

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

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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?**

Uruguay ratified the CRC on 20 November 1990<sup>1</sup> and ratified the first two Optional Protocols to the Convention on the involvement of children in armed conflict and on the sale of children child prostitution and child pornography in 2003.<sup>2</sup> Most recently, Uruguay ratified the Optional Protocol to the Convention on a communications procedure in February 2015.<sup>3</sup>

In accordance with the Uruguayan Constitution, international treaties signed by the President and approved by the parliament are part of the domestic legal order.<sup>4</sup>

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

The Uruguayan Constitution contains no express provisions addressing whether an international instrument takes precedence over domestic legislation. However, national doctrine and case law are in agreement that international human rights treaties should be given due consideration by virtue of their legal nature and the legally protected rights they aim to uphold.<sup>5</sup>

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

Yes, the CRC was incorporated into national law by Law 16,137.<sup>6</sup>

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

Yes, the CRC has been directly enforced in the courts and has been cited.<sup>7</sup>

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<sup>1</sup> Ratification status of the Convention on the Rights of the Child, available at:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> See Art. 6 in relation to Art. 85(7) of the Uruguayan Constitution; Also: Jiménez de Aréchaga, Eduardo, *La Convención Interamericana de Derechos Humanos como derecho interno*, Revista IIDH, San José, Instituto Interamericano de Derechos Humanos, enero-junio de 1988, p. 28.; Gros Espiell Héctor, *Los tratados sobre derechos humanos y el derecho interno*, RUDP, 1987.

<sup>5</sup> See e.g. Judgment N° 201/02 S.C.J. of the Supreme Court of Justice of Uruguay in relation to Art. 72 of the Uruguayan Constitution; Also: Riso Ferrand, *Derecho Constitucional*, t. 1, p. 351, ed. F.C.U., Año 2005, F.C.U; Cajarville Peluffo, Juan, *Reflexiones sobre los principios generales del derecho en la constitución uruguaya*, pp. 168 and 169.

<sup>6</sup> Available at: <http://www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=16137&Anchor=>

<sup>7</sup> See: <http://bjn.poderjudicial.gub.uy/BJNPUBLICA/busquedaSimple.seam> and search for “Convention on the Rights of the Child”.

Nonetheless, the UN Committee on the Rights of the Child in March 2015 criticised the lack of awareness in Uruguay on the legal status of the Convention. While the Committee noted that the Supreme Court of Justice has declared that international human rights treaties have constitutional status in the national legal framework, the Committee voiced concern about the limited application of the Convention owing to the lack of awareness among judges and recommended that further measures should be taken to ensure the full applicability of the Convention in the domestic legal system, such as awareness-raising activities on the content of the Convention, in particular among judges, lawyers and law enforcement officials, as well as members of the General Assembly of Uruguay and other actors responsible for the implementation of the Convention.<sup>8</sup>

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

In Uruguay, all courts that have jurisdiction in cases involving minors<sup>9</sup> (*v.gr.* Children's Courts of first instance, Family Courts, among others) routinely apply the CRC and other ratified international treaties on human rights, including the Hague Convention.<sup>10</sup> There are many examples, primarily in the case law of the courts of appeal and the Supreme Court of Justice, where the Convention has been used, some of which are referenced below.<sup>11</sup> The CRC has also been applied at first instance in proceedings for an *amparo* action.<sup>12</sup>

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

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

In accordance with the Civil Code and the Civil Procedure Code of the Republic of Uruguay, persons under the age of 18 are considered incapable of appearing in court or

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<sup>8</sup> UN Committee on the Rights of the Child, *Concluding observations on the combined third, fourth and fifth periodic reports of Uruguay*, CRC/C/URY/CO/3-5, 5 March 2015, paras 7-8, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fURY%2fCO%2f3-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fURY%2fCO%2f3-5&Lang=en).

<sup>9</sup> Available at: <http://www.poderjudicial.gub.uy/institucional/poder-judicial/juzgados-y-tribunales.html>.

<sup>10</sup> Hague Convention on the Civil aspects of International Child Abduction, available at: [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=24](http://www.hcch.net/index_en.php?act=conventions.text&cid=24).

<sup>11</sup> Suprema Corte de Justicia, Uruguay, 27 de julio de 1994. Número: 675/1994. Ficha: sin datos, available at: <http://bjn.poderjudicial.gub.uy/BJNPUBLICA/hojaInsumo2.seam?cid=42> (an appeal regarding the visitation rights of a child's paternal grandmother, and the procedural right of the child to be heard in accordance with article 12 of the CRC); Suprema Corte de Justicia, Uruguay, 3 de agosto de 2012. Número: 707/2012. Ficha: 9999-68/2010 (non-return of a child to their father, in accordance with the best interests of the child principle, CRC, article 3), available at: <http://bjn.poderjudicial.gub.uy/BJNPUBLICA/hojaInsumo2.seam?cid=215>; Suprema Corte de Justicia, Uruguay, 29 de septiembre de 2003. Número: 280/2003. Ficha: sin datos (best interests of the child principle, CRC, article 3), available at:

<http://bjn.poderjudicial.gub.uy/BJNPUBLICA/hojaInsumo2.seam?cid=259>; Tribunal de Apelaciones de Familia, Segundo Turno, Uruguay, 28 de febrero de 2007. Número: 17/2007. Ficha: 47-1/2006 (father's visitation rights, background of domestic abuse and sexual abuse of child, the procedural right of the child to have their views heard in accordance with the CRC, article 12), available at:

<http://bjn.poderjudicial.gub.uy/BJNPUBLICA/hojaInsumo2.seam?cid=310>.

<sup>12</sup> See for example, Tribunal de Apelaciones de Familia, Segundo Turno, 19 de agosto de 2008. Número: 195/2008. Ficha: 254-535/2008 (Amparo proceedings, child custody, CRC cited), available at:

<http://bjn.poderjudicial.gub.uy/BJNPUBLICA/hojaInsumo2.seam?cid=361>.

tribunals. Only through their representatives are they authorised to bring cases of violation of their rights to courts.<sup>13</sup>

Pursuant to the current civil legislation,<sup>14</sup> representation of minors is conferred to the persons exercising parental authority, guardianship or curatorship. Such persons may carry out all actions permitted under the law. Even when the law establishes limits for the execution of certain acts, such acts may be legally executed through judicial intervention or approval.

In conformity with the civil laws, parental authority is jointly exercised by the parents or, in some cases following a judicial decision, is individually exercised by one parent.<sup>15</sup> However, parental authority may be temporarily or permanently suspended and in such cases, minors are entitled to certain rights established under the civil laws and the Childhood and Adolescence Code.<sup>16</sup> For example, article 8 of the Childhood and Adolescence Code provides for a process through which children can appear in court or tribunals in order to defend and protect their rights, with the assistance of a lawyer. In addition, a judge may appoint a curator in order to assist a child with his or her claims.

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 Republic of Uruguay recognises legal capacity or age of majority at 18.<sup>17</sup> Children are required to appear in court with a representative, with certain exceptions permitted by law.<sup>18</sup> The Civil Code states that if a child is married there are certain proceedings for which he or she does not need a representative, but these are only in relation to the child's own children and any assets. With respect to proceedings before tribunals, children are required to appear accompanied by a curator appointed by the judge.<sup>19</sup>

Consequently, even though the Childhood and Adolescence Code states that children shall have the right to appear in court in order to assert their rights, it also recognises the parents of the child as their legal representatives and establishes the provisions for children's representation in the absence of their parents.<sup>20</sup>

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

As indicated in part II.B, article 8 of the Childhood and Adolescence Code provides that every child may appear in court and defend their rights, with the assistance of a lawyer. Additionally, a judge, in his or her discretion, may appoint a curator.

This discretionary power granted to the judge appears to be a regular practice in cases

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<sup>13</sup> See Art. 280(2) of the Civil Code and Art. 32 and 33 of the Civil Procedure Code.

<sup>14</sup> See Arts. 79, 267, 273, 316 and 458 of the Civil Code.

<sup>15</sup> See Art. 252 of the Civil Code.

<sup>16</sup> Available at: <http://archivo.presidencia.gub.uy/ley/2004090801.htm>; See Arts. 285, 286 and 295 of the Civil Code.

<sup>17</sup> See Art. 280(2) of the Civil Code.

<sup>18</sup> See Arts. 32 and 33 of the Civil Procedure Code and Art. 263 of the Civil Code, among others.

<sup>19</sup> See Art. 283 of the Civil Code and Art. 32 of the Civil Procedure Code.

<sup>20</sup> See Art. 8 of the Childhood and Adolescence Code.

where children go to court in defence of their rights.<sup>21</sup> A curator would typically be appointed for a case where there is a lack of means or in the case where there is a child with no parents, as opposed to cases where the child is merely underage (older than 13 and younger than 18).<sup>22</sup>

In these cases, the Civil Code defines such figure as special curatorship; its appointment shall be in cases of absence of the parents or when the interests of the child oppose to the interests of the parents.<sup>23</sup>

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

Agreement 7414 issued by the Supreme Court of Justice in March 2001, provides for free legal aid in every matter related to family issues and for matters where Family Courts and Tribunals are competent. Such legal aid is exclusively for low income individuals or persons who do not have relatives to assist them. The declaration of their economic situation is made under oath, by the individuals concerned, and if such declaration is false, criminal proceedings may be instigated.

It is important to point out that only Montevideo has specialised offices for the defence of the rights of children and adolescents, which is often a logistical impediment for the proper defence of a child. While there are public defenders in several provinces, they are not specialised in this area of law.<sup>24</sup>

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 main impediment for children to appear in court lies mainly in the contradiction between the Civil Code and the Childhood and Adolescence Code. The latter states that a child has the right to appear in court and to be heard, however it leaves to the discretion of the judge the appointment of a curator who shall act according to the civil legislation, which, in contradiction with the provisions of the Childhood and Adolescence Code, does not grant to underage children the civil capacity for appearing in court.<sup>25</sup>

Article 6 of the Childhood and Adolescence Code incorporates the principle of the best interests of the child into Uruguayan law, but the UN Committee on the Rights of the Child has voiced concern that the right of the child to have his or her best interests taken as a primary consideration is not always respected, particularly in judicial and

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<sup>21</sup> See for example, (1) UNICEF, *Manual para la defensa jurídica de los derechos humanos de la infancia*, Fondo de las Naciones Unidas para la Infancia, UNICEF Uruguay 2012, Asociación de Defensores Públicos del Uruguay, agosto 2012, available at: [http://www.unicef.org/uruguay/spanish/Manual\\_Defensa\\_derechos.pdf](http://www.unicef.org/uruguay/spanish/Manual_Defensa_derechos.pdf); (2) UNICEF, *Legislación nacional en materia de infancia. ¿Niño objeto de tutela o sujeto de derecho? ¿Intervención tutelar o derecho penal?*, Intercambios número 4, Montevideo, 2012, available at: [http://www.unicef.org/uruguay/spanish/Intercambios\\_4\\_WEB.pdf](http://www.unicef.org/uruguay/spanish/Intercambios_4_WEB.pdf).

<sup>22</sup> See Art. 458 of the Civil Code.

<sup>23</sup> See Art. 458 of the Civil Code.

<sup>24</sup> UNICEF, *Legislación nacional en materia de infancia. ¿Niño objeto de tutela o sujeto de derecho? ¿Intervención tutelar o derecho penal?*.

<sup>25</sup> See Art. 8 of the Childhood and Adolescence Code in relation to Art. 431 of the Civil Code.

administrative decisions and when children are separated from their parents. The Committee has also noted with concern the impossibility of appealing or revising decisions when this right has not been respected.<sup>26</sup>

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

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

The action of *amparo*<sup>27</sup> is a mechanism that allows for the protection of the rights of children, specifically when other legal means of protection are ineffective.<sup>28</sup> *Amparo* proceedings may be brought against any act or omission of a public authority or private individual that violates or threatens any of the rights or freedoms in the Constitution.<sup>29</sup> Such proceedings can be brought by any person,<sup>30</sup> without dismissing the regulations established in the Childhood and Adolescence Code with regard to the appearance of children in court,<sup>31</sup> as well as by the Public Ministry and non-governmental organisations. The legal status of the filing party is examined by the court in order to determine its legal capacity to appear in court and whether its legal interest is sufficient to bring forward the action.<sup>32</sup> Family judges and contentious-administrative judges shall have jurisdiction to hear actions of *amparo*.<sup>33</sup> The Childhood and Adolescence Code provides for special treatment regarding the action of *amparo* when initiated in the case of a violation of children's rights, which is why the legal requirements for its admissibility are more flexible, in order to expedite the entire proceeding.<sup>34</sup>

Under the Constitution, any person whose direct, personal and legitimate interest has been injured by a law or regulation may submit a petition to the Supreme Court for a declaration of unconstitutionality. The Constitution also provides for an action of *habeas corpus* to protect from unlawful imprisonment.<sup>35</sup>

Private prosecutions do not appear to be a possibility in Uruguay and prosecutions are usually brought by a prosecutor.<sup>36</sup>

A fundamental body authorised to bring to court cases of violations of children's rights is the Public Ministry. This body is responsible for filing such complaints; it does not

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<sup>26</sup> UN Committee on the Rights of the Child, *Concluding observations on the combined third, fourth and fifth periodic reports of Uruguay*, paras 25-26.

<sup>27</sup> Article 195 of the Childhood and Adolescence Code.

<sup>28</sup> This action is not expressly established in the Constitution; rather, such an action arises from the interpretation of several articles of the Constitution and is regulated by Law 16.011: See Arts. 7, 72 and 332 of the Constitution; Law 16.011 is available at:

<http://www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=16011&Anchor=> Flores Dapkevicius, Rubén, *El amparo en la República Oriental del Uruguay*, 2011, Revista IUS, 5(27), 235-250, available at: [http://www.scielo.org.mx/scielo.php?script=sci\\_arttext&pid=S1870-21472011000100012&lng=es&tlng=es](http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1870-21472011000100012&lng=es&tlng=es).

<sup>29</sup> Art. 72 of the Amparo Law.

<sup>30</sup> See Art. 1 of the Amparo Law.

<sup>31</sup> See Art. 4 of the Amparo Law.

<sup>32</sup> See Art. 195 of the Childhood and Adolescence Code.

<sup>33</sup> See Art. 3 of the Amparo Law in relation to the Law 15.750.

<sup>34</sup> See Art. 195 of the Childhood and Adolescence Code.

<sup>35</sup> Art. 17 of the Constitution.

<sup>36</sup> See Art. 233 Code of Criminal Procedure.

act as a representative of a specific child but as a manager of children's due process rights.<sup>37</sup>

Complaints by children can also be lodged with the the National Human Rights Institution and Ombudsman.<sup>38</sup> The UN Committee on the Rights of the Child has welcomed the establishment of the National Human Rights Institution and Ombudsman, but voiced concern about the lack of adequate human and financial resources allocated to this body, particularly the lack of staff specialised in children's rights, which limits the efficiency of its complaints mechanism. There exists a lack of awareness of this institution among children and adolescents.<sup>39</sup>

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),<sup>40</sup> on their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights.<sup>41</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>42</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>43</sup> The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.<sup>44</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>45</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

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<sup>37</sup> See Arts. 118 and 195 of the Childhood and Adolescence Code.

<sup>38</sup> Institución Nacional de Derechos Humanos y Defensoría del Pueblo (INDDHH), available at: <http://inddhh.gub.uy/>.

<sup>39</sup> UN Committee on the Rights of the Child, *Concluding observations on the combined third, fourth and fifth periodic reports of Uruguay*, paras 17-18.

<sup>40</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>41</sup> American Convention on Human Rights, Article 44.

<sup>42</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>43</sup> *Ibid.*, Article 28.

<sup>44</sup> *Ibid.*, Article 23.

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

victim(s) of human rights violations.<sup>46</sup> The Court's judgments are legally binding on the State against which they are made.

Finally, once all domestic remedies have been exhausted, complaints against violations of children's rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC,<sup>47</sup> which Uruguay has ratified. Complaints can be made directly by both an individual child or a group of children, or indirectly, on their behalf by an adult or an organisation.<sup>48</sup> The violations must concern a right granted by either the CRC, the Optional Protocol on the sale of children or the Optional Protocol on the involvement of children in armed conflict<sup>49</sup> and must have occurred after the entry into force of the Protocol on 23 June 2015.<sup>50</sup> Anonymous complaints are inadmissible and so are complaints not made in writing.<sup>51</sup> In addition, only complaints made in one of the working languages of the UN will be accepted.<sup>52</sup> After examining the complaint, the Committee can make recommendations to the State, which are not legally binding.<sup>53</sup>

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

In Uruguay, the action of *amparo* allows courts to establish in the first instance precautionary measures as a means to avoid further damage than that caused by the first act of violation of the constitutionally protected right.<sup>54</sup> The legal effects of an *amparo* judgment are limited to the protection of the child with regard to their rights or freedoms recognised by the Constitution.<sup>55</sup> Additionally, the judgment may contain an order directed at an individual or an authority for executing or suspending a certain action.<sup>56</sup> The judge may also, by request or ex officio, impose commutative pecuniary sanctions.<sup>57</sup> This is a sanction established in advance, in case of non-compliance with the judgment.<sup>58</sup> This sanction is independent of the potential existence of damages, which is why this latter action may be demanded in other judicial proceedings, such as a claim for payment of damages before the civil courts.<sup>59</sup>

The Supreme Court has the power to declare the unconstitutionality of a law or regulation. This results in the law or regulation being inapplicable in the specific case.

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?

As previously stated in part II.A, all civil actions brought for the protection of the

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<sup>46</sup> American Convention on Human Rights, Article 63.

<sup>47</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2013, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en).

<sup>48</sup> Ibid., Article 5.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid., Article 7(g).

<sup>51</sup> Ibid.

<sup>52</sup> Office of the United Nations High Commissioner for Human Rights, '23 FAQ about Treaty Body complaints procedures', available at: <http://www2.ohchr.org/english/bodies/petitions/individual.htm#contact>.

<sup>53</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Article 10.

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<sup>54</sup> See Art. 7 of the Amparo Law.

<sup>55</sup> See Art. 1 of the Amparo Law.

<sup>56</sup> See Art. 9 of the Amparo Law.

<sup>57</sup> Law 14.978, which authorises judges to impose commutative pecuniary sanctions, aimed to force the parties to comply with the judgments, available at:

[http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=14978&Anchor=.](http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=14978&Anchor=)

<sup>58</sup> See Art. 9 of the Amparo Law in relation to Law 14.978.

<sup>59</sup> See Art. 2 of the Law 14.978.



child's interests shall be exercised through legal representatives or the persons appointed by judicial order. These actions may include one or more children pursuing the same interest.<sup>60</sup>

For criminal proceedings, actions may be brought by one or more individuals, who must always be identified. Such criminal actions cannot be brought or challenged without a fully identified victim.<sup>61</sup>

Finally, actions of *amparo* may be initiated by the Public Ministry when there is a violation of the rights of a group of children, without having to identify them individually.<sup>62</sup>

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

The Code of Criminal Procedure recognises the appearance in court of several victims within the same proceeding.<sup>63</sup> In civil matters, the General Procedural Code identifies as *litisconsorcio* (joint litigation) the participation in a proceeding of two or more persons.<sup>64</sup> In both cases, the victims or injured parties are required to be fully identified.<sup>65</sup>

Regarding cases related to violations of constitutional rights, such as the right to life or liberty, these actions may be jointly exercised and there is no need to specify the victims individually.<sup>66</sup>

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

According to Law 16.011, in the case of incapacity of the victim, any natural or legal person may file an *amparo* action. Even though NGOs are authorised to file an *amparo*, once the proceedings have been initiated, and the victim has been identified, if applicable, the representation shall be governed by what is established in the Civil Code and the Childhood and Adolescence Code.<sup>67</sup> Therefore, it appears that if an NGO does not act as the legal representative of the children on whose behalf proceedings are initiated, they can only observe the proceedings.

#### IV. **Practical considerations.**

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

All cases related to children, whether they are civil, criminal or regarding violations of

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<sup>60</sup> See Arts. 1 and 45 of the Civil Procedure Code.

<sup>61</sup> See Arts. 12 and 15 of the Code of Criminal Procedure.

<sup>62</sup> See Art 1 of the Amparo Law and Art. 42 of the Civil Procedure Code.

<sup>63</sup> See Arts. 46 and 47 of the Code of Criminal Procedure.

<sup>64</sup> See Arts. 45 and 46 of the Civil Procedure Code.

<sup>65</sup> See Art. 117(2) of the Civil Procedure Code and Art. 15 of the Code of Criminal Procedure.

<sup>66</sup> Article 1 and 4 of Law 16.011, available at:

<http://www.parlamento.gub.uy/leyes/AccessoTextoLey.asp?Ley=16011&Anchor=>

<sup>67</sup> See Art. 195 of the Childhood and Adolescence Code and the Art. 13 of the Amparo Law in connection to Art. 32 and 33 of the Civil Procedure Code.

constitutional rights shall be filed with the Family Courts, in Montevideo, or with the Judges of First Instance, who according to Art 129 of the Childhood and Adolescence Code shall have the same jurisdiction as Family Judges.

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

In Uruguay, legal assistance is free and ex officio for everything related to family matters and children from low-income backgrounds.<sup>68</sup>

With respect to court costs, Law 16.462 determines certain costs for different actions, such as summons for conciliation, filing of claims, responses to claims, filing of appeals, responses to appeals, preparatory formalities and precautionary measures. However, all actions related to children and the protection of their rights are exempt from payment, which is why access to the courts for children is free.<sup>69</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 organisation, or under an agreement that does not require the payment of legal fees up front?

There are some institutions in Uruguay which provide free legal advice to children and their representatives, such as El Servicio Paz y Justicia Uruguay (SERPAJ)<sup>70</sup> or Instituto de Estudios Legales y Sociales del Uruguay (IELSUR).<sup>71</sup>

The Republic University (Universidad de la República) offers free legal assistance through its Legal Clinic (Consultorio Jurídico),<sup>72</sup> which also runs several District Law Clinics (Consultorios Jurídicos Barriales).<sup>73</sup> Similar legal offices have been founded throughout other cities in Uruguay as well, including Salto, Paysandú, Bella Unión and Maldonado.<sup>74</sup> Certain law firms in Uruguay also offer pro bono legal assistance.<sup>75</sup>

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

There are no special provisions that would allow young adults to bring cases about violations of their rights that occurred when they were children. *Amparo* proceedings must be brought within thirty days after the action, event or omission occurred.<sup>76</sup> With

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<sup>68</sup> See Art. 74(f) of the Childhood and Adolescence Code and Art. 254 of the Uruguayan Constitution.

<sup>69</sup> Art. 254 of the Uruguayan Constitution.

<sup>70</sup> See: <http://www.serpaj.org.uy/serpaj/>.

<sup>71</sup> See: <http://ielsur.org/>.

<sup>72</sup> See: <http://www.fder.edu.uy/consultorio.html>.

<sup>73</sup> Latham & Watkins, *A survey of pro bono practices and opportunities in 71 jurisdictions*, August 2012, p. 356, available at: <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

<sup>74</sup> Ibid.

<sup>75</sup> E.g. Ferrere Abogados; Jimenez de Aréchaga; Viana & Brause; see: Latham & Watkins, p. 356.

<sup>76</sup> See Art. 4 of the Amparo Law.

respect to civil claims, the General Procedural Code states the terms and conditions under which an action shall move forward.<sup>77</sup> Regarding criminal proceedings, the Criminal Code establishes assumptions such as amnesty or prescription. Crimes that have a penalty of more than 20 years and less than 30 years, prescribe after 20 years.<sup>78</sup>

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The General Procedural Code regulates the required evidence for establishing a prosecution and rules on admissibility. Evidence such as documents, own statements, testimonies, expert evidence and re-enactment of events is allowed in all courts.

However, there is a contradiction between the Childhood and Adolescence Code and the General Procedural Code, since the former establishes that the child shall be heard while the General Procedural Code does not allow testimony from persons under 14 years old.<sup>79</sup>

In the event of the appearance of a child to present evidence, the Justice and Auxiliary Police Law provides protection for every victim, witness or person that offers qualified information, as well as strict confidentiality regarding their identity. Nonetheless, it does not establish any other special treatment for children.<sup>80</sup>

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

The court system is severely backlogged,<sup>81</sup> making it unlikely for children to receive quick decisions from the courts.

According to the current statistics provided by the judicial authorities of the Republic of Uruguay, civil proceedings take between 20 to 25 months from the filing of the claim until the second-instance resolution.<sup>82</sup> With respect to criminal offences, the duration of the proceedings depends on the type of crime committed. In general terms, a proceeding instigated in 2011 lasted 29 months.<sup>83</sup>

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

Appeals in *amparo* proceedings shall be filed within three days after the notification of the judgment. Its admission does not suspend the measures enacted in the *amparo* judgment.<sup>84</sup> Decisions by the first instance courts can be appealed to the courts of appeal

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<sup>77</sup> See Art. 117 of the Procedural Code.

<sup>78</sup> Article 117 of the Criminal Code.

<sup>79</sup> See Chapter III of title VI of the General Procedural Code.

<sup>80</sup> Article 32 of the Law 18.315 for Police Procedure.

<sup>81</sup> Freedom House, *Freedom in the world 2014: Uruguay*, available at:

<https://freedomhouse.org/report/freedom-world/2014/uruguay#.VX7wdLzL-p9>.

<sup>82</sup> Available at: <http://www.poderjudicial.gub.uy/images/stories/anuario/civil/2010.pdf>.

<sup>83</sup> Available at: [http://www.poderjudicial.gub.uy/images/institucional/estadisticas/Informe\\_Procesos\\_Penales\\_2011.pdf](http://www.poderjudicial.gub.uy/images/institucional/estadisticas/Informe_Procesos_Penales_2011.pdf).

<sup>84</sup> See Art. 10 of the Amparo Law.

of which there are 16 spread across the country.<sup>85</sup> The Supreme Court is the final court of adjudication.<sup>86</sup>

- 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?

Judicial decisions are widely respected in Uruguay and political backlash or repercussions from a positive decision are not likely.<sup>87</sup>

Specialised courts for children are located in the capital city, while in the rest of the country these kinds of cases are resolved by multidisciplinary judges, running the risk of inattention in the cases of violations of the rights of children.<sup>88</sup> Furthermore, it can be difficult for children located outside the capital city to get access to specialised legal representation, mainly because of the distance and lack of specialised lawyers in other cities.<sup>89</sup>

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

The General Procedural Code establishes that the court that issues a judgment shall be responsible for its enforcement.<sup>90</sup> The claimant may make a claim to the court of origin for the enforcement of the provisional judgment. In case the judges grant enforcement of a provisional judgment, due to the threat of frustration of the recognised right resulting from the delay in the second instance, there shall be a request for a warranty in the event of contradiction between the first instance and second instance judgments.<sup>91</sup>

Once there is no judicial remedy left and the judgment becomes final, judgments are enforced upon request of the interested party.<sup>92</sup> The competent court for its enforcement is the court that resolved the matter in the first instance, which is authorised to take all the measures needed in order to execute it. Both the enforcement proceeding and its resolutions are irrevocable.<sup>93</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.

*Other regulations applicable to children*

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<sup>85</sup> See: <http://www.poderjudicial.gub.uy/institucional/poder-judicial/juzgados-y-tribunales.html>.

<sup>86</sup> See: <http://www.poderjudicial.gub.uy/institucional/poder-judicial/suprema-corte-de-justicia.html>.

<sup>87</sup> Freedom House.

<sup>88</sup> Fondo de las Naciones Unidas para la Infancia,

*La aplicación del Código de la Niñez y la Adolescencia en los procesos de protección de los derechos y situaciones especiales*, UNICEF, Montevideo, 2006, available at:

[http://www.unicef.org/uruguay/spanish/unicef\\_volpe\\_1.pdf](http://www.unicef.org/uruguay/spanish/unicef_volpe_1.pdf) for part 1 and

[http://www.unicef.org/uruguay/spanish/unicef\\_volpe\\_2.pdf](http://www.unicef.org/uruguay/spanish/unicef_volpe_2.pdf) for part 2.

<sup>89</sup> Ibid.

<sup>90</sup> See Art. 379 of the General Procedural Code.

<sup>91</sup> Article 260 of the General Procedural Code.

<sup>92</sup> Article 371 of the General Procedural Code.

<sup>93</sup> See Arts. 372 and 373 of the General Procedural Code.

Various other laws and regulations relate to children's rights in Uruguay:

- Law 18.777 Adolescents Criminal Offenders.
- Law 18.771 Institute of the Criminal Responsibility of the Adolescent.
- Law 18.778 Adolescents in Conflict with the Law.
- Law 18.640 Promotion of Health and Education in the Childhood and Adolescence within Public Education.
- Law 17.815 Commercial and Noncommercial Sexual Violence committed against children, adolescents or disabled people, in relation with the Law 17.559.
- Law 16.685 Materially Abandoned Minors.
- Law 18.535 Parental Responsibility and for its Protection Convention Related to the Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation Approval.
- Law 16.873 – Labour Agreements. Requirements and Benefits to Companies that incorporate Youths in the contractual arrangements provided.

*Discrimination against certain groups of children*

Concern has been voiced regarding discriminatory attitudes and social exclusion which still affect some sections of the child population in Uruguay, particularly children with disabilities, girls, children living in rural and remote areas, children from economically disadvantaged families and adolescents. Adolescents are often portrayed as criminals in the media, and “are therefore subjected to discrimination in law and in practice”.<sup>94</sup>

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

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<sup>94</sup> UN Committee on the Rights of the Child, *Concluding observations on the combined third, fourth and fifth periodic reports of Uruguay*, paras 23-24.