

ACCESS TO JUSTICE FOR CHILDREN: REPUBLIC OF THE CONGO

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

The Republic of the Congo ratified the CRC in 1993, and has also ratified the optional protocols on children in armed conflict and on the sale of children.¹ Ratified international agreements, including the CRC, automatically have the force of law in the Republic of the Congo. The Republic of the Congo's Constitution states that international treaties and agreements supersede national law.²

B. Does the CRC take precedence over national law?

Yes, the CRC takes precedence over existing national law.³

C. Has the CRC been incorporated into national law?

The CRC has not been incorporated into national law. However, on 14 June 2010, the President promulgated Law No. 4-2010 (Child Protection Law), which provides many rights similar to and identical to the CRC, such as the right to “well-being”, “an adequate standard of living”, “life, survival, and development”, “religious freedom”, protection from discrimination, and many others.⁴

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

Because the CRC has the force of law pursuant to Article 184 of the Republic of the Congo's Constitution, theoretically it can be directly enforced in court. However, the Committee on the Rights of the Child has noted with concern the lack of information on whether the CRC could be directly enforced in national courts, and has recommended that the Republic of the Congo ensure that the CRC can be invoked as a legal basis by individuals and judges at all levels of administrative and judicial proceedings.⁵

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

¹ Available at: <http://indicators.ohchr.org/>.

² Republic of the Congo Constitution, 20 January 2002, art. 184, available at: http://www.sgg.cg/iso_album/constitution_2002.pdf.

³ Ibid.

⁴ Republic of the Congo Child Protection Law, 14 June 2010, available at: <http://www.ilo.org/dyn/natlex/docs/SERIAL/88295/100902/F1370556512/COG-88295.pdf>.

⁵ UN Committee on the Rights of the Child, *Concluding observations on the combined second to fourth report of the Republic of Congo*, CRC/C/COG/CO/2-4, 21 February 2014, paras 10-11. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCOG%2fCO%2f2-4&Lang=en.

The Committee on the Rights of the Child has noted a lack of information on whether the CRC has been directly enforced in national courts.⁶ Generally, very few human rights cases are filed in the Republic of the Congo's court system. According to a 2010 report by the United States Department of State, there was no record of any civil cases filed for violation of human rights.⁷ See part V for more information.

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?

Under the Constitution, citizens can bring cases to challenge violations of human rights contained in the constitutionally enshrined Bill of Rights. Any individual may apply to the Constitutional Court for a ruling on the constitutionality of legislation, either directly or by raising an objection of unconstitutionality before a court in proceedings in which he or she is involved.⁸

Further, Article 33 of the Constitution provides that children, as a collective group, shall be entitled to protection as a vulnerable group. The Constitution offers nothing more specific about children's ability to bring cases themselves or through representatives.

The Constitution also provides that every citizen has the right to petition the appropriate State bodies.⁹ In practice, this includes the National Human Rights Commission (Commission) and Ombudsman, which were established by the 2002 Constitution.¹⁰ According to the Republic of the Congo's 2012 report, the mandate of the Commission includes receiving individual or collective complaints about human rights violations where the matter has not been referred to a court of law, while the mandate of the Ombudsman includes receiving individual complaints about acts of the public administration. However, the Committee on the Rights of the Child has noted with concern that the Commission and Ombudsman lack operational capacity to receive individual complaints from children, and has recommended that the State establish a specific mechanism to receive, investigate and address complaints by children.¹¹

The Child Protection Law includes no general provision allowing children or their representatives to bring judicial actions, but does grant a right to legal assistance in unlawful detainer scenarios. Article 64 says that "[n]o child shall be unlawfully or arbitrarily deprived of his liberty. . . . [and] [a] child deprived of liberty has the right to prompt access to legal assistance and other appropriate assistance . . ."¹² The Child Protection Law also grants children the right to express their views freely in all matters affecting them and, to this end, the right to be heard either directly, or through a representative or an appropriate facility, in any judicial and administrative proceedings affecting them.¹³

⁶ Ibid.

⁷ Ibid.

⁸ Constitution, art. 149.

⁹ Ibid., art. 40.

¹⁰ Ibid., arts. 163, 167; see also UN Committee on the Rights of the Child, paras 20-21.

¹¹ UN Committee on the Rights of the Child.

¹² Child Protection Law, art. 64.

¹³ Ibid., art. 30.

In criminal law, it is theoretically the State which prosecutes the perpetrator of a crime; however the law allows for the possibility for the victim to launch the prosecution in some cases, without more precision.¹⁴ The State can file a charge without the consent of the victim, even though in practice it is essential that victims cooperate with the State.¹⁵ The State brings criminal charges because of the underlying premise of the criminal law of the Republic of the Congo, that “the primary purpose of prosecution in particular and criminal law in general is to punish behaviour deemed to be a wrong against society as a whole and not to compensate the damage suffered by the victims, the overriding objective of civil law.”¹⁶

A final avenue available to children for violations of their rights by the State may be through the administrative courts. In the Republic of the Congo, “administrative law regulates the conduct of the state towards citizens”.¹⁷ The Constitution states that “every citizen who has suffered harm caused by administrative bodies or officials has the right to take legal action in the manner prescribed by law.”¹⁸ At the time of this report no examples could be located wherein a challenge to a violation of children’s rights was filed in an administrative court.

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 Code of Criminal Procedure provides that “[t]he right of objection, appeal, or cassation appeal may be exercised either by the minor or by his legal representative.”¹⁹ It also describes situations in which children may not be required to be present at a hearing, but instead must be “represented by his counsel or his father, mother, guardian, or person who has custody.”²⁰ Apart from initiating prosecutions, the Code of Criminal Procedure mentions that the Juvenile Court can prevent prosecutions by parents, guardians or custodians; but in similar cases in which a legal representative is not available, the court will appoint defense counsel for the child.²¹ Other sections refer to guardians and legal representatives for children under certain circumstances.²²

The Constitution’s National Human Rights Commission, tasked with “the promotion and protection of human rights”, presumably has the standing to file cases as a representative of children, although no examples of filings could be located at the time of this report nor did judicial procedure codes reviewed for this report or the Child Protection Law speak directly to this question.²³

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

¹⁴ Criminal Procedure Code, art. 1.

¹⁵ GlobalLex, ‘The Legal System of the Republic of the Congo (Congo-Brazzaville): Overview and Research’, 2014, para. 5, available at: http://www.nyulawglobal.org/globalex/Congo_Brazzaville.htm#PrinciplesoftheRepublic.

¹⁶ Ibid.

¹⁷ GlobalLex, para. 6.

¹⁸ Ibid.

¹⁹ Republic of the Congo Criminal Procedure Code, 13 January 1963, art. 719.

²⁰ Ibid., art. 710(2).

²¹ Ibid., art. 699(1).

²² Ibid., arts. 710(1), 711(1).

²³ Constitution, arts. 168-69.

Research of the Constitution and Civil and Criminal Codes of Procedure did not reveal any information on how cases involving infants or young children would typically be brought. See part II.B for children bringing cases generally.

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

For criminal matters, the Criminal Procedure Code states that the criminal court will appoint lawyers for defendants not yet represented by counsel.²⁴ A 1984 law on legal aid, completed by Decree no. 85-1067 of 10 September 1985, provides for completely free legal assistance to indigent defendants and partially free legal assistance to defendants with several children who want to lodge an appeal before all courts including the Supreme Court.²⁵ However, several reports indicate that these provisions are not carried out in practice and that the legal aid system in the Republic of Congo is not functional.²⁶ The only examples of legal aid found between 2005 and 2010 are: Decision no. 319 of 12 August 2002, Decision no. 03/005 of 12 January 2005, Decision no. 44 of 18 July 2005, and Decision no. 45 of 21 July 2005.²⁷

For civil matters, the Code of Civil Procedure cites that filing fees and other costs of the proceedings may be waived, but it does not specify how these waivers may be obtained.²⁸

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)?

Specific conditions or limits on children or their legal representatives bringing cases (or confirmation of the absence thereof) could not be located at the time of this report.

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?

See part II.A above.

According to the 2010 US Department of State Human Rights report, cases based on

²⁴ Criminal Procedure Code, art. 242.

²⁵ Act No. 1/84 of 20 January 1984, on reorganisation of legal aid.

²⁶ US Department of State Bureau of Democracy, Human Rights and Labor, 'Country Reports on Human Rights Practices for 2011, Republic of Congo', 20 March 2014, available at:

<http://www.state.gov/documents/organization/186397.pdf>; Death Penalty Worldwide, 'Congo (Republic of the)', 2011, available at: <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Congo+%28Republic+of+the%29#a23-6>.

²⁷ Investigation report of the "Plateforme pauvreté et accès à la justice", in the context of the « Programme Dialogue Citoyen », implemented between 2004 and 2010 in the Republic of Congo to help the civil society in its contribution to the elaboration of the final DSRP-Congo. See comptoirjuridique@gmail.com et fjecongo@yahoo.fr.

²⁸ Republic of the Congo Code of Civil Procedure, 21 April 1983, art. 8.

violations of the Constitution, the CRC or the Child Protection Law are seldom filed likely due to suspicion of political influence, corruption, and lack of resources.²⁹ In its report to the Committee on the Rights of the Child in 2010, the Republic of the Congo noted that "[t]he Government is well aware of the negative impact of corruption and is working to eliminate it and to limit its social impact through various enforcement institutions . . . [including] the courts."³⁰ If filed, the most appropriate action for private citizens and organisations would be a civil lawsuit in the local courts, as detailed in part IV.A.³¹

Additionally, though it is not a judicial body, the Ministry of Justice and Human Rights has legislative powers to "prevent and punish acts of exclusion and ostracism that are prohibited by law" to protect "children at risk and young offenders."³²

African Committee of Experts on the Rights and Welfare of the Child

Individuals, including child victims, their 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").³³ All available domestic remedies must have been exhausted before bringing a case to the African Committee.³⁴ 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.³⁵ 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.³⁶

African Commission on Human and Peoples' Rights

²⁹ US Department of State, 'Human Rights Report', 11 March 2010, available at: http://ppja.org/countries/republic-of-the-congo/US%20Department%20of%20State%20Human%20Rights%20Report%20Cong-Braz.pdf/at_download/file.

³⁰ *Combined second to fourth periodic report of the Republic of Congo to the UN Committee on the Rights of the Child*, CRC/C/COG/2-4, 11 November 2010, para. 83. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCOG%2f2-4&Lang=en.

³¹ See part II.A. Presumably, this would include bodies like the National Human Rights Commission.

³² *Combined second to fourth periodic report of the Republic of Congo to the UN Committee on the Rights of the Child*, para. 152.

³³ 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-acrwc/acrwc-charter-full-text/>. For more information about communications, see:

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

³⁴ African Committee of Experts on the Rights and Welfare of the Child, 'Communications', available at: <http://acerwc.org/the-committees-work/communications/>.

³⁵ 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>.

³⁶ *Ibid.*

Individuals, groups or NGOs may submit complaints (known as “communications”) to the African Commission on Human and Peoples’ Rights (“African Commission”) about violations of the African Charter on Human and Peoples’ Rights (“African Charter”).³⁷ All available domestic remedies must have been exhausted before bringing a case to the African Commission.³⁸ 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.³⁹ 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.⁴⁰ 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.⁴¹

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

The local courts can impose prison sentences in criminal cases and damages or orders for the cessation of human rights violations in civil cases.⁴²

If the Constitutional Court finds a law to be inconsistent with the Constitution, the impugned law can be neither promulgated nor implemented.⁴³ The decisions of the Constitutional Court are not subject to appeal—they are binding at all levels of government including administrative agencies, the judiciary, and individual citizens.⁴⁴

Also, the Constitution provides that every citizen who suffers harm as a result of government officials who work for administrative agencies has the right to sue in the manner prescribed by law.⁴⁵ Applications can be made to the Supreme Court for judicial review of decisions by various administrative authorities on grounds of misuse of authority.⁴⁶

³⁷ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

³⁸ Ibid., Article 56(5).

³⁹ 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/>.

⁴⁰ 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>.

⁴¹ 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>.

⁴² US Department of State, ‘Human Rights Report’.

⁴³ Constitution, art. 150.

⁴⁴ Ibid.

⁴⁵ Ibid., art. 41.

⁴⁶ *Initial report of the Congo to the UN Committee on the Rights of the Child*, CRC/C/COG/1, 20 February 2006, para. 46. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCOG%2f1&Lang=en.

However, the courts' power to review these violations and provide remedies is severely curtailed by the courts' limited resources and because the courts are only able to address a small percentage of filed complaints.⁴⁷

- 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?

Neither the Constitution, the Code of Civil Procedure, the Code of Criminal Procedure, nor the Child Protection Law address this issue.

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

Neither the Constitution, the Code of Civil Procedure, the Code of Criminal Procedure, nor the Child Protection Law address this issue.

- 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?

Neither the Constitution, the Code of Civil Procedure, the Code of Criminal Procedure, nor the Child Protection Law address this issue.

However in practice, NGOs defending human rights can intervene in a case already filed as a "partie civile".⁴⁸

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?

Cases could be filed in the local or "traditional" courts. These courts hear both civil and criminal complaints. A civil action ("constitution de partie civile") can be filed alongside the prosecution and before the same court.⁴⁹ The plaintiff must file the claim with the local court and pay the associated costs.⁵⁰ After the claim is filed, the clerk of the court will serve notice on all parties and inform them of the hearing date.⁵¹ The hearing date must occur within 30 days after notice is served on the parties.⁵²

The Code of Criminal Procedure mentions a system of Juvenile Courts and a specialised Criminal Court for minors,⁵³ but research did not indicate the jurisdiction of these courts, and specific Juvenile Courts are not described in the Constitution.⁵⁴ The

⁴⁷ US Department of State, 'Human Rights Report'.

⁴⁸ Criminal Procedure Code, art. 353-354.

⁴⁹ Criminal Procedure Code, art. 3-1.

⁵⁰ Code of Civil Procedure, art 8.

⁵¹ Ibid., art. 9.

⁵² Ibid., art. 11.

⁵³ Criminal Procedure Code, art. 709 to 716.

⁵⁴ Constitution, title VIII.

Republic of the Congo in its report to the Committee on the Rights of the Child notes that the Juvenile Courts receive and investigate complaints about cases of child abuse.⁵⁵

Administrative courts are an additional avenue if State officials and agencies are themselves accused of violating children's rights. According to the Organisation of the Judiciary of the Republic of the Congo (legislation passed in 1992), these courts are "competent to interpret the decisions of the various administrative authorities and assess their lawfulness."⁵⁶

Still, suspicion about the efficacy of the judicial system in the Republic of the Congo has likely prevented some from bringing challenges to violations of children's rights.⁵⁷

- 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.

Although both the Code of Civil Procedure and Code of Criminal Procedure include language suggesting that certain legal fees and costs may be waived, neither Code details how these waivers can be obtained.⁵⁸ No internal court documents exist to present the fees and related costs to pay. Due to the underfunded nature of the Republic of the Congo's judiciary, it is likely that child complainants (or their representatives) would be expected to pay any court costs and legal fees.⁵⁹

- 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?

Non-governmental organisations and non-profit agencies in the Republic of the Congo exist to provide free legal aid to the citizens of the Republic of the Congo.⁶⁰ In 2010, the US Department of State noted that six child judicial clinics run by NGOs with the help of the government, the UNDP and the EU (two by the Comptoir Juridique Junior, one by the "Association des Femmes Juristes du Congo", one by the Association MIBEKO, on by the "Association Panafricaine Thomas Sankara", and one by

⁵⁵ Combined second to fourth periodic report of the Republic of Congo to the UN Committee on the Rights of the Child, pp. 59-60.

⁵⁶ Organisation of the Judiciary of the Republic of the Congo, No. 022-92, 20 August 1992, art. 83.

⁵⁷ US Department of State, 'Human Rights Report'.

⁵⁸ See Code of Civil Procedure, art. 8; Criminal Procedure Code, art. 315.

⁵⁹ See US Department of State, 'Human Rights Report'.

⁶⁰ See generally Fahamu Refugee Programme, 'Congo Pro Bono Directory', 2014 available at: <http://www.refugeelegalaidinformation.org/congo-pro-bono-directory>; Institute for Human Rights and Development in Africa, available at: <http://www.ihrda.org/wp-content/uploads/2012/04/IHRDA-2012-brochure-ENGwebsite.pdf>; Global Information Society Watch, 'Women's rights and access to the internet', available at: <http://www.giswatch.org/en/country-report/womens-rights-gender/republic-congo>; World YWCA, 'World YWCA visits YWCA of Congo Brazzaville', available at: <http://www.worldywca.org/YWCA-News/News-Archive-2008-2005/YWCA-of-Congo-Brazzaville>.

HUMANICO) provided some legal services to trafficking victims, but “they are neither open on a regular basis nor operate with regular business hours.”⁶¹

A 2010 report by the Republic of the Congo to the Committee on the Rights of the Child notes a juvenile legal aid office and legal clinics programme run from a minors help centre, organised by the NGO Comptoir Juridique Junior in the city of Pointe-Noire,⁶² that offers legal counselling and free legal assistance to children. However, the Government did not remark about the conditions necessary to obtain aid.⁶³

- 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?

Civil cases based on violations of the Child Protection Law or the Constitution do not appear to be subject to a statute of limitations. Criminal cases must be filed within 10 years of the violation, if there have been no official investigations into the violation.⁶⁴ If there have been any investigations, criminal cases must be filed within ten years of the last act of investigation.⁶⁵ Finally, if a criminal conviction is obtained, a civil action based on the same violation must be filed within 30 years.⁶⁶

- 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?

Courts are granted extreme deference in determining the admissibility of evidence and requirements to prove a violation. Unless stated otherwise in applicable law, the judge has the discretion to admit most evidence before deciding the case.⁶⁷ Witness statements must have probative value and be based on personal knowledge.⁶⁸

There are no particular rules, procedures or practices for dealing with evidence produced or presented by children.

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

Research did not reveal information as to how long a court may take to reach a decision or how long after filing a complaint one must wait to have their case heard by the courts.

⁶¹ US Department of State, ‘Trafficking in Persons Report 2010’, available at: <http://www.state.gov/j/tip/rls/tiprpt/2010/142759.htm>. According to the Comptoir Juridique Junior, these legal clinics “were open Monday to Friday but unevenly, because some of the NGO which were put in charge did not have the required experience”.

⁶² The project was funded by UNICEF and the Ministry for the Promotion of Women between 2005 and 2012. These clinics do not receive any governmental help anymore.

⁶³ *Combined second to fourth periodic report of the Republic of Congo to the UN Committee on the Rights of the Child*, p. 63.

⁶⁴ Criminal Procedure Code, art. 7(1).

⁶⁵ *Ibid.*, art. 7(2).

⁶⁶ *Ibid.*, art. 10(2).

⁶⁷ *Ibid.*, art. 362(1).

⁶⁸ *Ibid.*, art. 364.

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

Appeals of decisions by first instance courts can be made to appeal courts. Appeals against their judgments on points of law may be filed with the Supreme Court (*Cour suprême*)—the country’s highest court. The Supreme Court reviews appeals based on procedural violations, improper application of the law, or other improper actions taken by the trial court.⁶⁹ In civil cases, parties have one month after judgment is entered to file an appeal.⁷⁰ In criminal cases, parties only have three days to file an appeal.⁷¹

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?

It is unclear what impact positive or negative decisions would have. The risks of adverse political influence, corruption, and possible reprisal would have to be determined on a case-by-case basis taking into account the relative standing of each party within the socioeconomic framework.

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

As of 2010, there were no records of civil cases filed for violation of human rights.⁷² Due to the underfunded, understaffed, and often corrupt judiciary, most criminal cases never make it to trial.⁷³ While the applicable laws (Constitution, Child Protection Law, Code of Criminal Procedure, and Code of Civil Procedure) offer a seemingly strong framework for the prosecution of violations of children’s rights, very few citizens appear to be benefiting from these remedies. The enforcement of a positive decision would likely be limited by the same problems in the judiciary.

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 Republic of the Congo has made recent efforts to reform its laws and policies, likely in response to pressure from the UN and various non-governmental organisations. These efforts include responding, albeit seven years late, to the UN regarding the CRC and promulgating the Child Protection Law, which offers broad protection of children’s rights. Unfortunately, for the reasons discussed in parts I-IV, citizens rarely utilise the legal system to address violations of these rights. For this reason, there is very little information available, positive or negative, on practical guidance to file a human rights claim.

The US Department of State conducted a human rights report in 2010 and noted that, in the Republic of the Congo, “[a]lthough the constitution and law provide for an independent judiciary, the judiciary continued to be overburdened, underfunded, and subject to political influence⁷⁴ and corruption.”⁷⁵ In the criminal context, the caseload

⁶⁹ Code of Civil Procedure, art. 105; Criminal Procedure Code, art. 512(2).

⁷⁰ Code of Civil Procedure, art. 66.

⁷¹ Criminal Procedure Code, art. 513.

⁷² See US Department of State, ‘Human Rights Report’.

⁷³ Ibid.

⁷⁴ Magistrates are nominated by a decree of the President of the Republic (and are heavily influenced); see

far exceeds the capacity of the judiciary to ensure fair and timely trials and thus, most criminal cases never even reach the court system.⁷⁶ Furthermore, the citizens of the Republic of the Congo distrust the legal system as a means of addressing human rights violations, due largely to corruption, the judiciary's inability to handle its existing caseload, and the threats and repressive acts conducted by the military authorities.⁷⁷ For these reasons, children or their representatives must overcome the aforementioned practical obstacles to obtaining redress.

In its report to the Committee on the Rights of the Child in 2010, the Republic of the Congo noted “[a] marked increase in the resources allocated to . . . legal protection, although [they] remain[ed] inadequate.”⁷⁸ It also noted that it has adopted “a national plan for the judicial protection of children”⁷⁹ and that “[a] specific legal framework exists, comprising juvenile courts headed by juvenile judges, an observation centre for minors, legal aid clinics set up . . . and a department for the legal protection of children within the Ministry of Justice and Human Rights.”⁸⁰

However, the Republic of the Congo recognised problems inhibiting a properly functioning juvenile justice sector: “(i) lack of visibility of judicial services for children, since they lack their own buildings and associated services and have insufficient, poorly trained staff; (ii) absence of rehabilitation centres; (iii) low level of involvement of district social services and charities; (iv) non-existent or tiny operating budgets; [and] (v) undervaluing of staff.”⁸¹ There is also the hurdle that key domestic and international laws and enactments “are being applied less and less and communities know nothing about them.”⁸² It observed that “[i]nstituting the rule of law has to be the cornerstone of efforts to build a legally secure environment [n]ational laws, policies, plans and programmes should fully comply with international human rights.”⁸³

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

article 4 of the Law no. 15-99 of 15 April 1999 on the status of the Magistrature.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ *Combined second to fourth periodic report of the Republic of Congo to the UN Committee on the Rights of the Child*, p. 10.

⁷⁹ Ibid., p. 12.

⁸⁰ Ibid., p. 78. According to the Comptoir Juridique Junior, no trace could be found of an observation centre for minors nor of legal clinics.

⁸¹ Ibid., p. 41.

⁸² Ibid., p. 80.

⁸³ Ibid., pp. 74, 78.