

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

*This report was produced by White & Case LLP in April 2014, but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.*

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

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

According to the Constitution of Venezuela, human rights treaties signed and ratified by the Republic of Venezuela have constitutional status.<sup>1</sup> This means that they are directly enforceable and precede national laws. In addition, the constitution specifically references the Convention on the Rights of the Child (CRC) and emphasises its normative value.<sup>2</sup>

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

The constitution provides that international treaties relating to human rights which have been signed and ratified by Venezuela have constitutional rank and precede national legislation insofar as they contain provisions concerning the enjoyment and exercise of rights that are more favorable than those established by the Constitution. Moreover, these treaties shall be immediately and directly applied by the courts and other public organs.<sup>3</sup>

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

The CRC was incorporated into Venezuela's national law in 1990, by way of the Law Approving the Convention on the Rights of the Child (Ley Aprobatoria de la Convención sobre los Derechos del Niño).

In addition, Venezuela promulgated the Organic Law for the Protection of the Child and Adolescent (Ley Orgánica para la Protección del Niño y del Adolescente, OLPCA) in 1998 which overrides ordinary laws.<sup>4</sup>

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

In its capacity as an international human rights treaty and based on the constitution of Venezuela, the CRC can be directly applied by the courts and any other public organ.<sup>5</sup>

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<sup>1</sup> Articles 19 and 23 of the Constitution of Venezuela of 1999. The text of the constitution is available at: <http://venezuela.justia.com/federales/constitucion-de-la-republica-bolivariana-de-venezuela/>.

<sup>2</sup> Article 78 of the Constitution of Venezuela of 1999.

<sup>3</sup> Article 23 of the Constitution of Venezuela of 1999.

<sup>4</sup> Ley Orgánica para la Protección del Niño y del Adolescente of 1998, available at: [http://www.oas.org/Juridico/mla/sp/ven/sp\\_ven-mla-law-child.pdf](http://www.oas.org/Juridico/mla/sp/ven/sp_ven-mla-law-child.pdf).

<sup>5</sup> Article 23 of the Constitution of Venezuela of 1999.

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

Domestic courts in Venezuela usually cite the Organic Law for the Protection of the Child and Adolescent as the domestic provision of children's rights instead of the CRC.

The Supreme Court of Venezuela publishes guidelines on occasion on the implementation of the CRC by the responsible courts, called Child Protection Courts, for example on children's rights to be heard during legal proceedings.<sup>6</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?

Children can bring cases to court through their representatives in Venezuela. According to the Civil Code of Venezuela, the legal age required to carry out all types of legal acts is 18. Therefore anyone under the age of 18 requires a legal representative in order to bring cases to court.<sup>7</sup>

Representation of children is jointly exercised by both parents as long as they both hold parental authority over the child.<sup>8</sup> Also, in the case of opposing interests between the child and his or her parents, the juvenile judge shall appoint a special curator.<sup>9</sup>

The civil code regulates that every child without any legal representative shall be provided with a guardian and a 'protutor', meaning a vigilant individual which is not quite as legally invested in the child as the main guardian.<sup>10</sup> The guardian and the protutor may be appointed by the parents, in case the child is subject to guardianship.<sup>11</sup> In the event that neither of the parents appoints a guardian, the judge may appoint a grandparent as guardian.<sup>12</sup> If the child has no grandparents, the judge of first instance, upon hearing a guardianship council, shall appoint another person to act as guardian.<sup>13</sup>

In the event of abandoned children and if the laws specifically provide for it, the state assumes guardianship.<sup>14</sup> In the absence of such specific regulations, the child shall be placed in a designated institution by a civil judge and the director of the institution then becomes the child's guardian.<sup>15</sup>

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<sup>6</sup> Guideline by the Supreme Court of Venezuela on the rights of children to be heard in legal proceedings before Child Protection Courts, 25 April 2007, available at: <http://www.tsj.gov.ve/informacion/acuerdos/Acuado%20Ni%C3%B1os-25-04-07.htm>.

<sup>7</sup> Article 18 of the Civil Code of 1982, available at: <http://docs.venezuela.justia.com/federales/codigos/codigo-civil.pdf>.

<sup>8</sup> Article 261 of the Civil Code of 1982.

<sup>9</sup> Article 264 of the Civil Code of 1982.

<sup>10</sup> Article 301 of the Civil Code of 1982.

<sup>11</sup> Article 305 of the Civil Code of 1982.

<sup>12</sup> Article 308 of the Civil Code of 1982.

<sup>13</sup> Article 309 of the Civil Code of 1982.

<sup>14</sup> Article 318 of the Civil Code of 1982.

<sup>15</sup> Articles 319 and 320 of the Civil Code of 1982.

Similarly, the Organic Code of Criminal Procedure (Código Orgánico Procesal Penal) states that if a victim of a crime is incapable of bringing a case to court because of his or her age, and if the victim does not have a legal representative or if the representative is unable to exercise the required action, the Office of the Prosecutor General of the Republic ('Public Ministry') shall bring the case to court.<sup>16</sup>

There are some exceptions to the general rule that children in Venezuela can only bring cases to court once they reach the age of 18. In a small number of cases specified in the Civil Code, children who have reached the age of 16 but are below the age of 18, are authorised to bring a case to court, such as a case regarding ascertaining parenthood.<sup>17</sup>

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

According to Venezuela's civil code, the representative or tutor of a child also serves as his or her legal representative in all aspects of life and brings cases on behalf of the child.<sup>18</sup>

Research suggests that cases are brought in the child's name. With regard to civil lawsuits, for example, the identification of the plaintiff him- or herself is always required.<sup>19</sup> In proceedings for indemnity and compensation for damages, the identification of the plaintiff or in fact that of the plaintiff's representative is required.<sup>20</sup> In addition, the Code of Civil Procedure establishes that every civil file shall contain, inter alia, the name of the parties and, with regard to different forms of notices, that the parties must be identified.<sup>21</sup> Similarly, the Code establishes that a lawsuit shall express the complete name of both the plaintiff and the defendant.<sup>22</sup> It is further provided that every judgment shall contain the names of the parties and their representatives, thereby making a difference in the naming of the child and his or her representative.<sup>23</sup>

Similarly, with regard to contentious proceedings in family affairs established by the OLPCA a lawsuit shall express the full names of the plaintiff and the defendant.<sup>24</sup>

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<sup>16</sup> Article 24 of the Organic Code of Criminal Procedure of 2001, available at: <http://docs.venezuela.justia.com/federales/codigos/codigo-organico-procesal-penal.pdf>; website of the Public Ministry, available at: <http://www.mp.gob.ve/web/guest;jsessionid=5CBFBFAFA8D546EC24B774D6DC4CBDBDE>.

<sup>17</sup> Articles 263 and 2770 of the Civil Code of 1982.

<sup>18</sup> Article 347 of the Civil Code of 1982.

<sup>19</sup> Article 294 Organic Code of Criminal Procedure.

<sup>20</sup> Article 423 Organic Code of Criminal Procedure

<sup>21</sup> Article 25 of the Organic Code of Civil Procedure of 1990, available at: <http://docs.venezuela.justia.com/federales/codigos/codigo-de-procedimiento-civil.pdf>.

<sup>22</sup> Article 340 of the Organic Code of Civil Procedure of 1990.

<sup>23</sup> Article 243 of the Organic Code of Civil Procedure of 1990.

<sup>24</sup> Article 455 of the Organic Law for the Protection of the Child and Adolescent of 1998.

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

The same provisions mentioned above apply to cases of infants and young children. Cases are brought by a legal representative, which is the person or persons exercising parental guardianship over the child.

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

The Organic Law for the Protection of the Child and Adolescent establishes the principle of gratuity, which provides that legal assistance for children and/or their representatives shall be free of cost.<sup>25</sup>

Several bodies have been established across the Venezuelan judiciary in order to assist children and their representatives in pursuing trials without cost, such as the Child Protection Council,<sup>26</sup> the Public Ministry<sup>27</sup> or the Office for the Defence of Children and Adolescents.<sup>28</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)?

In cases where children who are subject to parental authority have opposing interests to those of their parents, the judge appoints a special curator who will then represent the child.<sup>29</sup>

Similarly, in some limited cases, the Public Ministry can represent the child, for example in filiation proceedings involving children, if the legal representative does not bring the case to court.<sup>30</sup> In addition, proceedings to remove parental authority may be exercised by the Public Ministry or Child Protection Council, the other parent, ascendants or any other relative within the third degree.<sup>31</sup>

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

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

The legal system of Venezuela recognises the constitutional protective action of 'amparo' which can be brought in the Child Protection Courts (Tribunales de Protección del Niño y del Adolescente) or any other court in order to remedy child rights violations. 'Amparo' means the right of the individual to have all

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<sup>25</sup> Article 9 of the Organic Law for the Protection of the Child and Adolescent of 1998.

<sup>26</sup> Information on the Child Protection Council is available at:

<http://www.defensoria.gob.ve/dp/index.php/publicaciones/libros-de-derechos-humanos/1410-consejos-de-proteccion-de-ninos-ninas-y-adolescentes>.

<sup>27</sup> Ibid at No. 16.

<sup>28</sup> Information on the Office for the Defence of Children and Adolescents is available at:

<http://www.defensoria.gob.ve/dp/index.php/proteccion-de-ninas-ninos-y-adolescentes>.

<sup>29</sup> Article 337 of the Civil Code of Venezuela of 1982.

<sup>30</sup> Article 227 of the Civil Code of Venezuela of 1982.

<sup>31</sup> Article 278 of the Civil Code of Venezuela of 1982.

their constitutional rights protected, including those established by international treaties.<sup>32</sup>

Amparo proceedings can be brought against legislation, administrative acts, judgments, other court decisions, material actions, abstentions or omissions by the authorities or any individual provided it violates a constitutional guarantee or any right of the child.<sup>33</sup> It can also be brought preemptively if there is a tangible danger of such a violation.

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),<sup>34</sup> on their behalf or on behalf of third persons, regarding alleged violations of the American Declaration of the Rights and Duties of Man<sup>35</sup> and other Inter-American human rights instruments.<sup>36</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>37</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>38</sup> The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.<sup>39</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.

Venezuela denounced the American Convention on Human Rights (ACHR) in 2012 and since 10 September 2013, the country is no longer bound by the Convention. One of the grave consequences of this denunciation is that any human rights violations that have taken place in Venezuela after 10 September 2013 cannot be challenged by the Inter-American Court of Human Rights (IACtHR). Yet, human rights violations which took place in Venezuela while the

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<sup>32</sup> Article 27 of the Constitution of Venezuela of 1999.

<sup>33</sup> Allan R. Brewer-Carías, *Some aspects of the “Amparo” proceeding in Latin America as a constitutional judicial mean specifically established for the protection of human rights*, Colloquium in International and Comparative Law, University of Maryland School of Law, Baltimore, October 2007, at p. 21, available at: [http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1001&context=iclc\\_papers](http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1001&context=iclc_papers).

<sup>34</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>35</sup> Available at: <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>.

<sup>36</sup> Statute of the Inter-American Commission on Human Rights, Section IV, available at: <http://www.oas.org/en/iachr/mandate/Basics/statuteiachr.asp>.

<sup>37</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>38</sup> *Ibid.*, Article 28.

<sup>39</sup> *Ibid.*, Article 23.

country was a State Party to the American Convention are still subject to the Court's jurisdiction, in accordance with the obligations established in the Convention.<sup>40</sup> For any human and children's rights violations which occurred in Venezuela before 10 September 2013, the IACHR may therefore still refer the case to the IACtHR if Venezuela does not comply with the recommendations of the IACHR.<sup>41</sup> Individuals do not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACtHR interprets and applies the applicable Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.<sup>42</sup> The Court's judgments are legally binding on the State against which they are made.

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

Courts can offer full restoration of the violated legal position to remedy amparo proceedings. The court's decision in amparo proceedings should be limited to supporting and protecting the individual complainant without giving general statements about the law. The final decision of the court has no effect on other cases or persons who are not party to the proceedings, unless ordered specifically by the court. The ruling of the court in amparo proceedings usually orders the immediate enforcement of the decision. Non-compliance with an amparo ruling is punishable by imprisonment for a period of six to fifteen months. The judge is tasked with implementing all necessary steps in order to ensure that justice is restored.<sup>43</sup>

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

A legal challenge generally has to involve an individual victim and specific exceptions for the naming of child victims do not appear to exist in Venezuela.

In criminal proceedings, the identity of the complainant always has to be disclosed.<sup>44</sup> Similarly, with regard to civil lawsuits, the identification of a specific plaintiff is generally required. In cases of indemnity and compensation claims as a result of a criminal conviction, for example, identification of the plaintiff or his representative is always required.<sup>45</sup> Furthermore, every civil file must contain, inter alia, the names of both parties and every judgment shall contain the names of the parties and their representatives.<sup>46</sup>

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<sup>40</sup> For more information on Venezuela's relationship with the Inter-American human rights system, see: [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/064.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/064.asp).

<sup>41</sup> Ibid., Article 45.

<sup>42</sup> American Convention on Human Rights, Article 63.

<sup>43</sup> Article 27 of the Constitution of Venezuela of 1999.

<sup>44</sup> Article 294 of the Organic Code of Criminal Procedure of 2001, available at: <http://docs.venezuela.justia.com/federales/codigos/codigo-organico-procesal-penal.pdf>.

<sup>45</sup> Article 423 of the Organic Code of Criminal Procedure of 2001.

<sup>46</sup> Article 25, 340 and 243 of the Civil Code of Venezuela of 1982.

Similarly, with regard to contentious proceedings in family law cases, established by the OLPCA, the full names of both parties have to be disclosed.<sup>47</sup>

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

Group litigation is possible in civil proceedings in Venezuela. The Code of Civil Procedure (Código Orgánico Procesal Penal) provides that several victims shall act together through one representative when filing their claim.<sup>48</sup>

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

In criminal proceedings generally and especially in cases involving crimes which affect collective or wide-ranging interests, the Organic Law for the Protection of the Child and Adolescent also considers as victims associations, foundations and other legally constituted entities which are directly linked to the relevant interests.<sup>49</sup> A similar provision can be found in Venezuela's Code of Criminal Procedure.<sup>50</sup>

Furthermore, the OLPCA authorises legally incorporated organisations to file a child protection claim if the organisation has existed for at least two years and if its operations are related to the subject matter of the claim.<sup>51</sup>

The OLPCA also establishes a right of organisations to judicial remedies. In criminal cases against adolescents, organisations incorporated for the defense of the rights of children and adolescents are authorized to apply for the appeal of court decision.<sup>52</sup>

**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 regarding the protection of the rights of children and adolescents can be filed with the specialist Child Protection Courts which have jurisdiction over family-related matters such as custody, parental authority, child care, adoption as well as over criminal law proceedings against adolescents.<sup>53</sup>

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<sup>47</sup> Article 455 of the Organic Law for the Protection of the Child and Adolescent of 1998.

<sup>48</sup> Article 121 of the Organic Code of Civil Procedure of 1990.

<sup>49</sup> Article 661 of the Organic Law for the Protection of the Child and Adolescent of 1998.

<sup>50</sup> Article 119 of the Organic Code of Criminal Procedure of 2001.

<sup>51</sup> Article 278 of the Organic Law for the Protection of the Child and Adolescent of 1998.

<sup>52</sup> Article 612 of the Organic Law for the Protection of the Child and Adolescent of 1998.

<sup>53</sup> See inter alia articles 175, 177, 214, 357 and 412 of the Organic Law for the Protection of the Child and Adolescent of 1998.



However, ordinary criminal courts are competent to impose sanctions and penalties in all cases in which Child Courts lack jurisdiction, as detailed in the Organic Law for the Protection of the Child and Adolescent.<sup>54</sup>

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

The Constitution establishes the obligation of the state to guarantee “free, accessible, impartial, appropriate, transparent, autonomous, independent, responsible, fair and speedy” access to justice.<sup>55</sup> This constitutional principle is mirrored by the stipulation of gratuity of all child rights proceedings in the Organic Law for the Protection of the Child and Adolescent which provides that legal assistance for children and/or their representatives shall always be free of cost.<sup>56</sup>

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children’s rights organization, or under an agreement that does not require the payment of legal fees up front?

Free legal assistance is available through some specialised NGOs in Venezuela.

“Venezuela Sin Límites”, for example, is a network of NGOs which, among other aspects, has strong strategic alliances with law firms in order to provide legal services to other non-governmental organisations and individuals.<sup>57</sup>

“ProVene - La Fundación Pro Bono Venezuela” is an organisation of young lawyers and law students who volunteer to provide free legal assistance for vulnerable clients who cannot afford to pay for a lawyer to represent their case.<sup>58</sup>

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

The time limit for legal actions in order to protect children’s rights depends on the type of the intended legal action.

The general rule provided for by the Civil Code is that the statute of limitations for civil claims shall not run against a child.<sup>59</sup> Yet, for some civil actions, the statute of limitations can be restricted. Civil claims by a child against his or her

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<sup>54</sup> Article 214 of the Organic Law for the Protection of the Child and Adolescent of 1998.

<sup>55</sup> Article 26 of the Constitution of Venezuela of 1999.

<sup>56</sup> Article 9 of the Organic Law for the Protection of the Child and Adolescent of 1998.

<sup>57</sup> Venezuela Sin Límites, website available at: <http://www.venezuelasinlimites.org/Paginas/probono.aspx>.

<sup>58</sup> ProVene - La Fundación Pro Bono Venezuela, website available at: <http://www.provene.org>.

<sup>59</sup> Article 1965 of the Civil Code of 1982.



guardian, for example, can only be brought within ten years;<sup>60</sup> and inheritance claims expire twenty years after the death of the testator.<sup>61</sup>

The OLPCA also provides certain time limits for legal actions. As such, claims for child support payments can only be brought within a timeframe of ten years.<sup>62</sup>

For criminal law complaints, the time limit varies from three months to fifteen years and is dependant on the potential penalty under the penal provision.<sup>63</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?

All types of evidence which are admissible under the Civil Code and Civil Procedure Code can also be submitted the Child Protection Courts in Venezuela, such as documentary evidence, witness statements and expert evidence.<sup>64</sup>

The Law for the Protection of Victims, Witnesses and other Persons in Proceedings (Ley de Protección de Víctimas, Testigos y demás Sujetos Procesales) provides for special treatment for vulnerable victims in proceedings including children and grants protection measures during and after the legal process.<sup>65</sup>

The general rule applies that a child witness can only be heard by a judge once he or she reaches the age of twelve. Yet under some circumstances, the OLPCA authorizes the child to intervene in procedures and express its opinion, such as in administrative procedures<sup>66</sup> and conciliation procedures.<sup>67</sup> Furthermore, child witnesses below the age of fifteen do not have to swear an oath when testifying in criminal proceedings.<sup>68</sup>

While court hearings in criminal proceedings are usually public in Venezuela, the Code of Criminal Procedure allows for the court to hear evidence behind closed doors in cases of child victims where the court decides it would be inconvenient for the trial to take place publicly.<sup>69</sup>

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

According to the statistics of the Supreme Court of Justice and as of 2012, the average time frame for court proceedings was 270 days from the beginning of

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<sup>60</sup> Article 381 of the Civil Code of 1982.

<sup>61</sup> Article 952 of the Civil Code of 1982.

<sup>62</sup> Article 378 of the Organic Law for the Protection of the Child and Adolescent of 1998.

<sup>63</sup> Article 108 of the Criminal Code of 2000, available at: <http://docs.venezuela.justia.com/federales/codigos/codigo-penal.pdf>.

<sup>64</sup> Articles 470 to 480 of the Organic Law for the Protection of the Child and Adolescent of 1998.

<sup>65</sup> Article 6 of the Law for the Protection of Victims, Witnesses and other Persons in Proceedings of 2006, available at: [http://www.oas.org/juridico/spanish/mesicic2\\_ven\\_anexo\\_25\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic2_ven_anexo_25_sp.pdf).

<sup>66</sup> Article 294 and 299 of the Organic Law for the Protection of the Child and Adolescent.

<sup>67</sup> Article 311 of the Organic Law for the Protection of the Child and Adolescent.

<sup>68</sup> Article 228 of the Organic Code of Criminal Procedure of 2001.

<sup>69</sup> Article 333 of the Organic Code of Criminal Procedure of 2001.

the proceedings until their resolution. But there are no reliable statistics available that show the actual timing of proceedings in the first instance before Child Protection Courts.

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

The OLPCA permits appeals of Child Protection Court decisions to the next higher court.<sup>70</sup>

All final court decisions in civil and criminal cases can be appealed to the next higher court. Also, a second appeal or revision of the decision of the appeal court is available to all parties under the rules of civil as well as criminal procedure.<sup>71</sup>

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

Enforcement of judgments is solely dependant on the courts as judges are responsible for carrying out all the necessary measures in order to ensure that their judgments are executed. In some cases, judges can delegate the execution of judgements to a protection committee. The execution of the judgment is requested by the interested party and the court then orders its execution.<sup>72</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.

In order to broaden the application of the principles and provisions of the CRC, the government of Venezuela in 2002 created the Autonomous Institute for the National Council of the Rights of Children and Adolescents (Instituto Autónomo Consejo Nacional de Derechos del Niño, Niña y Adolescentes; IDENA), a body responsible for promoting the rights of the child throughout the country<sup>73</sup>

Other Venezuelan laws which may reflect on children's access to justice are:

- Law No. 64: Law to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (*Ley de Aprobación del Protocolo para Prevenir, Reprimir y Sancionar la Trata de Personas, especialmente Mujeres y Niños*);
- Law No. 82: Law Approving the Optional Protocol to the Convention on Rights of the Child on the Involvement of Children in Armed Conflict (*Ley Aprobatoria del Protocolo Facultativo de la Convención sobre los Derechos del Niño, relativo a la Participación de Niños en los Conflictos Armados*);
- Law for the Protection of Children and Adolescents in Internet Cafes and from Video Games and other Multimedia (*Ley para la Protección de*

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<sup>70</sup> Article 279 OLPCA.

<sup>71</sup> Articles 288 and following of the Organic Code of Civil Procedure of 1990; Articles 447 and following of the Organic Code of Criminal Procedure of 2001.

<sup>72</sup> Article 523 and following of the Organic Code of Civil Procedure of 1990; Articles 478 and following of the Organic Code of Criminal Procedure of 2001.

<sup>73</sup> Autonomous Institute for the National Council of the Rights of Children and Adolescents, website available at: <http://www.idena.gob.ve/index.php/la-institucion>.

*Niños, Niñas y Adolescentes en salas de uso de Internet, videojuegos y otros multimedias).*

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