

# **ACCESS TO JUSTICE FOR CHILDREN: EQUATORIAL GUINEA**

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

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

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

Equatorial Guinea ratified the CRC in 1995. According to the Fundamental Law, Equatorial Guinea abides by international principles and rights and duties from international treaties ratified by the country.<sup>1</sup> International treaties require the approval of Parliament to become national law.<sup>2</sup> Once approved, treaties should be published in the Official Government Gazette.

However, it is not clear whether the Parliament has approved the Convention, however, according to information provided by local sources, lawyers regard the CRC as being in force.

It is not clear if Parliament at that time approved the law, but the government has confirmed that the CRC was ratified by the country in November 15 of 1992. In a compilation of laws in force in Equatorial Guinea the CRC is included (though the compendium mentions a different ratification date- February 14, 1991). According to lawyers in Equatorial Guinea, the CRC is in force and could be cited in court.

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

It is not clear whether the provisions of the CRC will be accorded precedence over national laws.

Due to the history of Equatorial Guinea, the legal system is a mixed one: sources of law include those enacted under colonial Spanish rule, customary law and laws enacted since independence in 1992. There appears to be no legislation which clarifies which laws take precedence in the event of conflict.

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

Due to the lack of transparency and resources of the legal system of Equatorial Guinea, it is virtually impossible to ascertain whether legislation has been passed to effectively incorporate the CRC into national law. While

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<sup>1</sup> Fundamental Law, Article 8, available at: <http://www.egjustice.org/publications/fundamental-law-equatorial-guinea> (in Spanish).

<sup>2</sup> Regulatory Framework of the Chamber of Deputies, Title V, Articles 126 to 129.

available domestic legislation does not clarify this issue, the UN Committee on the Rights of the Child has raised concerns over the implementation of national legislation that was not compatible with the Convention, as well as the enforcement of domestic and traditional laws already in place that do not reflect the underlying principles of the CRC.<sup>3</sup> A report by the UN Development Group also states that there are concerns relating to the insufficient adaptation of national laws to comply with the CRC.<sup>4</sup>

The Constitution of Equatorial Guinea<sup>5</sup> does enshrine certain child rights (such as the protection of every person from birth, including moral, psychological and physical security)<sup>6</sup> which could enable the CRC to be effective in Equatorial Guinea (or at least for judges to use it as guiding authority when determining child rights should there be no other, more specific, legislation). However, it is unlikely that the CRC is referred to in such a manner.

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

Although the official status of the CRC in national law is unclear, according to information provided by local sources, lawyers consider that the Convention could be relied on in court. However, it is not known whether the Convention has actually been used by the national courts.

It is important to understand that enforcement of legal rights in Equatorial Guinea is still developing. In particular, the lack of legal resources is challenging, leading to inconsistent law enforcement and making it 'virtually impossible' to have current knowledge of the law.<sup>7</sup> Indeed, reports have shown that many Equatorial Guinean laws are not in written form or available to legal practitioners.<sup>8</sup>

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

Equatorial Guineans are reluctant to make use of the judicial system and are not well educated about their treaty rights. Further, case law is generally unavailable to local lawyers, rendering identification of the application of the CRC in Equatorial Guinea almost impossible.

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

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<sup>3</sup> UN Committee on the Rights of the Child, *Concluding Observations on the initial report of Equatorial Guinea to the UN Committee on the Rights of the Child*, CRC/C/15/Add.245, 3 November 2004, para 5. Available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.245&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.245&Lang=en).

<sup>4</sup> UN Development Assistance Framework, *Equatorial Guinea*, February 2007, p. 10, available at: <http://www.undg.org/index.cfm?P=234&f=E>.

<sup>5</sup> Available at: <http://www.constitutionnet.org/files/Equatorial%20Guinea%20Constitution.pdf>.

<sup>6</sup> Constitution, Article 22.

<sup>7</sup> International Bar Association Report, *Equatorial Guinea Fact Finding*, p. 24, available at: <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=d931b937-2c9a-4209-9317-e6e81a190bfe>.

<sup>8</sup> *Id.*, pp. 7 and 30.

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

Equatorial Guinea lacks established legal procedure and therefore, when combined with the lack of codification of Equatorial Guinean legislation, there are few resources available to provide detailed procedural information regarding enforcement of children's rights.

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?

Although some provisions on child representation exist in the Civil Code of 1889<sup>9</sup>, these are very outdated and it is not entirely clear what procedural rules should apply in actions alleging violations of children's rights.

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

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

There is no legal aid system within Equatorial Guinea.

Lawyers who have assisted with human rights cases have been known to be unofficially detained, and so there may be some reticence amongst the profession to establish free or subsidised legal assistance with regards to such matters<sup>10</sup>. In addition, it is difficult to obtain a license to practise law in Equatorial Guinea unless the applicant is sympathetic to or a member of the ruling party.<sup>11</sup> This significantly compromises the availability of lawyers who are willing to take on instructions that may be adverse to the interests of the government.

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 Civil Code of Equatorial Guinea provides that emancipated children may receive legal advice without the consent of their parents<sup>12</sup>. However, there are limited (if any) resources regarding court procedure and practice.

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<sup>9</sup> Available at: <http://www.wipo.int/wipolex/en/details.jsp?id=10798> (in Spanish).

<sup>10</sup> Human Rights Watch, *Equatorial Guinea: Human Rights Lawyer 'Disappeared'*, 24 November 2012, available at: <http://www.hrw.org/news/2012/10/24/equatorial-guinea-human-rights-lawyer-disappeared>.

<sup>11</sup> International Bar Association Report, p.29.

<sup>12</sup> *Concluding Observations on the initial report of Equatorial Guinea*, para. 38.

From this perspective, the conditions or other barriers to bringing such a case to trial are unknown.

Traditional family values are deeply enshrined in Equatorial Guinean society. Therefore, it would be rare for a child to bring a case without consent or assistance from his parents (if at all), and even rarer for female children to be given a platform to enforce her rights in this way.

From a practical perspective, civil cases are rarely brought to trial, and military courts are used widely for civilian matters.<sup>13</sup> Many citizens would rather have their cases handled by local traditional courts, which may not be aware of, or willing to uphold, the provisions of the CRC.

Freedom House ranks Equatorial Guinea as one of the ‘worst of the worst’ countries when assessing political and civil rights.<sup>14</sup> The lack of importance given to enforcing children’s rights and lack of the resources dedicated to such enforcement are very real barriers to cases being brought.

### **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?**

Equatorial Guinea has numerous courts of first instance and tribunals in district and rural areas.<sup>15</sup> Procedural rules are not clear or applied consistently, and so it cannot be said with any certainty whether a local court would be required to hear a constitutional or international matter and then refer it to the Constitutional Court of Equatorial Guinea (the Constitutional Court), or whether an applicant could lodge a complaint directly at the Constitutional Court.

The Constitutional Court has binding jurisdiction over all matters of a constitutional nature, including cases of alleged breaches of an individual’s constitutional rights.<sup>16</sup> The precise procedure for bringing a claim in the Constitutional Court is not clear, particularly as the procedure rules for this court have not yet been enacted (despite the court coming into being in 1995). The Constitutional Court therefore draws guidance from the procedural rules of the Supreme Court.

Whether the Constitutional Court would hear a case pertaining to the CRC in practice is a matter for debate as it would appear that the CRC is not given force of law in Equatorial Guinea. In addition, it is likely that if the matter were deemed to be a threat or slight to the ruling party, the case would either not reach determination or judgment would not be rendered freely.

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<sup>13</sup> International Bar Association Report, p. 21.

<sup>14</sup> Freedom House, *Freedom in the World 2013: Equatorial Guinea*, available at: <http://freedomhouse.org/report/freedom-world/2013/equatorial-guinea#.VCwjbK3tDtQ>.

<sup>15</sup> International Bar Association, p. 21.

<sup>16</sup> International Bar Association Report, p. 21.

The highest court in Equatorial Guinea is the Supreme Court. Reports have found that none of the judges at the Supreme Court are legally trained and two are military Generals.<sup>17</sup> The Supreme Court does not have a constitutional branch (the Constitutional Court being established by the Supreme Court divesting its constitutional powers). Therefore, it is unlikely that the Supreme Court would hear a constitutional challenge unless a matter of constitutional importance could be properly assigned to one of its administrative, labour, criminal, commercial, civil or customary law divisions. Whether appealing from the Constitutional Court to the Supreme Court is permissible in terms of procedure is not clear given the lack of codified procedural rules.

It is worth noting that the UN has been assisting Equatorial Guinea to establish juvenile justice courts in order to properly manage how child offenders and victims are treated in the judicial system. It is not clear whether these courts have been established yet and therefore, it is also unclear whether they have standing to hear constitutional challenges involving child rights.

Nonetheless, there are two regional mechanisms that can hear complaints alleging violations of human rights.

Individuals, including child victims, his/her parents or legal representatives, groups, or NGOs recognised by the African Union may submit complaints (known as “communications”) to the African Committee of Experts on the Rights and Welfare of the Child (“African Committee”) about violations of the African Charter on the Rights and Welfare of the Child (“African Children’s Charter”).<sup>18</sup> All available domestic remedies must have been exhausted before bringing a case to the African Committee.<sup>19</sup> The complaint must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, and whether or not the complainant wishes to remain anonymous and the reasons for this.<sup>20</sup> The African Committee will investigate the complaint and decide on the merits of the case, and make recommendations to the State, which may include compensation to the victim(s) and measures to prevent recurrence of the violation.<sup>21</sup>

In addition, individuals, groups or NGOs may also submit complaints (known as “communications”) to the African Commission on Human and

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<sup>17</sup> *Id.*

<sup>18</sup> African Charter on the Rights and Welfare of the Child (“African Children’s Charter”), Article 44, available at:

<http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acrwc/acrwc-charter-full-text/>.

For more information about communications, see: <http://acerwc.org/the-committees-work/communications/>.

<sup>19</sup> African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at: <http://acerwc.org/the-committees-work/communications/>.

<sup>20</sup> War Resisters’ International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, ‘African Committee of Experts on the Rights and Welfare of the Child: communication procedure’, 2012, available at:

<http://co-guide.org/mechanism/african-committee-experts-rights-and-welfare-child-communication-procedure>.

<sup>21</sup> *Ibid.*

Peoples' Rights ("African Commission") about violations of the African Charter on Human and Peoples' Rights ("African Charter").<sup>22</sup> All available domestic remedies must have been exhausted before bringing a case to the African Commission.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

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

Equatorial Guinea lacks established legal procedure and therefore, when combined with the lack of codification of Equatorial Guinean legislation, there are few resources available to provide detailed procedural information regarding enforcement of children's rights.

It is likely that any powers of review or remedy would be fettered by the lack of independence of the judiciary.

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?

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

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<sup>22</sup> African Charter on Human and Peoples' Rights ("African Charter"), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

<sup>23</sup> Ibid., Article 56(5).

<sup>24</sup> 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/>.

<sup>25</sup> 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>.

<sup>26</sup> 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>.

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- 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?

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

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

A variety of dispute resolution forums are available in Equatorial Guinea. In particular, the ability of individuals to petition the legislature, and for the legislature to overturn judicial decisions, should be noted as this is a more commonly used method of resolving a case than filing with the judiciary.<sup>27</sup> Local traditional courts are also popular venues for resolving cases.<sup>28</sup>

Given that there is a lack of established and consistently applied legal procedure, it cannot be said with any certainty where a claim should be filed, what the filing process would entail, or whether certain types of court have standing over constitutional matters.

- 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?

As noted above, there is no legal aid available in Equatorial Guinea.

Whilst not directly applicable to constitutional child rights, defendants to an action are entitled to request legal representation funded by the government, but only if they are to appear in court. Many defendants are not advised of this right, and there are no adequate systems in place to ensure that

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<sup>27</sup> International Bar Association Report, p. 17.

<sup>28</sup> International Bar Association Report, p. 26.



defendants are provided with legal advice.<sup>29</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 practising 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 is no administered pro bono scheme available in Equatorial Guinea.

There are few national bodies responsible for human rights, and those that do exist often defend the government from accusations rather than investigate potential violations or assist victims.<sup>30</sup> The country has no legally registered independent human rights groups.<sup>31</sup>

National lawyers generally obtain their licences to practise law by virtue of their relationship with the ruling party, and so there is little appetite to assist victims of constitutional abuse.<sup>32</sup>

Some international organisations do operate in-country, but the UN Committee on the Rights of the Child has voiced its concerns about the limited number of NGOs working for the protection of children and regarding the low level of cooperation between the government and those organisations. Further, it has been reported that human rights activists are subject to intimidation, harassment and reprisals.<sup>33</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?

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- 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?

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<sup>29</sup> United States Department of State, Bureau of Democracy, Human Rights and Labour, *Country report on Human Rights Practices for 2011: Equatorial Guinea Executive Summary*, p. 8, available at: <http://www.state.gov/documents/organization/186403.pdf>.

<sup>30</sup> United States Department of State, Bureau of Democracy, Human Rights and Labour, *Country report on Human Rights Practices for 2012: Equatorial Guinea*, p. 17, available at: <http://photos.state.gov/libraries/equatorialguinea/231771/PDF/2012human-rights-report-equatorial-guinea.pdf>.

<sup>31</sup> Human Rights Watch, *World Report 2014*, Chapter on Equatorial Guinea, available at: <http://www.hrw.org/world-report/2014/country-chapters/equatorial-guinea>.

<sup>32</sup> International Bar Association Report, p. 29.

<sup>33</sup> Human Rights Watch, *World Report 2014*.



there are few resources available to provide detailed procedural information regarding enforcement of children's rights.

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

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

The constitution provides for a right to appeal but in practice this is seldom used (due to both access to legal representation and lack of knowledge about the right to appeal).<sup>34</sup> As noted above, it is likely that the Constitutional Court is the highest court able to determine matters of constitutional importance unless the claim may be properly allocated to a branch of the Supreme Court. It is not clear whether procedure rules would a claim that had already been determined by the Constitutional Court could be heard in the Supreme Court.

The right to appeal, however, may not matter given the lack of separation of powers, and the lack of legal training of most judges.

- 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?

Given the more traditional lifestyles that the majority of the population lead, it is feasible that a negative (or indeed a positive) decision would have local repercussions. In particular, this may occur if the subject of the case was not one that resonated with the local community (such as the physical abuse of children, which is widely accepted for the purposes of discipline).<sup>35</sup>

Lawyers have been known to disappear or be detained without charge, especially those in political positions or representing political clients<sup>36</sup> and torture against political prisoners in detention is wide-spread.<sup>37</sup>

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

The executive branch of Equatorial Guinea's government has been known to interfere with the judiciary to ensure that a politically appropriate judgment is reached regardless of the legal merit of the action, or to ensure that

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<sup>34</sup> International Bar Association, pp. 34 and 43.

<sup>35</sup> *Country report on Human Rights Practices for 2012: Equatorial Guinea*, p. 19.

<sup>36</sup> International Bar Association Report, p. 13.

<sup>37</sup> United Nations News Centre, *Torture is rife in Equatorial Guinea's prisons, says UN expert*, 19 November 2008, available at: <http://www.un.org/apps/news/story.asp?NewsID=28998#.VC1c8q3tDtQ>.

sensitive cases are discontinued before judgment is reached.<sup>38</sup> The judiciary is not independent, with most judges being appointed due to their 'loyalty' to the government at the time.<sup>39</sup> In this regard, it may be difficult for a positive decision to be reached in the first place. In addition, it should be noted that the legislature may overturn judicial decisions.<sup>40</sup>

Even if a challenge to a child's rights is successful in the courts, there is widespread practice of the police and military failing to comply with judicial orders. Judges have expressed their frustration with, and fear of, the police and military. Court orders are often disregarded by the appropriate law enforcement agency.<sup>41</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.

Despite rights enshrined in the Constitution of Equatorial Guinea that may refer to, or be compatible with, the CRC, it has been noted in reports that the traditional values in Equatorial Guinea significantly limit the implementation of Article 12 of the CRC (the right of the child to be heard).<sup>42</sup>

Equatorial Guinea has established numerous laws pertaining to child rights, but it is unclear whether these laws have ever been enforced (in any event, none of these appear to be enforced at this time). For example, the Labour Act (1990) regulates child labour, the National Children Rights Committee (Decree No. 100/1997 of 30 September) directs and promotes initiatives in the implementation of the CRC, and the Judiciary Act (No. 5/2009) establishes juvenile courts and set standards for child detention centres (at the time of writing, the detention centres were not yet introduced).

Approximately 80% of judges in Equatorial Guinea are not legally trained or have never practised law, and many of those 80% have received no training to fulfil their role as a judge.<sup>43</sup> Citizens of Equatorial Guinea therefore have little faith in the legal system and would prefer that their grievances be heard by a traditional court or by the legislature.

Because the judiciary is not independent from the executive branch of government, lawyers are prone to giving bribes in order for cases to be resolved in their favour,<sup>44</sup> and there are limited legal resources and training available. The law is applied in an ad hoc manner given the lack of codification, inconsistent interpretation and lack of established procedures.<sup>45</sup>

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<sup>38</sup> International Bar Association Report, p. 25.

<sup>39</sup> International Bar Association Report, p. 22.

<sup>40</sup> International Bar Association Report, p. 40.

<sup>41</sup> International Bar Association Report, p. 26.

<sup>42</sup> The African Child Policy Forum 2009, *Child Friendly Laws in Africa*, p. 50, available at: <http://www.africanchildforum.org/site/index.php/resource-centre/child-friendly-laws-in-africa.html#.VC0voq3tDtQ>.

<sup>43</sup> International Bar Association Report, p. 23.

<sup>44</sup> International Bar Association Report, p. 42.

<sup>45</sup> International Bar Association, pp. 16, 29 and 41.

There is no ethics committee or governing body for lawyers and judges and judges serve at the pleasure of the president.<sup>46</sup>

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

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<sup>46</sup> *Id.*