

ACCESS TO JUSTICE FOR CHILDREN: ISLAMIC REPUBLIC OF MAURITANIA

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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?

Mauritania has been a party to the CRC since 8 April 2001.¹ Mauritania has also acceded to the Optional Protocol to the CRC on the sale of children.²

Under Article 78 of the Mauritanian Constitution, ratified international treaties are directly incorporated into national law.³ However, it ratified the CRC with a general reservation as “to articles or provisions which may be contrary to the beliefs and values of Islam, the religion of the Mauritanian People and State.”⁴

B. Does the CRC take precedence over national law?

Article 80 of the Constitution of Mauritania provides that properly ratified treaties have superior authority to national laws. Mauritania’s legal system, however, is a duality of Sharia law and positive law. The possibility of conflict between the two has the potential to create problems when implementing a foreign-based international treaty, despite what is specified in the Constitution.⁵

C. Has the CRC been incorporated into national law?

Yes. Under Article 78 of the Mauritanian Constitution, ratified international treaties are directly incorporated into national law.⁶

Additionally, although Mauritanian law does not contain a consolidated Children's Act, Mauritania has adopted several individual laws that either directly relate to children or encompass children within their scope. Amongst the laws enacted are:

¹ *Second periodic report of Mauritania to the UN Committee on the Rights of the Child*, CRC/C/MRT/2, 30 July 2008, para. 1. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMRT%2f2&Lang=en; 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 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.

³ Mauritania Constitution, Article 78.

⁴ UN Treaty Collection, ‘Convention on the Rights of the Child’.

⁵ UN Committee on Rights of the Child, *Concluding observations on the second periodic report of Mauritania*, CRC/C/MRT/CO/2, 17 June 2009, para. 7. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMRT%2fCO%2f2&Lang=en.

⁶ Mauritania Constitution, Article 78.

- Act No. 2001-052 of 19 July 2001 on the Personal Status Code, which fixes the age of majority at 18;
- Act No. 2001-054 of 19 July 2001 on compulsory basic education, which requires compulsory education for children between the ages of 6 and 14;
- Act No. 2004-017 of 6 July 2004 on the Labour Code, which sets the minimum employment age at 14;
- Act No. 2003-025 of 17 July 2003 on the suppression of trafficking in persons⁷;
- Act No. 2007-042 of 3 September 2007 on the criminalisation of slavery;
- Act No. 099-012 of 26 April 1999 on the reform of the education system;
- Ordinance No. 2005-015 of 5 December 2005 on the judicial protection of children; and
- Ordinance No. 2006-05 of 26 January 2006 on legal assistance.

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

The CRC can be directly enforced by the courts.⁷ Practical constraints, however, such as individual judges' reluctance to enforce international agreements, may hinder the implementation of the CRC in the Mauritanian legal system.⁸

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

At this time, no cases in which a domestic court used or applied the CRC have been found. Indeed, it seems that the CRC “is never mentioned nor in the motivations, nor in the conclusions of sentences by Courts and Tribunals, and it’s also only rarely invoked as defence in cases involving the CRC”.⁹

II. What is the legal status of the child?

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

Children through their representatives may bring civil or administrative cases to court to challenge violations of their rights (see part III.A below).

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?

⁷ *Second periodic report of Mauritania to the UN Committee on the Rights of the Child* (“Citizens are thus able to invoke such international instruments before the courts on the same footing as national laws.”); see also UNICEF, *Protecting the World’s Children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems*, pp. 188-90 (2007), available at: <https://books.google.com/books?id=alqqkVT9OfgC&lpg=PP1&pg=PP1#v=onepage&q&f=false>.

⁸ Zelezeck Nguimatsa Serge, ‘Researching the legal system and laws of the Islamic Republic of Mauritania’, August 2009, available at: <http://www.nyulawglobal.org/globalex/Mauritania.htm>.

⁹ Alternative report on the application of the CRC, 2008, part III.2, available at: https://www.crin.org/docs/Mauritania_AM_NGO_Report.pdf.

The age of majority in Mauritania is 18.¹⁰ By law, a person who has not reached the age of majority (i.e., a minor, or “*incapable mineur*”),¹¹ cannot exercise his or her civil rights.¹² Thus, a minor cannot, on his or her own, bring a case in domestic court to challenge a violation of children’s rights, and would need to rely on a guardian to bring the case.

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

As noted in part II.B above, any judicial proceeding must be brought by a guardian.

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

Article 103 of the Ordinance 2005-015 on the judicial protection of children states that children accused of criminal offences are entitled to a lawyer for free from when the child is taken into custody. Despite this provision, various reports highlight the lack of implementing measures to properly enforce Article 103.¹³

Ordinance 2006-05 on legal aid ensures complete or partial legal aid for Mauritanian nationals, nationals of countries that offer legal aid for Mauritanian nationals, as well as foreigners in some cases, notably when they are children, in front of all tribunals (contentious and non-contentious).¹⁴ At least two special bureaus exist within the legal aid offices - one to deal with requests by children’s legal representatives, and the other with family law issues.

An applicant has to prove his/her lack of resources to defend his/her rights,¹⁵ as well as the likelihood of success of the case, except if the person is the defendant, defendant in civil proceedings (“*personne civilement responsable*”), assisted witness, accused, condemned, or indicted.¹⁶ The request for legal aid can be made before or during the trial and in cases of urgency where the basic life conditions of the applicant are at risk, provisional legal aid can be granted.¹⁷

¹⁰ Portant Code du Statut Personnel (“Code of Personal Status”), Ordinance No. 2001-052, 19 July 2001, Article 162.

¹¹ See *Ibid.*, Article 166 (defining an “*incapable mineur*” as one who has not reached the age of majority).

¹² *Ibid.*, Article 163.

¹³ The report mentions that 22 lawyers provided legal assistance to children under Article 103 but were not paid. On the one hand it shows that the legal aid system has been put into practice; on the other hand, it shows that the system still needs improvement so that lawyers are encouraged to take on cases.

Available at:

http://www.europarl.europa.eu/meetdocs/2009_2014/documents/dmag/dv/dmag20120125_04_/dmag20120125_04_fr.pdf. A 2009 report on the application of the Ordinance 2005-015 states that despite Article 103, the presence of a lawyer is “very exceptional” in some regions, available at:

http://www2.unicef.org/evaldatabase/files/Mauritania_2009-007_-_Rapport_devaluation_de_lapplication_de_l_OPPE.pdf, p. 13.

¹⁴ Ordinance 2006-05 on Legal Aid, Article 10, available at:

<https://legislationmauritanienne.files.wordpress.com/2011/06/ordonnance-2006-05-relative-c3a0-laide-juridique.pdf>.

¹⁵ *Ibid.*, Articles 2 and 3.

¹⁶ *Ibid.*, Article 7.

¹⁷ *Ibid.*, Articles 16 and 18.

A recipient of legal aid is entitled to a lawyer of his/her own choosing, or a lawyer chosen by a judicial officer.¹⁸ Legal aid is valid throughout the appeal process,¹⁹ and is also available for legal consultations and non-judicial dispute resolution.²⁰ It cannot be granted to NGOs or institutions.²¹

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

Although a guardian has general responsibility to exercise a child's rights, approval by a judge is required for a guardian to institute judicial proceedings on behalf of a child.²²

It is unclear whether a woman can be appointed as a guardian under Mauritanian law. Article 179 of the Code of Personal Status provides that a father's legal guardianship is automatic until the child reaches the age of majority.²³ The statute, however, only refers to rights of the father. As such, it is unclear whether a child's mother, or any other adult female, can succeed the father as a child's guardian.²⁴

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?

Pursuant to Article 80 of the Constitution, international treaties are directly enforceable. Therefore, if a CRC provision is not covered by any internal law or code, one could always directly invoke it in court proceedings.

In general, the administrative chamber within Wilaya tribunals has jurisdiction to hear complaints of violations of human rights.²⁵ That court has jurisdiction over claims for damages brought against public officials or the state.²⁶

¹⁸ Ibid., Article 23.

¹⁹ Ibid., Article 24.

²⁰ Ibid., Articles 49 and following.

²¹ Ibid., Article 3.

²² Code of Personal Status, Article 189 (certain acts of a guardian, including instituting a judicial proceeding, require judicial approval).

²³ Ibid., Article 178.

²⁴ See, e.g., Ibid., Articles 180-84 (detailing the requirements for a father to designate a guardian upon his death, including that the person be able to exercise the father's legal rights, but not mentioning whether this person can also be a female).

²⁵ US State Department, 'Mauritania: 2013 human rights report', available at:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220136>.

²⁶ Code of Civil, Commercial and Administrative Procedure, Law No. 90-035, 24 July 1999, Article 25, available at:

<https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0CDI0FjAC&url=https%3A%2F%2Ftrack.unodc.org%2FlegalLibrary%2FlegalResources%2FMauritania%2FLaws%2FLoi%2520n.%252099-035%2520du%252024%2520juillet%25201999%2520portant%2520Code%2520de%2520Proc%2520C3%2520A9dure%2520civile%2C%2520commerciale%2520et%2520administrative%2520%281999%29.pdf&ei=GkmVVcGCIorTUeDRgogF&usq=AFOjCNFxpZPBbNRbIFhUdgN4PU0VtSdReoQ&bvm=bv.96952980.d.d24>

In front of children's tribunals and courts, the child and his/her legal representative can submit a criminal case to the Public Prosecutor to challenge violations of children's rights as provided in the ordinance on the judicial protection of children.²⁷ If the Public Prosecutor (*Ministère Public*) does not pursue criminal prosecution, the child and his/her legal representative can still pursue a civil action ("*action civile*") seeking compensation for the damage suffered.²⁸ This will automatically force the Public Prosecutor to pursue the criminal prosecution (by initiating investigations). Therefore, a person can overcome the refusal of the Public Prosecutor to pursue a criminal case via private prosecution.

In front of regular criminal courts (for violations of children's rights that are not covered by the law on the judicial protection of children), the Public Prosecutor is competent for initiating prosecution. If a person has suffered damage caused by a criminal offence, he/she can either file a complaint if the Public Prosecutor (*Ministère Public*) has not initiated prosecution²⁹ or intervene directly during the court hearing to seek monetary compensation ("*se constituer partie civile*").³⁰

Individuals who have been illegally or arbitrarily detained can ask for monetary compensation in front of either a criminal or civil court. Complaints about illegal or arbitrary detentions are to be made to police officers. Those who do not report the complaints to their superiors are subject to the loss of civil rights, as well as liable to providing monetary compensation.³¹ However, *habeas corpus* is not provided.

A victim or any other person or entity (including an NGO) may submit a complaint about a human rights violation to the National Human Rights Commission (CNDH). The CNDH, a public independent institution responsible for promoting human rights,³² can receive individual complaints aiming to restore these rights, to end the violations, and to obtain compensation. When it receives a complaint concerning an ongoing case at a tribunal, it will work in cooperation with the tribunal.³³ The CNDH can also investigate a case on its own initiative.³⁴

African Committee

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

²⁷ Ordinance 2005-015 on the judicial protection of children, Article 107.

²⁸ Ibid., Article 108.

²⁹ Code of Criminal Procedure, Article 358, available at: <http://www.refworld.org/pdfid/491c21192.pdf>.

³⁰ Ibid., Article 355.

³¹ Criminal Code, Chapter III, Section II, available at: <http://www.refworld.org/pdfid/491c1ffc2.pdf>.

³² The CNDH is currently governed by Law 2010-031, available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96371/113871/F667545477/MRT-96371.pdf>

³³ Ibid., Article 5;

<http://www.cndhmauritaniae.mr/index.php/2014-03-08-01-10-34/25-blog-venez-a-la-cndh/42-qu-est-que-une-plainte>. It is unclear how the measures taken by the CNDH would be coordinated with the judicial sentence.

³⁴ Available at:

<http://www.cndhmauritaniae.mr/index.php/2014-03-08-01-10-34/25-blog-venez-a-la-cndh/43-qui-peut-deposer-une-plainte>.

and Welfare of the Child (“African Children’s Charter”).³⁵ All available domestic remedies must have been exhausted before bringing a case to the African Committee.³⁶ The complaint must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, and whether or not the complainant wishes to remain anonymous and the reasons for this.³⁷ The African Committee will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.³⁸

African Commission

Individuals, groups or NGOs may submit complaints (known as “communications”) to the African Commission on Human and Peoples’ Rights (“African Commission”) about violations of the African Charter on Human and Peoples’ Rights (“African Charter”).³⁹ All available domestic remedies must have been exhausted before bringing a case to the African Commission.⁴⁰ The complaint must include, amongst other things: the name of the person filing it or, in the case of an NGO, the name of the legal representative; whether or not the complainant wishes to remain anonymous and the reasons for this; and the name of the victim, in a case where he/she is not the complainant.⁴¹ The African Commission will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.⁴² If the case relates to serious or massive human rights violations or if the Commission considers that the State is unwilling to comply with its recommendations in the case, the Commission may refer the complaint to the African Court on Human and Peoples’ Rights.⁴³

³⁵ African Charter on the Rights and Welfare of the Child (“African Children’s Charter”), Article 44, available at:

<http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acerwc/acerwc-charter-full-text/>

. For more information about communications, see:

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

³⁶ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at:

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

³⁷ War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Committee of Experts on the Rights and Welfare of the Child: communication procedure’, 2012, available at:

<http://co-guide.org/mechanism/african-committee-experts-rights-and-welfare-child-communication-procedure>.

³⁸ Ibid.

³⁹ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at:

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

⁴⁰ Ibid., Article 56(5).

⁴¹ Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rule 93, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010/>.

⁴² War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Commission on Human and Peoples' Rights: communication procedure’, 2012, available at:

<http://co-guide.org/mechanism/african-commission-human-and-peoples-rights-communication-procedure>.

⁴³ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, Article 5, available at:

<http://www.achpr.org/instruments/court-establishment>; Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rules 84(2) and 118, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010>.

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

Mauritania courts have the power to enter and enforce judgments.⁴⁴

Civil courts can award compensation for torts (whether they are intentional “*délits*” or unintentional “*quasi-délits*”).⁴⁵ Civil and administrative courts can issue injunctions to pay⁴⁶ and to fulfil obligations.⁴⁷ Administrative acts can be annulled by the administrative chamber of the Supreme Court.⁴⁸

Investigative judges can launch investigations at their own initiative, at the Public Prosecutor’s referral, or following a complaint by the alleged victim.⁴⁹

The Ordinance 2015-015 on the judicial protection of children lists crimes against children and the corresponding sanctions (death penalty, forced labour,⁵⁰ imprisonment, and fines).

Public servants, state agents and members of the government that commit arbitrary acts, or acts contrary to individual rights, civic rights or the Constitution, will be sentenced to the loss of civil rights, or forced labour in the case of a minister.⁵¹

The Constitutional Court can review the constitutionality of laws and stop the proclamation of a law or parts of it that are contrary to the Constitution. However, individuals cannot directly bring a case before the Constitutional Court.⁵²

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 specified victim?

In order to file civil and administrative cases, the plaintiff must be named.⁵³ The only possibility of bringing a challenge without naming a victim would be through a constitutional claim where a law violates children’s rights (though individuals may not bring such claims directly to the Constitutional Court).

⁴⁴ See, e.g., Code of civil, administrative and commercial procedure, Law No. 90-035, Article 81 (detailing what must be contained in the pronouncement of a judgment).

⁴⁵ Code of obligations and contracts, Article 126, available at:

<http://www.droit-afrique.com/images/textes/Mauritanie/Mauritanie%20-%20Code%20obligations%20contrats.pdf>

⁴⁶ Code of civil, administrative and commercial procedure, Articles 249 and following.

⁴⁷ Ibid., Article 257.

⁴⁸ Code of Civil, Commercial and Administrative Procedure, Article 163.

⁴⁹ Code of criminal procedure, Article 72.

⁵⁰ Pursuant to Article 278 of the Criminal Code which is applicable to children according to Article 6 of Law 2005-015.

⁵¹ Criminal Code, Articles 111 and following.

⁵² The Constitutional Court can only be referred to by the President, the President of the Chamber of representatives, the President of the Senate, one third of the representatives, or one third of the senators in order to challenge the constitutionality of a regular law before its proclamation: Constitution, Article 87. If it is an organic law, the Constitutional Court has the obligation to review its constitutionality before the proclamation *ex officio*. See Article 86, available at:

http://www.accpuf.org/images/pdf/cm/mauritanie/031-tf-txt_const.pdf.

⁵³ Code of Civil, Commercial and Administrative Procedure, Article 58.

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

Following French tradition, collective actions are not possible, except for labour law.⁵⁴ When there is a sufficient link between two cases in front of two different courts, it is possible to join them to ensure good administration of justice. If one of the courts is superior to the other, it will join the two cases in one.⁵⁵

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

In front of investigative judges, children's tribunals and the Children's Criminal Court, national child rights NGOs are permitted to file cases seeking monetary compensation ("*action civile*") for torture, acts of barbarity, violence, sexual aggression, and endangering children when criminal prosecution has been put in motion by the Public Prosecutor or the victim.⁵⁶

Any interested person can intervene as third party in civil and administrative cases.⁵⁷ According to expert opinion (based on French law),⁵⁸ the notion of "interest" is very wide and allows for legal entities to intervene as well. Therefore, NGOs could theoretically intervene in civil and administrative proceedings within their area of interest. It would nonetheless be necessary to check how Mauritanian courts apply this notion.

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

The relevant regular first instance tribunals are the following:

- Moughataa tribunals: local district tribunals with jurisdiction over civil cases which do not fall under the jurisdiction of Wilaya courts, including civil liability cases, family cases, filiation cases, and personal status matters, as well as small criminal cases ("*contraventions de simple police*");⁵⁹
- Wilaya tribunals: regional tribunals with jurisdiction over some civil cases (notably nationality), as well as administrative cases (in front of an administrative chamber) and requests claiming damages against the State and

⁵⁴ Trade unions can act on behalf of the workers they represent: Labour Code, Livre Troisieme, "*Des groupements professionnels*", Article 11, available at:

<http://www.droit-afrique.com/images/textes/Mauritanie/Mauritanie%20-%20Code%20Travail.pdf>.

⁵⁵ Code of Civil, Commercial and Administrative Procedure, Articles 51 and 52.

⁵⁶ Ordinance 2005-015 on the judicial protection of children, Article 109, available at:

https://legislationmauritanienne.files.wordpress.com/2011/06/ordonnance-nc2b02005-015-portant-protection-pc3a9nale-de-l_enfant.pdf.

⁵⁷ Code of Civil, Commercial and Administrative Procedure, Article 135.

⁵⁸ Pascal Labbé, *Introduction au Droit Processuel*, page 57, available at:

https://books.google.co.uk/books?id=l7HCfqsIWuIC&pg=PA57&lpg=PA57&dq=qui+peut+faire+une+in+tervention+volontaire+accessoire&source=bl&ots=9E_mhMoOOZ&sig=FnhYTbd0riPjGgXxMx8lIvFBcWk&hl=en&sa=X&ei=FL-LVaSPiCaC7gbf0YCwBg&ved=0CFkO6AEwBw#v=onepage&q=qui%20peut%20faire%20une%20intervention%20volontaire%20accessoire&f=false.

⁵⁹ Code of Civil, Commercial and Administrative Procedure, Article 20.

public bodies.⁶⁰ They also examine some criminal cases including cases against children within a specialised children’s chamber;⁶¹

- Criminal courts: attached to *wilaya* tribunals, they have general jurisdiction over criminal cases.⁶² A special composition of the criminal court deals with crimes committed by children or against children.
- Children’s tribunals with jurisdiction over “*délits*” and children’s tribunals with jurisdiction over “*contraventions*” (“*Juridictions correctionnelles et de police pour enfants*”): Theoretically created by Ordinance 2005-015 on the judicial protection of children, they should have jurisdiction over “*délits*” and “*contraventions*” committed by children or against children”.⁶³
- Children’s Criminal Court (“*Cour criminelle pour enfants*”): theoretically created by Ordinance 2005-015 on the judicial protection of children, this court should have jurisdiction over “*crimes*” committed by children or against children”.⁶⁴ Nevertheless, they have not yet been effectively created.⁶⁵

In front of civil tribunals, one should file either a “*requête introductive d’instance*” (motion to open judgment), a “*déclaration individuelle introductive d’instance*” (oral motion to open judgment), an “*assignation*” (subpoena) or a “*requête conjointe*” (joint motion to open judgment).⁶⁶

A “*requête introductive d’instance*” (motion to open judgment) is the only way to file an administrative claim in front of the administrative chamber of the Wilaya Tribunal.⁶⁷

In criminal proceedings, including in front of children’s courts and tribunals, a complaint can only be made by the prosecutors in front of investigative judges.⁶⁸ Victims can initiate criminal proceedings under the conditions detailed above at III.A. Investigation is mandatory for children accused of having committed a “*crime*”.⁶⁹

One should file a complaint (“*plainte*”) in front of the CNDH. It must state the plaintiff’s identity and address, the nature of the supposed violated rights, and the accused (see part III.A above).⁷⁰

Ordinance 2005-015 on the judicial protection of children provides for mediation between the child offender and the victim of a “*délit*” or a “*contravention*” to avoid criminal prosecution. The request for mediation can be submitted either by the child or

⁶⁰ Ibid., article 25.

⁶¹ Ibid., Article 26.

⁶² Ibid., Article 50.

⁶³ Ordinance 2005-015 on the judicial protection of children, Article 122.

⁶⁴ Ibid., Article 142.

⁶⁵ http://www.justice.gov.mr/html/Organisation_de_la_justice.html.

⁶⁶ Code of Civil, Commercial and Administrative Procedure, Article 69.

⁶⁷ Ibid., Article 150.

⁶⁸ Maitre Mactar Diassi, *Evaluation report on the application of the Ordinance on the judicial protection of children*, UNICEF Mauritanie 2009, page 14, available at: http://www2.unicef.org/evaldatabase/files/Mauritania_2009-007_-_Rapport_devaluation_de_lapplication_de_l_OPPE.pdf.

⁶⁹ Ordinance 2005-015 on the judicial protection of children, Article 107.

⁷⁰ The complaint form is available at:

http://www.cndhmauritanie.mr/cndh_fichiers/FichetraitementsplaintesCNDH.pdf.

his/her representative. The mediation agreement can be revised by the judge, taking into consideration the child's best interests.⁷¹

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.

A recipient of legal aid is exempt from paying all expenses related to the trial proceedings.⁷² If the recipient loses or is condemned to pay the trial costs (“*dépens*”) of the other party, he/she will have to pay exclusively for the trial costs of the other party. Nevertheless, the judge can order the state to pay for part of it. If the losing party does not benefit from legal aid, it will have to reimburse the state for procedural costs as well. Nevertheless, taking into consideration equity and the economic situation of the losing party, the judge can exempt him/her from all or part of it.

However, in criminal proceedings, if the person entitled to legal aid is the defendant, defendant in civil proceedings (“*personne civilement responsable*”), assisted witness, accused, condemned or indicted, he/she will not have to reimburse the state or the other party.⁷³ If a person intervenes in a criminal case seeking monetary compensation for damages from the criminal offence and is condemned to pay the trial costs, the judge can also exempt him/her completely or partially from the legal costs.⁷⁴

Where, if the Public Prosecutor has not initiated prosecution, a person files a complaint regarding damage caused by a criminal offence, a sum of money must be deposited (“*consignation*”) to cover procedural costs. However, those who have been awarded legal aid are exempt from paying the deposit.⁷⁵

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?

The organisation *Avocats sans frontières Mauritanie* offers pro bono services for human rights cases in Mauritania.⁷⁶ The law firm Mkono & Co based in Mauritania offers pro bono services.⁷⁷ Other NGOs that intervene in children's rights cases include *Association Mauritanienne pour la Santé de la mère et de l'enfant* (offers legal counsel), *Terre des hommes Lausanne* (offers legal assistance for children in the Beyla centre for child offenders).⁷⁸

⁷¹ Ordinance 2005-015 on the judicial protection of children, Articles 155 and following.

⁷² Ordinance 2006-05 on Legal Aid, Article 36.

⁷³ *Ibid.*, Article 43.

⁷⁴ *Ibid.*, Article 44.

⁷⁵ *Ibid.*, Article 358.

⁷⁶ <http://www.asf-network.org/web/fr/44-avocats-sans-frontieres-mauritanie.php>.

⁷⁷ <http://www.mkono.com/fr/index.php>.

⁷⁸ http://www.justice.gov.mr/html/Organisation_de_la_justice.html.

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?

Regular civil actions arising from an obligation must be brought within 15 years.⁷⁹ In actions seeking compensation for a tort - whether intentional (*délit*) or unintentional (*quasi délit*) - the claimant has five years from the day he/she became aware of the damage to bring the case, but no more than 20 years from the day the damage was caused.⁸⁰ In actions seeking the rescission of an act, the claimant has one year from the day he/she became aware of the damage to bring the case, but no more than 15 years from the day the damage was caused.⁸¹ There is no time limitation for actions between a parent and his/her child and between an “incapable” person and his/her tutor as long as the tutorship lasts.⁸²

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

- for “*crimes*”: 10 years;
- for “*délits*”: three years; and
- for “*contraventions*”: one year.⁸³

Nevertheless, “*crimes*” and “*délits*” that are subject to the sentences of “*Ghissas*”,⁸⁴ “*Houdoud*”⁸⁵ and “*Diya*”⁸⁶ are not subject to any time limitations.⁸⁷ Many of the crimes against children described in Ordinance 2005-015 on the judicial protection of children are punishable by these penalties. Nevertheless, there is no express provision excluding all crimes against children from time limitations.

Claims against administrative decisions must be brought within two months of the date of notification or publication of the administrative decision.⁸⁸

⁷⁹ Code of Obligations and Contracts, Article 384, available at:

<http://www.droit-afrique.com/images/textes/Mauritanie/Mauritanie%20-%20Code%20obligations%20contrats.pdf>

⁸⁰ Ibid., Article 126.

⁸¹ Ibid., articles 324 to 327.

⁸² Ibid., Article 375.

⁸³ Code of Criminal Procedure, Articles 7, 8 and 9, available at:

<http://www.refworld.org/pdfid/491c21192.pdf>.

⁸⁴ “*Ghissas*” are defined as “intentional crimes against the person”: William Schabas, *War crimes and Human Rights: Essays on the Death Penalty, Justice and Accountability*, pp. 87-88, available at:

https://books.google.co.uk/books?id=SPhGSg_5Go0C&pg=PA87&lpg=PA87&dq=houdoud+penal&source=bl&ots=rHVnQ3clrr&sig=7TO68AvclfpAGE3JKZIK12jqiw&hl=en&sa=X&ei=hNWbVZLiC4eT7Aax5bnwAg&ved=0CC0O6AEwAg#v=onepage&q=houdoud%20penal&f=false.

⁸⁵ “*Houdoud*” are defined as “important crimes deemed to threaten the very existence of Islam [which] are punishable pursuant to penalties set by the Koran itself”. They consist of “adultery, defamation, theft, robbery, rebellion, drunkenness and apostasy”: Ibid.

⁸⁶ “*Diya*” is described as a system “which prescribes restitution or compensation for the victim”: Ibid.

⁸⁷ Code of Criminal Procedure, Article 8 bis.

⁸⁸ Code of Civil, Commercial and Administrative Procedure, Article 150. Note: If a request is made to the administration and it does not answer within 4 months, it is considered that the answer is negative.

- 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?

All witnesses are considered competent to testify unless the judge or decisions of the court would have declared the witness incompetent to testify.⁸⁹ Witnesses who have not reached the age of majority are not required to take an oath, but are instead “informed” of their obligation to tell the truth.⁹⁰ A witness may not deliver in-person testimony by reading a prepared draft, unless such draft has been prepared by the witness him/herself.⁹¹

Additionally, Mauritanian courts have the authority to order certain “investigative measures” when the judge lacks sufficient evidence to decide the case.⁹² Such measures include an investigation,⁹³ a site-visit,⁹⁴ or an audit or other writing.⁹⁵ An expert can also be called upon to assist the judge in making a decision, but only where the other investigative measures are insufficient to render a decision.⁹⁶ In such a situation, the expert submits a written report and may also be called to testify at the hearing or be summoned to the judge’s chambers to provide further explanation of the report.⁹⁷

In front of children’s tribunals and courts, each case is heard separately, in the absence of other accused children. Only “close” persons, witnesses, the parents, tutor, guardian or legal representative, the lawyers, the representatives of child rights organisations and those in charge of the child’s supervised freedom may attend the court hearing. The judge can order the child to leave at any time, as well as for the witnesses to leave as soon as they have testified. Any kind of publication of the report of the court hearing is prohibited and punishable by a fine or imprisonment.⁹⁸ There are no explicit provisions on the child’s right to be heard.

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

Amnesty International reports court delays concerning slavery cases.⁹⁹ Whether time limits on proceedings in children’s cases are met varies according to the region.¹⁰⁰

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

⁸⁹ Ibid. Article 109.

⁹⁰ Ibid. Article 110.

⁹¹ Ibid., Article 115.

⁹² Ibid. Article 88.

⁹³ Ibid. Article 105.

⁹⁴ Ibid. Article 100.

⁹⁵ Ibid.

⁹⁶ Ibid. Article 91.

⁹⁷ Ibid. Article 93.

⁹⁸ Ordinance 2005-015 on the judicial protection of children, Article 127.

⁹⁹ “ Court cases were subject to long delays. Between 2010 and the end of 2014, at least six cases of slavery were submitted to the Public Prosecutor, but no ruling had been made by the end of 2014.”, available at: <https://www.amnesty.org/en/countries/africa/mauritania/report-mauritania/>

¹⁰⁰ Maitre Mactar Diassi, *Evaluation report on the application of the Ordinance on the judicial protection of children*, UNICEF Mauritanie 2009.

Individuals or organisations may appeal first instance decisions from all courts (civil, administrative and criminal)¹⁰¹ to the Court of Appeals and then to the Supreme Court.¹⁰²

Ordinance 2005-015 on the judicial protection of children provides for the creation of a specialised court of appeal for children and a specialised chamber inside each regular Court of Appeal. Nevertheless, it seems that the specialised Court of Appeal has not been created.¹⁰³ Currently, inside the Court of Appeals, a special chamber (“*chambre pénale des mineurs*”) deals with appeals of decisions of children’s tribunals with jurisdiction over “*délits*” and children’s tribunals with jurisdiction over “*contraventions*” (“*Juridictions correctionnelles et de police pour enfants*”) and Children’s Criminal Courts (“*Cour criminelle pour enfants*”). The right to appeal can be exercised by the child, the legal representative, or the Public Prosecutor. However, there is no specialised prosecutor to bring appeals in children’s courts and tribunals, therefore, it is rarely used.¹⁰⁴ Only the legal representatives can appeal decisions from investigative judges.¹⁰⁵

In order to appeal to the Supreme Court, one must normally make a deposit (“*consignation*”) but children (under 18s) are exempt.¹⁰⁶

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?

According to a 2014 report by the US Department of State, “the judiciary was not autonomous” and the “executive branch continued to exercise significant influence over the judiciary through its ability to appoint and remove judges”.¹⁰⁷ Furthermore, “NGO representatives stated they collaborated with the court, adding it was not impartial”.¹⁰⁸ Another report states that the “system is strongly influenced by rulings and settlements of tribal elders based on Shariah and tribal regulations”.¹⁰⁹

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

See part IV.H above.

¹⁰¹ Code of Civil, Commercial and Administrative Procedure, Article 167.

¹⁰² See *Ibid.*, Article 11 (“The proceedings before the Supreme Court is that under the Code of civil, commercial, administrative Procedure and the Criminal Procedure Code or any other statutory provision.”); see also US State Department, ‘Mauritania: 2013 human rights report’ (explaining the appeal options for court decisions on human rights violations).

¹⁰³ Pursuant to Maitre Mactar Diassi, *Evaluation report on the application of the Ordinance on the judicial protection of children*, UNICEF Mauritanie 2009.

¹⁰⁴ *Ibid.*, page 16.

¹⁰⁵ Ordinance 2005-015 on the judicial protection of children, Article 121.

¹⁰⁶ Code of Criminal Procedure, Article 513.

¹⁰⁷ US State Department, ‘Mauritania: 2014 human rights report’, available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236382>.

¹⁰⁸ *Ibid.*

¹⁰⁹ Worlmark Encyclopedia of Nations , 2007, available at: <http://www.encyclopedia.com/topic/Mauritania.aspx>

- 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.

Traditional and customary courts

The current Mauritanian legal system incorporates French civil Law and Sharia Law. Traditional and customary courts exist at the regional level in Mauritania. They are not regulated by the law, but their decisions can be validated by Moughataa Courts.¹¹⁰

The vast majority of disputes are resolved in informal/customary forums at family, village and clan levels according to Muslim customs. The bulk of matters dealt with informally relates to personal status. The Moughataa Court may use its conciliation powers to uphold amicable settlements, on matters within its competence, arrived at or out of court by the Mouslihs, that is, traditional Muslim adjudication authorities.¹¹¹

The interplay between the positive law and Sharia law may complicate any judicial proceeding. For example, a case brought by a woman may receive different treatment than if it were brought by a man.¹¹² Additionally, courts may rely on Sharia norms being invoked by a court, in addition to any positive law.¹¹³ As one author notes on the conflict between Islamic norms and implementing the CRC: "A significant proportion of the population, government officials as well as members of NGOs and civil society organisations consider human rights treaties of the United Nations as a foreign Western imposition and at variance either with Islamic values or Islamic culture, custom and tradition."¹¹⁴ This creates an additional obstacle to using the CRC to enforce the rights of the child.

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

¹¹⁰ Zelezeck Nguimatsa Serge.

¹¹¹ Ordinance 2007/006, Article 58.

¹¹² See US State Department, 'Mauritania: 2013 human rights report' ("Law and procedure are grounded in sharia, and courts did not treat women equally in all cases").

¹¹³ Zelezeck Nguimatsa Serge, section 1.1.

¹¹⁴ *Protecting the World's Children*, pp. 189-90.