest or confinement with the public prosecutor under the Criminal Procedure Law, who is required to examine the legality of their arrest or confinement. If the person arrested or confined is a child, the legal procedural requirements are more strict.<sup>11</sup> It is unclear what these procedural requirements with respect to children involve.

Despite these provisions, reports indicate that the right to complain and challenge State actions is frequently not respected in practice. It is reported that when anonymous petitions or complaints about state administration were submitted, authorities sought to identify the authors, who could be subjected to investigation and punishment.<sup>12</sup> Judicial review of legislative acts does not exist in law or in practice. Judicial review of detentions also does not exist in law or in practice; *habeas corpus* or its equivalent is not recognised.<sup>13</sup> In cases of arrest or detention for political crimes, defendants are

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<sup>7</sup> Ibid., para. 13.

<sup>8</sup> *Combined third and fourth periodic reports of the Democratic People’s Republic of Korea to the UN Committee on the Rights of the Child*, para. 76.

<sup>9</sup> Ibid., para. 29.

<sup>10</sup> Ibid., para. 76.

<sup>11</sup> *Second periodic report of the Democratic People’s Republic of Korea to the UN Committee on the Rights of the Child*, para. 212

<sup>12</sup> US Department of State, ‘2010 Human Rights Report: Democratic People’s Republic of Korea’, <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154388.htm>, 8 April 2011, (accessed 29 January 2014).

<sup>13</sup> Ibid.; Washington University, ‘Democratic People’s Republic of North Korea’, <http://law.wustl.edu/WUGSLR/CitationManual/countries/northkorea.pdf>, (accessed 29 January 2014); Federal Research Division of the Library of Congress, ‘North Korea: the judiciary’, <http://www.country-data.com/cgi-bin/query/r-9648.html>, (accessed 29 January 2014).

frequently not afforded the right to a trial (see part V below).

The UN Committee on the Rights of the Child has recommended that the State ensure that its complaints mechanisms: are independent, easily accessible to and user-friendly for all children; receive and deal with complaints of violations of their rights; provide remedies for violations in a manner respectful of their right to privacy; investigate, prosecute and punish cases of violations committed by law enforcement personnel and prison guards;<sup>14</sup> and guarantee that filing individual complaints against any particular institution will have no negative consequences for the child. It has also recommended that the State establish an independent, child-friendly monitoring mechanism such as an ombudsman for children.<sup>15</sup>

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

Children can file complaints and claim remedies from a court or other authority in cases of violations of their rights under the CRC either directly or through their parents, guardian or representative.<sup>16</sup> According to State reports, in lodging complaints before a court or other relevant authority, a child does not necessarily need to be represented by their parents or guardian.<sup>17</sup> However, for a child to file a complaint or petition on their own, the child must be “capable of forming his or her own views”.<sup>18</sup>

Under the Civil Law, a child under the age of 16 must exercise civil legal actions through his or her parents or guardian. A child aged 16 requires parental or guardian approval if he or she is going to exercise a civil legal action “beyond the range of his or her income”.<sup>19</sup>

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

A child’s parents or guardian would typically bring the case on their behalf.<sup>20</sup>

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<sup>14</sup> UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of the Democratic People’s Republic of Korea*, CRC/C/PRK/CO/4, 27 March 2009, para. 73. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPRK%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPRK%2fCO%2f4&Lang=en).

<sup>15</sup> *Ibid.*, paras 11-12; UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of the Democratic People’s Republic of Korea*, CRC/C/15/Add.239, 1 July 2004, para. 14. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd\\_239&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd_239&Lang=en).

<sup>16</sup> *Combined third and fourth periodic reports of the Democratic People’s Republic of Korea to the UN Committee on the Rights of the Child*, para. 29; *Second periodic report of the Democratic People’s Republic of Korea to the UN Committee on the Rights of the Child*, para. 14.

<sup>17</sup> *Second periodic report of the Democratic People’s Republic of Korea to the UN Committee on the Rights of the Child*, para. 57.

<sup>18</sup> *Initial report of the Democratic People’s Republic of Korea to the UN Committee on the Rights of the Child*, CRC/C/3/Add.41, 17 June 1996, para. 53. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f3%2fAdd\\_41&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f3%2fAdd_41&Lang=en).

<sup>19</sup> *Ibid.*, para. 91; Civil Law of the Democratic People’s Republic of Korea 1999, art. 20, available at: [http://unibook.unikorea.go.kr/?sub\\_num=53&recom=5&state=view&idx=73](http://unibook.unikorea.go.kr/?sub_num=53&recom=5&state=view&idx=73).

<sup>20</sup> Civil Law, art. 21.

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

The North Korean constitution states that “the accused is guaranteed the right of defence”.<sup>21</sup> According to reports, in criminal cases the Government assigns an accused a lawyer, who is chosen from the local lawyers’ committee and receives a state salary. According to the Criminal Proceedings Act, defence attorneys are charged with ensuring that the accused’s rights are protected.<sup>22</sup> However, it is reported that they represent the interests of the State rather than the client, and are expected to assist the court by persuading their clients to confess guilt.<sup>23</sup> Some reports note a distinction between those accused of political crimes and common criminals, and state that the Government affords lawyers only to the latter.<sup>24</sup>

The availability of free or subsidised legal assistance in other types of cases is unknown.

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child’s parents or guardians have to agree to a case being brought)?

Children do not require parental consent to file a complaint if they are capable of forming their own views (see part II.B above).<sup>25</sup> A child aged 16 requires parental or guardian approval if he or she is going to exercise a civil legal action “beyond the range of his or her income”.<sup>26</sup>

### 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?

According to State reports, children can seek redress before a court,<sup>27</sup> although no specific details are provided on how cases can be brought to the court. In theory, legal challenges can be brought via the complaints mechanism, which allows complaints to be submitted to a relevant institution for consideration (see part II.A). It is unclear, however, whether this complaints mechanism grants access to a court or an administrative review body. Judicial review of legislative acts is not available.<sup>28</sup>

B. What powers would courts have to review these violations and what remedies could

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<sup>21</sup> Socialist Constitution of the Democratic People’s Republic of Korea 2010, art. 164, available at: [http://unibook.unikorea.go.kr/?sub\\_num=53&state=view&idx=369](http://unibook.unikorea.go.kr/?sub_num=53&state=view&idx=369).

<sup>22</sup> Criminal Proceedings Act of the Democratic People’s Republic of Korea 2005, art. 107, available at: [http://unibook.unikorea.go.kr/?sub\\_num=53&recom=4&state=view&idx=289](http://unibook.unikorea.go.kr/?sub_num=53&recom=4&state=view&idx=289).

<sup>23</sup> P. Goedde, ‘Overview of the North Korean legal system and legal research’, [http://www.nyulawglobal.org/globalex/North\\_Korea1.htm](http://www.nyulawglobal.org/globalex/North_Korea1.htm), 2011, (accessed 29 January 2014); Jurist, ‘North Korea’, <http://jurist.law.pitt.edu/world/northkorea.htm>, (accessed 29 January 2014).

<sup>24</sup> San Diego State University, ‘North Korea’, [http://www-rohan.sdsu.edu/faculty/rwinslow/asia\\_pacific/north\\_korea.html](http://www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/north_korea.html), (accessed 29 January 2014).

<sup>25</sup> *Initial report of the Democratic People’s Republic of Korea to the UN Committee on the Rights of the Child*, para. 53.

<sup>26</sup> *Ibid.*, para. 91; Civil Law, art. 20.

<sup>27</sup> *Second periodic report of the Democratic People’s Republic of Korea to the UN Committee on the Rights of the Child*, para. 57.

<sup>28</sup> Washington University.

they offer?

North Korea has a complaints mechanism that includes all governmental organs from the centre to local areas (see part II.A). The Law on Complaints and Petitions guarantees that complaints or petitions will be “conclusively dealt with”.<sup>29</sup> However, there is no available information on remedies that can be offered by courts.

- 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 answer to this is unclear. There is no mention in State reports or other sources of bringing challenges without naming a specific victim, so it is unlikely that this is possible.

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

The answer to this is unclear. There is no mention in State reports or other sources of collective action or group litigation involving multiple child victims, so it is unlikely that this is available.

- 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 answer to this is unclear. As stated in part II above, the State reports only provide that children or their parents, guardian or representative may file claims. It is unclear whether non-governmental organisations can also file or intervene in cases.

**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?

North Korea has a three-tiered court system, which consists of a Central Court, twelve Provincial Courts and approximately 100 People’s Courts at the county level.<sup>30</sup> The People’s Courts have initial jurisdiction for most criminal and civil cases.

A complaint or petition against an administrative body should be filed in the complaints department of the relevant institution, enterprise or organisation (see part II.A above). If a complaint is lodged in the wrong department, it is referred to the correct institution, enterprise or organisation.<sup>31</sup> The State reports and other sources do not indicate if or how complaints reach the court system.

- 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

<sup>29</sup> *Second periodic report of the Democratic People’s Republic of Korea to the UN Committee on the Rights of the Child*, para. 20.

<sup>30</sup> P. Goedde; Federal Research Division of the Library of Congress.

<sup>31</sup> *Combined third and fourth periodic reports of the Democratic People’s Republic of Korea to the UN Committee on the Rights of the Child*, para. 29.

of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D. It is not clear who bears the cost of such court expenses. The State reports and other sources are silent on the matter.

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

Article 28 of the Law on Lawyers<sup>32</sup> states that “[the State] has Chosun Bar Association as lawyers’ organisation”. Article 29 of the same law provides that the association has lawyers’ committees at central and local levels, and can have offices under such committees. However, it is unclear whether any independent law firm or any other independent organisation offering pro bono legal assistance exists in the country. It is also not clear to what extent lawyers may participate in proceedings or what they may charge clients.

- 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?

Rules on time limits for bringing cases could not be found. The State reports do not discuss young adults bringing cases about violations 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 presented by children?

According to State reports, children are entitled to be witnesses and give testimony in court, in civil and criminal cases, if he or she is capable of independently understanding and expressing a fact he or she has seen or heard about. Article 42(1) of the Civil Proceedings Act provides that any person “who knows important facts related to the case” can be a witness. Article 140(1) of the Criminal Proceedings Act provides that “[a]ll persons who have heard about, have seen, or have an impression of a crime may be witnesses”. Article 108 of the Civil Proceedings Act states that “[if] a minor is called to the box, the court shall allow the parents, guardian [and] teacher ... patron to attend.” Children can be cross-examined as witnesses in criminal court. Article 147 of the Criminal Proceedings Act states that “[t]he questioning of a witness under the age of 14 should be attended by a teacher, parent, guardian or other protector.”<sup>33</sup>

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

Information on the resolution of cases could not be found. The State reports do not

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<sup>32</sup> Law on Lawyers of the Democratic People's Republic of Korea 1993, available at: [http://unibook.unikorea.go.kr/?sub\\_num=53&state=view&idx=76&sty=T&ste=%25BA%25AF%25C8%25A3%25BB%25E7](http://unibook.unikorea.go.kr/?sub_num=53&state=view&idx=76&sty=T&ste=%25BA%25AF%25C8%25A3%25BB%25E7).

<sup>33</sup> Ibid., para. 80; *Second periodic report of the Democratic People's Republic of Korea to the UN Committee on the Rights of the Child*, para. 57.

discuss how long it might take a court to decide on whether there has been a violation.

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

North Korea has a three-tiered court system with a Central Court, Provincial Courts, and People's Courts at the county level. The appeal process is based on the principle of a single appeal to the next highest court. The Central Court is the final court of appeal for criminal and civil cases and has initial jurisdiction for grievous crimes against the state. Below the Central Court are the Provincial Courts, which serve as the courts of first and only appeal for decisions made by the People's Courts, and have initial jurisdiction for certain serious crimes.<sup>34</sup>

In practice, it is reported that most political offences do not go through the criminal justice system, but are handled by the State Security Department. Trials are closed, and there is no provision for appeal (see part V). According to one report, appeals do occur from time to time, but since appeals generally result in additional sentencing people do not often submit objections.<sup>35</sup>

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?

It is unclear whether North Korea observes the rule of precedent. The State reports do not mention the impact of decided cases and case law is unavailable. However, according to other sources, a positive decision is likely not to be enforced (see part IV.I below).

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

Enforcement of decisions is not specifically discussed in the State reports. However, it is reported that the Korean Workers' Party's influence is pervasive in both criminal and political cases. The Central Court and prosecuting bodies must perform their functions as "powerful weapons of the proletariat dictatorship, which execute the judicial policies of the Korean Workers' Party".<sup>36</sup> It is therefore likely that positive decisions of the courts, if any, would not be enforced.

**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.

Due to the lack of publicly available information, it is unclear what processes are required to successfully bring a case to a court in North Korea.

Although the Constitution states that courts are independent and judicial proceedings are to be carried out in accordance with the law, it is reported that, in practice, the judiciary is neither transparent nor independent.<sup>37</sup> All personnel involved in the judiciary -

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<sup>34</sup> Federal Research Division of the Library of Congress.

<sup>35</sup> K.C. Lee and G.J. Chung, 'The North Korean Criminal Trial System', <https://kinu.or.kr/upload/neoboard/DATA02/ra11-05.pdf>, (accessed 29 January 2014).

<sup>36</sup> Federal Research Division of the Library of Congress.

<sup>37</sup> Human Rights Watch, 'World report 2012: North Korea', <http://www.hrw.org/world-report-2012/world-report-2012-north-korea>, 2012, (accessed 29 January 2014).

including judges, prosecutors, lawyers and jury members - are appointed and controlled by the ruling Korean Workers' Party. The Government considers critics of the regime to be "political criminals".<sup>38</sup> In such cases, the Public Security Ministry dispenses with a judicial process and refers the individuals to the Ministry of State Security for punishment.<sup>39</sup> Therefore, there is a risk that challenging a Government violation of children's rights could be viewed as criticism of the State, and may expose the complainant to punishment without trial.

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

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<sup>39</sup> Federal Research Division of the Library of Congress.