

ACCESS TO JUSTICE FOR CHILDREN: SUDAN

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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 CRC was ratified by Sudan in September 1991.¹ Sudan has also ratified the Optional Protocols to the CRC on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.²

The rights and freedoms under the CRC and other international human rights instruments ratified by Sudan automatically have the force of law and are considered an ‘integral part’ of the Bill of Rights set out in the Interim National Constitution of the Republic of the Sudan, 2005 (the “Constitution”).³

Article 32(5) of the Constitution provides that: “[t]he State shall protect the rights of the child as provided in the international and regional conventions ratified by the Sudan”.

In 2010, the Sudanese Government reported to the Committee on the Rights of the Child that:

“any convention ratified by the Sudan shall be considered part of the legal framework in the country, and any article in any law that contradicts it should be amended or eliminated, as the Interim National Constitution of the Sudan, 2005, stipulates in Article 27, the Bill of Rights.”⁴

B. Does the CRC take precedence over national law?

Yes, the CRC takes precedence over national law. As mentioned above, upon ratification, the CRC became an integral part of the Bill of Rights set out in the Constitution and any provision in any law that contradicts it should be amended or eliminated.⁵ The Constitution is considered the supreme law of Sudan and all laws must comply with it.⁶

C. Has the CRC been incorporated into national law?

¹ See: <http://www.cmi.no/publications/file/4106-sudan-country-case-study-child-rights.pdf>.

² See: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx.

³ The Interim National Constitution of the Republic of the Sudan (2005), Article 27(3), available at: <http://unmis.unmissions.org/Portals/UNMIS/Constitution-making%20Symposium/INC%20of%20Sudan.pdf>.

⁴ See: <http://www.crin.org/en/library/publications/sudan-national-laws>.

⁵ See: <http://www.crin.org/en/library/publications/sudan-national-laws>; see also part I.E. below.

⁶ The Interim National Constitution of the Republic of the Sudan (2005), Article 3.

The CRC has been incorporated automatically into national law, as aforementioned. Furthermore, the government has reported that “[a] large number of measures were adopted to ensure the alignment of legislation with the provisions of the...[CRC]”.⁷

Attempts have been made to incorporate aspects of the CRC into law. For example, see the following legislation:

- Child Act 2010;⁸
- Civil Registry Act 2001;
- Sudanese Nationality Act 1993 (amended 2005);
- Labour Code 1997 (draft amendment 2007); and
- Education Planning Act 2001

The Child Act states that the provisions of the Act shall be interpreted by resorting to the principles and provisions set out in the Constitution and other ratified international agreements.⁹ However, in its 2010 Concluding Observations, the Committee on the Rights of the Child expressed concerns that the State has yet to establish a regulatory and policy framework to implement the Child Act.¹⁰

In addition to the Constitution’s incorporation of the CRC as part of the Bill of Rights, the Constitution also includes several articles reflecting alignment with the CRC on such topics as capital punishment¹¹ and the right to education.¹² Furthermore, the constitutions of several of the states within Sudan also include provisions relating to child welfare and protection in accordance with the Constitution.¹³

Additionally, the peace agreements entered into by Sudan contain several provisions relating to the CRC. For example, the Nifasha Peace Agreement of 2005 includes a number of protocols that provide for the protection of children, including the 2004 Protocol on Power Sharing, which provides that Sudan will “*fully comply with its obligations under the international human rights treaties to which it is a party*” and which specifically mentions the CRC.¹⁴ The Darfur Peace Agreement (Abuja) of 2006 and the Eastern Sudan Peace Agreement of 2006 also include several provisions dealing

⁷ *Third and fourth periodic reports of Sudan to the UN Committee on the Rights of the Child*, CRC/C/SDN/3-4, 24 February 2010, para. 17, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSDN%2f3-4&Lang=en.

⁸ See: <http://www.crin.org/en/library/publications/sudan-child-rights-references-universal-periodic-review>, at para 75.

⁹ Child Act 2010, Article 5, available at: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Sudan/sudan_children_2010_en.pdf.

¹⁰ UN Committee on the Rights of the Child, *Concluding observations on the third and fourth periodic reports of Sudan*, CRC/C/SDN/CO/3-4, 22 October 2010, para. 9, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/SDN/CO/3-4&Lang=En.

¹¹ The Interim National Constitution of the Republic of the Sudan (2005), Article 36.

¹² *Ibid*, Article 44; *Third and fourth periodic reports of Sudan to the UN Committee on the Rights of the Child*, para. 17.

¹³ *Third and fourth periodic reports of Sudan to the UN Committee on the Rights of the Child*, para. 17.

¹⁴ *Ibid.*, para. 19.

with international human rights and the rights of children.¹⁵

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

As an ‘integral part’ of the Constitution, the CRC can be directly enforced in the Sudanese domestic courts.

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

In one high-profile case, the Constitutional Court did apply the CRC. In *Nagmeldin Gasmalla v. Government of Sudan and the relatives of Abdelrahman Ali*, the defendant had been sentenced to death for a murder he committed when he was 15 years old. The Constitutional Court held that the provisions of the Criminal Act (upon which the Supreme Court had founded its decision) violated the CRC and the Constitution by violating the defendant’s right to life.¹⁶

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, every person is guaranteed the right to litigation and no person may be denied the right to resort to justice.¹⁷ Children, through their representatives, may bring civil, constitutional or administrative cases or complaints under the Child Act to challenge violations of their rights (see part III.A below).

Private prosecutions are not possible, though complaints may be made by individuals to the authorities. The Public Prosecutor is responsible for overseeing the conduct of criminal proceedings and investigations, and initiating proceedings before the criminal courts.¹⁸ Public actions are initiated based on the information at the disposal of the local authorities or the Public Prosecutor, or following a communication or complaint made by any person(s) to the authorities.¹⁹ Claims/reports can be made by any person charged with the maintenance of security and public order, or from any individual regarding matters of ‘personal right(s)’.²⁰

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 1983 Civil Procedures Act²¹ gives children the right to have access to the courts

¹⁵ Ibid.

¹⁶ Arrested Development: Sudan’s Constitutional Court, Access to Justice and the Effective Protection of Human Rights, available at: <http://www.refworld.org/docid/50641ad82.html>.

¹⁷ The Interim National Constitution of the Republic of the Sudan (2005), Article 35.

¹⁸ Criminal Procedure Act 1991, Article 19, available at (Arabic): <http://www.moj.gov.sd/content/lawsv4/6/26.htm>.

¹⁹ Ibid, Article 33.

²⁰ Ibid, Article 34(1).

²¹ A 2003 Civil Procedures Act is available in draft form in English. It is unclear whether this Act has been adopted: <http://www.gurtong.net/LinkClick.aspx?fileticket=X3b9wiZrdSA%3D&tabid=342>.

through their legal guardians.²² In addressing matters of guardianship of the child during legal proceedings, Article 116 states that the child can act as both a claimant/complainant or be a defendant; in either case the court must appoint a guardian to aid the child's cause as a resolution to the dispute is sought.

Furthermore, it seems likely, given the provisions of the Child Act, that the court would only permit a child to bring an action through his/her parent, guardian or advocate.²³ However, every child²⁴ is guaranteed the right to take part in the special judicial, administrative, social, or instructional procedure, depending on the age of the child and degree of their maturity.²⁵

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

Cases on behalf of infants and young children would most likely be brought by their parent, guardian or advocate.

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

The below provisions suggest that a child is entitled under the law to legal representation at the State's expense, at least where he/she is charged with a serious offence or is a victim of recruitment into armed conflict, exploitation or forced labour.

The Constitution provides that “[a]dvocates shall serve to protect and advance the fundamental rights of citizens...and may render legal aid for the needy according to law”.²⁶ In criminal proceedings, the Constitution states that “any accused person has the right to defend himself/herself in person or through a lawyer of his/her own choice and to have legal aid assigned to him/her by the State where he/she is unable to defend himself/herself in serious offences”.²⁷ According to a report by the US State Department, the law stipulates the government is obligated to provide a lawyer for indigents in cases in which punishment might exceed 10 years’ imprisonment or include execution.²⁸ An accused may also request assistance through the legal aid department at the Ministry of Justice.²⁹

The Child Act contains some child-specific provisions with respect to legal representation. It states that the trial of a child “shall not be conducted, save in the attendance of an advocate, or pleader therefor, as far as possible”.³⁰ Furthermore, where a child is a victim of recruitment into armed conflict, exploitation or forced labour, the State has a duty to provide “appropriate legal and social aid services” to the child victim throughout the legal proceedings.³¹

²² Available in Arabic at: <http://www.moj.gov.sd/content/laws4/3/16.htm>.

²³ See, for example, Child Act 2010, Articles 56(1), 63(a), 65(1) and 65(6).

²⁴ A “child” is defined as “every person, who is not above the age of eighteen years”: Ibid., Interpretation.

²⁵ Child Act 2010, Article 5(2) (j).

²⁶ Ibid, Article 134(2).

²⁷ The Interim National Constitution of the Republic of the Sudan (2005), Article 34(6).

²⁸ See:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236410#wrapper>.

²⁹ Ibid.

³⁰ Child Act 2010, Article 65(4).

³¹ Child Act 2010, Article 83(1)(d).

However, according to reports by Sudan and the Committee on the Rights of the Child, despite legal guarantees, there is a lack of legal aid for children.³² In 2010 the Committee recommended that the State “[a]ccord all children in conflict with the law the full range of rights and judicial guarantees set out in articles 37 and 40 of the Convention, including the provision of prompt legal and other assistance at all stages of the investigative and judicial processes”.³³

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

The consent of a child’s parent or guardian is not explicitly required for a child or someone acting on his or her behalf to initiate legal proceedings. Article 118 of the Civil Procedure Act states that a guardian during proceedings may be replaced if they are not undertaking their required duties, although it is unclear if this applies to the court-appointed guardian or parental responsibility.

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

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

A legal challenge alleging violations of children’s rights under the CRC or the Bill of Rights (contained in Part II of the Constitution) may be made to the Constitutional Court in the first instance. The Constitutional Court has jurisdiction to hear “suits from any aggrieved person to protect the freedoms and rights guaranteed by the Constitution after exhausting the executive and administrative remedies available”.³⁴

Cases involving children who are victims of violations may be submitted to the Child Court by the child’s “next-of-kin”, the Prosecution Attorneys Bureau or the Social and Psychological Service Office.³⁵ Furthermore, the Child Act provides that a telephone hotline must be established to receive information, suits and complaints of any violation of children’s rights set out in the Child Act. The informant must provide their identity and address.³⁶ It is unclear whether this telephone hotline has been set up or, if it has, whether it can be accessed by children directly.

There are statutory procedures for judicial review of administrative decisions in Sudan under the Constitutional and Administrative Act 2005. A request for the review of administrative decisions taken by the President of the Republic, the Council of Ministers or a Minister is to be made before the judge of the High Court specialised in dealing with such matters.³⁷ Any administrative decision taken by any other government

³² *Third and fourth periodic reports of Sudan to the UN Committee on the Rights of the Child*, para. 324.

³³ UN Committee on the Rights of the Child, para. 90(d).

³⁴ Constitutional Court Act 1998, Article 10, Chapter 3.

³⁵ Child Act 2010, Section 63(a) and (b).

³⁶ *Ibid*, Section 85.

³⁷ Constitutional and Administrative Act 2005, Article 4(1), available at:

<http://www.justice-lawhome.com/vb/showthread.php?4762-%DE%C7%E4%E6%E4-%C7%E1%DE%D6%C7%C1-%C7%E1%C5%CF%C7%D1%EC-%E1%D3%E4%C9-2005>.

authority may be appealed before the judge of the Court of Appeal specialised in dealing with such matters.³⁸

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

However, enforcement of decisions of the African Commission may be a challenge (see part IV.I below).

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

The Constitutional Court has a duty, among other things, to protect human rights and fundamental freedoms; adjudicate on the constitutionality of laws or provisions in accordance with the Constitution or the relevant state constitutions; and decide disputes that arise under the Constitution and the constitutions of Northern states at the instance of individuals.⁴⁴ It is unclear whether the Constitutional Court has the power to strike down a law that is deemed unconstitutional.

The National Supreme Court is a court of cassation and review in respect of any criminal, civil and administrative matters arising out of or under national laws, or personal matters.⁴⁵

³⁸ Ibid., Article 4(2).

³⁹ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

⁴⁰ Ibid., Article 56(5).

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

⁴² War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Commission on Human and Peoples' Rights: communication procedure’, 2012, available at: <http://co-guide.org/mechanism/african-commission-human-and-peoples-rights-communication-procedure>.

⁴³ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, Article 5, available at: <http://www.achpr.org/instruments/court-establishment>; Rules of Procedure of the African Commission on Human and Peoples’ Rights of 2010, Rules 84(2) and 118, available at: <http://www.achpr.org/instruments/rules-of-procedure-2010>.

⁴⁴ The Interim National Constitution of the Republic of the Sudan (2005), Article 122.

⁴⁵ Ibid., Article 125.

Child Courts under the Child Act have jurisdiction over cases submitted to them with respect to violations of children's rights, as well as cases involving children in conflict with the law.⁴⁶ The Child Court may assign and adopt the recommendations and appropriate treatment of a specialised body where it appears in any proceedings that a child is at risk of harm.⁴⁷ If the criminal court, or any other court, becomes aware of a crime committed against a child during proceedings, they are to prepare a dossier/report on the matter and bring it before the specialised Child Courts.⁴⁸ In cases concerning children in conflict with the law, the Child Court may pass any of the following "reform measures": reprimand and warning; placement under social probation, in his/her social environment; binding by performing service to the society, or joining appropriate vocational, cultural, sports or social training courses; or lodging at instruction homes.⁴⁹ However, the Committee on the Rights of the Child in its 2010 report expressed concerns that "*the juvenile justice system is not yet fully functional*".⁵⁰

In cases challenging administrative decisions, it is possible for the judge concerned to take any of the following actions: cancel the decision in question; prevent the government authority from acting in a particular manner; require the government authority to take a particular action; pronounce on the rights of the party; and compensate those that have suffered from the detrimental effects of the decision in question.⁵¹

For child victims of exploitation or forced labour, the Justice Organs must make available to them "appropriate procedures" to obtain, without discrimination, compensation for the injuries they have suffered by the persons legally responsible for such offences.⁵²

Despite these legal provisions, the Committee on the Rights of the Child in a 2010 report stated its concerns that "*there is no effective oversight of the investigative and judicial processes*", particularly those involving children.⁵³ Accessibility to an active constitutional remedy before the Constitutional Court is hindered by several key factors, mainly narrow standing, fees, qualification of lawyers, remoteness, and delays.⁵⁴

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Article 36 of the Civil Procedure Act affirms the required details/information when making a claim; the names of both the claimant and defendant are required, as per parts (b) and (c) respectively. Article 36 (d) states that if the defendant is a child/juvenile, or not represented legally, this must be disclosed. From these provisions it may be deduced

⁴⁶ Child Act 2010, section 63.

⁴⁷ Ibid, section 76.

⁴⁸ Ibid., section 76(3).

⁴⁹ Ibid., section 69.

⁵⁰ Committee on the Rights of the Child, Reporting status for Sudan, Concluding observations, CRC/C/SDN/CO/3-4, 22 October 2010, para. 89, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=SDN&Lang=EN.

⁵¹ Constitutional and Administrative Act 2005, Article 12.

⁵² Child Act 2010, Section 83(2).

⁵³ See UN Committee on the Rights of the Child.

⁵⁴ Arrested Development: Sudan's Constitutional Court, Access to Justice and the Effective Protection of Human Rights.

that, in civil matters, the specific victim must be named when bringing a claim.

Article 33 of the Criminal Procedure Act states that proceedings are initiated independently by the 'General Criminal Police' or the General Prosecutor upon coming into knowledge of a worthy situation, or following a communication or complaint. It is unclear whether individual child victims are involved or not.

The Child Act contains a number of protective measures for children coming into contact with the justice system - such as Article 65(5) which allows the Child Court to exempt a child defendant or witness from attending the hearing if this is in their best interests - but it remains unclear if the individual child victim(s) is to be named or not. Article 65(1) does state that in the absence of any domestic text on procedural issues before the Child Court, the UN Minimum Rules for the Administration of Juvenile Justice, the Beijing Rules, to be issued by publication by the Chief Justice; however, it is unclear to what extent they are applied and whether this affects the identification of child parties to proceedings.

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

Due to a lack of codified civil procedure in Sudan, it is unclear whether collective action is possible, and, if so, what procedure such an action would take. There does not appear to have been any documented case of collective action being brought in the Sudan courts in relation to child rights.

The Civil Procedure Act states that it is possible for multiple individuals to have the same claim brought before court, whether by one of them acting on their behalf or be a number of them if approved by the court.⁵⁵ The names of all of those involved must be disclosed to the court and their names published or by any other means at the court's discretion. Article 93 also confirms that any person(s) with an interest in the case may request from the court to join proceedings on the side of one of the respective parties.

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?

There is no provision in the Sudanese Civil Procedure Act which explicitly allows NGOs to file or intervene in cases. However, Article 58(2)(b) affirms that attendance with/on behalf of the parties is permitted for 'agents' authorised under power of attorney by the parties and approved by an official organ of the State. Article 59 provides that authorisation of representation allows the agent concerned to conduct the necessary investigatory/preparatory work in order to present the case. This provision may allow NGOs to act on behalf of parties with their consent.

There have been cases of organisations bringing action regarding potential children's rights violations. For example, the UNDP filed an appeal to the Sudanese courts on behalf of a 13-year-old girl in Garssila who had been raped and then convicted of adultery, which resulted in the judgment being quashed.⁵⁶

⁵⁵ Civil Procedure Act, Article 34(1).

⁵⁶ For further information, see:

<http://www.arabstates.undp.org/content/rbas/en/home/ourwork/crisispreventionandrecovery/successstories>

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 court system comprises four types of courts: regular courts, which consider criminal and civil matters (including the Court of Appeal, Public Courts and District Courts (courts of first instance), mixed security courts, military courts and tribal courts, which apply customary law to resolve disputes over land and water rights and family matters.⁵⁷

Cases regarding civil claims involving children would typically be filed at the regular courts initially. The General Civil Court has the jurisdiction of first instance in civil matters.⁵⁸ As such, initial claims would be brought before this court by the child's parent(s) or guardian in the first instance.

Cases concerning a potential violation of a child's rights under the CRC or the Bill of Rights in the Constitution should be filed at first instance with the Constitutional Court.⁵⁹

Alternatively, a case challenging a violation of a child's rights may be brought to a Child Court. As at 2010, Child Courts are established in the states of Khartoum (Khartoum north reformatory, the reformatory of Giraif west), Darfur (Shala reformatory), the South (Meridi reformatory) and in Sinnar (Abu-Jabal reformatory).⁶⁰

- 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?

Please see part II.D above.

The Child Act makes no mention of court fees in its provisions.

The Criminal Procedure Act only makes one reference to a waiver of court fees in the case of a defendant who is insolvent and has been convicted of a term of over seven years' imprisonment or capital punishment - which is not pertinent with regard to children as the Child Act applies to matters of juvenile justice and children are spared punishment by imprisonment and death under the law.⁶¹

⁵⁷ For further information, see: http://www.nyulawglobal.org/globalex/Sudan.htm#_The_Supreme_Court.

⁵⁸ Civil Procedure Act, Article 18(1).

⁵⁹ The Interim National Constitution of the Republic of the Sudan (2005), Article 122.

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http://www.sida.se/contentassets/e3a7b0cb84274558afc2720451885d62/20113-sudan-country-case-study-child-rights_3127.pdf, p. 14.

⁶¹ See Child Act 2010, Articles 58(4), 68, 69. Note, however, that Article 77(c) states that a child is not to be deprived of their personal freedom unless found guilty of a violent act and where there is no other suitable sanction/measure.

Under the Civil Procedure Act, it is for the court to decide on the allocation of expenses at the time of the judgment.⁶² Article 35 stipulates that, in referring to the filing of a case, a lawsuit may be considered filed from the date of the submission of the petition in instances where the claimant has been exempted from the corresponding fees under law, but provides no further information regarding said exemption(s).

- 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?

According to a report by the US State Department, an accused may request assistance through the Sudanese Bar Association. Lawyers wishing to practice are required to maintain membership in the government-controlled Sudanese Bar Association. However, the government continued to arrest and harass members of the legal profession whom it considered political opponents.⁶³

Research has not identified any local organisations that provide legal assistance.

In urgent situations, certain organisations have intervened in immediate appeals on behalf of children. For example, the UNDP intervened in a case involving a 13-year-old girl in Garssila who faced a sentence of one hundred lashes following an adultery conviction. In this case, UNDP mobilised its legal aid lawyers to file an immediate appeal to the General Court of Zalingei.⁶⁴ The non-profit group Justice Center Sudan also recently offered legal representation to a Sudanese woman in an appeal against her death sentence for apostasy.⁶⁵

Further information on organisations offering legal aid and pro bono services in Sudan, especially in the context of refugee law, can be found at the Rights in Exile Programme Pro Bono Directory.⁶⁶

- 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?

There is no clear indication of timing regarding how soon after a constitutional violation a case would have to be brought.

The Criminal Procedure Act states that no criminal case may be opened after (a) 10 years for any crime punishable by death or 10 years in prison; (b) five years for any

⁶² Civil Procedure Act, Article 111.

⁶³ See:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236410#wrapper>.

⁶⁴ For further information, see:

<http://www.arabstates.undp.org/content/rbas/en/home/ourwork/crisispreventionandrecovery/successstories/legal-aid-for-rape-victim-in-sudan.html>.

⁶⁵ For further information, see:

<http://www.wsj.com/articles/sudan-court-hears-appeal-of-apostasy-death-sentence-1402406085>.

⁶⁶ <http://www.refugeelaidinformation.org/sudan-pro-bono-directory>.

crime punishable by one year in prison or more; or (c) two years for any other crime.⁶⁷

There are no corresponding provisions in the Civil Procedure Act regarding limitation periods.

Judicial review of administrative decisions must be made within 60 days of their publication in the Official Gazette or any other of the State's publishing sources, or from the date of being made aware of the decision.⁶⁸

Research has not identified any special provisions for children in this regard.

- 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?

The Evidence Act 2003 states that "*evidence of a child of tender years is inadmissible on behalf of the prosecution in proceedings against an accused and shall not be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him*",⁶⁹ although it is unclear what precisely is meant by "a child of tender years". The Act further provides that "*all persons shall be competent to testify unless the court consider that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years...*"⁷⁰ This indicates that the court will have discretion regarding the child's competency as a witness according to its assessment of his or her maturity and capacity for understanding.

There are no legislative provisions providing for an exemption to taking an oath.⁷¹ However, as Child Courts may exempt children from attending a hearing, there may be an implied exemption in this regard.

Child victims and witnesses and children in conflict with the law are afforded special protection by the Child Act. This Act states that the Justice Organs must guarantee the protection of the rights and interests of victims, in particular, by adapting the proceedings to recognise the special needs of child witnesses.⁷² However, it does not specify how proceedings may be adapted in order to protect child witnesses. The Child Act states that "*upon inquiry with any child, there shall attend his guardian, or whoever may deputise therefor, whoever may stand for him, his advocate or the social researcher*".⁷³ In addition, the Child Court may exempt a child in conflict with the law or child witness from attending the trial by him/herself, where it deems that his/her

⁶⁷ Criminal Procedure Act, Article 38(1).

⁶⁸ Constitutional and Administrative Act 2005, Article 5(1).

⁶⁹ The Evidence Act, 2003, Section 123, available at:

http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Sudan/sudan_evidence_2003_en.pdf.

⁷⁰ Ibid, Section 124.

⁷¹ Article 90 of the Civil Procedure Act provides that "[t]he testimony of a party/witness is to be taken under oath, or with the clear intention of stating nothing but the truth in accordance with their religious beliefs." No exceptions are provided.

⁷² Ibid, Section 83.

⁷³ Child Act 2010, Section 56(1).

interest requires the same.⁷⁴

Regarding the privacy of children involved in court proceedings, the Evidence Act does not contain any such provision, although the Constitution provides generally that “*personal privacy is inviolable and evidence obtained in violation of such privacy shall not be admissible in the court of law*”.⁷⁵ Special measures relating to privacy apply to hearings involving children at the Child Court. The Child Act specifies that “*no information, relating to [the child’s] appearance...shall be published, save by permission of the Child Court*”.⁷⁶ The Child Act also provides for “*protection of privacy and identity of the victim children*” and ensures that courts must “*take the necessary measures, to avoid publication of...information as can lead to recogni[tion] of victim children*”.⁷⁷

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

Under the Child Act, Justice Organs must avoid unjustified delay in determining cases involving child victims of rights violations, and executing orders and decisions which grant compensation to child victims.⁷⁸

According to the US State Department, the large number of detainees and judicial inefficiency resulted in trial delays. In Darfur judges were often absent from their posts, thus delaying trials.⁷⁹

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

Article 179(a) of the Criminal Procedure Act states that it is possible to appeal all decisions taken at first instance, as well as any judgment that has not yet exhausted all avenues of appeal.

Appeals against decisions of Courts of First Instance are first heard at the National Courts of Appeal,⁸⁰ after which the National Supreme Court will consider any appeals against these judgments.⁸¹ Article 189 of the Civil Procedure Act affirms the instances where parties may request cassation before the National Supreme Court following decisions of the Courts of Appeal, the verdict being ill-founded legally, for example.

Sentences and orders passed by the Child Court are also subject to appeal before the Courts of Appeal.⁸²

Decisions of the specialised judge in administrative cases may be appealed within 15 days of their notification to the party requesting the review, in conjunction with a

⁷⁴ Ibid, Section 65(5).

⁷⁵ The Interim National Constitution of the Republic of the Sudan (2005), Article 156(c).

⁷⁶ Child Act 2010, Section 79.

⁷⁷ Ibid.

⁷⁸ Child Act, Section 83(1)(g).

⁷⁹ See: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236410>.

⁸⁰ The Interim National Constitution of the Republic of the Sudan (2005), Article 126; Civil Procedure Act, Article 172(3).

⁸¹ Ibid., Article 125.

⁸² Child Act 2010, Section 75(1).

written request identifying the reasons and basis for such a request.⁸³

Decisions of the Constitutional Court are final and binding.⁸⁴

Decisions of military courts cannot be appealed (see part V below).

- 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?

The amount of political controversy that can be aroused by negative and positive decisions can be illustrated by the 2014 apostasy case of Meriam Yehya and the 2010 Garssila rape case.⁸⁵

In a 2010 report, Ingrid Massage, a British-based human rights consultant wrote that “*there has been some disappointment at the outcomes of litigation testing the new Constitutional Court [in Sudan]*”, but notes that “*the testing itself was essential for the work and for the wider assessment of the human rights situation in the country*”.⁸⁶

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

According to reports by Freedom House and the US State Department, the judiciary is not independent, and courts are frequently subject to political control and interference by government officials and security forces, particularly in cases of alleged crimes against the state.⁸⁷ The 2014 apostasy case⁸⁸ is an example of the lack of enforcement of judicial decisions.

Furthermore, the government has not enforced decisions of regional bodies. In 2014, the African Commission released its decision regarding a 2009 case filed against the government by three internally displaced persons. The victims alleged they were arrested without charge, tortured by security forces, and prevented from seeking legal counsel. The court ordered the country to pay adequate compensation to the victims, initiate an investigation into the circumstances of the arrest and detention, amend legislation incompatible with the African Charter, and train security officers on the prohibition of torture. The government did not implement the court’s decision.⁸⁹

- 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

⁸³ Constitutional and Administrative Act 2005, Article 14(1).

⁸⁴ The Interim National Constitution of the Republic of the Sudan (2005), Article 122(1).

⁸⁵ See: <http://news.sky.com/story/1272505/cameron-meriam-death-sentence-is-barbaric>; <http://www.sudannews.net/index.php/sid/223221431>; <http://www.telegraph.co.uk/news/worldnews/europe/italy/10987694/Sudanese-Christian-woman-Meriam-Ibrahim-arrives-in-Italy.html>; <http://www.economist.com/news/middle-east-and-africa/21603509-death-sentence-issued-sudanese-court-has-stirred-up-controversy-show-whos>; <http://www.arabstates.undp.org/content/rbas/en/home/ourwork/crisispreventionandrecovery/successstories/legal-aid-for-rape-victim-in-sudan.html>.

⁸⁶ See: <http://www.redress.org/Microsoft%20Word%20-%20REDRESS%20report%20for%20submission%20to%20the%20European%20Commission.pdf>.

⁸⁷ See: <https://freedomhouse.org/report/freedom-world/2015/sudan#.VZOaU6ZSpz8>; <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236410>.

⁸⁸ See: <http://www.bbc.com/news/world-africa-28460383>.

⁸⁹ <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236410#wrapper>.

of children's rights.

Current context

The information contained in this report should be read in the context of the current political situation in Sudan. Conflict in Darfur, South Kordofan, and Blue Nile states has resulted in large numbers of civilian deaths and displaced.⁹⁰ An estimated two million people have been internally displaced by conflict in Sudan, 400,000 in 2014 alone. They face discrimination and many lack access to basic facilities and legal services.⁹¹ Access to functioning courts was also a problem for residents in remote areas.⁹²

The government took steps to investigate violations committed by the national police, but prosecution was rare. Authorities, however, did not investigate violations by other branches of the security forces. Impunity remained a common problem in all branches of the security forces.⁹³ For example, in September 2013, government forces used excessive force on protesters, resulting in the deaths of at least 185 people, including at least 15 children,⁹⁴ and hundreds of injuries and arrests. As of September 2014, only one case among more than 85 criminal complaints reached court, and the suspect was acquitted.⁹⁵

A state of emergency in Darfur, Blue Nile, and Southern Kordofan has allowed for arrest and detention without trial.⁹⁶ Sudanese military courts have exercised their power to try civilians, contrary to international standards, for a range of broadly defined offences such as undermining the Constitution.⁹⁷ Defendants do not have the right to appeal decisions of military courts.⁹⁸

All NGOs must register with the governmental Humanitarian Assistance Commission (HAC). The HAC regularly places restrictions or bans on the operations of NGOs and the movements of their workers, particularly in the conflict-affected areas of Darfur, Southern Kordofan, and Blue Nile.⁹⁹ Security forces prevented NGOs and human rights advocates from submitting complaints to the National Human Rights Commission on several occasions.¹⁰⁰

National Human Rights Commission

Under the Constitution and National Human Rights Commission Act adopted in April 2009, the Human Rights Commission was established to monitor the application of the

⁹⁰ See: <http://www.hrw.org/world-report/2015/country-chapters/sudan>.

⁹¹ See: <https://freedomhouse.org/report/freedom-world/2015/sudan#.VZOaU6ZSpz8>.

⁹² See: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236410>

⁹³ Ibid.

⁹⁴ African Centre for Justice and Peace Studies (ACJPS);

<https://freedomhouse.org/report/freedom-world/2015/sudan#.VZOaU6ZSpz8>.

⁹⁵ See: <https://freedomhouse.org/report/freedom-world/2015/sudan#.VZOaU6ZSpz8>;

<http://www.hrw.org/world-report/2015/country-chapters/sudan>.

⁹⁶ See: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236410>

⁹⁷ See: <http://www.hrw.org/world-report/2015/country-chapters/sudan>.

⁹⁸ See:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236410#wrapper>.

⁹⁹ See: <https://freedomhouse.org/report/freedom-world/2015/sudan#.VZOaU6ZSpz8>.

¹⁰⁰ See:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236410#wrapper>.

rights and freedoms provided for in the Bill of Rights and to receive complaints about violations.¹⁰¹ However, it is reported that the Commission remains inactive as it does not have an approved budget, lacks the authority to hire staff, and, as at October 2014, does not have a sitting commissioner.¹⁰² In 2010 the Committee on the Rights of the Child expressed concern that, despite the establishment of the Commission in law, there is currently no independent national mechanism to monitor the implementation of the CRC, receive complaints of child rights violations and take appropriate remedial action.¹⁰³

Sources of law

Sudan's formal legal system is based on British common law and Islamic law. Sources of law are Islamic law, constitutional law, legislation, judicial precedent, and custom. In family law, judicial circulars (*manshurat*) issued by the Qadi al-Quda (first issued in 1916) served to institute reforms or instruct the application of particular interpretations.¹⁰⁴

Sudan is governed according to the 2005 Interim Constitution. This Constitution is currently being redrafted, following the independence of South Sudan in 2011, but no meaningful progress has been made.¹⁰⁵

Criminal law

Sudanese criminal law includes elements from British colonial penal law, Egyptian civil code and penalties prescribed by Islamic law (*hudud*). The applicable criminal laws include: Criminal Act, 1991 and Criminal Procedure Act, 1991 (CPA); as well as *shari'a* and local custom. Individuals may also be convicted of crimes defined in Islamic *shari'a* law, which can include Islamic *hadd* punishments of amputation and death.¹⁰⁶

Authorities apply *shari'a* law sanctions disproportionately to women and girls, typically for "crimes" that include private beliefs and decisions about marriage, sexuality, or dress code.¹⁰⁷ Girls alleging rape can in turn be themselves accused of adultery in such courts.¹⁰⁸

Civil law

Civil matters are formally governed by statute, including include the Family Code 1991. The Family Code includes *shari'a* principles as well as interpretations of some *manshurat*, though the Supreme Court (*Shari'a* Circuit) is vested with the power to issue interpretations of Code. Hanafi *fiqh* is also established as a residual source of law.¹⁰⁹ Outside the capital, civil matters are in practice resolved through informal laws and community justice mechanisms (see below).

Customary law and community justice

Informal legal practices or popular court justice is exercised frequently throughout

¹⁰¹ The Interim National Constitution of the Republic of the Sudan (2005), Article 142.

¹⁰² See: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236410>.

¹⁰³ UN Committee on the Rights of the Child, para. 15.

¹⁰⁴ See: <http://www.nyulawglobal.org/globalex/Sudan.htm>.

¹⁰⁵ See: <https://freedomhouse.org/report/freedom-world/2015/sudan#.VZOaU6ZSpz8>.

¹⁰⁶ See: <http://www.nyulawglobal.org/globalex/Sudan.htm>.

¹⁰⁷ See: <http://www.hrw.org/world-report/2015/country-chapters/sudan>.

¹⁰⁸ See: <http://www.nyulawglobal.org/globalex/Sudan.htm>.

¹⁰⁹ Ibid.

Sudan. The formal judiciary relies on community justice for resolving disputes through tradition and reconciliation. Customary laws vary throughout Sudan and are based on diverse customs, traditions, and tribal systems of justice that may not be consistent with the formal legal system or public policy.¹¹⁰ Customary law is known to be weak in terms of human rights protections for women and children.¹¹¹

Personal matters are generally governed by the religious laws of the particular individuals concerned: Muslims are usually governed by local interpretations of *shari'a* law, whilst Christians are governed by local understandings of sectarian laws. If an individual is of no formal religion,¹¹² then personal issues are governed by the customary laws of his/her particular tribe.

For family disputes, often the father or the head of the extended family will resolve matters within the family unit. Beyond the family, people who are party to disputes will take the issue to the local chief, known as a Sultan, who applies local customary laws and tribal practices.¹¹³ Popular courts are staffed by respected community elders and enforce customary law that is not considered to be inconsistent with the law or public policy. Parties may appeal to the formal justice system, though much discretion is generally accorded to the decision of a Sultan or popular court.¹¹⁴

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

¹¹⁰ Graeme R. Newman, p. 362.

¹¹¹ See: <http://www.nyulawglobal.org/globalex/Sudan.htm>.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.