

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

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

Niger ratified the UN Convention on the Rights of the Child (the “CRC”) on 30 September 1990 without any reservations or declarations.<sup>1</sup>

Both the negotiation and ratification of international agreements are entrusted by Niger’s Constitution (the “Constitution”) to the President of the Republic.<sup>2</sup> However, agreements relating to national defense, international organisations or those conventions purporting to modify internal laws may be ratified only following a law authorising their ratification.<sup>3</sup> All international conventions and treaties regularly ratified by Niger take precedence over national law.<sup>4</sup>

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

The CRC has been regularly ratified and published and thus takes precedence automatically over national written and customary law, as well as executive decrees and actions.<sup>5</sup> However it is not entirely clear whether it would also prevail over a conflicting provision of the Constitution. In theory, it is not possible to have a treaty provision which contradicts the Constitution, because before ratification of any treaty, the Constitutional Court is seized to check the constitutionality of the treaty and, if there are contradicting dispositions, the Constitution is amended.<sup>6</sup>

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

According to the terms of Article 171 of the Constitution, the CRC has automatically gained precedence over national law upon its ratification, and does not need to be incorporated into national law.<sup>7</sup> However, conflicting national law—whether statutory, customary or

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<sup>1</sup> *Ratification Status of the Convention on the Rights of the Child*, UNITED NATIONS TREATY COLLECTION (26 November 2014, 5:01 AM), [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en).

<sup>2</sup> Constitution of the Seventh Republic of Niger, art. 168, available at : [https://www.constituteproject.org/constitution/Niger\\_2010.pdf](https://www.constituteproject.org/constitution/Niger_2010.pdf).

<sup>3</sup> Ibid, art. 169.

<sup>4</sup> Ibid, art. 171.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid, art. 170.

<sup>7</sup> Ibid, art. 171.

religious—continues to be applied, despite the CRC.<sup>8</sup> Although a Children’s Code has been drafted, the Government has neither examined it nor submitted it to the National Assembly for adoption.<sup>9</sup>

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

The CRC has been enforced directly in a few civil adoption cases.

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

There are few reported instances of the Convention being cited by the Courts of First Instance.<sup>10</sup> In adoption cases, they have quoted its mandatory language that “in all decisions . . . the interest of the child shall be a primary consideration.”<sup>11</sup> Several such cases state directly that the standards set by the CRC (e.g., for adoption, the “best interests of the child” standard) control the outcome of the case, even if the requirements of the Civil Code are not met.<sup>12</sup>

Nonetheless, the Committee on the Rights of the Child has noted that traditional societal attitudes, entrenched in customary law, impede judicial enforcement of the CRC.<sup>13</sup> Although Niger courts have cited the CRC in a handful of adoption cases, there are no other published cases involving other areas of law that rely on it.

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?

In its report to the UN Committee on the Rights of the Child, Niger has stated that children, just like other citizens, are entitled to file complaints

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<sup>8</sup> *Second periodic report of Niger to the UN Committee on the Rights of the Child*, CRC/C/NER/2, 20 November 2008, para. 51a. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fNER%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fNER%2f2&Lang=en).

<sup>9</sup> *Prohibiting corporal punishment of children in West and Central Africa - Progress Report*, 2014, p.46. Available at : <http://www.endcorporalpunishment.org/pages/pdfs/reports/West%20and%20Central%20Africa%202014%20EN.pdf>.

<sup>10</sup> See: Tribunal de Première Instance de Niamey, *Jugement civil N° 218*, 2008 TPI 92 (JN), 2 April 2008. Available on JURICAF at: <http://www.juricaf.org/arret/NIGER-TRIBUNALDEPREMIEREINSTANCEDENIAMEY-20080402-2008TPI92JN>.

<sup>11</sup> See: Tribunal de Première Instance de Niamey, *Jugement civil N° 12*, 2006 TPI 12 (JN), 18 January 2006. Available on JURICAF at: <http://www.juricaf.org/arret/NIGER-TRIBUNALDEPREMIEREINSTANCEDENIAMEY-20060118-2006TPI12JN>.

<sup>12</sup> See, e.g.: Tribunal de Première Instance de Niamey, *Jugement civil N° 218*, 2 April 2008. .

<sup>13</sup> UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Niger*, CRC/C/NER/CO/2, 18 June 2009, para. 7. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fNER%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fNER%2fCO%2f2&Lang=en).

with the civil, administrative, or criminal courts when their rights are violated.<sup>14</sup>

However, Niger lacks a Code of Civil Procedure, which even the government has admitted “puts legal practitioners and litigants in an uncomfortable situation.”<sup>15</sup> Lawyers and litigants routinely refer to a variety of sources, including the French Code of Civil Procedure and “scattered procedural texts” in order to justify bringing suit.<sup>16</sup>

The Code of Criminal Procedure (the “Code”) provides some general guidance. The Code states that any victim of a crime can file a complaint which will be transmitted to the Public Prosecutor for legal action. The Code also provides that a civil action arising from a crime or other offense “belongs to all who have personally suffered damage directly caused by the offense”.<sup>17</sup> Children can seize the juvenile court judges in the event of danger to their safety, health or morality.<sup>18</sup>

It is possible for a party to a legal process in any court to challenge the constitutionality of a law. The Court will then forward it to the Constitutional Court.<sup>19</sup> As the Constitution includes a Bill of Rights, individuals can challenge violations of their rights by a law.

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?

The Civil Code sets the age of civil majority (and legal capacity) at 21 years old,<sup>20</sup> or at marriage. The minimum age for marriage is 18 for men, and 15 for women.<sup>21</sup> Children are under their parents’ authority until civil majority; when the parents are married, only the father holds this authority.<sup>22</sup>

Research has not been able to find any source referring to a civil action being brought by a child. While international organisations and parents may bring such cases on behalf of children,<sup>23</sup> there is no legal provision or rule of procedure granting minors standing before the courts.

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<sup>14</sup> *Second periodic report of Niger to the UN Committee on the Rights of the Child*, CRC/C/NER/2, 20 November 2008, para. 59.

<sup>15</sup> *Vers l’adoption d’un code de procedure civile au Niger*, AGENCE DE PRESSE AFRICAINE (21 March 2013), available at: <http://news.aniamey.com/h/667.html>.

<sup>16</sup> *Ibid.*

<sup>17</sup> Code de Procédure Pénale, Book I, art. 2. Available at: [https://www.unodc.org/tldb/pdf/Niger/Niger\\_CPP.pdf](https://www.unodc.org/tldb/pdf/Niger/Niger_CPP.pdf).

<sup>18</sup> “*La protection des mineurs devant les juridictions pénales*”, Ministry of Justice, available in French at : <http://www.justice.gouv.ne/?q=node/100>.

<sup>19</sup> Constitution, art. 132.

<sup>20</sup> Code Civil, Book I, Title V, Chapter I, art. 144. Available in French at: [http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Niger/niger\\_civilcode\\_2005\\_fr.pdf](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Niger/niger_civilcode_2005_fr.pdf).

<sup>21</sup> Code Civil, Book I, Title XI, Chapter I, art. 488.

<sup>22</sup> Code Civil, Book I, Title IX, art. 372-373.

<sup>23</sup> Country Reports on Human Rights (Niger), U.S. DEPT OF STATE (2013), available at : <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220144#wrapper>.

Despite this uncertainty, it is customary that male citizens exercise authority over their communities in most of Niger's society, and fathers exercise authority over their families. Such authority likely prevents children from being aware of - much less pursuing - legitimate causes of action under the CRC and other international legal norms guarding them from abuse.<sup>24</sup>

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

It is likely that infants and young children must be represented by their parents or by an appointee of the court, as the Civil Code provides for expansive parental authority over children until they reach the age of majority.<sup>25</sup>

Research did not identify what is the common practice regarding legal representation of those children who are too young to represent themselves.

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

Niger passed an Act in 2011 setting up a public administration institution called the National Agency for Legal and Judicial Assistance ("NALJA"). This new institution is to be in charge of handling legal assistance requests.<sup>26</sup> Officially launched on 27 March 2015, it has met significant resistance from Niger lawyers bar association, which sees in it competition for the lawyers' income (by providing free legal assistance).<sup>27</sup> Previously, no legal provisions governed the access to legal assistance for individuals.

The 1999 Order states that minors involved in legal proceedings must be assisted by a lawyer or an officially designated public defender.<sup>28</sup> It is however unclear whether or not this legal assistance is free or subsidised. The government has affirmed that non-governmental organisations ("NGOs") may provide legal assistance to children and other claimants to vindicate their rights.<sup>29</sup>

E. Are there any other conditions or limits on children or chosen legal

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<sup>24</sup> *Ibid.*

<sup>25</sup> Code Civil, Book I, Title IX, art. 371 et seq.

<sup>26</sup> Statutes of the NALJA, 13 december 2012, available in French at : <http://www.justice.gouv.ne/sites/default/files/statuts%20de%20l%E2%80%99Agence%20Nationale%20de%20l%E2%80%99Assistance%20Juridique%20et%20Judiciaire.pdf>.

<sup>27</sup> "Création de l'Agence nationale d'assistance juridique et judiciaire: L'Ordre des avocats s'insurge et menace de saisir la Commission de l'UEMOA", Niger Diaspora, 8 April 2015, available in French at : <http://nigerdiaspora.net/les-infos-du-pays/politique-niger/politique-niger/item/70166-creation-de-l-agence-nationale-d-assistance-juridique-et-judiciaire-l-ordre-des-avocats-s-insurge-et-menace-de-saisir-la-commission-de-l-uemoa>.

<sup>28</sup> *Second periodic report of Niger to the UN Committee on the Rights of the Child*, CRC/C/NER/2, 20 November 2008, para. 366.

<sup>29</sup> *Ibid*, para. 61.

representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

Niger maintains that children may bring claims under the CRC or other international legal instruments in its courts.<sup>30</sup> As explained above, it is very likely that, in practice, parents (in particular fathers) must authorise suits brought by or on behalf of their children.<sup>31</sup>

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

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

Parties may bring civil cases claiming violations of both domestic and international law in the courts.<sup>32</sup> As there is no Civil Procedure Code, lawyers and litigants refer to a variety of texts on the procedures to follow.<sup>33</sup>

According to the Code of Criminal Procedure, a civil action arising from a crime or other offense "belongs to all who have personally suffered damage directly caused by the offense".<sup>34</sup> Civil cases may be brought against defendants concurrently with a criminal case brought by the public authorities.<sup>35</sup> Alternatively, civil cases may be brought separately of such a criminal case. However in this situation the resolution of the civil case will be conditioned by the resolution of the criminal case.<sup>36</sup>

As regards to criminal cases, the Code states that any victim of a crime can file a complaint which will be transmitted to the Public Prosecutor. He will then decide whether legal proceedings can be undertaken. If the Public Prosecutor refuses to pursue the case, the Instruction Judge can choose to go ahead with the handling of the case anyway.<sup>37</sup>

The juvenile courts, who also have jurisdiction over criminal offenses committed by children,<sup>38</sup> can be seized in the case of danger to a child by either the Public prosecutor, the child's parents (without need of agreement from both parents), his guardian or the child himself.<sup>39</sup>

A 2011 law created the position of the Mediator of the Republic ("the

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<sup>30</sup> *Ibid*, para. 59.

<sup>31</sup> See Code Civil, art. 371 et seq.

<sup>32</sup> *Country Reports on Human Rights (Niger)*, U.S. DEP'T OF STATE (2013).

<sup>33</sup> *Vers l'adoption d'un code de procedure civile au Niger*, AGENCE DE PRESSE AFRICAINE (21 March 2013).

<sup>34</sup> Code de Procédure Pénale, Book I, art. 2.

<sup>35</sup> Code de Procédure Pénale, Book I, art. 3.

<sup>36</sup> Code de Procédure Pénale, Book I, art. 4.

<sup>37</sup> Code de Procédure Pénale, Book I, Title III, Chapter I, art. 80-81.

<sup>38</sup> *Second periodic report of Niger to the UN Committee on the Rights of the Child*, CRC/C/NER/2, 20 November 2008, para. 365.

<sup>39</sup> "La protection des mineurs devant les juridictions pénales", Ministry of Justice.

Mediator”). The Mediator is an independent administrative authority, nominated by the President of the Republic. His main mission is to resolve disputes between individuals and the administration, and to ensure the respect of citizens’ rights. The Mediator can be seized of issues relating to children’s rights, through complaints or by its own will.<sup>40</sup> The Mediator can be seized by any individual or organisation, group of people, foreigners and members of the legislature, as long as the individual making the request is able to prove he has exhausted all ordinary communication procedures with the administration involved in the conflict. The Mediator may also launch investigations by its own accord.<sup>41</sup>

During legal proceedings in any court, an individual can challenge the constitutionality of a law. The court will then postpone its decision and forward the challenge to the Constitutional Court. The Constitutional Court will decide within 30 days.<sup>42</sup>

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>43</sup> All available domestic remedies must have been exhausted before bringing a case to the African Committee.<sup>44</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>45</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>46</sup>

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

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<sup>40</sup> *Rapport d’activités 2011-2013 du médiateur de la République*, June 2014, p. 12. Available in French at: [http://www.aomf-ombudsmans-francophonie.org/fichiers/1417709742\\_Niger-Rapportd%27activit%C3%A9s2011-2013.pdf](http://www.aomf-ombudsmans-francophonie.org/fichiers/1417709742_Niger-Rapportd%27activit%C3%A9s2011-2013.pdf).

<sup>41</sup> Association des Ombudsmans et médiateurs de la Francophonie, “*Médiateur de la République - Niger*”, available in French at : <http://www.aomf-ombudsmans-francophonie.org/recueil.php?fiche=26>.

<sup>42</sup> Constitution, art. 132.

<sup>43</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>.

<sup>44</sup> African Committee of Experts on the Rights and Welfare of the Child, ‘*Communications*’, available at: <http://acerwc.org/the-committees-work/communications>.

<sup>45</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>46</sup> *Ibid.*

on Human and Peoples' Rights ("African Charter").<sup>47</sup> All available domestic remedies must have been exhausted before bringing a case to the African Commission.<sup>48</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>49</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>50</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>51</sup>

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 the Community Court of Justice.<sup>52</sup> This includes acts or inaction of Community Officials which violate the rights of individuals.<sup>53</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>54</sup> There are, however a number of conditions: the complaint must not be anonymous or be pending before another international court,<sup>55</sup> representation by an agent or lawyer is required,<sup>56</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>57</sup> Judgments of the Court of Justice are

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<sup>47</sup> African Charter on Human and Peoples' Rights ("African Charter"), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

<sup>48</sup> *Ibid*, Article 56(5).

<sup>49</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>50</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>51</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>.

<sup>52</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>53</sup> *Ibid*, Article 4; Protocol on the Community Court of Justice, Article 10(c).

<sup>54</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>55</sup> Supplementary Protocol A/SP.1/01/05, Article 4; *Protocol on the Community Court of Justice*, Article 10(d).

<sup>56</sup> Protocol on the Community Court of Justice, Article 12.

<sup>57</sup> Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).



binding on the Member States, Institutions of the Community, individuals and corporate bodies.<sup>58</sup>

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

The Code empowers criminal courts to offer broad compensatory remedies to civil complainants. The court may order compensation to the aggrieved party for bodily and mental harms, as well as property damage.<sup>59</sup> Restitution may also be ordered<sup>60</sup>, and compensation and restitution will take precedence over fines if the defendant has insufficient funds for the totality of his debt.<sup>61</sup> Although research has found no legal text on this subject, we assume that courts are authorized to issue the same remedies in civil proceedings.

In the case of danger to a child, the juvenile court can choose to leave the child with his family; however he will then designate a person or institution to provide guidance to the family and to make sure the child is attending school or working. If the current home situation of the child is not safe, the court will place him with a family member or with an institution. In any case, the court will refer the situation to social services.<sup>62</sup>

The Mediator may only issue recommendations to the administration at fault; however they are not mandatory.<sup>63</sup> Its own activities report states that administrations have generally followed such recommendations.<sup>64</sup>

In the case of a constitutional challenge, if the provision is found unconstitutional it will no longer have the force of law.<sup>65</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?

The Code of Criminal Procedure states that debates in criminal cases are usually public, with the possibility for the judge to decide to make the case into a closed case.<sup>66</sup>

Research has not been able to locate any provision guaranteeing confidentiality to children involved in criminal or civil cases, nor

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<sup>58</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>59</sup> Code de Procédure Pénale, art. 3.

<sup>60</sup> Code Pénal, Book I, Title I, art. 10. Available in French at : [https://www.unodc.org/tldb/pdf/Code\\_Pnal\\_du\\_Niger\\_2003.pdf](https://www.unodc.org/tldb/pdf/Code_Pnal_du_Niger_2003.pdf).

<sup>61</sup> *Ibid*, Book I, Title I, Chapter III, Section II, art. 36.

<sup>62</sup> “*La protection des mineurs devant les juridictions pénales*”, Ministry of Justice.

<sup>63</sup> Association des Ombudsmans et médiateurs de la Francophonie, “*Médiateur de la République - Niger*”.

<sup>64</sup> *Ibid*.

<sup>65</sup> Constitution, art. 132.

<sup>66</sup> Code de Procédure Pénale, Book II, Title I, Chapter VI, art. 293; and Book II, Title II, Chapter I, art. 386.



provisions permitting a challenge to a law or action without naming a specific victim.

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

The Mediator allows for a group of people to seize him in case of a conflict with the administration constituting a violation of their rights.<sup>67</sup>

As Niger has no Civil Procedure Code, it is difficult to find whether civil collective action is possible. Research has found no provision nor case law showing such possibilities.

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?

According to the State's report to the UN Committee on the Rights of the Child, NGOs may assist complainants in bringing legal action for a violation of children's rights. Niger has represented that children may "receive assistance in the event of legal proceedings from NGOs" and other organisations.<sup>68</sup> The U.S. Department of State has reported that "[i]ndividuals or organizations may seek civil remedies for human rights violations."<sup>69</sup> The Mediator also allows for any organisation to bring a case before him.<sup>70</sup>

As Niger has no Civil Procedure Code, it is difficult to find whether NGOs can file a civil case or intervene in one. Research did not find any legal provision or case law showing such possibilities, in civil courts or other courts.

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 magistrate courts (*Tribunal d'Instance*) and the district courts (*Tribunal de Grande Instance*) are the lower level courts with jurisdiction for civil, criminal and administrative cases. The repartition of cases between magistrate courts and district courts is based on the monetary value of the cases filed. For the most serious crimes such as murder, rape

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<sup>67</sup> Association des Ombudsmans et médiateurs de la Francophonie, "Médiateur de la République - Niger".

<sup>68</sup> *Second periodic report of Niger to the UN Committee on the Rights of the Child*, CRC/C/NER/2, 20 November 2008, para. 61.

<sup>69</sup> *Country Reports on Human Rights (Niger)*, U.S. DEP'T OF STATE (2013).

<sup>70</sup> Association des Ombudsmans et médiateurs de la Francophonie, "Médiateur de la République - Niger".

etc, the Assize court (*Cour d'Assises*) is competent.<sup>71</sup>

The appellate courts (*Cour d'Appel*) hear appeals for cases tried by lower courts. The State Court (*Cour d'Etat*) acts as cassation court and is the last domestic resort for cases heard in appeal.

Niger adopted a text (Order n° 99-11 of 14 May 1999) creating juvenile court divisions of at least one judge in every magistrate or district courts.<sup>72</sup> These juvenile court divisions only have jurisdiction on situations where the health, safety or morality of a child - defined as minor of less than 18 years - are in danger, and to try criminal cases where the defendant are children.<sup>73</sup> However, the juvenile courts get allocated very little human and financial resources, and the magistrates are usually not trained in children's issues.<sup>74</sup>

The Constitutional Court reviews the constitutionality of provisions.<sup>75</sup>

In the event of rights violations, civil, criminal and administrative cases may be filed in the magistrate court or the district court.<sup>76</sup> In the specific cases described above, juvenile court judges may also be seized. However, with reports that the courts and in particular the smaller ones are "influenced by family and business ties," child litigants are not likely to receive a full and fair hearing.<sup>77</sup> Since Niger does not have a Code of Civil Procedure, and its government has not passed a Children's Code aimed at implementing the CRC into national law, minor parties cannot be expected to have effective recourse to legal remedies for all violations of their rights.<sup>78</sup>

Without a Code of Civil Procedure, there is no uniform method of filing a case in front of a civil court. The Criminal Procedure Code does authorise filings of civil claims during criminal legal proceedings.<sup>79</sup> Article 4 of the Code states that a civil claim arising from the results of a crime may also be separately filed in civil court; however in this situation the resolution of the civil case will be conditioned by the resolution of the criminal case.<sup>80</sup>

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<sup>71</sup> Niger Ministry of Justice, "Note sur l'organisation judiciaire", available in French at : <http://www.justice.gouv.ne/?q=node/116>. See also, GlobalLex, "REGARD SUR LE SYSTEME JURIDIQUE ET JUDICIAIRE DU NIGER", Nov/Dec 2011, available in French at : [http://www.nyulawglobal.org/globalex/Niger1.htm#\\_3\\_Le\\_syst%C3%A8me](http://www.nyulawglobal.org/globalex/Niger1.htm#_3_Le_syst%C3%A8me).

<sup>72</sup> *Country Reports on Human Rights (Niger)*, U.S. DEPT OF STATE (2013).

<sup>73</sup> *Rapport de la Cour Suprême du Niger sur les mineurs en danger*, available in French at : <http://www.ahjucaf.org/Rapport-de-la-Cour-supreme-du.7219.html>.

<sup>74</sup> *UN Committee on the Rights of the Child, Concluding observations on the second periodic report of Niger*, CRC/C/NER/CO/2, 18 June 2009, para. 80.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Second periodic report of Niger to the UN Committee on the Rights of the Child*, CRC/C/NER/2, 20 November 2008, para. 59.

<sup>77</sup> *Country Reports on Human Rights (Niger)*, U.S. DEPT OF STATE (2013).

<sup>78</sup> *Ibid*, para. 7.

<sup>79</sup> Code de Procédure Pénale, Book I, art. 3.

<sup>80</sup> Code de Procédure Pénale, Book I, art. 4.

For criminal cases, the Code states that any victim of a crime can file a complaint which will be transmitted to the Public Prosecutor and might start criminal legal proceedings.<sup>81</sup>

- 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?

The NALJA office opened in March 2015. However, its statutes do not give details on the conditions of eligibility for legal assistance.<sup>82</sup>

The Code of Criminal Procedure does however provide that if the proceedings were brought about by a complaint, the litigant must shoulder the costs of the procedure - in the absence of legal aid. Failure to do so could result in the “non-admissibility of the complaint.”<sup>83</sup> Furthermore, the Code grants the judge discretion in setting the amount of costs borne by the litigant. This last requirement exposes claimants to greater uncertainty regarding filing requirements, as well as a heightened risk of arbitrariness in the determination of their court costs.<sup>84</sup>

- 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 practising 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?

Niger has indicated that this is possible. In its 2008 Report to the UN Committee, it represented that “remedial action by children is facilitated in some cases by support in the form of description and listening services and assistance in the event of legal proceedings from NGOs.”<sup>85</sup> However, Niger did not specify the extent of this assistance. The U.S. Department of State has stated that international organisations can bring actions to enforce human rights guarantees, but does not mention anything about representing children in particular.<sup>86</sup>

- 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 Code of Criminal Procedure provides for several such periods for bringing criminal charges. For serious crimes, the Code prescribes a

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<sup>81</sup> Code de Procédure Pénale, Book I, Title III, Chapter I, art. 80-81.

<sup>82</sup> Statutes of the NALJA, 13 december 2012.

<sup>83</sup> Code de Procédure Pénale, Book I, Title III, Chapter I, art. 83.

<sup>84</sup> *Ibid.*

<sup>85</sup> *Second periodic report of Niger to the UN Committee on the Rights of the Child, CRC/C/NER/2*, 20 November 2008, para. 61.

<sup>86</sup> *Country Reports on Human Rights (Niger)*, U.S. DEP'T OF STATE (2013).

limitation period of ten years from the date of the commission of the crime.<sup>87</sup> For lesser crimes, that period is of three years<sup>88</sup> and for misdemeanors it is one year.<sup>89</sup>

The Criminal Code states that for international crimes (genocide, crimes against humanity and war crimes) there are no such time limitations.<sup>90</sup>

Research did not find any provision ruling the rules of limitation periods for a civil action. It is not likely that civil actions are bound by the same time periods because of the Code of Criminal Procedure's emphasis on the independence of the civil action from the criminal process.<sup>91</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?

At least in criminal cases, evidence must be admitted where the adverse party has an opportunity to contest it. Any evidence may be admitted at the discretion of the judge.<sup>92</sup>

During the instruction of a criminal case as well as during the trial of lesser crimes and misdemeanors, children can testify, under oath if they are over 16. Children under 16 do not have to take an oath.<sup>93</sup>

During the trial of serious crimes, children under 16 cannot testify under oath unless neither the Public Prosecutor nor one of the parties to the trial objects to it.<sup>94</sup> If any of those individuals opposes it, the presiding judge may still decide to hear the child for informational purposes.<sup>95</sup>

Without a Code of Civil Procedure, however, Niger's civil courts likely decide on a case-by-case basis what evidence must be shown to establish claims under the CRC and other international legal instruments.

Research found no provision ensuring child-friendly procedures.

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

It is possible to ask for emergency measures that provide immediate relief to litigants with claims that implicate significant civil, political and economic rights and interests that are in immediate danger. The judge seized - the presiding judge of the competent court - has the power to order

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<sup>87</sup> Code de Procédure Pénale, art. 7.

<sup>88</sup> *Ibid*, art. 8.

<sup>89</sup> *Ibid*, art. 9.

<sup>90</sup> Code Pénal, Title III, Preliminary Chapter, art. 208.8.

<sup>91</sup> Code de Procédure Pénale, art. 10.

<sup>92</sup> *Ibid*, Book II, Title II, Chapter I, art. 414.

<sup>93</sup> *Ibid*, Book I, Title III, Chapter I, art. 103; and *Ibid*, Book II, Title II, Chapter I, art. 433.

<sup>94</sup> *Ibid*, Book II, Title I, Chapter VI, art. 322-323.

<sup>95</sup> *Ibid*.

temporary protective measures. The case will then have to follow normal procedures and be ruled upon.<sup>96</sup>

The Ministry of Justice website refers to the French Civil Procedure Code provisions that govern even in Niger the rules of this procedure.<sup>97</sup>

However, such expeditious proceedings cannot necessarily be depended upon because of the lack of funding and corruption that continues to hamper efforts to strengthen the judiciary.<sup>98</sup> Indeed, the U.S. State Department specifically noted that “due to the limited number of jurisdictions, staff shortages, and lack of resources, judicial delays left a large number of detainees awaiting trial.”<sup>99</sup> If the government cannot assure criminal defendants a speedy trial, the same system is unlikely to afford speedy process to civil litigants who are challenging government action.

In addition, research found no provision ensuring that cases involving children be expedited.

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

In general, all citizens enjoy the right to appeal adverse judicial decisions in the courts of appeal and on up to the State Court.<sup>100</sup> Serious crimes cases judged in the Assize courts can only be appealed directly to the State Court,<sup>101</sup> which only verifies the correct application of the law. With respect to civil actions, appeals must be brought within two months of the publication of the judicial decision for which the appeal is sought. In criminal matters, that delay is of 10 days.<sup>102</sup> Further, the petition for appeal must be brought before the clerk of the court which issued the contested decision.<sup>103</sup> The defendant (sentenced to prison or to pay compensation), his representant (if applicable) and the person entitled to receive the compensation can all appeal the decision within those time frames.<sup>104</sup>

Adverse decisions rendered by courts in Niger regarding human rights complaints can be appealed to the Court of Justice of the Economic

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<sup>96</sup> Niger Ministry of Justice, “*Les Procédures Judiciaires Rapides*”, available in French at : <http://www.justice.gouv.ne/?q=node/44>.

<sup>97</sup> *Ibid*. See the relevant articles : Code of Civil Procedure, Book II, Title I, Subtitle II, Chapter I, art. 808 to 811. Available in French at : [http://www.legifrance.gouv.fr/affichCode.do;jsessionid=A4197D6B02E9DCE424195B8963C47F16.tpdil\\_a09v\\_2?idSectionTA=LEGISCTA000006149697&cidTexte=LEGITEXT000006070716&dateTexte=20150616](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=A4197D6B02E9DCE424195B8963C47F16.tpdil_a09v_2?idSectionTA=LEGISCTA000006149697&cidTexte=LEGITEXT000006070716&dateTexte=20150616); and in English at : <http://www.legifrance.gouv.fr/Traductions/Liste-des-traductions-Legifrance>.

<sup>98</sup> *Country Reports on Human Rights (Niger)*, U.S. DEP’T OF STATE (2013).

<sup>99</sup> *Ibid*.

<sup>100</sup> Niger Ministry of Justice, “*Les Voies de Recours Judiciaires*”, available in French at : <http://www.justice.gouv.ne/?q=node/45>.

<sup>101</sup> Code de Procédure Pénale, Book II, Title I, Chapter VII, art. 346.

<sup>102</sup> Niger Ministry of Justice, “*Les Voies de Recours Judiciaires*”.

<sup>103</sup> *Ibid*.

<sup>104</sup> *Ibid*; see also Code de Procédure Pénale, Book II, Title II, Chapter II, art. 485.

Community of West African States,<sup>105</sup> the African Commission on Human and Peoples' Rights, and the African Committee of Experts on the Rights and Welfare of the Child (see details on these procedures above in part III.A).

- 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?

As children's rights violations are very rarely reported, there are no cases of backlash against children's rights complainants.<sup>106</sup>

What is more, the lack of judicial independence hampers the ability to detect and investigate such violations in the first place. Judges who exercise their authority to invalidate government actions or investigate important political and business personalities routinely face demotion and censure.<sup>107</sup> Furthermore, low salaries and inadequate training have been leading to judicial corruption.<sup>108</sup>

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

Legal pluralism in Niger poses serious problems for enforcing decisions in favor of a child. The government's laws are not implemented in many communities, which view national legislation as foreign authority.<sup>109</sup> Rather, most rural communities depend on traditional sources of law, which comprise either customary law or Sharia law (the difference between the two becoming more and more blurry). Niger has recognised that this clash between legal systems "leads to the selective application of provisions of the Convention inasmuch as each [community] invokes . . . whichever rules suit it."<sup>110</sup> The persistence of pre-independence customary law, as well as the proliferation of the application of Islamic law in many regions of the country, continues to inhibit the government's efforts to reform the judiciary and enforce national law in local communities.

Furthermore, prospects for enforcement remain low in the face of scant resources committed to the judiciary - especially to the new juvenile courts - by the government. Indeed, implementation of a new Children's Code, which is meant in part to aid enforcement of rights under the CRC, has been delayed because of inadequate budgetary allocations to the departments responsible for drafting it, and because

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<sup>105</sup> *Ibid.*

<sup>106</sup> *Country Reports on Human Rights (Niger)*, U.S. DEP'T OF STATE (2013).

<sup>107</sup> *Ibid.*

<sup>108</sup> Freedom House, "*Freedom in the World 2014 - Niger*", available at : [https://freedomhouse.org/report/freedom-world/2014/niger#\\_mrxVKIM](https://freedomhouse.org/report/freedom-world/2014/niger#_mrxVKIM).

<sup>109</sup> *Second periodic report of Niger to the UN Committee on the Rights of the Child*, CRC/C/NER/2, 20 November 2008, para. 51a.

<sup>110</sup> *Ibid.*

of the opposition of certain Muslim associations to some provisions.<sup>111</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.

No additional factors were identified.

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

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<sup>111</sup> *Ibid*, para. 101.