

ACCESS TO JUSTICE FOR CHILDREN: SENEGAL

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

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

The Republic of Senegal (Senegal) signed and ratified the CRC on 26 January 1990 and 31 July 1990 respectively.¹ Senegal is also a State party to the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography and the Optional Protocol to the CRC on the involvement of children in armed conflict.² It has signed, but not ratified, the third Optional Protocol to the CRC on a communications procedure.³

Senegal follows the monist approach towards international law.⁴ This means that once a treaty is ratified it is automatically incorporated into national law and can be invoked before domestic courts.

B. Does the CRC take precedence over national law?

The CRC, as a ratified treaty, takes precedence over national law. The Senegalese Constitution states that “treaties and agreements duly ratified shall upon their publication have an authority superior to that of the laws subject to its application by the other party.”⁵ Treaties and agreements do not take precedence, however, over the Constitution. In the event of a conflict between a treaty or agreement and the Constitution, the treaty or

¹ UN Committee on the Rights of the Child, *Notes on Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, CRC/C/2/Rev.3, 11 July 1994, pg 4. Available at: <http://www.refworld.org/pdfid/3ae6aeda4.pdf>.

² *Second Periodic Report of Senegal to the UN Committee on the Rights of the Child*, CRC/C/SEN/2, 20 February, 2006, pg 4, para 15. Available at: http://www.bayefsky.com/reports/senegal_crc_c_sen_2_2006.pdf.

³ UN Treaty Collection, *Status of ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en.

⁴ African Assembly for the Defence of Human Rights, *Alternative Report to the UN Committee on Elimination of Racial Discrimination (Reviewing the 16th and 17th periodical reports of Senegal)*, July 2012, pg 5 para 2. Available at: http://www2.ohchr.org/english/bodies/cerd/docs/ngos/RADDHO_IDSN_Senegal81.pdf.

⁵ Constitution of the Republic of Senegal, 2001, as amended to June 19, 2009. Art. 98, hereinafter [“Constitution”] (“*Les traités ou accords régulièrement ratifiés ou approuvés ont, dès leur publication, une autorité supérieure à celle des lois, sous réserve, pour chaque accord ou traité, de son application par l'autre partie.*”) Available at: www.gouv.sn/IMG/pdf/constitution_sn.pdf or <http://workspace.unpan.org/sites/Internet/Documents/UNPAN048952.pdf>.

agreement is inapplicable until the Constitution is amended.⁶

C. Has the CRC been incorporated into national law?

Senegal has incorporated the CRC directly into the Preamble of Constitution of 2001, which states that the Senegalese people “affirm their adhesion to,” among other conventions, the Convention on the Rights of the Child.⁷ It is important to note that the preamble is an integral part of the Constitution, meaning that the provisions and treaties referred to therein have constitutional value.⁸

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

The CRC should be directly enforceable in domestic courts for the reasons described above. However, in practice, international human rights law does not appear to always be directly applicable. The best example is the *Habré* case, where the Convention Against Torture (CAT) had been ratified and published but was refused applicability.⁹ The court ruled that a civil action and criminal prosecution against former Chadian dictator Hissene Habré was not admissible in Senegalese domestic law because “Senegalese positive law does not at present include a cause of action for crimes against humanity”.¹⁰ This means that the CAT has been incorporated into national law, but failed to be enforceable in the courts. No similar cases concerning the CRC can be located.

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

Senegalese courts have referred to international treaties in very few cases and never in a way which determined the outcome of a case.¹¹ However, for an example of how the courts have interpreted the CAT, another relevant international instrument, please see the *Habré* case above in part I.D.

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to

⁶ Constitution, Art. 97 (“Si le Conseil constitutionnel a déclaré qu’un engagement international comporte une clause contraire à la Constitution, l’autorisation de le ratifier ou de l’approuver ne peut intervenir qu’après la révision de la Constitution”).

⁷ Constitution, Preamble (“Le peuple du Sénégal souverain...affirme: son adhésion a...la Convention relatives aux Droits de l’Enfant du 20 novembre 1989”).

⁸ Concluding paragraph 18 to the Preamble.

⁹ Ruling no. 135 of 04/07/2000/ Accusation (Senegal: Cour D’Appel de Dakar 2000).

¹⁰ *ibid.*

¹¹ Marone, Fatou Kava, ‘La Convention contre la torture et son application au niveau national: Le cas du Senegal dans l’affaire Hissene Habre; (2010) pp193, para 1, available at: http://www.pulp.up.ac.za/pdf/2010_17/2010_17.pdf

challenge violations of children's rights?

Under Senegalese law the age of civil majority is 18.¹² A child cannot bring a case in court, but the Family Code states that a legal administrator is to represent the minor in all acts of civil life.¹³ This is usually the father, unless he cannot fulfil the role. The Family code specifies that if there is a conflict of interest, a different administrator can be appointed¹⁴. Nevertheless, the child's best interests must be taken into consideration in proceedings concerning them.¹⁵

With respect to violence against children, any person who is aware of such violence must bring it to the attention of the competent authority.¹⁶ The Penal Code and the Code of Criminal Procedure contain special provisions to protect the rights of children in danger and children in conflict with the law. The parents, guardian of a child whose rights have been violated, or the prosecutor, can bring a claim before the juvenile court.¹⁷ The claims can even be brought by the representative of a specialised administrative or judicial service provider.¹⁸

For care proceedings in a juvenile court, there are special provisions set out in the Penal Code for minors under the age of 21 who have committed a crime, or minors under 21 who appear to be in moral or material danger.¹⁹ Such a case would typically be brought by the parent, guardian, representative, specialised authority.²⁰

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

As described above, civil cases must be brought by a parent or representative.

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

¹² Law n. 2008-28 of 28 July 2008, replacing Article 19 of the law n. 70-23 of 6 June 1970, available at <http://www.jo.gouv.sn/spip.php?article7178>

¹³ Family Code, Article 301, available at http://www.africanchildforum.org/cfr/Legislation%20Per%20Country/Senegal/senegal_family_1989_fr.pdf

¹⁴ *ibid.*

¹⁵ Senegal, CRC, CRC/C/46 (1995) 21 at para. 138.

¹⁶ *Second Periodic Report of Senegal to the UN Committee on the Rights of the Child*, CRC/C/SEN/2, 20 February, 2006, pg 43, para 195.

¹⁷ Senegalese Code of Criminal Procedure, Articles 595. available at http://www.centif.sn/Loi_66-61_du_21_juillet_1965_code_procedure_penal.pdf

¹⁸ *ibid.*

¹⁹ Senegalese Code of Criminal Procedure, Articles 565.

²⁰ *ibid.*, Article 599.

There are no specific provisions for infants and young children, though cases would most likely be brought by a parent or representative, as described above.

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

Yes, subsidised legal assistance exists in Senegal, although the effectiveness and the extent of its availability cannot be readily determined. It is more likely that the child and their representative would access free legal assistance through an NGO, as described in part IV.C.

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)?

There appear to be no other conditions or limits on children or their legal representatives to bring cases.

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 Constitutional Council rules on constitutional matters. It examines any pleadings of unconstitutionality of laws, procedures, and international engagements. Decisions of the council are not subject to appeal and are binding on all authorities.²¹ However, there are restricted rules of standing, which do not allow direct individual access.²² Access to the Constitutional Council is restricted to the executive, the legislature, and the judiciary.²³ No individual – including legal practitioners – can directly submit a case to the Constitutional Council. However, individuals can go through the judiciary to access the Council by invoking the exception of unconstitutionality of law during a proceeding before the Court of Cassation or State Council.²⁴ These courts must then refer to the Constitutional Council to decide.

Alleged violations which are not specifically constitutional matters will be brought to the civil or administrative courts.

Several state organs have been established for the promotion and protection

²¹ *ibid.*

²² Constitution, Article 74 as amended by Constitutional Law n. 2007-6.

²³ *ibid.*

²⁴ Adjolohoun, Horace. 'Visiting the Senegalese Legal system and Legal Research: A Human Rights Perspective,' http://www.nyulawglobal.org/globalex/SENEGAL.htm#_edn28 March/April 2009, para 5.4.

of human rights in the legal system, though none are designed specifically for children's needs. The following organs provide mechanisms for complaints to be brought:

The Ombudsman (Médiateur):

The Ombudsman is competent to hear a complaint from any individual who believes that a public body has not acted in accordance with their public duties.²⁵ The individual can refer the matter to the attention of the Ombudsman by way of a written complaint. The Ombudsman is competent to hear complaints of children's rights violations, but is yet to do so.²⁶

The Human Rights Office

This Human Rights Office receives and submits individual complaints relating to human rights to the President.²⁷ The complaint may be filed by any person or organisation.

The High Commissioner for Human Rights and the Protection of Peace:

The Commission includes a *Guichet des droits de l'homme* (Human Rights Board) in charge of receiving complaints and making suggestions to the President of the Republic on subsequent responses.²⁸ The Commissioner does not have powers to provide remedies to individuals. Despite receiving all complaints of human rights violations, the Commissioner is neither allowed to participate in the judicial process, nor challenge court decisions.²⁹

The Senegalese Human Rights Committee:

The Senegalese Human Rights Committee is the state human rights institution. The Committee must take action when it becomes aware of human rights violations, independently or is informed of them by the authorities; it may "draw the attention" of public authorities to violations of human rights and propose solutions.³⁰ The Committee may issue opinions or recommendations on matters relevant to human rights, including "laws, regulations or administrative practices."³¹ However, the Committee lacks a formal role in reviewing laws, and has no investigative powers in individual cases.³² The Committee has no express powers to pursue individual violations, meaning that it has a largely passive response to violations,

²⁵ Law n° 91-14 of 11 february 1991, Law instituting an Ombudsman of the Republic of Senegal, Article 7, found at: http://icoaf.org/docs/Senegal/Loi_instituant_Mediateur_Senegal.pdf.

²⁶ Koffi Kounte (2012), pg 10, column 5 of table.

²⁷ UN Committee on the Rights of the Child, *Considerations of reports submitted by States parties under Article 44 of the Convention*, CRC/C/SEN/2, 20 February 2007, page 32, para 6.

²⁸ *ibid*, para 2.1.

²⁹ Human Rights Council, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography* (2010), page 11, para 52.

³⁰ Law No 97-04 of 10 March 1997, as mentioned in Adjolohoun, Horace. (2009) Para 2.1.

³¹ *ibid*.

³² Human Rights Watch, 'Protectors or Pretenders? Government Human Rights Commissions in Africa', (January 2001) New York, pg. 256.

limited to highlighting the abuse through public or private communication.³³

Outside of the domestic legal system, the following regional mechanisms are also available:

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

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”).³⁴ All available domestic remedies must have been exhausted before bringing a case to the African Committee.³⁵ 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.³⁶ 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.³⁷

2. African Commission on Human and Peoples’ Rights

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

³³ *ibid.*

³⁴ 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-acerwc/acerwc-charter-full-text/>. For more information about communications, see: <http://acerwc.org/the-committees-work/communications/>.

³⁵ African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at: <http://acerwc.org/the-committees-work/communications/>.

³⁶ 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>.

³⁷ *Ibid.*

³⁸ African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

³⁹ *Ibid.*, Article 56(5).

⁴⁰ 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/>.

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.⁴¹ 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.⁴²

3. ECOWAS Community Court of Justice

Individuals can bring complaints about violations of human rights that occur in any Member State of the Economic Community of West African States (ECOWAS) to the Community Court of Justice.⁴³ This includes acts or inaction of Community Officials which violate the rights of individuals.⁴⁴ There is no requirement to exhaust domestic remedies, therefore individuals do not need to pursue national judicial remedies before filing a case with the Community Court of Justice.⁴⁵ There are, however a number of conditions: the complaint must not be anonymous or be pending before another international court;⁴⁶ representation by an agent or lawyer is required;⁴⁷ and any action by or against a Community Institution or the Member State must be brought within three years of when the right of action arose.⁴⁸ Judgments of the Court of Justice are binding on the Member States, Institutions of the Community, individuals and corporate bodies.⁴⁹

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

In civil proceedings, courts have the power to award damages. Damages are governed by the Code of Civil and Commercial Obligations.⁵⁰ There is no

⁴¹ 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>.

⁴² 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>.

⁴³ Supplementary Protocol A/SP.1/01/05, Articles 3 and 4, available at:

http://www.courtecowas.org/site2012/pdf_files/supplementary_protocol.pdf; Protocol on the Community Court of Justice, Articles 9(4) and 10(d), available at: http://www.courtecowas.org/site2012/pdf_files/protocol.pdf.

⁴⁴ Ibid., Article 4; Protocol on the Community Court of Justice, Article 10(c).

⁴⁵ War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre, 'ECOWAS Community Court of Justice', 2012, available at: <http://co-guide.org/mechanism/ecowas-community-court-justice>.

⁴⁶ Supplementary Protocol A/SP.1/01/05, Article 4; Protocol on the Community Court of Justice, Article 10(d),

⁴⁷ Protocol on the Community Court of Justice, Article 12.

⁴⁸ Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).

⁴⁹ Revised Treaty of the Economic Community of West African States, Article 15(4), available at:

http://www.courtecowas.org/site2012/pdf_files/revised_treaty.pdf.

⁵⁰ Senegalese Code of Civil and Commercial Obligations, Article 133, Available at:

principle of punitive damages, as the allocation of damages is always supposed to repair what has been suffered.⁵¹ There is no rule limiting maximum damages, which are always supposed to be fixed in proportion to the damage suffered.⁵²

Citizens may seek cessation of and reparation for human rights violations in regular administrative or judicial courts⁵³. Citizens can also seek administrative remedies by filing a complaint with the High Commission for Peace and Human Rights in the Office of the President.⁵⁴ However, a lack of independence has hampered judicial and administrative handling of these cases. At times, prosecutors have refused to prosecute security officials, and violators have gone unpunished.⁵⁵ There have also been problems in enforcing court orders, since the government can ignore court orders without legal consequences.⁵⁶

There are several specific remedies available in the juvenile courts. The judge can order interim measures regarding the guardianship of the child in cases of emergency and before the date of a hearing.⁵⁷ The president of the court can also order a psychological, medical and physiological study of the child. The juvenile court will conduct a private hearing and will issue a decision in consultation with the child, his parents or guardian and any other individual whose contribution would be useful.⁵⁸ In cases where a child is suspected to be in grave danger, agents of the special brigade have the right to enter any place and remove the child, and refer them to the Public Prosecutor or Ginndi Centre for treatment⁵⁹.

There are special procedures for cases involving minors exposed to prostitution,⁶⁰ begging,⁶¹ or trafficking.⁶² Importantly, convictions cannot be handed down against minors for the offences covered,⁶³ and the maximum

<http://www.droit-afrique.com/images/textes/Senegal/Senegal%20-%20Code%20des%20obligations%20civiles%20et%20commerciales.pdf>

⁵¹ *ibid*, Article 134.

⁵² *ibid*.

⁵³ United States Department of State, Bureau of Democracy, Human Rights and Labour, 'Country Reports on Human Rights practices for 2012, Senegal' 2012, page 8, available at:

<http://www.state.gov/documents/organization/204370.pdf>

⁵⁴ *ibid*.

⁵⁵ *ibid*.

⁵⁶ *ibid*.

⁵⁷ Senegalese Code of Criminal Procedure, Article 597;

see also Ministry of Family, Women's Groups, and the Protection of Children, and the Ministry of Justice, *Cartographie et Analyse des systemes de protection de l'enfance au Senegal*, January 2011, pg 50.

⁵⁸ *ibid*.

⁵⁹ Senegalese Code of Criminal Procedure, Article 607.

⁶⁰ Senegalese Code of Criminal Procedure, Article 327 bis.

⁶¹ Article 3 of Act No. 2005-02, found in Human Rights Council, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography* (2010), page 8, para 30.

⁶² *ibid*, page 8, para 34.

⁶³ *ibid*, page 7, para 29.

sentence is handed down when the offence is committed against a minor.⁶⁴

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?

There are no publicly available sources that address this point.

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

Senegalese law currently does not provide for group litigation or class action. At the end of 2013, a law was proposed by Parliament to permit class actions.⁶⁵ The law was suggested with consumer protection litigation in mind, but could potentially extend to cases involving children's rights.

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

There is no evidence to suggest that NGOs may file challenges to potential children's rights violations; however, they can provide legal aid and assistance in cases involving minors.⁶⁶ Authorised representatives of specialised judicial or administrative services may also file claims.⁶⁷

In addition, Senegal has established children's and youth parliaments who participate in cases concerning children's rights by ensuring that the child's perspective is represented during the hearing.⁶⁸ Unfortunately, due to practical and financial difficulties, as well as resistance from parents, the parliaments lack participation and fail to effectively express the views of children.⁶⁹

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:

⁶⁴ *ibid*, page 8, para 34.

⁶⁵ Bocoum, Matel. 'Projet de loi sur l'action de groupe ou le recours collectif,' *Enquete+*, 13 December 2013. <http://www.enqueteplus.com/content/projet-de-loi-sur-laction-de-groupe-ou-le-recours-collectif-les-associations-de>

⁶⁶ L'Organisation Nationale des Droits de L'homme au Senegal (ONDH), 'Assistance Judiciaire et Juridique,,' <http://www.ondh-radiab.org/spip.php?article74>, 2008.

⁶⁷ Ministry of Family, Women's Groups, and the Protection of Children, and the Ministry of Justice, *Cartographie et Analyse des systemes de protection de l'enfance au Senegal*, January 2011, pg 50, para 3.

⁶⁸ UN Committee on the Rights of the Child, *Considerations of reports submitted by States parties under Article 44 of the Convention*, CRC/C/SEN/2, 20 February 2007, page 42, para 185. Available at: http://www.bayefsky.com/reports/senegal_crc_c_sen_2_2006.pdf

⁶⁹ UNICEF, 'Les institutions independantes des droits de l'homme pour les enfants en Afrique francophone: la situation au Mali, au Burkina Faso, et au Senegal'. Page 19, para 4. Available at: http://www.unicef.org/wcaro/wcaro_Document_de_travail_Ombudsman.pdf

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

The judicial system is organised as a pyramid structure with the courts of first instance at the base, the courts of second instance (courts of appeal, courts of assize, regional courts and departmental courts) in the middle and the Supreme Court at the top.⁷⁰ In addition, there are specialised courts: labour courts, juvenile courts and courts of military justice.⁷¹

A violation could be filed with the Constitutional Council, but due to standing issues mentioned in part III.A, cases must be referred by a court, rather than brought by an individual.

A case concerning a violation of children's rights would typically be heard in a juvenile court. Juvenile courts were established in 1965 in each of the 14 regions of Senegal with a deputy prosecutor and an investigating judge at every court.⁷² However, there is no specialised judge or procedures for handling criminal cases involving child victims and witnesses.⁷³

Administrative and judicial courts have jurisdiction to hear cases involving human rights violations. The Human Rights Office, established in April 2001 and part of the Office of the President, also receives and submits individual complaints relating to human rights to the President.⁷⁴ The complaint may be filed by any person or organisation.

Legal action in a civil court is initiated by filing a written request. The lawsuit is notified to the opposing party by a competent bailiff at the request of the applicant.⁷⁵ The plaintiff themselves can also notify the defendant that a claim has been made against them. In cases relating to public and administrative law involving the abuse of power the claim is lodged before the Supreme Court, and afterwards notified to the defending party through an affidavit notified by a bailiff.⁷⁶ This notification, must contain the names and places of residence of the parties, an overview of the facts case the plaintiff wishes to make, and a copy of the order challenged by the claimant.

⁷⁰ Human Rights Council, *Report of the Working Group on Arbitrary Detention* A/HRC/13/30/Add3, 23 March 2010, page 5, para 12, available at: <http://www1.umn.edu/humanrts/wgad/2010report-senegal.pdf>

⁷¹ *ibid.*

⁷² *Second Periodic Report of Senegal to the UN Committee on the Rights of the Child*, page 28, para 107.

⁷³ Ministry of Family, Women's Groups, and the Protection of Children, and the Ministry of Justice, *Cartographie et Analyse des systemes de protection de l'enfance au Senegal*, January 2011, pg 50, available at http://www.unicef.org/wcaro/english/Senegal_Carto_Analyse_Systemes_Prot_Enfant.pdf

⁷⁴ UN Committee on the Rights of the Child, *Considerations of reports submitted by States parties under Article 44 of the Convention*, CRC/C/SEN/2, 20 February 2007, page 32, para 6.

⁷⁵ Chambers and Partners and Geni&Lebe SCP, *Senegal- Law and Practice, Legal Practice Guide 2014-2015*, <http://www.chambersandpartners.com/guide/practice-guides/location/241/7308/1544-200>, 2015.

⁷⁶ *ibid.*

⁷⁷ The suit can be modified by the plaintiff by introducing further information.

Influenced by the French legal system, an ‘action civile’ can be brought by an individual in Senegal, where the victim of a crime can initiate a case to seek compensation.⁷⁸ The claim for damages must be made at a trial, and the civil action then runs separately to the public criminal prosecution.⁷⁹

- 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?

Article 24 of the Civil Procedure Code states that the principal appellant may be required to pay up to 20,000 francs to file a case.⁸⁰ Article 728 mentions that this fee is not payable in cases where legal aid is provided,⁸¹ at the court’s discretion. There is no indication that children, or their representatives, are necessarily exempt from paying legal fees.

- 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?

The NGO National Organisation for Human Rights (Organisation Nationale des Droits de l’Homme au Sénégal ONDH) provides free legal aid and advice in cases involving children before local courts.⁸²

The Centre for Legal Information of the African Network for Integrated Development (CIJ-RADI) was established to provide legal assistance for those who could not afford representation.⁸³ The organisation aims to educate citizens about their rights, and facilitate access to justice for the defence of those rights. Its nationwide structure includes paralegals working in remote rural areas.⁸⁴

⁷⁷ *ibid.*

⁷⁸ Dr G Bruggemeier and Dr J Falke, ‘Private law Remedies for Extraterritorial Human Rights Violations,’ January 2006, page 15, available at: <http://aei.pitt.edu/7547/1/doktorarbeit.pdf>

⁷⁹ *ibid.*

⁸⁰ Code of Civil Procedure, Article 24.

⁸¹ *ibid.*, Article 278.

⁸² L’Organisation Nationale des Droits de L’homme au Senegal (ONDH), ‘Assistance Judiciaire et Juridique,; <http://www.ondh-radiab.org/spip.php?article74>, 2008.

⁸³ University of Minnesota, Human Rights Library, ‘The Status of Human Rights Organisations Sub-Saharan Africa Senegal’, available at: <https://www1.umn.edu/humanrts/africa/senegal.htm>

⁸⁴ *ibid.*

The African Committee for Law and Development is a regional NGO with a branch in Senegal. Its mandate includes the following: to promote and protect human rights; defend the independence of the judiciary and guarantees of individual freedom; and provide legal aid, especially to rural dwellers.⁸⁵

The Council of Non-Governmental Organisations in Support of Development focuses on NGO and government relations, and works towards socio-economic development. Part of its mandate includes providing legal assistance in rural areas.⁸⁶

- 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?

A civil action is limited by a general 10 year time limit, with a five year limit for commercial matters, civil liability, and insurance.⁸⁷ There is no available information to suggest that this limitation period is suspended when the claimant is a child. However, a court decision can be reviewed at any time subject to the interest of the child.⁸⁸ It is unclear what the time limit is when submitting a complaint to other judicial bodies, such as the Ombudsman.

- 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?

In a juvenile court hearing, witness evidence may be given by the child, parents, or any relevant party.⁸⁹ However, if the judge considers that it is in the best interests of the child, a ‘moral representative’ can give evidence in their place.⁹⁰

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

When a case is brought before the Constitutional Council, a decision is usually handed down within one month.⁹¹ However, this can be reduced to 8 days if the government declares the matter to be urgent.⁹² When a decision

⁸⁵ *ibid.*

⁸⁶ *ibid.*

⁸⁷ Chambers and Partners and Geni&Lebe SCP, *Senegal- Law and Practice, Legal Practice Guide 2014-2015*, <http://www.chambersandpartners.com/guide/practice-guides/location/241/7308/1544-200>, 2015.

⁸⁸ UN Committee on the Rights of the Child, *Considerations*, (2007), page 29, para 114

⁸⁹ Criminal Code, Article 578.

⁹⁰ Criminal Code, Article 579.

⁹¹ Constitutional Council, Legislative Texts, Article 19, available at: http://www.accpuf.org/images/pdf/cm/senegal/042-tri-txt_leg.pdf

⁹² *ibid.*

made by the Court of Assize or the Council of the State is being assessed for conformity with the law or with an international convention, the Constitutional Council may take up to three months to produce a decision.⁹³

There can be lengthy delays in delivering compensation for a violation, as demonstrated by the case of *Famara Koné*, where the has victim waited over a decade to receive the damages payment agreed upon in an amicable settlement.⁹⁴

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

The right of appeal exists for all citizens and in any court with the exception of the High Court of Justice which is a court of last instance.⁹⁵ *Res judicata* is not applicable in cases concerning children.⁹⁶ This means that where a matter has already been decided by a competent court, it may not be pursued further by the same parties. The Court of Appeal houses a special division responsible for hearing cases on appeal involving minors.⁹⁷ There is a time limit of two months to appeal a judgement in the first instance.⁹⁸

The decisions of the Constitutional Council, however, are not subject to any appeal.⁹⁹ They are binding on public authorities and all administrative and judicial authorities.

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?

Similar to the French legal system, there is no concept of binding precedent in Senegal.¹⁰⁰ This means that previous decisions of higher courts do not bind the lower courts, though they are often followed and have persuasive authority. The Senegalese system appears to use the doctrine of ‘jurisprudence constante’ whereby a long series of previous decisions may determine a subsequent case, and judges rule on their own interpretation of the law.

The government has, at times, proved to be slow in delivering damage

⁹³ *ibid*, article 20.

⁹⁴ Adjolohoun, Horace (2009).

⁹⁵ US Department of State, Bureau of Democracy, Human Rights and Labor, #2010 Human Rights Report: Senegal’, <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154366.htm> 2011.

⁹⁶ UN Committee on the Rights of the Child, *Considerations of reports submitted by States parties under Article 44 of the Convention*, CRC/C/SEN/2, 20 February 2007, page 29.

⁹⁷ *ibid*, page 33, para 126.

⁹⁸ Civil Code, Article 17, available at: <http://senegal.eregulations.org/media/CPC%5B1%5D.pdf>

⁹⁹ Gouvernement de Senegal, Constitutional Council competences, available at <http://www.gouv.sn/Le-Conseil-constitutionnel.html>

¹⁰⁰ Réseau Francophone deDiffuson du Droit, (2015), para 2, available at: <http://legiglobe.rf2d.org/senegal/>

payments agreed upon. The *Famara Koné* case, mentioned in part IV.F, demonstrates how the domestic courts have previously received and implemented a decision made by an international human rights body.¹⁰¹ A Senegalese citizen filed a complaint to the UN Human Rights Committee claiming that he had suffered torture, degrading treatment and arbitrary detention by the Senegalese government. The UN Committee found Senegal in violation of the International Covenant on Civil and Political Rights, and recommended that the government compensate the victim for its abuse of power.¹⁰² Following this, the Prime Minister of Senegal requested the Senegalese Human Rights Committee to examine the case for an amicable domestic settlement. Mr Koné was awarded with land, a monetary sum, and medical insurance for the damages he had suffered. However, it is worth noting that it appears that the victim has waited over a decade to actually receive the agreed damages.¹⁰³ Such ‘amicable domestic settlements’ can potentially be to the detriment of the victim who only receives what the state is willing to pay, and when they are willing to pay it.¹⁰⁴

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

In order to enforce a decision in Senegal, the litigant will have to register the judgment and ask for an enforcement ordinance with the *rationae loci* or *rationae materiae* competent municipal judge.¹⁰⁵ The enforcement ordinance orders any competent public agent to implement the judgement. With the help of a lawyer or a bailiff, the litigant will then have the judgment enforced. In cases where the judgment is against the state, the Judicial Agent of the State attached to the ministry of finance shall be seized or called before the judge for necessary reparations.¹⁰⁶ In sum, the municipal ordinary judge plays the central role in the enforcement process.

As mentioned in part III.C, there can difficulties enforcing judgements against the state, as there are no apparent legal consequences when the government fails to adhere to court decisions.¹⁰⁷

V. **Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal

¹⁰¹ Adjolohoun, Horace. ‘Visiting the Senegalese Legal system and Legal Research: A Human Rights Perspective,’ http://www.nyulawglobal.org/globalex/SENEGAL.htm#_edn28 March/April 2009.

¹⁰² *Koné v Senegal*, Communication No. 386/1989, UN Doc CCPR/C/52/D/386/1989 (1994), para 9, available at <http://www1.umn.edu/humanrts/undocs/html/vws386.htm>

¹⁰³ Adjolohoun, Horace (2009).

¹⁰⁴ *ibid*, Part 7.1, para 4.

¹⁰⁵ Adjolohoun, Horace (2009), para 5.1.

¹⁰⁶ *ibid*.

¹⁰⁷ United States Department of State, Bureau of Democracy, Human Rights and Labour, ‘Country Reports on Human Rights practices for 2012, Senegal’ 2012, page 8, available at: <http://www.state.gov/documents/organization/204370.pdf>

action to challenge a violation of children's rights.

The Children's Unit is a police unit specialising in child protection.¹⁰⁸ However, its territorial jurisdiction is limited to the city of Dakar. Every police station in Senegal is required to inform the Unit of any incidents involving children, but this is rarely done.

According to the Ministry of Justice, as far as possible the juvenile courts avoid removing children from their family environment.¹⁰⁹ There is also a detention centre for juveniles in conflict with the law which provides schooling and support.¹¹⁰ However, the juvenile courts and services lack financial and human resources.¹¹¹

Deeply entrenched cultural values may challenge the enforcement of a positive decision. Serious forms of child abuse carry on under the guise of religion. For example, children, known as *talibés*, undergo severe forms of abuse and exploitation at *daaras*, or Quranic schools, where they are forced to beg for up to 10 hours a day.¹¹² Although the Senegalese government has taken steps to regulate these schools, only one school has been shut down and no teachers have been prosecuted.¹¹³ This may be due, in part, to the importance of such schools to religious communities. Such cultural or religious sensitive may prevent a court, or the relevant authorities, from ensuring that positive judgments are enforced.

There is also the widespread practice referred to as *yaar doom*, meaning "child-rearing", which involves parents sending children to stay with family members or to Koranic schools that are sometimes a long way from their town or village.¹¹⁴ In most cases, parents lack the financial resources to contribute to the costs of the institutions and it is not uncommon for children to be exploited sexually and economically.¹¹⁵ Whilst the traditional practices of child migration and placing children with members of the extended family are not wrong per se, there is a need for the courts to clearly "distinguish between children placed outside the family in the context of these traditional practices and child victims of trafficking and exploitation".¹¹⁶

¹⁰⁸ *ibid*, page 10, para 46.

¹⁰⁹ Human Rights Council, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography*, A/HRC/16/57/Add.3, 28 December 2010, page 10, para 44. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.57.Add.3_en.pdf

¹¹⁰ Senegalese Code of Criminal Procedure, Articles 595,

¹¹¹ Human Rights Council, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography* (2010), page 10, para 44.

¹¹² Human Rights Watch, 'Talibes in Senegal' <http://www.hrw.org/features/talib-s-senegal>; April 2010.

¹¹³ IRINnews, 'Scant progress on Senegal's Talibe problem,' <http://www.irinnews.org/report/99809/scant-progress-on-senegal-s-talib%C3%A9-problem> March 2014

¹¹⁴ Human Rights Council, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography* (2010), page 4, para 8.

¹¹⁵ *ibid*.

¹¹⁶ Analyse et Plan National d'Action de lutte contre la traite des personnes, en particulier des femmes et

There are also vast differences in the perceived meaning of the concepts of sale, trafficking, migration, economic exploitation and apprenticeship, which could lead to a lack of clearly challengeable violations. There is often resistance or failure to report offences for fear of reprisals and cultural stigmatisation. Certain ‘amicable settlements’ still exist between the family of the child victim and the perpetrator, particularly in rural areas. the persistence of such practices means that victims are denied access to official legal structures and remedies.

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

des enfants, the Senegalese Ministry of Justice in conjunction with UNICEF, the French embassy in Senegal and cooperation from Italy (Dakar, Senegal, 2008), page 15.