

# **ACCESS TO JUSTICE FOR CHILDREN: GUINEA**

*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?**

Any international treaty that modifies the Guinean legislation must first be declared compatible with the Constitution by the Constitutional court<sup>1</sup> before it is ratified.<sup>2</sup> The CRC was ratified by the Guinean government in 1990.<sup>3</sup>

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

The CRC takes precedence over national law. The Constitution of Guinea states that, once lawfully ratified and upon publication, an international treaty has a higher authority than that of domestic laws.<sup>4</sup> In principle, this means that, where the CRC contradicts domestic legislation, courts should be required to apply the Convention. The Guinean Civil Code reiterates this principle, stating that national laws have a lower authority than (in decreasing order) the Constitution, Proclamations and International Treaties.<sup>5</sup>

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

The CRC appears to have been automatically incorporated on ratification. Furthermore, the Guinean government has taken several steps to embed the principles of the CRC into national law. Title II of the Guinean Constitution contains specific provisions addressing the rights of children. The Constitution states that the right and duty of the parents is to provide for education, physical and mental health for their children.<sup>6</sup> The Constitution further provides that the State must provide specific protections to children against exploitation, neglect, sexual abuse and human trafficking.<sup>7</sup> The Constitution states that the State should

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<sup>1</sup> Guinea's Constitution of 2010, Art. 97, available at [www.constituteproject.org/constitution/Guinea\\_2010.pdf](http://www.constituteproject.org/constitution/Guinea_2010.pdf).

<sup>2</sup> Guinea's Constitution of 2010, Art. 149.

<sup>3</sup> Order No 010/PRG/SGG of 17 March 1990, as cited in: United Nations Committee on the Rights of the Child, *Consideration of Reports submitted by state parties under Article 44 of the Convention*, April 2012, CRC/C/GIN/2, para 56, available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GIN.2.pdf>

<sup>4</sup> Guinea's Constitution of 2010, Art. 151.

<sup>5</sup> Guinean Civil Code, Art. 9, available at:

[http://www.africanchildforum.org/clr/Legislation%20Per%20Country/guinea/guinea\\_civilcode\\_1889\\_fr.pdf](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/guinea/guinea_civilcode_1889_fr.pdf)

<sup>6</sup> Guinea's Constitution of 2010, Art. 18.

<sup>7</sup> Guinea's Constitution of 2010, Art. 19.

also provide for mandatory education of the youth.<sup>8</sup>

The Guinean government has created a Committee for Monitoring, Protection and Defense of the Rights of Children<sup>9</sup> and has implemented educational and supervision policies. After several recommendations by the Committee on the Rights of the Child (the “Committee”),<sup>10</sup> Guinea has implemented a Children’s Code.<sup>11</sup> However, it has been noted by the Committee that several provisions remain unclear and, in some cases, contradict themselves. Moreover, the Committee has noted the persistence of discriminating legislation, particularly against girls on the grounds of their parents’ marital status at birth.<sup>12</sup>

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

To date, it appears that no court has directly enforced the CRC. However, several provisions of the CRC have been implemented into the national laws. Such laws can therefore be the basis for a complaint, based on those provisions, before the domestic courts. For instance, the Children’s Code<sup>13</sup> and the Criminal Procedure Code<sup>14</sup> provide guidance to the courts in charge of the protection of children.

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

To date, it appears that no case has involved a domestic court using or applying the CRC.

II. **What is the legal status of the child?**

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

The Children’s Code states that a child under the age of 18 cannot, without the intervention of their legal representative, enter into any valid legal act.<sup>15</sup> For any

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<sup>8</sup> Guinea’s Constitution of 2010, Art. 23.

<sup>9</sup> Created by Decree D/010/PRG/SGG of 16 January 1995, as cited in: United Nations Committee on the rights of the Child, *Examination of reports presented by State parties in conformity with Article 44 of the convention*, CRC/C/3/Add.48, 1997, para 9, available at:

[http://www.law.yale.edu/rcw/rcw/jurisdictions/afw/guinea/guinea\\_initial\\_report.pdf](http://www.law.yale.edu/rcw/rcw/jurisdictions/afw/guinea/guinea_initial_report.pdf)

<sup>10</sup> United Nations Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Guinea*, CRC/C/15/Add.100, 05 October 1990, para 23 , available at:

<http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/CRC.C.15.Add.100.En?Opendocument>.

<sup>11</sup> The Children’s Code, Law L/2008/011/AN of 19 August 2008, available at:

[http://www.africanchildforum.org/clr/Legislation%20Per%20Country/guinea/guinea\\_children\\_2008\\_fr%20.pdf](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/guinea/guinea_children_2008_fr%20.pdf)

<sup>12</sup> *Ibid.*

<sup>13</sup> The Children’s Code, Law L/2008/011/AN of 19 August 2008.

<sup>14</sup> Code of Criminal Procedure, Law n.037 of 31 December 1998, available at:

<http://www.refworld.org/docid/44a3e20b4.html>

<sup>15</sup> Guinean Children’s Code, 2008, Art. 168, available at:

civil act, a minor must be represented by a parent, appointed guardian, or member of a Family Council. Therefore, a child would be able to challenge a violation of their rights in civil proceedings with the assistance of one of these people.

In criminal proceedings, however, a criminal offence against a minor can be challenged before the president of the Children's Tribunal by a request from the legal representative, the public prosecutor or the child himself.<sup>16</sup> A case can also be brought by the representative of a judicial or social organisation.

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?

A 'legal administrator' must represent the child in all civil acts, except in a case where the law expressly authorises the child to act themselves.<sup>17</sup> The case must be brought on the child's behalf by their legal administrator. The legal administrator will be one or both parents exercising parental authority.<sup>18</sup> When the parent's interests are in opposition with the interests of the child, the judge may appoint a guardian on an ad hoc basis.<sup>19</sup>

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

There is no distinction between infants, young children and children in the way cases can be brought in the domestic courts.

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

There does not appear to be any general legal aid scheme set out in legislation.

However, the Children's Code contains several provisions providing children with legal aid in exceptional circumstances. The Code creates a special category of child: the "orphan and vulnerable child". A child will be considered orphan or vulnerable if (i) one or both of his or her parents are deceased or (ii) he or she lives in the street, is a victim of armed conflicts, is a victim of the worst working conditions or has HIV/AIDS.<sup>20</sup> Under the Children's Code, this type of assistance is provided by the Guinean Lawyers National Order and Legal Support Centers, but it is unclear which type of proceedings it applies to.

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[http://www.africanchildforum.org/clar/Legislation%20Per%20Country/guinea/guinea\\_children\\_2008\\_fr%20.pdf](http://www.africanchildforum.org/clar/Legislation%20Per%20Country/guinea/guinea_children_2008_fr%20.pdf)

<sup>16</sup> Guinean Criminal Procedure Code, Art. 749, available at: <http://www.refworld.org/docid/44a3e20b4.html>

<sup>17</sup> Guinean Children's Code, Article 216.

<sup>18</sup> *ibid*, Article 214.

<sup>19</sup> *ibid*, Article 206.

<sup>20</sup> Guinean Children's Code, Art. 265.

- 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 show that there are any other conditions or limits on children or chosen legal representatives bringing a case.

### III. **How can children's rights violations be challenged before national courts?**

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Under Guinean law, the Constitutional Court is the competent tribunal to judge the constitutionality of the laws, as well as the conformity of the international treaties and agreements to the Constitution.<sup>21</sup>

It guarantees the exercise of the fundamental rights of the human person and of the public freedoms.<sup>22</sup> Specifically, it hears complaints challenging the violation of fundamental rights by the public authorities, the State and its agents, and every one of the citizens.<sup>23</sup> To initiate a challenge, any pleader may raise the unconstitutionality of law before their appropriate jurisdiction, as described in part IV.A.<sup>24</sup> The jurisdiction will then remit the matter to the Constitutional Court, who will decide within 15 days of the referral. The case can also be referred by the National Institution of Human Rights.<sup>25</sup>

Outside of the domestic legal system, the following regional mechanisms are also available:

#### ***1. 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”).<sup>26</sup> All available domestic remedies must have been exhausted before bringing a case to the African

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<sup>21</sup> Guinea’s Constitution of 2010, Art. 93

<sup>22</sup> Guinea’s Constitution of 2010, Art. 93.

<sup>23</sup> Guinea’s Constitution of 2010, Art. 96.

<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*; The National Institute of Human Rights was created in January 2015, and its missions is to promote and protect human rights, to educate the citizens of their rights, and to investigate violations. There does not appear to be a website.

<sup>26</sup> African Charter on the Rights and Welfare of the Child (“African Children’s Charter”), Article 44, available at: <http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acerwc/acerwc-charter-full-text/>. For more information about communications, see: <http://acerwc.org/the-committees-work/communications/>.

Committee.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

## ***2. 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”).<sup>30</sup> All available domestic remedies must have been exhausted before bringing a case to the African Commission.<sup>31</sup> The complaint must include, amongst other things: the name of the person filing it or, in the case of an NGO, the name of the legal representative; whether or not the complainant wishes to remain anonymous and the reasons for this; and the name of the victim, in a case where he/she is not the complainant.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup>

## ***3. 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

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<sup>27</sup> African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at: <http://acerwc.org/the-committees-work/communications/>.

<sup>28</sup> 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>.

<sup>29</sup> *Ibid.*

<sup>30</sup> African Charter on Human and Peoples' Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

<sup>31</sup> *Ibid.*, Article 56(5).

<sup>32</sup> 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/>.

<sup>33</sup> 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>.

<sup>34</sup> 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>.

the Community Court of Justice.<sup>35</sup> This includes acts or inaction of Community Officials which violate the rights of individuals.<sup>36</sup> 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.<sup>37</sup> There are, however a number of conditions: the complaint must not be anonymous or be pending before another international court;<sup>38</sup> representation by an agent or lawyer is required,<sup>39</sup> 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.<sup>40</sup> Judgments of the Court of Justice are binding on the Member States, Institutions of the Community, individuals and corporate bodies.<sup>41</sup>

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

The Constitutional Court has the power to review violations by all officers of the state and all citizens.<sup>42</sup> If the Court declares a law to be unconstitutional, it becomes null and of no effect, and may not be promulgated or applied.<sup>43</sup> Though the National Assembly is the only organ charged with adopting law, within the eight clear days that follow the adoption of a law, the President of the Republic, at least one-tenth of the Deputies or the Independent National Institution for Human Rights, may refer the matter to the Constitutional Court which may stop the enforcement of that law. When considering matters of State violations of fundamental rights and public freedoms, the decisions of the Constitutional Court prevail over other jurisdictions.<sup>44</sup> However, the Constitutional Court does not have any express powers to award financial compensation to individual victims.

The various courts in the judicial hierarchy have the power to award compensation in civil matters, and impose prison sentences or fines in penal matters. Specifically, the Children's magistrate has the power to conduct a preliminary examination into any matter, launch a full examination, and perform

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<sup>35</sup> Supplementary Protocol A/SP.1/01/05, Articles 3 and 4, available at: [http://www.courtecowas.org/site2012/pdf\\_files/supplementary\\_protocol.pdf](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](http://www.courtecowas.org/site2012/pdf_files/protocol.pdf).

<sup>36</sup> *Ibid.*, Article 4; Protocol on the Community Court of Justice, Article 10(c).

<sup>37</sup> 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>.

<sup>38</sup> Supplementary Protocol A/SP.1/01/05, Article 4; Protocol on the Community Court of Justice, Article 10(d),

<sup>39</sup> Protocol on the Community Court of Justice, Article 12.

<sup>40</sup> Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).

<sup>41</sup> 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](http://www.courtecowas.org/site2012/pdf_files/revised_treaty.pdf).

<sup>42</sup> Guinea's Constitution of 2010, Art. 93.

<sup>43</sup> Guinea's Constitution of 2010, Art. 96.

<sup>44</sup> *ibid.*

the function of judge by constituting alone the whole court.<sup>45</sup>

- 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?

It could not be determined whether or not such a challenge would have to involve one or more specifically named victims.

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

Neither the Code of Civil Procedure nor the Code of Criminal Procedure contemplate collective action or 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?

NGOs, association, public services who assume responsibility for child victims are permitted to represent them or intervene in their cases.<sup>46</sup>

- 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 civil case could be brought initially to the Justice of the Peace, for minor offences or civil matters which do not exceed 50 000 Guinean francs in value.<sup>47</sup> The next level is a Tribunal of First Instance, which is divided into civil and penal divisions. A Tribunal for Children has been established near every Tribunal of First Instance to hear any cases related to children within their territorial jurisdiction.<sup>48</sup> However, such tribunals reportedly do not function outside of the capital due to a lack of resources and funding.<sup>49</sup>

The Court of Appeal is the only court of second degree, and can consider cases of minors over the age of 13 accused of crimes. However, in this case, the court's composition changes to include the president of the Tribunal for Children or a magistrate for children, replacing one of the Councillors.<sup>50</sup> As the

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<sup>45</sup> S, Ibrahima. 'Guinean Legal System and Research'.

<sup>46</sup> Guinea's Children's Code, Article 396.

<sup>47</sup> S, Ibrahima. 'Guinean Legal System and Research', Global Law School Program, available at: [http://www.nyulawglobal.org/globalex/Guinea.htm#\\_1](http://www.nyulawglobal.org/globalex/Guinea.htm#_1)

<sup>48</sup> *ibid.*

<sup>49</sup> *ibid.*

<sup>50</sup> *ibid.*

age of criminal responsibility is set at 13, minors below this age can only be brought before the courts for matters of protection, assistance, surveillance or compensation.<sup>51</sup> There is also a Court of Assize for Minors.

The highest is the Supreme Court, which has three separate chambers: The Constitutional and Administrative Chamber, the Judicial Chamber (civil, penal and economic), and the Chamber of Accounts. However a new law on judicial organisation may change the structure of the Supreme Court.<sup>52</sup>

If the violation of children's rights are of a criminal nature, a case would have to be brought before the criminal courts. In this context, the main venue will be the Children's Court. A case may be referred to the Children's Court by a request filed by a parent, a guardian, the General Attorney or the child themselves.<sup>53</sup> The President of the Court can also exercise his or her power to hear a case without higher referral.<sup>54</sup>

- 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?

The Guinean legal system does not provide for legal aid. Therefore, child victims and their representatives are expected to pay court costs or cover other expenses unless they can obtain pro-bono assistance or prove that they fulfil the criteria to be considered an "orphan or vulnerable child" as described in Part II.D.

- 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?

The Children's Code provides that the associations, NGOs and public services that take care of victimised children can represent them in court.<sup>55</sup> Several non-governmental organisations can provide free legal assistance to victims of human rights violation.

Some examples are *Sabou-Guinee*<sup>56</sup>, *Les Mêmes Droits Pour Tous*<sup>57</sup> (Same Rights for All) and *Organisation Guinéenne de Défense des Droits de l'Homme*

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<sup>51</sup> *ibid.*

<sup>52</sup> Legiglobe, *Guinee*, 24 March 2014, available at: <http://legiglobe.rf2d.org/guinee/>.

<sup>53</sup> Guinean Criminal Procedure Code, Art. 749.

<sup>54</sup> *ibid.*

<sup>55</sup> Guinea's Children's Code, Article 396.

<sup>56</sup> <http://www.tdh.ch/en/news/guinea-towards-justice-for-juveniles-that-respects-the-rights-of-the-child>.

<sup>57</sup> <http://www.worldcoalition.org/Mmes-droits-pour-tous-MDT.html>.

*et du Citoyen*<sup>58</sup> (Guinean Organisation for the Defense of Human Rights).

However, there do not appear to be any pro-bono lawyers or non-governmental organisations who specifically provide assistance for children.

- 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?

As the general rule, the Criminal Procedure Code provides that a crime can be prosecuted for ten years after the day such crime has been committed.<sup>59</sup> The Code provides for a special provision when the victim is a minor. If the crime has been committed by a relative or a person having guardianship over the child, the ten-year period starts when the child turns eighteen.<sup>60</sup>

The prescription for all civil actions is thirty years.<sup>61</sup>

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The Criminal Procedure Code does not set out a list of evidence that is admissible or required, but it confirms that any kind of documents, testimonies, physical evidence or expert opinions can be admitted as evidence.<sup>62</sup>

There are further procedures for child victims and witnesses set out in the Children's Code. To protect the identity and privacy of child victims and witnesses, the trial courts can order that the case be closed from the public.<sup>63</sup> The court can also exempt children victims or witnesses from appearing at the hearing.<sup>64</sup> When children are considered particularly vulnerable, they may be assisted before the courts by a chosen or appointed lawyer.<sup>65</sup> In civil actions, the public prosecutor may request any child witness without legal representation to be placed under legal guardianship in order to protect their well being and best interests.<sup>66</sup>

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

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<sup>58</sup> <http://www.refugee-rights.org/African%20NGO%20directory/West%20Africa/Guinea-OGDH.html>.

<sup>59</sup> Guinea's Code of Criminal Procedure, Article 3.

<sup>60</sup> Guinean Criminal Procedure Code, Art. 3.

<sup>61</sup> Code of Civil, Economic and Administrative Procedure, Article 651, available at:

<http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/90491/104341/F-591484541/GIN-90491.pdf>

<sup>62</sup> Guinean Criminal Procedure Code, Art. 420.

<sup>63</sup> Guinean Children's Code, Article 394.

<sup>64</sup> *ibid.*

<sup>65</sup> Guinean Children's Code, Article 395.

<sup>66</sup> Guinean Children's Code, Article 396.

There is no information available indicating exactly how long it may take to get a decision from the courts. However, there are reports that there is severe backlog in the courts due to judicial inefficiency and corruption.<sup>67</sup> Some pre-trial detainees are reported to have been held for up to three years before a hearing or sentencing.<sup>68</sup>

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

It is possible to appeal a decision to the Court of Appeal, except for a matter where the fine is less than 5,000 Guinean Francs. A request for appeal must be filled within 15 days following the lower court decision by the defendant, the victim or the prosecutor.<sup>69</sup>

It is also possible to appeal a decision to the Supreme Court to get an annulment in the following circumstances:

- Incompetence of the court;
- Abuse of authority by the judge;
- Violation of the rules governing the procedural issues;
- Violation of the rules relating to the substantive issues; or
- Violation of the procedure by all the parties.<sup>70</sup>

It is not possible to appeal a decision from the Constitutional Court.

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?

There are reports of corruption in the judicial process, with the courts being neither impartial nor independent.<sup>71</sup> Many decisions were reportedly influenced by bribes, or social and political considerations.<sup>72</sup> Security forces rarely followed the Penal Code, and many citizens are fearful of abuse, arbitrary detention or corruption.<sup>73</sup>

Several sources indicate concerns over the lack of independence demonstrated by National Independent Human Rights Institution.<sup>74</sup> Amendments were

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<sup>67</sup> United States Bureau of Democracy, Human Rights and Labour, *Country Reports on Human Rights Practices for 2012*, available at: <http://www.state.gov/documents/organization/204339.pdf>

<sup>68</sup> *ibid.*

<sup>69</sup> Guinean Criminal Procedure Code, Arts. 491-93.

<sup>70</sup> Guinean Criminal Procedure Code, Arts. 562-63; see also Law L/91/08/CTRN dated 23 December 1991.

<sup>71</sup> United States Bureau of Democracy, Human Rights and Labour, *Country Reports on Human rights Practices for 2012*, Available at: <http://www.state.gov/documents/organization/204339.pdf>

<sup>72</sup> *ibid.*

<sup>73</sup> *ibid.*

<sup>74</sup> FIDH, 'Guinea: The National Institute for Human Rights must respect the Constitution,' 28 January 2015, available at:

<https://www.fidh.org/International-Federation-for-Human-Rights/Africa/guinea-conakry/16882-guinea-the-national-institution-for-human-rights-must-respect-the>

introduced by the government, circumventing the National Assembly, thereby undermining the legitimacy and functioning of the institution.<sup>75</sup> This might undermine or even impede the possibility to enforce or even bring before courts a violation of children's rights.

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

There is no proper enforcement system in Guinea and, more often than not, positive decisions are not enforced, especially when they are related to a crime or violation committed by a parent, a guardian or a family member.<sup>76</sup> Moreover, the lack of lawyers and judicial personnel makes it even more difficult to bring a case before the courts and to have a positive decision enforced.<sup>77</sup>

- 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.

Customary laws and traditional hearing systems are still present in Guinea and recognised by the law. As an example, the Criminal Code does not punish sexual acts with a child aged fourteen to eighteen in the context of a marriage celebrated under customary laws.<sup>78</sup>

Many citizens, wary of judicial corruption, preferred to rely on traditional systems of justice at the village or urban neighborhood level.<sup>79</sup> Litigants presented their civil cases before a village chief, a neighborhood leader, or a council of 'wise men'.<sup>80</sup> The dividing line between the formal and informal justice systems was vague, and authorities sometimes referred a case from the formal to the traditional system to ensure compliance by all parties. In the traditional system, evidence given by women carried less weight. This severe lack of consistency in the legal system may deter those considering legal action, as the course of justice and outcome are so unpredictable.

Lastly, there is a persistent problem of impunity, with the government reportedly taking minimal steps to punish those state actors who had committed grave offences in the past, including mass killings and rapes.<sup>81</sup>

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<sup>75</sup> *ibid.*

<sup>76</sup> United States Bureau of Democracy, Human Rights and Labour, *Country Reports on Human rights Practices for 2012*, Available at: <http://www.state.gov/documents/organization/204339.pdf>.

<sup>77</sup> *ibid.*

<sup>78</sup> Guinean Criminal Code, Art. 302.

<sup>79</sup> United States Bureau of Democracy, Human Rights and Labour, *Country Reports on Human rights Practices for 2012*, Available at: <http://www.state.gov/documents/organization/204339.pdf>.

<sup>80</sup> *ibid.*

<sup>81</sup> United States Bureau of Democracy, Human Rights and Labour, *2013 Human Rights Report: Guinea*, available at: <http://www.state.gov/j/drl/rls/hrrpt/2013/af/220120.htm>.

To conclude, practical constraints, including economic factors, and a lack of legal knowledge in effect limit the access to courts for children in some regions of Guinea.

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