

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

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

According to the Constitution of the Republic of Paraguay, ratified international treaties are considered as positive national law.<sup>1</sup> Paraguay has ratified the first and second optional protocols to the CRC<sup>2</sup>, but only signed the third one. Also, Paraguay has ratified by law multiple regional, global and labour conventions<sup>3</sup>.

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

Pursuant to article 137 of the Constitution, international treaties have a lower level of hierarchy than the Constitution but take precedence over national law. Additionally, article 142 of the Constitution forbids national authorities to denounce a treaty on fundamental rights, unless the same formalities as required to amend the Constitution are followed. The Constitution also includes the following language: “The Republic accepts the principles of international law and proclaims the respect for the human rights”. In article 145 of the Constitution, it is established that Paraguay supports a supranational legal order to ensure the observance of the human rights; the country has indeed accepted the competence of the Inter-American Human Rights Court to hear complaints.

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

The CRC has been directly incorporated into national law as of April 4, 1990, under law number 57/90, and has inspired modern legislation, such as the Childhood and Adolescent Code, the Law Against Domestic Violence and the Special Procedure Law for Child Abuse Justice.

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

As explained in I.C, the CRC has been incorporated directly by law and throughout national legislation, and can be directly enforced in courts.

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<sup>1</sup> Constitution of the Republic of Paraguay, Article 137.

<sup>2</sup> Laws 2897/02 and 2134/03, respectively.

<sup>3</sup> Full list available at: <http://www.sna.gov.py/seccion/4-marco-normativo.html>.

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

The CRC has been applied in constitutional courts jointly with the national law.<sup>4</sup> The principle of the best interest of the child, for instance, is constantly mentioned, and has been incorporated in national law from the CRC.

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

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

According to Article 4 of the Childhood and Adolescence Code, any person can require the authorities to force the State, parents or others responsible for the child to fulfil the basic rights of the child. Any person who has knowledge of a violation of children's rights has the obligation to give notice, even orally, of such violation to the Municipal Counselling for the Rights of Boys, Girls and Adolescents, to the Public Ministry or Public Defence.<sup>5</sup>

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

Children are subject to "parental authority", which includes a duty to represent the child in civil acts until the child acquires capacity.<sup>6</sup> Full civil capacity, however, is only achieved at the age of 20, or at 18 if in agreement with the parents<sup>7</sup>.

However, pursuant to article 26 of the Childhood and Adolescence Code, any child has petitioning powers in the face of any authority. Also, according to article 167 of the Childhood and Adolescence Code, such claims can be brought directly by the child, the parents or guardians, the Public Defender, the Public Prosecutor, on the initiative of the judge, or any other person who has a legitimate interest.

The child may request the suspension or abolition of parental authority before the competent authorities.<sup>8</sup> Where a child is a victim of an offence and the child's parents do not bring a claim, the victim is entitled to notify the competent authorities.<sup>9</sup>

A child or adolescent who has suffered physical or psychological abuse is entitled to request judicial protection from the Childhood and Adolescence Public Prosecutor Office, the Childhood and Adolescence Public Defense,

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<sup>4</sup> <http://www.csj.gov.py/jurisprudencia/default.aspx?AspxAutoDetectCookieSupport=1>.

<sup>5</sup> Article 5 of the Childhood and Adolescent code. Available at: [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Paraguay.pdf)

<sup>6</sup> Id, Article 71.e.

<sup>7</sup> Civil Code, Article 36.

<sup>8</sup> Id, Article 74.

<sup>9</sup> Id, Article 81.

the Arbitrage Courts, the Municipal Counselling on the Rights of the Child and Adolescent or the Police<sup>10</sup>.

Any person, including children, can request the intervention of the Ombudsperson (see part III.A below).<sup>11</sup>

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

Infants and young children would typically be represented by their parents (see part II.A).

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

Pursuant to Article 162 of the Childhood and Adolescence Code, legal aid is free whenever the child does not have private legal assistance. The Childhood and Adolescence Public Defenders Office has a duty to represent children on their or their parents' request in "all judicial proceedings" where the child's rights are at risk.<sup>12</sup>

No special law on legal aid could be found during this research.

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)?

No. Under articles 26 and 167 of the Childhood and Adolescence Code, cases can be initiated by the filing of a claim by a child before any governmental entity without parental consent.

### 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?

There are two challenges that could be filed: an ordinary complaint or a request for an *amparo* writ.

If a person has their rights limited by any norm (legal or administrative), administrative decision or act that contradicts the Constitution, an unconstitutionality complaint can be filed individually before the Supreme Court or within an ordinary complaint.<sup>13</sup>

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<sup>10</sup> Special Procedure for Childhood Abuse Justice Law.

<sup>11</sup> Organic Law 631/95 on the Office of the Ombudsperson, Article 13, available at: [https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCEQFjAAahUKEwjD3NfyqcTHAhXFIRoKHSzCDgs&url=http%3A%2F%2Ffiles.ipasecparaguay.webnode.es%2F200000040-3bac13e9a8%2FLEY%2520N%25C2%25BA%2520631.pdf&ei=9WvcVYOOK8WTAqyEu1g&usq=AFOjCNG552GQfU4KDODo9ViT6EvCF\\_z03w](https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCEQFjAAahUKEwjD3NfyqcTHAhXFIRoKHSzCDgs&url=http%3A%2F%2Ffiles.ipasecparaguay.webnode.es%2F200000040-3bac13e9a8%2FLEY%2520N%25C2%25BA%2520631.pdf&ei=9WvcVYOOK8WTAqyEu1g&usq=AFOjCNG552GQfU4KDODo9ViT6EvCF_z03w).

<sup>12</sup> Childhood and Adolescence Code, Article 162 and 163.

<sup>13</sup> Civil Procedure Code, Article 550 and following.

In order to file an *amparo* challenge, pursuant to article 134 of the Constitution, any person whose rights have been violated or has reason to believe a violation is impending in breach of the Constitution, international treaties or domestic laws, may request such a writ, as long as the act or omission is clearly illegal and if the matter is so urgent that an ordinary action is not suitable.

Article 133 of the Constitution also establishes a comprehensive scope for the *habeas corpus* writ, whether to prevent or redress a situation of unlawful restriction on freedom of movement, or to prevent any physical, moral or psychological violence against those lawfully detained.

The Ombudsperson (*Defensor del Pueblo*), which is linked to the Childhood and Adolescence Public Defenders Office,<sup>14</sup> is an autonomous parliamentary commissioner responsible for receiving and investigating complaints about human rights violations.<sup>15</sup> The complaints can be addressed to public authorities and based directly on violations of human rights established in international treaties.<sup>16</sup> The Ombudsperson can demand information from public authorities, denounce human rights violations to the Public Prosecutor's Office, promote *amparo* and *habeas corpus* actions in the name of the victim, and promote collective actions.<sup>17</sup>

### *Regional mechanisms*

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),<sup>18</sup> on their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights<sup>19</sup>. A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.<sup>20</sup> The petition 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, the name(s) of the victim(s) if possible, and whether the petitioner wishes to remain anonymous and the respective reasons.<sup>21</sup> The victim may designate a lawyer or other person to

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<sup>14</sup> Resolution 055/2014, Article 20.1., available at:

[http://www.defensoriadelpueblo.gov.py/Publicaciones/Ley%205189/Documentos/estructura\\_org%C3%A1nica\\_2014\\_res\\_55-14.pdf](http://www.defensoriadelpueblo.gov.py/Publicaciones/Ley%205189/Documentos/estructura_org%C3%A1nica_2014_res_55-14.pdf)

<sup>15</sup> Organic Law 631/95 on the Office of the Ombudsperson, Articles 1 and 10.

<sup>16</sup> *Ibid.*, Article 10.1).

<sup>17</sup> *Ibid.*, Article 10.

<sup>18</sup> The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a “dual role” as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at:

[http://www.oas.org/dil/treaties\\_A-41\\_Charter\\_of\\_the\\_Organization\\_of\\_American\\_States.htm](http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm); American

Convention on Human Rights, ‘Pact of San Jose, Costa Rica’, Chapter VII, available at:

[http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

<sup>19</sup> American Convention on Human Rights, Article 44.

<sup>20</sup> Rules of Procedure of the Inter-American Commission on Human Rights, Articles 31-32, available at:

<http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

<sup>21</sup> *Ibid.*, Article 28.

represent him/her before the IACHR, but this is not compulsory.<sup>22</sup> When a petition is declared admissible, the IACHR attempts to reach a “Friendly Settlement” between the parties concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the human rights violations, making reparations, and/or making changes to the law.

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).<sup>23</sup> Individuals do not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACtHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.<sup>24</sup> The Court’s judgments are legally binding on the State against which they are made.<sup>25</sup>

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

The Childhood and Adolescence Court can, immediately after the filing of the complaint, establish precautionary measures such as a warning, family counselling, therapy, mandatory attendance to classes, suspension of paternal power, prohibition of contact and institutionalisation or placing under a foster family as last resources.<sup>26</sup>

The *amparo* procedure also establishes a set of precautionary measures, mostly designed to halt the action being challenged as soon as possible.

If the constitutionality of a norm or act is being discussed, the Supreme Court can limit its interpretation and application to the concrete case<sup>27</sup> or, by its own initiative, generally.<sup>28</sup>

The Ombudsperson has the power to publicly condemn human rights violations.<sup>29</sup>

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<sup>22</sup> Ibid., Article 23.

<sup>23</sup> Ibid., Article 45.

<sup>24</sup> American Convention on Human Rights, Article 63.

<sup>25</sup> See case “Juvenile Reeducation Institute” v. Paraguay of 2004, available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_112\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_112_ing.pdf)

<sup>26</sup> Childhood and Adolescence Code, Article 34.

<sup>27</sup> Civil Procedure Code, Article 542.

<sup>28</sup> Constitution, Article 137.

<sup>29</sup> Organic Law 631/95 on the Office of the Ombudsperson, Article 10.6).

- 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?

Unconstitutionality complaints, are strictly individual, even if the Supreme Court subsequently decides to limit the norm or act. The initial petitions for *habeas corpus* and *amparo* also require the naming of the victim.<sup>30</sup>

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

Article 38 of the Constitution establishes that anyone can pursue diffuse interests, individually or collectively, before the authorities. However, a specified group of people must be appointed as the possible victims of an official act or norm.

The Public Prosecutors Office is responsible for defending collective and diffuse claims judicially, when the affected are not able to do so.<sup>31</sup>

*Amparo* and *habeas corpus* writs can be pursued collectively and by third parties in good-faith.

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

Non-governmental organisations can intervene as *amicus curiae* in any part of the procedure.

Collective *habeas corpus* proceedings to improve the condition of child detention facilities have been filed and led to the country's conviction in the Inter-American Court of Human Rights.<sup>32</sup> Individual *habeas corpus* proceedings can be filed by anyone that is aware of the violation, therefore they can also be filed by NGOs.<sup>33</sup> Collective *amparo* writs can be filed by associations in favor of a determined group of people,<sup>34</sup> as well as individual *amparo* writs since the victim can be represented by any person of her/his choice.<sup>35</sup>

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<sup>30</sup> Law 1500/99 on Habeas Corpus, Article 7.b), available at: [https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/7892c3deab969d03c125770000401c47/\\$FILE/60568794.PDF/Paraguay%20-%20Ley%201500-99.PDF](https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/7892c3deab969d03c125770000401c47/$FILE/60568794.PDF/Paraguay%20-%20Ley%201500-99.PDF); Law 340/71 on *Amparo*.

<sup>31</sup> Public Prosecutors Office Organic Law, Article 42. Available at: [https://www.unifr.ch/ddp1/derechopenal/legislacion/1\\_20080616\\_72.pdf](https://www.unifr.ch/ddp1/derechopenal/legislacion/1_20080616_72.pdf).

<sup>32</sup> Available at: <http://www.iidh.ed.cr/BibliotecaWeb/varios/Documentos.Interno/BD/Acceso%20a%20la%20justicia%20PARAGUAY.pdf>.

<sup>33</sup> Law 1500/99 on *Habeas Corpus*, Article 6.

<sup>34</sup> Civil Procedure Code, Article 567

<sup>35</sup> Law 340/71 on *Amparo*, Article 4.

[http://www.mspbs.gov.py/dgaf-administracion/wp-content/uploads/2013/11/LEY-N%C2%BA-340\\_71.pdf](http://www.mspbs.gov.py/dgaf-administracion/wp-content/uploads/2013/11/LEY-N%C2%BA-340_71.pdf).

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

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

A case of abuse can be brought to the Police, the Public Prosecutor, the Municipal Council for the Rights of the Children and Adolescents, directly to the Childhood and Adolescence Court or, in its absence the Peace Court. The procedures may permit an oral and possibly informal filing to allow anyone, including children, to bring forth the notice.<sup>36</sup>

If the abuse amounts to an offence, the Childhood and Adolescence judge will submit the procedure to the concomitant judgement of the criminal courts.<sup>37</sup>

*Amparo* actions are to be brought in front of the first instance court with local jurisdiction.<sup>38</sup> *Habeas corpus* actions can either be brought in front of the first instance tribunal with local jurisdiction or in front of the Criminal Chamber of the Supreme Court of Justice.<sup>39</sup> Unconstitutionality claims can be filed either during an ongoing trial by a person who believes that a normative act (law, decree, etc.) that is being applied to them is unconstitutional before the judge, who will then transfer the claim to the Supreme Court of Justice,<sup>40</sup> or at any time by any person who believes that a normative act is unconstitutional directly in front of the Supreme Court of Justice.<sup>41</sup>

B. Legal aid / Court costs. Under what conditions would free or subsidized legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above. According to article 167 of the Childhood and Adolescence Code, legal procedures for children should be carried out free of charge.

In civil proceedings, the losing party is responsible for paying the costs.<sup>42</sup> This is also true for *amparo* actions,<sup>43</sup> which are nevertheless exempt from taxes.<sup>44</sup> However, one can ask for the "benefit to litigate at no costs" by proving her/his lack of resources and apparent likelihood of success. The

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<sup>36</sup> Child Abuse Special Procedure Law, Article 1.

<sup>37</sup> *Ibid.*, Article 6.

<sup>38</sup> Constitution, Article 134; Civil Procedure Code, Article 566.

<sup>39</sup> Law 1500/99 on Habeas Corpus, Article 3.

<sup>40</sup> Civil Procedure Code, Articles 538 and 539.

<sup>41</sup> *Ibid.*, Article 550.

<sup>42</sup> Civil Procedure Code, Article 192.

<sup>43</sup> *Ibid.*, Article 587.

<sup>44</sup> *Ibid.*, Article 588.

successful applicant will be represented by the “Defender of the poor” (*Defensor de pobres*).<sup>45</sup>

All proceedings in front of the Ombudsperson are free of costs.<sup>46</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 practicing lawyers on a pro bono basis, through a children’s rights organization, or under an agreement that does not require the payment of legal fees up front?

There are no prohibitions nor requirements. Even though there is a public legal aid system, pro bono and financing is also available for plaintiffs.

- 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 *amparo* has to be brought within 60 working days from the day the person became aware of the violation.<sup>47</sup>

Unconstitutionality claims not raised during an ongoing trial can be brought at any time, except if the act claimed to be unconstitutional is personal, then the person to whom it is addressed has six months from when he/she became aware of it.<sup>48</sup>

The Law 1500/99 on *habeas corpus*<sup>49</sup> provides for “preventive” *habeas corpus* and “remedial” *habeas corpus*, but no time limitations for bringing these actions. Given the nature of these actions, it is safe to assume that “preventive” *habeas corpus* can be brought whenever there is a risk of unlawful imprisonment, and “remedial” *habeas corpus* can be brought as long as a person is allegedly unlawfully imprisoned. There is also a “generic” *habeas corpus* which is either dependent on or a replacement of one of these two actions, and therefore has to be brought in the same manner as the preemptive or restorative *habeas corpus*, depending on the case.

Civil procedures are limited to six months after the act that would entail responsibility, even for children.<sup>50</sup>

Criminal prosecutions are limited to the amount of the maximum prison time of the felony, with a minimum of three and a maximum of 15 years. Torture, genocide and kidnapping are not time-limited.<sup>51</sup>

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<sup>45</sup> Civil Procedure Code, Articles 589 and following. The Defender of the poor is not the Ombudsperson!

<sup>46</sup> Organic Law 631/95 on the Office of the Ombudsperson, Article 17.

<sup>47</sup> Law 340/71, Article 4.

<sup>48</sup> *Ibid.*, Article 551.

<sup>49</sup> Available at:

[https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/7892c3deab969d03c125770000401c47/\\$FILE/60568794.PDF/Paraguay%20-%20Ley%201500-99.PDF](https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/7892c3deab969d03c125770000401c47/$FILE/60568794.PDF/Paraguay%20-%20Ley%201500-99.PDF).

<sup>50</sup> Civil Procedure Code, Article 172.

<sup>51</sup> Penal Code, Article 102.



- 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?

Any sort of evidence may be filed so long as it is permitted under the Constitution. Child testimony will be taken into account in accordance with the child's age and maturity.<sup>52</sup>

Pursuant to Article 314 of the Civil Procedure Code, only children older than 14 may testify as witnesses.

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

According to both Criminal and Civil Procedure Codes, the decision in a case should be issued within six months. However, the final resolution issued by the Appeal Court may take longer.

In an *amparo* procedure, the Magistrate's resolution should be issued within a few weeks, in accordance with the immediacy of the measure.

Under article 162 of the Childhood and Adolescence Code, legal proceedings involving children should be carried out through a summary process (a process shorter than a regular one).

The Supreme Court of Justice has one month to issue its decisions on all unconstitutionality claims.<sup>53</sup>

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

All judgments in ordinary proceedings may be appealed to the Childhood and Adolescence Court of Appeals and, if the resolution is considered unconstitutional, an extraordinary appeal may be filed before the Supreme Court of Justice.

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

There is no indication that political influences can severely hamper the enforceability of positive decisions, but a lack of political will can affect the enforceability of cases. For example, Case 11.666 of the IACtHR is still not fully executed by the authorities after more than three years since the sentence.<sup>54</sup>

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<sup>52</sup> Childhood and Adolescence Code, Article 167.

<sup>53</sup> Civil Procedure Code, Articles 542 and 554.

<sup>54</sup> [http://www.corteidh.or.cr/docs/supervisiones/instituto\\_19\\_11\\_09\\_ing.pdf](http://www.corteidh.or.cr/docs/supervisiones/instituto_19_11_09_ing.pdf).

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

Most concerns entail matters beyond the applicable law and are related to general problems within the justice system, including a lack of funds. A 2015 Freedom House report states that “Paraguay’s judiciary was generally stable in 2014”, however, “[w]hile nominally independent, the judiciary is corrupt, leading to trial delays and extended pretrial detention”.<sup>55</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.

The Constitution of Paraguay, Civil Code, Criminal Code, Domestic Violence Code, Family Code, Adoption Code and Parenthood Code may affect children’s rights.

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

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<sup>55</sup> <https://freedomhouse.org/report/freedom-world/2015/paraguay#.Vd8rsryYO1E>.