

ACCESS TO JUSTICE FOR CHILDREN: MOROCCO

This report was produced in July 2014. Child Rights International Network (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?

Morocco ratified the CRC by Decree No. 1-93-363 of 21 November 1996, which was published in the official gazette no. 4440 on 19 December 1996. Morocco, through article 19 of the Constitution, has committed itself to “international conventions and pacts duly ratified by Morocco and this, with respect for the provisions of the Constitution, of the permanent characteristics and of the laws of the kingdom”.

Morocco has ratified or acceded to most international human rights instruments, including the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography and the Optional Protocol to the CRC on the involvement of children in armed conflict.¹

B. Does the CRC take precedence over national law?

According to the preamble of the Constitution, ratified international treaties take precedence over national law upon publication.² However, according to commentators, the Constitution does not clearly establish the supremacy of international treaties over domestic law.³ Nevertheless, it is the settled judicial practice of the Supreme Court that when there is a contradiction between a domestic law and an international treaty, the latter prevails, provided that it has been published in the official gazette.⁴

C. Has the CRC been incorporated into national law?

Yes. As a monist country, international treaties duly incorporated by publication in the official gazette, such as the CRC (see part I.A above), are part of domestic law.⁵

The Government of Morocco interprets the provisions of article 14, paragraph 1, of the CRC in light of the Constitution of 7 October 1996 and the other relevant provisions of its domestic law, as follows:

Article 6 of the Constitution, which provides that Islam, the State religion, shall guarantee freedom of worship for all.

Article 54, paragraph 6, of Act 70-03 (the Family Code) which stipulates that parents owe their children the right to religious guidance and education based on

¹ See ‘Common core document forming part of the reports of States parties: Morocco’, HRI/CORE/MAR/2012, 10 October 2012, pages 7 and 8.

² Constitution of Morocco, adopted at the referendum of 1 July 2011, preamble.

³ http://www.idea.int/publications/the_2011_moroccan_constitution/.

⁴ See, for example, decisions No. 49 of 1 October 1976, No. 5 of 3 November 1972 and No. 162 of 3 August 1979: <http://www.redress.org/downloads/country-reports/Morocco.pdf>.

⁵ <http://www.redress.org/downloads/country-reports/Morocco.pdf>.

good conduct.

In the context of the new Constitution, Morocco maintains its position as set out in that declaration.

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

It is unclear if the CRC can be directly enforced in Moroccan courts as the Constitution is silent on that point. However, it can be argued that given the CRC has been incorporated into national law, it can successfully be enforced before local courts.

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

No cases from Moroccan courts citing the CRC could be found.⁶

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 preamble to the Constitution declares that the Kingdom of Morocco “fully adheres to the principles, rights and obligations emanating from the charters of [international] organisations as it reaffirms its determination to abide by the universally recognised human rights.” Since the rights of children are deemed to be an integral part of human rights, a child shall have access to the same judicial remedies as are open to any citizen in the area of human rights. In view of the age of the child, rules and laws dealing with children in relation to justice provide for their support through the presence of a lawyer and/or those legally responsible for the child.⁷

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

In relation to civil cases, children (under 18) are not permitted to bring complaints and seek redress before a court or any other authority by themselves, and instead require parental consent.⁸ Claims would be filed by the child's legal tutor who, according to article 236 of the Family Code, would be the child's father.

Any person may lodge a complaint about a crime to the criminal investigation officers or the public prosecutor; there is no minimum age for bringing a complaint, and the

⁶ The website of the Ministry of Justice does not have a database that allows users to search according to subject matter. It publishes selected judgments in relation to each jurisdiction. No cases related to the CRC are available on the website. <http://adala.justice.gov.ma/AR/Jurisprudence/Jurisprudence.aspx>

⁷ *Second periodic report of Morocco to the UN Committee on the Rights of the Child*, CRC/C/93/Add.3, 12 February 2003, para. 70. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f93%2fAdd.3&Lang=en.

⁸ *Third and fourth periodic report of Morocco to the UN Committee on the Rights of the Child*, CRC/C/MAR/3-4, 5 August 2013, para. 61(f). Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMAR%2f3-4&Lang=en.

public prosecutor's office and officers of the criminal investigation department are legally bound to receive all complaints and accusations. A victim of a crime also has the right to institute criminal proceedings.⁹

As regards the age at which children are able to participate in administrative or legal procedures affecting their interests, child complainants can in principle act as such only through their official guardian according to article 231 of the Civil Code. Children are nevertheless able to take part in certain procedures affecting them by being heard or expressing their opinion (in relation to custody or *kafalah*).¹⁰

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

Such cases would be brought by the child's legal tutor / guardian (see part II.B above).

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

Article 118 of the Constitution provides that access to justice is guaranteed to every person for the defence of their rights and of their interests protected by the law. Under Article 121, when provided by the law, justice is free for those who do not have the resources sufficient to bring a claim before a court.

Article 1 of Law 514-65 of 1 November 1966 on judicial assistance provides that legal assistance should be accorded in all types of litigation to persons of Moroccan nationality who can prove that their lack of financial resources prevents them from exercising their right to defend themselves before a court. This, however, excludes legal counselling i.e. consultation with legal professionals. Legal aid encompasses all the legal costs the beneficiary may incur (e.g. appointment of a lawyer, experts, translators, execution costs) and excuses the beneficiary from paying any tax due in connection with the commencement of proceedings. Legal aid applies to all cases, and is granted for the entirety of the legal proceeding, from representation before court up until execution of the decision.¹¹

In practice, however, the legal aid system is restricted to criminal matters.¹²

There is no centralised legal aid service in Morocco; rather, applicants must apply to the court relevant to their case (see part IV.B below).

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)?

The Code of Civil Procedure, the Criminal Procedure Code and the Family Code do not provide for any additional conditions or limits on children or chosen legal

⁹ Criminal Procedure Code, articles 56 and 93; *Third and fourth periodic report of Morocco to the UN Committee on the Rights of the Child*, para. 61.

¹⁰ Ibid.

¹¹

<http://www.probonoinst.org/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>

¹² Ibid.

representatives bringing cases.

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

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

A civil claim may be brought before a Court of First Instance by written submission by the child's representative at the registrar of the court.¹³

Any person may lodge a complaint about a crime to the criminal investigation officers or the public prosecutor. A victim of a crime also has the right to institute criminal proceedings. This can be done by summoning the alleged perpetrator directly before the competent court for cases relating to minor offences. For more serious offences, the victim has to bring a claim before the examining judge (*juge d'instruction*) by becoming a *partie civile*.¹⁴ According to the Code of Criminal Procedure, when an offence is committed against a child, the judge may take up the case on being informed of it, or the case may be referred to him/her by the public prosecutor.¹⁵

According to article 133 of the Constitution, the Constitutional Court is competent to review the constitutionality of a legal provision if it has been raised before a court by one of the parties whose rights or freedoms guaranteed by the Constitution have been infringed. Under article 19 of the Constitution, men and women enjoy "the rights and freedoms of civil, political, economic, social, cultural and environmental character, enounced in [Title II of the Constitution (Fundamental Freedoms and Rights)] and in the other provisions of the Constitution, as well as in the international conventions and pacts duly ratified by Morocco and this, with respect for the provisions of the Constitution, of the constants... and of the laws of the Kingdom".

Actions and activities of public persons and decisions of administrative authorities may be challenged in administrative courts.¹⁶ Article 77 of the Code of Obligations and Contracts provides that "any act whatsoever perpetrated by a person who, without being authorised by law, knowingly and intentionally causes material or moral injury to another person obliges its perpetrator to redress that injury, once it has been established that the act is the direct cause of the injury." Public officials are personally responsible for injury caused by their bad faith or by serious errors committed in the performance of their duties.¹⁷ The state is liable for any injury caused directly by the functioning of their departments and by errors committed by their employees in the course of their duties.¹⁸

A child whose rights have been violated may also complain to the National Human Rights Council (CNDH)¹⁹ or the Ombudsman. The CNDH, through its Protection and Assistance for Victims Department, receives and investigates complaints from

¹³ Civil Procedure Code, article 31.

¹⁴ Criminal Procedure Code, articles 56 and 93.

¹⁵ *Third and fourth periodic report of Morocco to the UN Committee on the Rights of the Child*, para. 61.

¹⁶ *Second periodic report of Morocco to the UN Committee on the Rights of the Child*, para. 47.

¹⁷ Code of Obligations, article 80.

¹⁸ *Ibid.*, article 79; <http://www.redress.org/downloads/country-reports/Morocco.pdf>.

¹⁹ The CNDH was established on 1 March 2011 by Dahir No. 1.11.19 dated 18 Rabii I 1431 H. It replaced the Consultative Council on Human Rights. For more information, see: <http://www.cndh.org.ma>.

individuals whose rights have been violated, and submits an advisory opinion to the competent authority concerning the approach that needs to be undertaken. The Ombudsman is empowered to conduct inquiries or investigations, initiate disciplinary proceedings, or act as public prosecutor.²⁰ Both institutions may take up violations of human rights on their own initiative.²¹

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

In civil cases, a Court of First Instance is entitled to award damages to the child or his/her tutor (father) for breaches of contractual obligations or for damage caused in tort.²²

In criminal cases, the Child Judge can either order the placement of the child under the supervision of a “trusted” person, specialised institution or public interest institution specialised in child care until the judge issues his/her judgment.²³ Based on the recommendation of the prosecutor, the Child Judge can also order the placement of the child in a specialised institution or public interest institution or association specialised in child care, in order to protect the child.

Article 134 of the Constitution provides that in the event a legal provision is declared unconstitutional, it may not be promulgated or implemented, and is deemed repealed by the decision of the Constitutional Court.

Administrative courts may award compensation for damages caused by actions and activities of public persons, and other remedies for illegal decisions of administrative authorities.²⁴

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?

Article 32 of the Civil Procedure Code provides that the claim must contain, amongst other information, the name of the claimant.

The Code of Civil Procedure, the Criminal Procedure Code and the Family Code do not contain any provisions governing multi-party claims or the possibility of bringing anonymous claims.

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

The Code of Civil Procedure, the Criminal Procedure Code and the Family Code do not provide for the possibility of a form of 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?

²⁰ <http://www.theioi.org/news/morocco-new-ombudsman-institution>.

²¹ *Third and fourth periodic report of Morocco to the UN Committee on the Rights of the Child*, para. 35.

²² Civil Procedure Code, articles 77, 259 and 263.

²³ Criminal Procedure Code, article 510.

²⁴ *Second periodic report of Morocco to the UN Committee on the Rights of the Child*, para. 47.

Although Moroccan law does not contain specific legislation or a provision allowing non-governmental organisations (NGOs) to file challenges to potential children's rights violations or to intervene in cases that have already been filed, Article 111 of the Civil Procedure Code provides that applications for interventions can be accepted from those who have an interest in the dispute.

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?

In civil matters, claims have to be filed before a Court of First Instance. The claim must contain:

- the name, address and profession of both the claimant and his lawyer;
- a summary of the claim and the arguments relied upon; and
- documents on which the claimant relies.²⁵

Criminal cases are commenced by lodging a complaint about a crime to the criminal investigation officers or the public prosecutor. Alternatively, a victim of a crime can institute criminal proceedings by summoning the alleged perpetrator directly before the competent court for minor offences, or by bringing a claim regarding more serious offences before the examining judge (*juge d'instruction*) by becoming a *partie civile*.²⁶

Administrative cases may be brought before the competent administrative court which has jurisdiction to hear actions for the redress of injuries caused by the acts or activities of public officials.²⁷ There are seven administrative courts in the main provinces of the Kingdom.²⁸

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

See part II.D above.

Each court has a special "bureau" which examines whether the applicant is eligible for legal aid, having regard to the financial resources of the applicant and the circumstances of the case. The applicant must provide a certificate from the *pacha* or the *caid* (town clerk) certifying that he/she has insufficient funds and should be eligible for legal aid. In the case of a successful application, the bureau must, within 3 days of its decision, inform the president of the relevant court/tribunal, who will then inform the law society,

²⁵ Civil Procedure Code, article 32.

²⁶ Criminal Procedure Code, articles 56 and 93; *Third and fourth periodic report of Morocco to the UN Committee on the Rights of the Child*, para. 61.

²⁷ Act establishing Administrative Courts, Law 41-90 of 11 July 1991, chapter II, article 8; <http://www.redress.org/downloads/country-reports/Morocco.pdf>

²⁸ <http://www.lexadin.nl/wlg/courts/nofr/oeur/lxctmar.htm#Administrative%20Appellate%20Court>.

which will appoint a lawyer (*avocat commis d'office*). The successful applicant for legal aid in a court of first instance will not automatically receive legal aid where his/her case is appealed, but must reapply before each court/tribunal.²⁹

- 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 Moroccan Association of Human Rights (*Association Marocaine des Droits Humains*)³⁰ provides information on legal aid services. It can be contacted at:

Appt N°1, Imm 6
Rue Aguous, Av. Hassan II
Les Orangers (Près de Auto-Hall) Rabat Ville, Maroc
www.amdh.org.ma
Telephone: +212 037 73 09 61
Email: amdh1@mtds.com, amdh_site@yahoo.fr

The Moroccan government has created the National Observatory of Children's Rights (*Observatoire National des Droits de L'Enfant*) whose purpose is to ensure that the CRC's provisions are implemented. This organisation can be reached on a toll free line: 080002511.

The UNDP Office in Morocco issued a legal guide for children's rights which lists a certain number of associations which focus on the protection of children's rights (see Schedule).

- 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?

The limitation period for criminal proceedings is set at 20 years from the date a serious crime was committed, five years in the case of lesser offences, and two years in the case of minor offences.³¹

- 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?

In civil cases, the *Conseiller Rapporteur* (equivalent of an investigation judge) is allowed to order the production of documents, hear witnesses, appoint experts, etc.³² In criminal matters, the investigating judge can listen to witnesses,³³ obtain copies of telephone communications,³⁴ confront the victim with the suspect,³⁵ or appoint an

²⁹ <http://www.a4id.org/sites/default/files/u3/A4ID%20Legal%20AID%20Guide.pdf>

³⁰ www.amdh.org.ma

³¹ *Third and fourth periodic report of Morocco to the UN Committee on the Rights of the Child*, para. 61.

³² Civil Procedure Code, articles 45 and 334.

³³ Criminal Procedure Code, article 117.

³⁴ *Ibid.*, article 108.

³⁵ *Ibid.*, article 134.

expert.³⁶

The age from which children can testify in court has been set by legislation at 16 years in the case of civil proceedings. In criminal proceedings, the Code of Criminal Procedure allows for the hearing of testimony by children under the age of 18 without requiring them to take an oath, at both the investigation³⁷ and trial stages.³⁸ When minors are interviewed by the criminal investigation department, this takes place in the presence of their guardian.³⁹

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

There is no reliable information on how long it takes to get a decision from the court. A broad estimate would be one year to obtain a decision from the court. However, it has been reported that the Moroccan court system is hindered by “significant delays and backlogs”.⁴⁰

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

In civil cases, an appeal can be lodged before the Court of Appeal within 30 days, or 15 days in judgments issued in family affairs.⁴¹ These periods start running from the date on which the judgment rendered in first instance has been notified to the party concerned. An appeal before the Cassation Court can also be filed within 30 days from the date of notification of the judgment to the party concerned.⁴²

In criminal cases, the appeal before the Court of Appeal must be lodged within 10 days from the date on which the judgment was notified to the concerned party.⁴³ An appeal before the Court of Cassation must be filed within 10 days from the date on which the appeal judgment has been rendered.⁴⁴

Decisions by administrative courts at first instance can be appealed to the administrative appeal courts.⁴⁵

- H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Although the public opinion is not exposed to child rights, the public opinion in Morocco is sensitive to cases which involve child molestation or murder.

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

³⁶ Ibid., article 194.

³⁷ Ibid., article 123.

³⁸ Ibid., article 332; Second periodic report of Morocco to the UN Committee on the Rights of the Child, para. 573.

³⁹ *Third and fourth periodic report of Morocco to the UN Committee on the Rights of the Child*, para. 61.

⁴⁰ <http://www.moroccoboard.com/news/1202-morocco-rule-of-law-assessment>.

⁴¹ Civil Procedure Code, article 134.

⁴² Ibid., article 358.

⁴³ Criminal Procedure Code, article 400.

⁴⁴ Ibid., article 527.

⁴⁵ <http://www.nyulawglobal.org/globalex/morocco1.htm>.

Parents of victims of sexual violence or abuse are often reluctant to sue the sexual offenders as they are ashamed to bring a claim and reveal what happened to their child in public. Some parents also avoid bringing claims in order to avoid harming their children socially.

- 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.

Several NGOs have raised the lack of judicial independence as an area of concern. According to a 2013 Freedom House report, the "judiciary is not independent, and the courts are regularly used to punish opponents of the government".⁴⁶ Following a 2013 report entitled 'Reforming the judiciary in Morocco', the International Commission of Jurists called for "comprehensive and meaningful reform of the judiciary" aimed at "putting an end to any form of undue influence or control by the executive over judicial matters".⁴⁷ It also stated that reform of the judiciary system must include the Office of the Public Prosecutor.⁴⁸ A 2013 Human Rights Watch report indicates that Morocco's courts convict people using evidence that defendants claim is obtained through torture or falsified.⁴⁹ The justice system was listed as one of the most corrupt sectors in the country by the 2013 World Corruption Index.⁵⁰

In September 2013, the government unveiled a reform plan for the judicial system, which includes more resources and training for judges, prosecutors and lawyers, greater transparency in appointments and penalties on members of the judiciary, and the establishment of a high council of the judiciary. The plan follows up on measures in the new 2011 Constitution to make the judiciary more independent.⁵¹

This report (produced in July 2014) is provided for educational and informational purposes only and should not be construed as legal advice.

⁴⁶ <http://freedomhouse.org/report/freedom-world/2013/morocco#.U71WCfhx0xA>.

⁴⁷ <http://www.icj.org/morocco-judicial-reform-must-be-comprehensive-and-meaningful/>.

⁴⁸ Ibid.

⁴⁹ <http://www.hrw.org/node/116335/>.

⁵⁰ <http://news.yahoo.com/morocco-outlines-ambitious-judicial-reform-plan-090943283.html>.

⁵¹ Ibid.

Schedule

- **La Ligue Marocaine pour la Protection de l'Enfance**

B.P. 5109, Route de Akrache, Hay Annahda II, Souissi

Tél: 037 75 96 75

- **Association Bayti**

Km 12,5, route de Rabat, Aïn Harouda, Sidi El Bernoussi, Casablanca

Tél: 022 75 69 65/66, Fax: 022 75 69 66

- **Association Darna**

9, rue Al Boughaz, Tanger

Tél: 039 33 36 32, Fax: 039 33 35 61

- **Association Al Amal**

19, avenue 9 avril, Annakhil, Casablanca

Tél: 022 80 90 50, Fax: 022 82 06 83

- **Centre Houqouq Annas**

Immeuble 38, 1^{er} étage, avenue Chefchaouni, Al Madina Al Jadida, Fès

Tél: 035 94 35 11, Fax: 035 94 09 81

- **Association Marocaine d'aide aux Enfants en Situation Précaire**

Avenue Aoulad Mourab, Youssofia, Rabat

Tél: 037 75 27 74, Fax: 037 65 14 09

- **Association Insaf**

Route Azemour, 26 rue n°8, quartier Annassim, Casablanca

Tél: 022 94 20 80, Fax : 022 36 21 74

- **Association Al Karam pour la Protection des Enfants en Situation Difficile**

88, rue Moussa Bnou Nousseir, quartier Oued El Bacha, Safi

Tél: 024 62 47 78

- **Association Saât Al Farah**

5, rue Abou Abbas El.Jirari, Casablanca

Tél: 022 24 40 37, Fax :022 24 50 69

- **Association Annakhil**

5, rue Abou Abbas El Jarraoui, Marrakech

Tél: 024 30 67 09