

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

*This report was produced by White & Case LLP in June 2015 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?**

Togo ratified the CRC in 1990,<sup>1</sup> and the Optional Protocols to the CRC on the sale of children (OPSC) in 2004<sup>2</sup> and on the involvement of children in armed conflict (OPAC<sup>o</sup>) in 2005.<sup>3</sup> As at the date of this report, it has not ratified the Optional Protocol to the CRC on a communications procedure.

The CRC forms part of the national law of Togo and prevails over national legislation.<sup>4</sup> Indeed, pursuant to Article 140 of the Constitution, international treaties duly ratified have, as soon as they are published, higher authority to that of the laws and as long as the other party also applies it.<sup>5</sup> The CRC was approved by the Chamber of representatives on 7 May 1990 and published in the *Journal Officiel* on 9 November 1990.<sup>6</sup>

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

The CRC takes precedence over national legislation.

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

The CRC took effect in national law upon ratification and publication.<sup>7</sup>

In addition, several other laws contain provisions relevant to children's rights. For example, the 2002 Constitution of Togo declares that "the state protects youth from all forms of exploitation or manipulations."<sup>8</sup> Togo adopted the Children's Code in 2007.<sup>9</sup> However, the UN Committee on the Rights of the Child in its 2012 concluding

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<sup>1</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en).

<sup>2</sup>

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

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

<sup>4</sup> UNICEF, 'Law reform and implementation of the Convention on the Rights of the Child', December 2007, available at: [www.unicef-irc.org/publications/pdf/law\\_reform\\_crc\\_imp.pdf](http://www.unicef-irc.org/publications/pdf/law_reform_crc_imp.pdf).

<sup>5</sup> Togo: Constitution de la IVe République [Togo], 14 October 1992, as revised by Law No. n°2002-029 of 31 December 2002, available at:

<http://www.refworld.org/docid/48ef43c72.html> [accessed 9 July 2015].

<sup>6</sup> Presidential decree n° 90-180, available at:

[http://www.legitogo.gouv.tg/annee\\_txt/1991/Pages%20from%20jo\\_1991-002x.pdf](http://www.legitogo.gouv.tg/annee_txt/1991/Pages%20from%20jo_1991-002x.pdf).

<sup>7</sup> Constitution, Article 138, paragraph 2.

<sup>8</sup> Ibid., Article 36.

<sup>9</sup> Law No. 2007-017 (Children's Code), 6 July 2007, available at:

<http://www.hsph.harvard.edu/population/fgm/togo.child.07.pdf>

observations reported that the Code contains many provisions which are not in compliance with the CRC,<sup>10</sup> and does not fully recognise children as right holders.<sup>11</sup> Furthermore the Children's Code is not fully applicable as the implementing regulations have not yet been adopted.<sup>12</sup>

A new Criminal Code and a new Code of Criminal Procedure are currently under examination by the Parliament, addressing namely a proper criminalisation of torture.<sup>13</sup>

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

The Togolese Constitution provides that “the rights and duties set out in the Universal Declaration of Human Rights and in international treaties relating to human rights and ratified by Togo are integral parts of the Constitution”.<sup>14</sup> Pursuant to this provision, the Togolese government stated that the provisions of international treaties to which Togo is a party can be invoked before national courts and be directly applied by the judges.<sup>15</sup>

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

No case law could be found online.

## 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?

The Children's Code establishes legal majority at 18 years of age. Minors are incapable of exercising civil rights, including bringing cases in justice.<sup>16</sup> Children may bring cases through their representatives.

Pursuant to the Code of Criminal Procedure, private prosecution is available through an “*Action civile*”<sup>17</sup>: If a regular claim (“*Plainte*”) is made to the Public Prosecutor and it

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<sup>10</sup> For example, Article 248 of the Children's Code provides that a child born from an adulterous relationship cannot claim maintenance from his/her father if the father did not acknowledge him or her as his child. Article 21 provides that a foreign child can marry a Togolese child without any age limitation, which indirectly authorises marriage with a very young child.

<sup>11</sup> UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic report of Togo*, CRC/C/TGO/CO/3-4, 8 March 2012, para. 9. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTGO%2fCO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTGO%2fCO%2f3-4&Lang=en).

<sup>12</sup> Ibid.

<sup>13</sup> ACAT, CACIT, OMCT & FIACAT, Contribution à la Liste des Points à traiter précédant la rédaction du rapport périodique du Togo au Comité des Nations unies contre la torture, p. 6. Available at: <http://www.refworld.org/pdfid/54b7d4b84.pdf>.

<sup>14</sup> Constitution, Article 50.

<sup>15</sup> *Initial Report of Togo (on the OPSC) to the UN Committee on the rights of the child*, CRC/C/OPSC/TGO/1, 3 March 2009, para. 19. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPSC%2fTGO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPSC%2fTGO%2f1&Lang=en).

<sup>16</sup> Children's Code, Article 2. See also Organic Law n°2012-014, Persons and Family Code, Article 259, and section 2 on legal guardians, available at: [http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Togo/togo\\_family\\_1980\\_fr.pdf](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Togo/togo_family_1980_fr.pdf).

<sup>17</sup> Law n°83-1 establishing a Code of Criminal Procedure, 3 March 1983, (Code of Criminal Procedure),

does not pursue it, the alleged victim can make a claim seeking civil compensation for the damages suffered pursuant the criminal offense (“*plainte avec constitution de partie civile*”). This will not only open a damages claim but it will also oblige the Public Prosecutor to initiate investigation. In such a way, the alleged victim can initiate the criminal prosecution.<sup>18 19</sup>

Article 15 of the Constitution provides that: “No one may be arbitrarily arrested or detained. Whoever is arrested without legal basis or detained longer than the time period of arrest may, on their request or that of any interested person, refer [the matter] to the judicial authority designated to this effect by the law. The judicial authority decides without delay on the legality or the regularity of their detention.”<sup>20 21</sup>

The Criminal Code condemns abuse of authority (“*forfaiture*”). A public servant who abused its power is subject to the destitution from its position besides the regular sentences.<sup>22</sup>

Furthermore, the *Commission Nationale des Droits de l’Homme* (National Human Rights Commission, CNDH) is entitled to receive complaints against public servants and administrative agencies relating to human rights violations. To this end, it can audition public servants involved and have access to all documents related to the violation.<sup>23</sup>

Refer to III.A. and IV.A. for further information.

**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?**

Under Togolese law, in order to bring a case in regular domestic courts, a person must

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Article 1, paragraph 2: “This action [the criminal prosecution] can also be engaged by the victim, in the conditions determined by this code”, and Article 71. Available at:

[http://www.legitogo.gouv.tg/annee\\_txt/1983/Pages%20from%20jo\\_1983-009.pdf](http://www.legitogo.gouv.tg/annee_txt/1983/Pages%20from%20jo_1983-009.pdf)

<sup>18</sup> If the criminal offense is a “*délit*” or a “*contravention*”, the “*plainte avec constitution de partie civile*” necessarily has to be preceded by a regular “*plainte*”. If it is a “*crime*” it does not.

<sup>19</sup> Pursuant to Article 69 of the Code of Criminal Procedure, paragraph 1, the investigative judge transfers the case to the Public Prosecutor, who is obliged to pursue the case in 48 hours. The Public prosecutor can only refuse to pursue the case if the criminal prosecution itself is impossible or if the facts cannot constitute a criminal offense (paragraph 3).

<sup>20</sup> Constitution, available at: [https://www.constituteproject.org/constitution/Togo\\_2007.pdf](https://www.constituteproject.org/constitution/Togo_2007.pdf)

<sup>21</sup> The Court of Justice of the Economic Community of West African States has recently (24 June 2015) condemned Togo for the arbitrary detention of Pascal Bodjona, former government spokesman, available at:

<http://togosite.com/index.php/togo/1473-togo-la-cour-de-la-cedeao-reconnait-la-detention-arbitraire-de-pascal-bodjona>.

<sup>22</sup> Law n°80-1 establishing a Criminal code, 13 August 1980, as amended in 2000 (Criminal code), articles 149 and 150. Available at:

[http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Togo/togo\\_penal-amt\\_2000\\_fr.pdf](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Togo/togo_penal-amt_2000_fr.pdf).

<sup>23</sup> Organic law 96-12 on the composition, organisation and functioning of the National Commission for Human Rights (CNDH), 11 December 1996, Article 21, mentioning “agents” and “administration”. Original law (1996) available at:

<https://ilo.org/dyn/natlex/docs/SERIAL/46943/40742/F2049383433/comission%20nat%20DH.pdf>.

Amendments to the 1996 law (Law N° 2005-004, 9 February 2005), available at:

<https://ilo.org/dyn/natlex/docs/SERIAL/46943/40742/F2049383433/comission%20nat%20DH.pdf>.

have the legal capacity to be a party to legal proceedings.<sup>24</sup> Children under the age of 18 are considered minors<sup>25</sup> and are deemed to be incapable of taking legal action.<sup>26</sup> Therefore, as a general principle, a minor must be represented by his or her legal guardian.<sup>27</sup> In principle, the parents are the child's legal administrators. Nevertheless, whenever the child's interests are in conflict with the parent's, an administrator *ad hoc* is named by the guardianship judge ("*juge des tutelles*").<sup>28</sup> Children can be emancipated from the age of 16 years of age, with the consent of the parents. Emancipated children can exercise all civil actions.<sup>29</sup>

Furthermore, the Children's Code states that when a child is in danger, a child can bring a case him/herself before the children's judge.<sup>30</sup>

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

Cases would typically be brought by the child's representatives.

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

Article 16 of the Constitution provides that "Every accused [person] has the right to be assisted by counsel at the stage of the preliminary inquiry."

"The law stipulates that all crime victims who are indigent are entitled to legal aid, but in practice such aid is not available".<sup>31</sup> The Law on Legal aid was indeed adopted in 2013, but it is not yet enforceable since it lacks an implementing decree ("*décret d'application*"). In 2013 and 2014, the President allocated a subvention to the Bar's office in order to accelerate proceedings.<sup>32</sup> A lawyer is to be provided for defendants in front of the court responsible for judging the most serious criminal offences ("*crimes*"), the "*Cour d'assises*".<sup>33</sup>

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<sup>24</sup> Decree n°82-50 establishing a Code of Civil Procedure, 15 March 1982, (Code of Civil Procedure), Article 22. Available at:

[http://www.legitogo.gov.tg/annee\\_txt/1982/Pages%20from%20jo\\_1982-008.pdf](http://www.legitogo.gov.tg/annee_txt/1982/Pages%20from%20jo_1982-008.pdf).

<sup>25</sup> Children's Code, Article 2.

<sup>26</sup> See Persons and Family Code, section 2.

<sup>27</sup> Togo uses the 1956 version of the French civil code. See Law 08-001 establishing a Civil code, 1 January 1959, Article 450 (Civil code). Available at:

[http://legitogo.gov.tg/annee\\_txt/2008/Pages%20from%20jo\\_2008-001.pdf](http://legitogo.gov.tg/annee_txt/2008/Pages%20from%20jo_2008-001.pdf).

<sup>28</sup> Children's Code, Article 187.

<sup>29</sup> Children's Code, Articles 235 and 238.

<sup>30</sup> *Ibid.*, Article 285.

<sup>31</sup> *Combined third and fourth periodic report of Togo to the UN Committee on the Rights of the Child*, CRC/C/TGO/3-4, 20 May 2011, para. 524. Available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTGO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTGO%2f3-4&Lang=en). See Law 2013-010 on Legal aid, 27 May 2013, available at:

[http://legitogo.gov.tg/annee\\_txt/2013/Pages%20from%20jo\\_2013-013Special-1.pdf](http://legitogo.gov.tg/annee_txt/2013/Pages%20from%20jo_2013-013Special-1.pdf).

<sup>32</sup> CAT, CACIT, OMCT & FIACAT, Contribution à la Liste des Points à traiter précédant la rédaction du rapport périodique du Togo au Comité des Nations unies contre la torture, p. 16. Available at:

<http://www.refworld.org/pdfid/54b7d4b84.pdf>.

<sup>33</sup> Code of Criminal Procedure, Article 186.

Children have the right to be assisted by legal counsel during pretrial investigation<sup>34</sup> and to express their opinions through such counsel at all stages of the proceedings.<sup>35</sup> In Lomé, the Ministry of Social Affairs operates two shelters, one of which - the Oasis Center - provides legal and other services to child victims up to age 14.<sup>36</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)?

If a child gets married before 18 years of age, the parents do not bear responsibility for the damages their child might cause to others anymore,<sup>37</sup> as marriage entails automatic emancipation.<sup>38</sup>

If the child offender is accused along with adults, the privilege of a specialised judge can be lifted and the child tried in front of the regular criminal courts where the adults are tried.<sup>39</sup>

During the minority of a child, only the mother can exercise a claim for the recognition of paternity.<sup>40</sup>

The consent of a child is not required for his/her adoption (even if it must be in the best interests of the child).<sup>41</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 Constitutional Court is responsible for reviewing laws' compliance with the Constitution.<sup>42</sup> As stated in I.D., as a human rights treaty, the CRC is an integral part of the Constitution. The Constitutional Court reviews the constitutionality of laws prior to their enactment.<sup>43</sup> Regular laws can be submitted to the Constitutional Court either by the President, the Prime Minister, 1/5 of the Chamber of representatives or the President of the Chamber of representatives.<sup>44</sup> Organic laws are necessarily submitted to the

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<sup>34</sup> Children's Code, Article 303, paragraph 2.

<sup>35</sup> *Combined third and fourth periodic report of Togo to the UN Committee on the Rights of the Child*, CRC/C/TGO/3-4, 20 May 2011, para. 485. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTGO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTGO%2f3-4&Lang=en).

<sup>36</sup> US Department of State, '2014 Trafficking in Persons Report: Togo', available at: <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226834.htm>.

<sup>37</sup> Children's Code, Article 156.

<sup>38</sup> *Ibid.*, Article 135.

<sup>39</sup> *Ibid.*, Article 118, paragraph 2.

<sup>40</sup> Civil Code, Article 340.

<sup>41</sup> *Ibid.*, Articles 343 and following.

<sup>42</sup> Constitution, Article 99.

<sup>43</sup> *Ibid.*, Article 104.

<sup>44</sup> Organic law n°2004-004 on the Constitutional Court, 1 March 2004, Article 28. Available at: [http://www.accpuf.org/images/pdf/cm/togo/togo\\_loiorganique2004.pdf](http://www.accpuf.org/images/pdf/cm/togo/togo_loiorganique2004.pdf).

Constitutional Court before their enactment.<sup>45</sup> Laws that violate the CRC can also be challenged in front of the Constitutional Court by individuals, under certain conditions.

<sup>46</sup> Refer to IV.A for further information.

Several provisions of the CRC have been implemented in national laws. Such laws can therefore be the basis for a complaint before relevant domestic courts. Refer to IV.A for more information on how to file cases.

Moreover, once ratified and published, an international treaty automatically has the force of law in Togo. Therefore, any violation of the CRC that is not transposed in a domestic law can be challenged directly by any capable citizen before the correspondent domestic court.<sup>47</sup> For further information on judicial organisation, refer to IV.A below.

### *National Commission for Human Rights*

It is possible for complaints about violations of rights to be submitted to the National Commission for Human Rights in Togo (CNDH).<sup>48</sup> It is an independent institution, which “only responds to the Constitution and the Law”.<sup>49</sup> Its members are elected by the Chamber of representatives (*Assemblée Nationale*) among different kinds of professionals (lawyers, judges, professors, activists etc.) committed to human rights. It is provided that one of the members is a children’s rights activist.<sup>50</sup> However, the Committee on the Rights of the Child has noted that this general complaints mechanism “remains ineffective and inaccessible to most children”, and that there is no specific complaints mechanism for children.<sup>51</sup> The Committee has recommended that the government ensure that the CNDH “is able to receive, investigate and address complaints by children in a child-sensitive manner”.<sup>52</sup>

### *African Committee of Experts on the Rights and Welfare of the Child*

Individuals, including child victims, their 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>53</sup> All available domestic

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<sup>45</sup> Ibid., Article 27.

<sup>46</sup> Ibid., refer to IV. A for further information.

<sup>47</sup> The claimant would have to be able to identify the Tribunal whose jurisdiction under which would fall the case, i.e., if the case is civil, criminal, administrative etc. Refer to IV.A. on how to file cases.

<sup>48</sup> Organic Law 2005-004 modifying and completing the Organic Law 96-12 on the composition, organisation and functioning of the National Commission for Human Rights (CNDH), Article 17 (New), available at:

[http://www.apr.ch/content/files/npm/africa/Togo\\_Organic%20Law\\_National%20Human%20Rights%20Commission\\_2005.pdf](http://www.apr.ch/content/files/npm/africa/Togo_Organic%20Law_National%20Human%20Rights%20Commission_2005.pdf).

<sup>49</sup> Ibid., New Article 1.

<sup>50</sup> Ibid., New Article 3.

<sup>51</sup> UN Committee on the Rights of the Child, UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic report of Togo*, CRC/C/TGO/CO/3-4, 8 March 2012, para. 15. Available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTGO%2fCO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTGO%2fCO%2f3-4&Lang=en).

<sup>52</sup> Ibid. para. 16.

<sup>53</sup> African Charter on the Rights and Welfare of the Child (“African Children’s Charter”), Article 44,

remedies must have been exhausted before bringing a case to the African Committee.<sup>54</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>55</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>56</sup>

### *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”).<sup>57</sup> All available domestic remedies must have been exhausted before bringing a case to the African Commission.<sup>58</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>59</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>60</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>61</sup>

### *ECOWAS Community Court of Justice*

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available at:

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

. For more information about communications, see:

<http://acerwc.org/the-committees-work/communications/>.

<sup>54</sup> African Committee of Experts on the Rights and Welfare of the Child, ‘Communications’, available at:

<http://acerwc.org/the-committees-work/communications/>.

<sup>55</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>56</sup> Ibid.

<sup>57</sup> African Charter on Human and Peoples' Rights (“African Charter”), Article 55, available at:

<http://www.achpr.org/instruments/achpr>.

<sup>58</sup> Ibid., Article 56(5).

<sup>59</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>60</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>61</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>.

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.<sup>62</sup> This includes acts or inaction of Community Officials which violate the rights of individuals.<sup>63</sup> 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.<sup>64</sup> There are, however a number of conditions: the complaint must not be anonymous or be pending before another international court;<sup>65</sup> representation by an agent or lawyer is required;<sup>66</sup> 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.<sup>67</sup> Judgments of the Court of Justice are binding on the Member States, Institutions of the Community, individuals and corporate bodies.<sup>68</sup>

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

If the Constitutional Court finds a law unconstitutional, it cannot be enacted if the Court was seized to before its enactment, or it is declared null and withdrawn from the legislation if the Court is referred to during an ongoing case.<sup>69</sup>

Civil courts can award financial compensation,<sup>70</sup> order injunctions while the criminal courts can impose prison sentences and fines. Investigative judges (“*Juges d’instruction*”) are responsible for investigating criminal accusations.<sup>71</sup> The investigation is mandatory if the criminal offence is a “*crime*” and in front of the Children’s judge and the Children’s court.<sup>72</sup>

Administrative courts can award compensation for damages suffered pursuant to decisions from the Administration, or to acts from public officers.<sup>73</sup> It seems that they can take provisional measures against administrative bodies in the context of the interim relief procedures (*Procédures de référé*).<sup>74</sup>

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<sup>62</sup> Supplementary Protocol A/SP.1/01/05, Articles 3 and 4, available at: [http://www.courtecawas.org/site2012/pdf\\_files/supplementary\\_protocol.pdf](http://www.courtecawas.org/site2012/pdf_files/supplementary_protocol.pdf); Protocol on the Community Court of Justice, Articles 9(4) and 10(d), available at: [http://www.courtecawas.org/site2012/pdf\\_files/protocol.pdf](http://www.courtecawas.org/site2012/pdf_files/protocol.pdf).

<sup>63</sup> Ibid., Article 4; Protocol on the Community Court of Justice, Article 10(c).

<sup>64</sup> 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>.

<sup>65</sup> Supplementary Protocol A/SP.1/01/05, Article 4; Protocol on the Community Court of Justice, Article 10(d),

<sup>66</sup> Protocol on the Community Court of Justice, Article 12.

<sup>67</sup> Supplementary Protocol A/SP.1/01/05, Article 3; Protocol on the Community Court of Justice, Article 9(3).

<sup>68</sup> Revised Treaty of the Economic Community of West African States, Article 15(4), available at: [http://www.courtecawas.org/site2012/pdf\\_files/revised\\_treaty.pdf](http://www.courtecawas.org/site2012/pdf_files/revised_treaty.pdf).

<sup>69</sup> Constitution, Article 104, paragraph 8. See further information below in IV.A.

<sup>70</sup> Civil Code, Article 1146.

<sup>71</sup> Code of Criminal Procedure, Article 39.

<sup>72</sup> Ibid., Article 62.

<sup>73</sup> Ordinance 78-35 on the judiciary organisation, 7 September 1978, Article 28. Available at: [http://legitogo.gouv.tg/annee\\_txt/1978/Pages%20from%20jo\\_1978-021Bis.pdf](http://legitogo.gouv.tg/annee_txt/1978/Pages%20from%20jo_1978-021Bis.pdf).

<sup>74</sup> No law could be found on provisional measures in administrative proceedings. However, the following article indicates that these exist:

*Offences committed by children:*

The children's judge, as a specialised judge, can impose measures such as ordering a medical examination, placing a child with a custodian or an educational centre, measures of protection, supervision, assistance and education.<sup>75</sup> Children's courts may order the same measures, but also imprisonment (which has to be undertaken in an institution different from regular prisons, or at least in a separated part of a regular prison) if the child is older than 16 years of age.<sup>76</sup>

The Children's Code provides for mediation as an alternative resolution mechanism to criminal offences committed by children. The child or his representative can make a request to the Public Prosecutor, who will decide whether to pursue it or not. If the request is made jointly by the child offender and the victim, the Public Prosecutor cannot refuse to pursue it. The Public Prosecutor can always pursue the mediation at its own initiative. Mediation is not possible for "crimes", sexual offences and offences against public property. Remedies available through this mechanism include compensation, reparation, restitution, community service, written or verbal apologies.<sup>77</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?

As a general principle, only a person having a legitimate direct interest to act can bring a case to court.<sup>78</sup> In civil matters, in practice, this means that only a child claiming to be a victim of a violation or his/her representative can bring a case to court. In administrative matters, this can be interpreted slightly more broadly, but claimants still need to prove their interest to act.

In criminal matters, only individuals who have personally suffered from an offence can bring a claim for damages as *partie civile*.<sup>79</sup>

When the Constitutional Court is seized before the enactment of the law, there is no need to name a specific victim since the Court will proceed to an abstract review of the compliance of the law with the Constitution. Nevertheless, this possibility is not open to individuals. Refer to IV.A for further information.

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

Pursuant to the French tradition, class actions are not possible, except for specific areas of law (i.e. labour law, consumer protection).<sup>80</sup>

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<http://www.focusinfos.net/index.php/component/k2/item/558-justice-administrative-togolaise-une-juridiction-a-la-traine>.

<sup>75</sup> Children's Code, Article 292 for protection measures for children in danger and Article 328 for sentences for child offenders.

<sup>76</sup> Ibid., Article 335.

<sup>77</sup> Children's Code, Articles 311 and following.

<sup>78</sup> Code of Civil Procedure, Article 3.

<sup>79</sup> Code of Criminal Procedure, Article 2.

<sup>80</sup> See for instance Criminal Code, Art. 116 on consumers' organisations' ability to bring actions against misleading advertisement.

In civil proceedings, two cases can be joined if there is a sufficient link between them (“*lien de connexité*”).<sup>81</sup>

In criminal proceedings in front of Children courts and tribunals, children co-defendants who would normally be tried in different courts according to their territorial jurisdiction can be tried in front of the same tribunal only if this is required to ensure a good administration of justice.<sup>82</sup>

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

The Children’s Code specifically states that any organisation working for the defence and protection of children’s rights can bring a case before the children’s judge.<sup>83</sup> This includes NGOs. NGOs can also file human rights claims in front of the CNDH.<sup>84</sup>

Neither the Code of Civil Procedure nor the Code of Criminal Procedure mention intervention to support a party.<sup>85</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?

Administrative actions are filed through a motion to open proceedings (“*requête introductive d’instance*”) in the Court registry (“*greffe de la Cour*”).<sup>86</sup> Actions seeking compensation for decisions from public bodies are brought before the administrative chamber of the Court of appeals. Nevertheless, actions seeking the State's responsibility for actions committed by public servants are to be brought before First instance tribunals.<sup>87</sup>

Civil actions are brought before First instance tribunals or civil chambers of Courts of Appeals (depending on the damages at stake). They are filed through a motion (“*requête*”) that can either be written or oral, before the tribunal’s clerk (“*greffier du Tribunal*”), or through a joint motion (“*requête conjointe*”).

Criminal matters are subject to public prosecution that can be triggered by the victim’s complaint. The victim can join the action as *partie civile* (civil party) when filing the

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<sup>81</sup> Code of Civil Procedure, Article 12. No other details were found.

<sup>82</sup> Children’s Code, Article 319, paragraph 4.

<sup>83</sup> Children’s Code, Article 285.

<sup>84</sup> Organic Law 2005-004, New Article 17, paragraph 2.

<sup>85</sup> Indeed, Article 102 of the Code of Civil Procedure provides only for incident or connexe claims, that is, one couldn’t intervene just to support a claim, they would have to make a claim in order to support a distinct interest.

<sup>86</sup> Law 81-10 on the procedure in front of the administrative chamber of the Court of appeals, Article 7, available at: [http://legitogo.gouv.tg/annee\\_txt/1981/Pages%20from%20jo\\_1981-018-6.pdf](http://legitogo.gouv.tg/annee_txt/1981/Pages%20from%20jo_1981-018-6.pdf).

<sup>87</sup> Ordinance 78-35 on the organisation of the judiciary, Article 28.

complaint or at any later stage during the investigation.<sup>88</sup> The Code of Criminal Procedure requires civil parties to give an address in the jurisdiction where the investigation is conducted, failing which they would not be able to complain if they did not receive documents and notifications.<sup>89</sup> First instance tribunals rule over minor offences (*délits* and *contraventions*), and Criminal chambers of Court of Appeals rule over serious offences (*crimes*).<sup>90</sup>

The Constitutional Court can be seized by a court or tribunal during an ongoing case (“*in limine litis*”) whenever a party to the case raises an unconstitutionality claim (“*exception d’inconstitutionnalité*”) which challenges the constitutionality of the law being apply.<sup>91</sup>

As part of the organisation of the judiciary, Togo provides for the creation of a specialised judge (“*Juge des enfants*”) and a specialised court for children (“*Tribunal pour enfants*”) in each first instance court.<sup>92</sup> Nevertheless, to date, only five first instance tribunals have a specialised Children’s judge. Furthermore, there is only one minor’s brigade (“*Brigade pour mineurs*”), which is located in the capital Lome.<sup>94</sup> Cases are referred to the children’s judge:

- If the case concerns children in danger: Through a written or oral claim (“*demande*”) by the child him/herself, both parents, either one of the parents, the tutor or guardian, the Public prosecutor, the social worker within the first instance tribunal or any service responsible for the protection of children’s rights, any children’s rights organisation, public or private institutions, those who found the child, and the Children’s judge who can at his/her own initiative take on the case.<sup>95</sup>
- If the case concerns infractions committed by children: By the Public Prosecutor (“*Ministère Public*”) through a written indictment (“*réquisitoire écrit*”) or by the alleged victim through a civil claim only for civil compensation purposes (“*partie civile*”).<sup>96</sup> If the offence is considered as a “*crime*” or if despite, previous educative measures, the child persists in delinquency, the children’s judge transfers the case to the Children’s tribunal (“*Tribunal pour enfants*”). In other cases (“*délits*” and “*contraventions*”),<sup>97</sup> the children’s judge will hear the child him/herself in a subsequent hearing where he/she can order only educative measures.<sup>98</sup>

Human rights claims can be brought in front of the CNDH<sup>99</sup> in the form of a “*requête*”

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<sup>88</sup> Code of Criminal Procedure, Article 70. See above in II.A for further information.

<sup>89</sup> Ibid., Article 72.

<sup>90</sup> See: <http://legiglobe.rf2d.org/togo/2013/10/09/>.

<sup>91</sup> Constitution, Article 104.

<sup>92</sup> The Children’s court is composed by the Children’s judge who presides the court and two assessors who are nominated by the President of the Court of appeals on the basis of their demonstrated interest for children’s matters, pursuant to Article 331 of the Children’s Code.

<sup>93</sup> Ordinance No. 78-35. See *Human Rights Report: Togo*, supra note 10.

<sup>94</sup> See: <http://news.alome.com/h/25764.html>

<sup>95</sup> See Children’s Code, Article 285.

<sup>96</sup> Children’s Code, Article 319, paragraph 1.

<sup>97</sup> Pursuant to Article 3 of the Criminal code, from the more serious to less serious infractions, “*crimes*” are infractions punishable by criminal sentences, “*délits*” are infractions punishable by corrective sentences and “*contraventions*” are infractions punishable by police sentences.

<sup>98</sup> Ibid., Article 325c.

<sup>99</sup> The CNDH is a non judicial mechanism.

by the alleged victim, a third party or an NGO. The Commission can also refer the case at its own initiative, at its President's or any member's demand, or whenever a human rights violation is brought to its attention.<sup>100</sup> The "*requête*" must notably mention the name and address of the author of the violation. It cannot concern facts already addressed in an ongoing case in front of a Tribunal, except for cases of "manifest denial of justice".<sup>101</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?

See part II.D above. Generally, a fee has to be paid in order to file a *partie civile* complaint in a criminal matter.<sup>102</sup> The Children's Code states that cases in front of Children's tribunals are exempt from registration fees.<sup>103</sup> The referral *in limine litis* to the Constitutional Court is exempt from fees.<sup>104</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?

Togo reported on the following initiatives in its latest report to the Committee on the Rights of the Child:

*Children in conflict with the law*

- A number of judges and lawyers have set up a juvenile defence association, the *Enfant Radieux* association, which works with juveniles. The association is based in Lomé but covers the whole country.<sup>105</sup>
- The French association *La Voix de la Justice* has been working with the Togolese bar to provide free legal aid to children in conflict with the law. Togolese NGOs also provide free legal aid to children.<sup>106</sup>
- ICCB Togo (International Catholic Child Bureau) provides systematic assistance to young offenders held in the juvenile division, from pretrial investigation up to sentencing.<sup>107</sup>

*Child victims of crime*

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<sup>100</sup> Organic Law 2005-004, New Article 17.

<sup>101</sup> Organic Law 96-12, Article 18, available at:

[http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Togo/togo\\_hrtscommission\\_1996\\_fr.pdf](http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Togo/togo_hrtscommission_1996_fr.pdf).

<sup>102</sup> Code of Criminal Procedure, Article 71.

<sup>103</sup> Children's Code, Article 343.

<sup>104</sup> Association des Cours Constitutionnelles ayant en Partage l'Usage du Français, *Rapport de la Cour constitutionnelle du Togo*, March 2000, II.1.1., page 567, available at:

[http://www.accpuf.org/images/pdf/cm/togo/062-rc-access\\_juge\\_const.pdf](http://www.accpuf.org/images/pdf/cm/togo/062-rc-access_juge_const.pdf)

<sup>105</sup> *Combined third and fourth periodic report of Togo to the UN Committee on the Rights of the Child*, CRC/C/TGO/3-4, 20 May 2011, para. 502. Available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTGO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTGO%2f3-4&Lang=en).

<sup>106</sup> *Ibid.*, para. 525.

<sup>107</sup> *Ibid.*, para. 526.

- Under a pilot project for the care of children in conflict with the law and the strengthening of the juvenile justice system in Togo, child victims of rights violations who have been in contact with the law receive legal and medical assistance and psychosocial support. The project was launched by the Togolese Government, with technical and financial support from UNICEF, and is being implemented by ICCB.<sup>108</sup>
- Child victims of abuse or violence receive legal and social assistance from both public (the Child Protection Department) and non-governmental institutions.<sup>109</sup> ICCB, *Terre des Hommes* and the African branch of the World Association for Orphans and Abandoned Children (WAO Africa), provide legal assistance to neglected, abused or assaulted children.<sup>110</sup>
- ICCB provides legal assistance to child victims of sexual exploitation.<sup>111</sup>
- The Togo network against child trafficking (RELUTET) provides legal assistance to children exploited by traffickers.<sup>112</sup>
- With regard to the recovery of maintenance payments, the Ministry responsible for child protection and some civil society organisations, notably ICCB, *Terre des Hommes*, FODDET and its networks, provide legal and judicial assistance to children to enable them to enjoy their right to maintenance.<sup>113</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 regular limitation period for most civil actions is 30 years.<sup>114</sup> Statutes of limitations apply to complaints regarding violations against children, except in the case of a child's action against his or her guardian (*tuteur*).<sup>115</sup> However, actions concerning civil status are not subject to time limitations when they are engaged by the child.<sup>116</sup> A recognition of paternity claim can be made by a child during a period of one year after he/she turned 18 if it had not been made during the child's minority (normally, it could only be done 2 years after the date of birth by the mother).<sup>117</sup>

As a general rule, the Criminal Procedure Code provides that when a crime ("*crime*") is committed, it can be prosecuted within 10 years of the day such crime was committed. The prosecution period is five years for misdemeanours ("*délits*") and one year for smaller misdemeanours ("*contraventions*").<sup>118</sup>

To date, Togo is not a party to the Rome Statute of the International Criminal Court,<sup>119</sup> nor to the Convention on the non-applicability of statutory limitations to war crimes and

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<sup>108</sup> Ibid., paras 173 and 175.

<sup>109</sup> Ibid., para. 160.

<sup>110</sup> Ibid., para. 161.

<sup>111</sup> Ibid., para. 604.

<sup>112</sup> Ibid., para. 527 and 621.

<sup>113</sup> Ibid., para. 143.

<sup>114</sup> Civil Code, Article 2262.

<sup>115</sup> Civil Code, Article 2278.

<sup>116</sup> Civil Code, Article 328.

<sup>117</sup> Civil code, Article 340.

<sup>118</sup> Criminal Procedure Code, Article 7.

<sup>119</sup> List of African State parties available at:

[http://www.icc-cpi.int/en\\_menus/asp/states%20parties/african%20states/Pages/african%20states.aspx](http://www.icc-cpi.int/en_menus/asp/states%20parties/african%20states/Pages/african%20states.aspx)

crimes against humanity.<sup>120</sup> It is a party to the Genocide Convention, which does not however exclude genocide from time limitations.<sup>121</sup>

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

The Criminal Procedure Code does not set out a list of evidence that is admissible or required, but it confirms that any kind of evidence may be admitted. Therefore, any kind of documents, testimonies, physical evidence or expert opinions can be admitted as evidence.<sup>122</sup>

Child witnesses under the age of 16 are heard without being sworn in.<sup>123</sup>

The Children's Code gives any child who is capable of own judgment ("*discernement*") the right to express his or her views freely on any issue or judicial or administrative proceeding concerning him or her either directly or through an "impartial representative" or a child rights organisation. The best interests of the child are to be taken into consideration in front of the courts.<sup>124</sup> The Code also states that the media cannot publish the content of debates led within Children's tribunals, and can only "report on sentences" without mentioning the names of the children implicated or giving any indication that might allow to identify them.<sup>125</sup> Hearings in front of Children's judges (at first instance and on appeal) are private - only the child, the parents, the witnesses, the civil parties (those who claim monetary compensation for damage pursuant to a criminal offence), experts, and social workers involved with the child are present.<sup>126</sup>

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

When an appeal of a Children's judge's decision is filed in the Court of appeals, the latter has 45 days to issue its ruling.<sup>127</sup>

When a "*requête*" is made to the CNDH, the executive bureau has 48 hours to meet. For serious, manifest, continued violations, the bureau must meet without delay.<sup>128</sup>

When deciding on an "exception of unconstitutionality" filed by an individual, the Constitutional Court must reach a decision within a month of it being seized, except in urgent matters where a decision must occur within eight days.<sup>129</sup> Whenever ruling on a

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<sup>120</sup> List of State parties available at:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-6&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-6&chapter=4&lang=en)

<sup>121</sup> List of State parties available at:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-1&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&lang=en)

<sup>122</sup> Criminal Procedure Code, Article 302.

<sup>123</sup> Criminal Procedure Code, Article 87.

<sup>124</sup> Children's Code, Articles 8 and 9.

<sup>125</sup> Ibid., Article 344.

<sup>126</sup> Ibid., Articles 334 and 340.

<sup>127</sup> Ibid., Article 293.

<sup>128</sup> Organic Law 96-12, Article 19.

<sup>129</sup> Law on the Constitutional Court, Article 33.

human rights matter, the court must reach a decision within eight days.<sup>130</sup>

There are reportedly many delays in the justice system.<sup>131</sup> In 2014, five new Children's judges were nominated but there are still many first instance tribunals which do not have their own Children's judge, in breach of Article 317 of the Children's Code that provides that every first instance tribunal should have one Children's judge.<sup>132</sup>

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

As a general rule, the Criminal Procedure Code states that a decision can be appealed within 15 days following the judgment.<sup>133</sup> This is extended to 20 days when the appeal is made by the accused<sup>134</sup> and three months when it is made by the public prosecutor.<sup>135</sup>

For civil matters, a decision can be appealed within a month following the judgment.<sup>136</sup>

First instance tribunal decisions can be appealed to the Court of Appeals. Decisions from the Court of Appeals can be appealed to the Supreme Court. The Court of Appeals have jurisdiction over administrative cases seeking compensation for damages suffered because of decisions or acts of public agencies. They can only be appealed once, to the Supreme Court.<sup>137</sup>

Decisions from the Children's judge can be appealed to the Court of Appeals by the child himself/herself, his/her guardian, tutor, parents, lawyers, social services, within 15 days.<sup>138</sup>

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Under the Code of Criminal Procedure, if public proceedings end with charges being dropped (*ordonnance de non-lieu*), the defendant can ask for damages to be paid by the *partie civile* (in most cases the victim).<sup>139</sup>

According to reports, the judicial system is heavily influenced by the presidency and the executive.<sup>140</sup>

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

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<sup>130</sup> Ibid. Article 32.

<sup>131</sup> US Department of State, *Togo 2014 human rights report*, 2014, available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236416>.

<sup>132</sup> Available at: <http://www.icilome.com/nouvelles/news.asp?id=11&idnews=789395>

<sup>133</sup> Code of Criminal Procedure, Article 371.

<sup>134</sup> Code of Criminal Procedure, Article 372.

<sup>135</sup> Code of Criminal Procedure, Article 373.

<sup>136</sup> Code of Criminal Procedure, Article 195.

<sup>137</sup> Ordinance 78-35 on the judiciary organisation.

<sup>138</sup> Children's Code, Article 293.

<sup>139</sup> Code of Criminal Procedure, Article 74.

<sup>140</sup> Freedom House, 'Togo', 2015, available at: <https://freedomhouse.org/report/freedom-world/2015/togo#.VZyVYKZSpz8>; US Department of State, 'Togo 2014 human rights report'.

positive decision?

According to the same reports, the judicial system lacks resources and prisons are overcrowded. Judge Emanuel Etorh<sup>141</sup>, chief magistrate of the children's court, states that two major obstacles faced by the court are the unauthorised placement of children in institutions and a lack of resources to investigate. According to an online article, administrative claims are very rarely used, which preventing the population from obtaining remedies for damages suffered because of administrative bodies' actions.<sup>142</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.

#### *Customary law*

First instance tribunals and Courts of appeals have jurisdiction over customary law conflicts. When a case is brought, an assistant specialized in the applicable custom joins the other judges.<sup>143</sup>

#### *Helplines*

In 2009, Togo created the toll-free helpline "Allô 111", run by the Ministry of Social Affairs, for children and adults to report anonymously on violence against children.<sup>144</sup> The hotline is only accessible in one of the six regions in Togo but the service does provide information on the rights of the child and legal procedures. Even though they are not allowed to, the agents of the helpline sometimes intervene in emergencies.<sup>145</sup>

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

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<sup>141</sup> Human Rights Watch, Borderline Slavery, Child trafficking in Togo, Vol.15, No. 8, April 2003, p.36. Available at: <http://www.hrw.org/reports/2003/togo0403/togo0303-10.htm>.

<sup>142</sup> See:

<http://www.focusinfos.net/index.php/component/k2/item/558-justice-administrative-togolaise-une-juridiction-a-la-traine>

<sup>143</sup> Ordinance 78-35 on the organisation of the judiciary, Articles 27 and 33.

<sup>144</sup> See: [http://www.unicef.org/infobycountry/togo\\_52416.html](http://www.unicef.org/infobycountry/togo_52416.html).

<sup>145</sup> Report on the Evaluation of the Helpline for the protection of children in Togo, 2010, page 20, available at:

[www.unicef.org/evaldatabase/files/Togo\\_2010-002\\_Rapport\\_dEvaluation\\_Allo111\\_version.pdf](http://www.unicef.org/evaldatabase/files/Togo_2010-002_Rapport_dEvaluation_Allo111_version.pdf)