

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

*This report was produced by White & Case LLP and Child Rights International Network (CRIN) in July 2015. 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?**

Djibouti signed the CRC on 30 September 1990 and ratified it on 6 December 1990.<sup>1</sup> It has also signed the Optional Protocols to the CRC on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography on 14 June 2006, and ratified them on 27 April 2011.<sup>2</sup> Djibouti has signed the Optional Protocol to the CRC on a communications procedure, but has not yet ratified it.<sup>3</sup>

At the time of signing the CRC, Djibouti made the following reservation: “the Government of Djibouti shall not consider itself bound by any provisions or articles that are incompatible with its religion and its traditional values.” However, the Djibouti government withdrew this reservation on 7 December 2009.<sup>4</sup>

As ratified treaties take precedence over national law, it seems that they are part of the national legal system.<sup>5</sup>

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

According to the Constitution of Djibouti, international treaties which have been regularly ratified take precedence over national law on their publication.<sup>6</sup> However, it is not entirely clear whether they would also prevail over a

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<sup>1</sup> *Ratification Status of the Convention on the Rights of the Child*, UNITED NATIONS TREATY COLLECTION, available at:

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

<sup>2</sup> *Ratification Status of the Optional Protocol on the involvement of children in armed conflict*, UNITED NATIONS TREATY COLLECTION, available at:

[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);

and *Ratification Status of the Optional Protocol on the sale of children, child prostitution and child pornography*, UNITED NATIONS TREATY COLLECTION, available at:

[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).

<sup>3</sup> *Ratification Status of the Optional Protocol on a communications procedure*, UNITED NATIONS TREATY COLLECTION, available at :

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

<sup>4</sup> *Ratification Status of the Convention on the Rights of the Child*, UNITED NATIONS TREATY COLLECTION.

<sup>5</sup> Constitution of the First Republic of Djibouti, 15 September 1992, as modified in 2006, 2008, and 2010, art. 70, available at : [https://www.constituteproject.org/constitution/Djibouti\\_2010.pdf?lang=en](https://www.constituteproject.org/constitution/Djibouti_2010.pdf?lang=en), and in French at : [http://www.presidence.dj/la\\_constitution.htm](http://www.presidence.dj/la_constitution.htm).

<sup>6</sup> Ibid.

conflicting provision of the Constitution. In theory, it is not possible to have a treaty provision which contradicts the Constitution, because if there are contradicting dispositions, the Constitution will be amended prior to the ratification of the treaty.<sup>7</sup>

C. Has the CRC been incorporated into national law?

As the CRC is part of the national legal system, it does not need to be incorporated into national law.

However, in May 2015, Djibouti passed an Act called the Child Protection Code which directly refers to the CRC and incorporates several children's rights.<sup>8</sup> Other legislation relevant to the rights of children is found throughout a number of legislative acts. Relevant legislation includes:

- The Family Code;<sup>9</sup>
- The Penal Code;<sup>10</sup>
- The Criminal Procedure Code;<sup>11</sup>
- The Nationality Code;<sup>12</sup>
- The Labour Code Act of 2006;<sup>13</sup>
- The Outline Act on the Education System of 2000;<sup>14</sup>
- The Law against trafficking in human beings 2007;<sup>15</sup>
- The Law on the protection of persons living with HIV and AIDS 2007;<sup>16</sup> and
- The Health Act of 1999.<sup>17</sup>

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

The Constitution states that the judiciary is “only obedient to the law”.<sup>18</sup> Therefore the CRC should be directly applicable by the courts.

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<sup>7</sup> Constitution, art. 62.

<sup>8</sup> Child Protection Code, 18 May 2015, available in French at:

[http://www.presidence.dj/jo/texte.php?num=95&date\\_t=2015-05-18&nature\\_t=Loi](http://www.presidence.dj/jo/texte.php?num=95&date_t=2015-05-18&nature_t=Loi).

<sup>9</sup> Family Code, 31 January 2002, available in French at:

<http://www.presidence.dj/jo/loi152an02.php>.

<sup>10</sup> Penal Code, available in French at: <http://www.justice.gouv.dj/Codes.php#>.

<sup>11</sup> Criminal Procedure Code, available in French at:

[http://www.justice.gouv.dj/Code\\_procedure\\_penal.php](http://www.justice.gouv.dj/Code_procedure_penal.php).

<sup>12</sup> Loi n°79/AN/04/5ème L Portant Code de la Nationalité Djiboutienne, 24 October 2004, available in French at: <http://www.presidence.dj/jo/2004/loi79an04.php>.

<sup>13</sup> Loi n°133/AN/05/5ème L portant Code du Travail, 28 January 2006, available in French at:

[http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_126983.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126983.pdf).

<sup>14</sup> Loi n°96/AN/00/4ème L portant Orientation du Système Educatif Djiboutien, 10 August 2000, available in French at: <http://www.presidence.dj/jo/2000/loi96an00.php>.

<sup>15</sup> Loi n°210/AN/07/5ème L relative à la Lutte Contre le Trafic des Etres Humains, 27 December 2007, available in French at: <http://www.presidence.dj/jo/2007/loi210an07.php>.

<sup>16</sup> Loi n°174/AN/07/5ème L portant mesures protectrices adaptées à la situation des personnes vivant avec le VIH/Sida et des groupes vulnérables, 22 April 2007, available in French at: <http://www.presidence.dj/jo/2007/loi174an07.php>.

<sup>17</sup> Loi n° 48/AN/99/4ème L portant Orientation de la Politique de Santé, 3 July 1999, available in French at: <http://www.presidence.dj/page392.html>.

<sup>18</sup> Constitution, art. 72.

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

As of August 2008, the CRC had not been directly invoked in a domestic court case.<sup>19</sup> No later cases could be found.

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

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

Children's rights violations can be brought through civil actions, criminal proceedings, claims to the children's judge or to the Personal Status Tribunal, or by referral to the Constitutional Council (see part III.A below).

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

The Penal Code,<sup>20</sup> the Family Code<sup>21</sup> and the Child Protection Code<sup>22</sup> define minors as children under 18. Minors do not have legal capacity.<sup>23</sup> The child's tutor is their father,<sup>24</sup> and if the father is deceased or incapable, the tutor will be the grandfather.<sup>25</sup> If the child's interests are not being protected by his/her tutor, the civil judge can decide, in the best interest of the child, to withdraw tutorage and grant it to the child's mother.<sup>26</sup> Children can be partially or fully emancipated by a judge once they turn 15.<sup>27</sup>

Children cannot bring cases on their own behalf in judicial courts, except before the children's judge. Indeed, children whose health, safety, morality or educative conditions are in danger can ask the children's judge to order for protective measures to be taken.<sup>28</sup>

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

The Child Protection Code states that in any proceedings involving a child, his/her best interest will be fundamental.<sup>29</sup> However, this principle was not translated into specific provisions regarding the legal challenge of violations of infants' and young children's rights. Such cases would likely be brought by the

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<sup>19</sup> Reply to list of issues on the second periodic report of Djibouti to the UN Committee on the Rights of the Child, CRC/C/DJI/Q/2/Add.1, 14 August 2008, question 3, available at : [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDJI%2fQ%2f2%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDJI%2fQ%2f2%2fAdd.1&Lang=en).

<sup>20</sup> Penal Code, Titre II, Chapter II, art. 32.

<sup>21</sup> Family Code, Titre X, Chapter II, art. 169.

<sup>22</sup> Child Protection Code, art. 2.

<sup>23</sup> Family Code, Titre X, Chapter I, art. 166.

<sup>24</sup> Ibid, Chapter II, art. 170.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid, art. 170-171.

<sup>27</sup> Ibid, art. 174-175.

<sup>28</sup> Child Protection Code, Title I, Chapter I, art. 19.

<sup>29</sup> Child Protection Code, art. 3.

child's father.

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

The 1992 Constitution guarantees the rights of the defence including the right to be assisted by a lawyer of your own choosing at all stages of legal proceedings.<sup>30</sup>

Djibouti passed an Act in July 2011 regarding legal aid applicable in relation to proceedings before all national courts. Legal aid can be requested before or during legal proceedings by people whose resources don't allow them to go to court or to defend themselves.<sup>31</sup> Minors automatically benefit from legal aid.<sup>32</sup> People who are granted legal aid have a right to a lawyer of their own choosing, whose fees will be covered by legal aid. However the lawyer may refuse to take on the case. The head of the Bar association will then appoint another one.<sup>33</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)?

Research found no further limitations.

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?

Criminal proceedings can be prompted by the Public Prosecutor or by the victim.

<sup>34</sup> In addition, the victim of a crime may bring about a civil action for the damages resulting directly from the crime.<sup>35</sup> Such civil action can be brought concurrently with the criminal proceedings, or filed in a civil court. In this case, the civil judge will hold judgement until the criminal proceedings have been finalised.<sup>36</sup> The civil action can seek material, corporal, or moral damages.<sup>37</sup>

Djibouti does not have its own Civil Code nor Civil Procedure Code; and although draft codes have been worked on in the past few years, they have not yet been presented to the Parliament.<sup>38</sup> It appears that legal practitioners have

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<sup>30</sup> Constitution, art. 10.

<sup>31</sup> Loi n°136/AN/11/6ème L relative à l'aide judiciaire, 20 July 2011, Chapter II, art. 2-3, available in French at : [http://www.presidence.dj/jo/texte.php?num=136&date\\_t=2011-07-20&nature\\_t=Loi](http://www.presidence.dj/jo/texte.php?num=136&date_t=2011-07-20&nature_t=Loi).

<sup>32</sup> Ibid, art. 3.

<sup>33</sup> Ibid, Chapter VII, art. 26.

<sup>34</sup> Criminal Procedure Code, Book I, Title I, Chapter I, art. 1.

<sup>35</sup> Ibid, Chapter II, art. 6.

<sup>36</sup> Ibid, art. 8-9.

<sup>37</sup> Ibid, art. 8.

<sup>38</sup> "Programme d'appui au Ministère de la Justice et des Droits de l'Homme", UNDP, 2013, available in French at : [http://www.dj.undp.org/content/djibouti/fr/home/operations/projects/democratic\\_governance/programme\\_d\\_appui-au-ministere-de-la-justice-et-des-droits-de-lh/](http://www.dj.undp.org/content/djibouti/fr/home/operations/projects/democratic_governance/programme_d_appui-au-ministere-de-la-justice-et-des-droits-de-lh/).

been referring to the French legislation.<sup>39</sup> In the matters of family and personal status, a complaint may be filed with the Personal Status Tribunal by anyone with legal capacity.<sup>40</sup>

The children's judge have competence in the situations where a child is in danger. The Child Protection Code gives several examples of such situations:

- the loss of the child's parents resulting in the absence of familial support;
- the child's exposure to negligence, vagrancy and the street;
- the continuous lack of education and protection of the child;
- the child's physical abuse;
- the child's sexual abuse or exploitation;
- the child's economic exploitation, such as forced begging;
- the child's exposure to organised crime;
- the child's exposure to adults in conflict;
- child soldiers;
- the child's exposure to unhealthy or dangerous practices; and
- the parents' unwillingness or inability to ensure the child's education and protection.<sup>41</sup>

In those situations, and any other where the child's safety, health, morality or education is in danger, the parents, the legal guardian, the child or the Public Prosecutor may ask the children's judge to take action. The judge can also act of his/her own accord.<sup>42</sup>

In theory, any individual with legal capacity may file a complaint with the Administrative Tribunal.<sup>43</sup> However, the administrative court is not active at the moment.<sup>44</sup>

Any individual in conflict with an administration and who has already carried out the necessary appeals to the administration can ask that the matter be referred to the Mediator of the Republic (*Médiateur de la République*). The claim is transmitted to a parliamentary, who will refer it to the Mediator if they choose to.<sup>45</sup>

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<sup>39</sup> "Djibouti - MENA Gender Equality Profile", UNICEF, 2011, available at :

<http://www.unicef.org/gender/files/Djibouti-Gender-Eqaulity-Profile-2011.pdf>.

<sup>40</sup> Loi n°8/AN/03/5ème L Relative à l'organisation des juridictions de statut personnel, à leurs compétences et aux règles de procédures, 25 June 2003, Title II, Chapter III, art. 8, available in French at : <http://www.presidence.dj/jo/2003/loi8an03.php>.

<sup>41</sup> Child Protection Code, Title I, Chapter I, art. 8.

<sup>42</sup> Child Protection Code, Title I, Chapter I, art. 19.

<sup>43</sup> Loi n°56/AN/09/6ème L portant création d'un tribunal Administratif, 19 July 2009, Chapter III, Section I, available in French at :

[http://www.presidence.dj/jo/texte.php?num=56&date\\_t=2009-07-19&nature\\_t=Loi](http://www.presidence.dj/jo/texte.php?num=56&date_t=2009-07-19&nature_t=Loi).

<sup>44</sup> Amina Saïd Chiré, *Djibouti contemporain*, 2013, pp. 101-102, available online in French at [https://books.google.co.uk/books?id=jlo8scsrSIYC&pg=PA102&lpg=PA102&dq=tribunal+administratif+djibouti&source=bl&ots=iH0Av3V3CG&sig=rZ4JA4XdJ6\\_S66UQquT0ypx2qXc&hl=en&sa=X&ei=v\\_STVcDgMMOu7AbLkYzwAg&ved=0CFkQ6AEwBw#v=onepage&q=tribunal%20administratif%20djibouti&f=false](https://books.google.co.uk/books?id=jlo8scsrSIYC&pg=PA102&lpg=PA102&dq=tribunal+administratif+djibouti&source=bl&ots=iH0Av3V3CG&sig=rZ4JA4XdJ6_S66UQquT0ypx2qXc&hl=en&sa=X&ei=v_STVcDgMMOu7AbLkYzwAg&ved=0CFkQ6AEwBw#v=onepage&q=tribunal%20administratif%20djibouti&f=false). See also "Djibouti : La dernière infamie du « prince loufoque » de Djibouti", HCH24, 24 April 2014, available in French at : <http://www.hch24.com/actualites/04/2014/djibouti-la-derniere-infamie-du-prince-loufoque-de-djibouti-la-decheance-de-la/>.

<sup>45</sup> Loi n° 51/AN/99/4ème L relative au Médiateur de la République, 21 August 1999, art. 4-5, available in French at : <http://www.presidence.dj/page564.html>.

An individual involved in legal proceedings may contest the constitutionality of a law if it concerns the fundamental rights recognised in the Constitution. The tribunal or court must then suspend the proceedings and refer the matter to the Supreme Court. The Supreme Court has a month to decide on the admissibility of the issue. If the challenge is admissible, the matter will be referred to the Constitutional Council.<sup>46</sup>

### *African Commission*

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>47</sup> All available domestic remedies must have been exhausted before bringing a case to the African Commission.<sup>48</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>49</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>50</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>51</sup> For an example case involving Djibouti, see *Communication 133/94 - Association pour la défense des droits de l'Homme et des libertés v. Djibouti*.<sup>52</sup>

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

Civil actions brought concurrently to or independently of criminal proceedings may lead to restitution or compensation.<sup>53</sup> Although no specific provisions could be found regarding civil claims, we can assume that the same remedies are

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<sup>46</sup> Constitution, art. 80.

<sup>47</sup> African Charter on Human and Peoples’ Rights (“African Charter”), Article 55, available at: <http://www.achpr.org/instruments/achpr>.

<sup>48</sup> *Ibid.*, Article 56(5).

<sup>49</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>50</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>51</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>.

<sup>52</sup> 11 May 2000, available at <http://caselaw.ihrrda.org/doc/133.94/pdf/en/>.

<sup>53</sup> Criminal Procedure Code, Book II, Title I, Chapter III, art. 256; and *Ibid*, Book I, Title IV, Chapter I, art. 85.

available to civil and personal status<sup>54</sup> judges, as they are in French law.<sup>55</sup>

When confronted with an endangered child, the children's judge can decide, in the best interest of the child, to place them with the parent that does not usually hold custody, or with a specialised institution.<sup>56</sup> When seized, the judge may verify the dangerousness of the child's situation by hearing the child and his/parents, visiting his/her residence, conducting an investigation, and asking for a social service's report. He may decide to take "any protective measure necessary" during the investigation, and to write a report at the conclusion of the investigation.<sup>57</sup> After the investigation, the judge can ask the child's parents or legal guardian to sign a contract indicating they will respect the measure the judge has decided was the most appropriate to the child's situation.<sup>58</sup> In some situations, the judge can take urgent measures to protect the child from danger, and place him/her in an institution.<sup>59</sup>

According to the law, the Administrative Tribunal can sentence the administration to pay the claimant a sum of money.<sup>60</sup> In urgent situations, the tribunal has the power to order temporary conservative measures before a ruling has been given.<sup>61</sup>

The Mediator of the Republic cannot hear a case that is or has been set before a court.<sup>62</sup> He may only give out recommendations to the administration involved.<sup>63</sup> He is helped in his investigation by the administration.<sup>64</sup>

The Constitutional Council which has been seized has to give out a ruling within one month. A law that has been deemed unconstitutional ceases to be applicable.<sup>65</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?

No specific provisions could be found permitting the challenge of a law or action without the naming of a specific victim.

However, children's courts are always closed to the public.<sup>66</sup>

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<sup>54</sup> Loi n°8/AN/03/5ème L Relative à l'organisation des juridictions de statut personnel, à leurs compétences et aux règles de procédures, 25 June 2003, Title V, art. 32.

<sup>55</sup> See "Access to Justice for Children: France", available at : [https://www.crin.org/sites/default/files/france\\_access\\_to\\_justice\\_0.pdf](https://www.crin.org/sites/default/files/france_access_to_justice_0.pdf).

<sup>56</sup> Child Protection Code, Title I, Chapter I, art. 20.

<sup>57</sup> Ibid, art. 22.

<sup>58</sup> Ibid, art. 24.

<sup>59</sup> Ibid, art. 25.

<sup>60</sup> Loi n°56/AN/09/6ème L portant création d'un tribunal Administratif, 19 July 2009, Chapter IV, art. 37.

<sup>61</sup> Ibid, Chapter III, Section II.

<sup>62</sup> Loi n° 51/AN/99/4ème L relative au Médiateur de la République, 21 August 1999, art. 8.

<sup>63</sup> Ibid, art. 7.

<sup>64</sup> Ibid, art. 9-10.

<sup>65</sup> Constitution, art. 80.

<sup>66</sup> Child Protection Code, Title I, Chapter II, art. 73.

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

Research could not identify any specific provisions relating to collective action.

- 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 Criminal Procedure Code states that an association, regularly constituted for at least five years from the date of the crime, and whose statutes include the fight against female genital mutilation (“FGM”) and sexual assault, may, in cases of FGM or sexual assault, file a civil action concurrently to the criminal proceedings. In the case of sexual assault, the association must first obtain the consent of the victim or of their parents or legal guardian if the victim is a minor.

<sup>67</sup>

In addition, according to the Child Protection Code, the child who committed a crime will be appointed counsel. If no lawyer is appointed, any individual or legal person (aka organisation) with an interest in children’s rights may fulfil the office.<sup>68</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?

The Sharia courts have been replaced by the Personal Status Tribunal (*Tribunal de Statut Personnel*), which applies the Family Code and is competent for issues relating to family and personal status (marriage, divorce, filiation, child care, inheritance etc).<sup>69</sup> The Family Code was strongly influenced by the Sharia, more so than civil law, and contains several gender discriminatory provisions.<sup>70</sup> According to the 2007 state report to the Committee on the Rights of the Child, personal status judges lack training in children’s rights.<sup>71</sup> This issue might have improved with the creation of children’s judges.

The tribunals of first instance (*tribunal de première instance*) are the lower level courts competent in civil matters, and have jurisdiction over misdemeanors and

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<sup>67</sup> Criminal Procedure Code, Book I, Title I, Chapter II, art. 7.

<sup>68</sup> Child Protection Code, Title I, Chapter II, art. 63-64.

<sup>69</sup> Loi n°8/AN/03/5ème L Relative à l'organisation des juridictions de statut personnel, à leurs compétences et aux règles de procédures, 25 June 2003, Title I, art. 1; and *Ibid*, Title II, Chapter II, art. 6-7.

<sup>70</sup> “International religious freedom report - Djibouti”, US Department of State, 2013, available at : <http://www.state.gov/documents/organization/222255.pdf>, and “Human Rights Report - Djibouti”, US Department of State, 2013, available at : <http://www.state.gov/documents/organization/220318.pdf>.

<sup>71</sup> *Second periodic report of Djibouti to the UN Committee on the Rights of the Child*, CRC/C/DJI/2, 11 December 2007, para. 18, available at : [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDJI%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDJI%2f2&Lang=en).

lesser crimes.<sup>72</sup> Since 2010, children's judges (*juge pour enfant*) are based in every tribunal of first instance. They hear all cases where a child is accused of committing a criminal offense, and order protective measures for children in danger.<sup>73</sup> Although children's judges are a positive step, their work is reported constrained by a lack in human and financial resources.<sup>74</sup>

The Criminal Court (*Cour Criminelle*) has competence over major crimes, and takes the form of a jury trial.<sup>75</sup>

The Appellate Court (*Cour d'appel*) hears the appeals of decisions from the tribunals of first instance<sup>76</sup> and from the Personal Status Tribunal.<sup>77</sup> The Court includes a Minor's Chamber (*Chambre pour Mineurs*) before which the decisions of children's judges can be appealed.<sup>78</sup>

The Administrative Tribunal (*Tribunal Administratif*) have competence over administrative claims.<sup>79</sup> Although the law creating it was voted in 2009, the Tribunal was still not in action in 2014.<sup>80</sup>

The Supreme Court (*Cour Suprême*) is the cassation court for all matters civil and criminal.<sup>81</sup> Decisions from the Administrative Tribunal can be appealed before the Supreme Court.<sup>82</sup>

The Constitutional Council (*Conseil Constitutionnel*) decides on the constitutionality of provisions.<sup>83</sup>

Djibouti's population of about 850,000 is concentrated in urban centers and especially the capital city, Djibouti: 77% of the population lives in towns.<sup>84</sup> As a result, most of the judicial system can only be found in the capital - the Personal

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<sup>72</sup> Loi n°52/AN/94/3e L portant création d'une Cour d'Appel et d'un Tribunal de Première Instance, 10 October 1994, Title I, Chapter III, art. 19 and 24, available in French at : <http://www.presidence.dj/LES%20TEXTES/loi52an94.htm>.

<sup>73</sup> Loi n°79/AN/10/6ème L modifiant la Loi n°52/AN/94/3ème L portant création d'une Cour d'Appel et d'un Tribunal de Première Instance, 22 April 2010, art 5-6, available in French at : [http://www.presidence.dj/jo/texte.php?num=79&date\\_t=2010-04-22&nature\\_t=Loi](http://www.presidence.dj/jo/texte.php?num=79&date_t=2010-04-22&nature_t=Loi).

<sup>74</sup> *Concluding observations of the Human Rights Committee on the initial report of Djibouti*, CCPR/C/DJI/CO/1, 19 November 2013, para. 19, available at : [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fDJI%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fDJI%2fCO%2f1&Lang=en).

<sup>75</sup> Loi n°52/AN/94/3e L portant création d'une Cour d'Appel et d'un Tribunal de Première Instance, 10 October 1994, Title I, Chapter II.

<sup>76</sup> *Ibid*, Chapter I, art. 9.

<sup>77</sup> Loi n°8/AN/03/5ème L Relative à l'organisation des juridictions de statut personnel, à leurs compétences et aux règles de procédures, 25 June 2003, Title I, art. 1; and *Ibid*, Title III, art. 22.

<sup>78</sup> Loi n°79/AN/10/6ème L modifiant la Loi n°52/AN/94/3ème L portant création d'une Cour d'Appel et d'un Tribunal de Première Instance, 22 April 2010, art 1-2.

<sup>79</sup> Loi n°56/AN/09/6ème L portant création d'un tribunal Administratif, 19 July 2009, Chapter II, art. 7.

<sup>80</sup> Amina Saïd Chiré, *Djibouti contemporain*, 2013, pp. 101-102, see also "*Djibouti : La dernière infamie du « prince loufoque » de Djibouti*", HCH24, 24 April 2014.

<sup>81</sup> Ordonnance n°79-027/PR/J portant création de la cour suprême, 10 April 1979, art. 2, available in French at : <http://www.presidence.dj/jo/1979/ord027pr79.htm>.

<sup>82</sup> Loi n°56/AN/09/6ème L portant création d'un tribunal Administratif, 19 July 2009, Chapter II, art. 7.

<sup>83</sup> Constitution, art. 75-82.

<sup>84</sup> "*The World Factbook - Djibouti*", CIA, available at : <https://www.cia.gov/library/publications/the-world-factbook/geos/dj.html>.

Status Tribunal, the Criminal Court, the Appellate Court, the (future) Administrative Tribunal, and the Supreme Court. Only tribunals of first instance are spread out across the country. This makes the access to justice for the rural population very complicated. The law does allow for “*audiences foraines*”, where the tribunals of first instance and the Appellate Court can send judges to rural locations to give justice.<sup>85</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?

Legal aid is available to all individuals whose resources are insufficient to bring a case before a judge, or to defend themselves in a trial. It is available before all national courts.<sup>86</sup> Legal aid can cover all or a part of the costs, and can be applied for before or during legal proceedings. Minors (and people living with HIV-AIDS) are automatically entitled to legal aid. It can exceptionally be granted to associations based in Djibouti.<sup>87</sup>

The applicant must demonstrate that their or their family’s monthly resources (excluding state benefits) over the past year are, on average lower than 100,000 Djibouti francs or lower than 150,000 Djibouti francs if the claimant has three or more children.<sup>88</sup> The condition of financial resources does not apply to minors, people living with HIV-AIDS, and to civil claims for damages resulting from deliberate attempts on an individual’s life or physical integrity.<sup>89</sup> Legal aid can be refused if the legal aid office finds that the claim is clearly inadmissible or not legally founded,<sup>90</sup> and the office’s decisions cannot be appealed.<sup>91</sup>

Legal aid, once granted, covers all the court costs supported by the litigant as well as the lawyer fees,<sup>92</sup> including a potential appeal of the lower level decision.<sup>93</sup> However, in order to profit from legal aid before the Supreme Court, the litigant must apply for it again.<sup>94</sup>

Before a criminal court, the victim who brings the case (and does not benefit from legal aid) must pay the court costs prior to the trial. The judge determines the amount to be paid, taking into account the victim’s resources.<sup>95</sup> In the case of a civil action brought concurrently to criminal proceedings, if the defendant wins

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<sup>85</sup> Loi n°52/AN/94/3e L portant création d’une Cour d’Appel et d’un Tribunal de Première Instance, 10 October 1994, Title I, Chapter V, art. 39.

<sup>86</sup> Loi n°136/AN/11/6ème L relative à l’aide judiciaire, 20 July 2011, Chapter I, art. 1.

<sup>87</sup> Ibid, Chapter II, art. 2-3.

<sup>88</sup> Décret n°2011-0196/PR/MJCDH portant application de la loi n°136/AN/11/6ème L relative à l’aide judiciaire, 16 October 2011, art. 1, available in French at : [http://www.presidence.dj/jo/texte.php?num=2011-0196&date\\_t=2011-10-16&nature\\_t=D%E9cret](http://www.presidence.dj/jo/texte.php?num=2011-0196&date_t=2011-10-16&nature_t=D%E9cret).

<sup>89</sup> Loi n°136/AN/11/6ème L relative à l’aide judiciaire, 20 July 2011, Chapter II, art. 4.

<sup>90</sup> Ibid, Chapter II, art. 6.

<sup>91</sup> Ibid, Chapter V, art. 20.

<sup>92</sup> Ibid, Chapter VII, art. 26 and 28.

<sup>93</sup> Ibid, Chapter III, art. 9.

<sup>94</sup> Ibid, Chapter V, art. 13.

<sup>95</sup> Criminal Procedure Code, Book I, Title IV, Chapter I, art. 80.

the trial, the victim will be liable for court costs. The judge can however decide to waive them partially or totally.<sup>96</sup> If the losing party profits from legal aid, they will only be liable for the court costs supported by their opposing party. In this case also, the judge can decide to waive the costs.<sup>97</sup>

The claimant in an administrative case will have to pay 10,000 Djibouti francs up front, unless they are a beneficiary of legal aid.<sup>98</sup>

The procedure before the Supreme Court is free.<sup>99</sup>

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

Research found no such possibilities.

- 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?

In criminal matters, the limitation periods to bring about criminal proceedings differ depending on the seriousness of the crime : 10 years from the date of the crime for major crimes, three years for lesser crimes, and one year for misdemeanours.<sup>100</sup> A civil action for the damages caused by the crime cannot be brought after the expiration of these limitation periods.<sup>101</sup>

Research could identify no provisions suspending the limitation periods for minors.

- 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 criminal cases, crimes can be proven by any means. The judge will rule according to their conviction, beyond a reasonable doubt.<sup>102</sup> There is no mention of a minimum age for children to testify, but children under 16 testify without taking an oath.<sup>103</sup>

Children can be heard by the children's judge in order to prove that they are in a dangerous situation,<sup>104</sup> or to explain their actions when they have committed a

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<sup>96</sup> Criminal Procedure Code, Book II, Title I, Chapter VI, art. 299.

<sup>97</sup> Loi n°136/AN/11/6ème L relative à l'aide judiciaire, 20 July 2011, Chapter VII, art. 29.

<sup>98</sup> Loi n°56/AN/09/6ème L portant création d'un tribunal Administratif, 19 July 2009, Chapter III, art. 11.

<sup>99</sup> Ordonnance n°79-027/PR/J portant création de la cour suprême, 10 April 1979, art. 10.

<sup>100</sup> Criminal Procedure Code, Book I, Title I, Chapter I, art. 3-4-5.

<sup>101</sup> Criminal Procedure Code, Book I, Title I, Chapter II, art. 11.

<sup>102</sup> Criminal Procedure Code, Book II, Title I, Chapter IV, art. 264.

<sup>103</sup> Criminal Procedure Code, Book I, Title IV, Chapter I, art. 105.

<sup>104</sup> Child Protection Code, Title I, Chapter I, art. 22.

crime.<sup>105</sup> The judge can decide to exempt the child to attend the hearing if it deems it to be in the child's best interest.<sup>106</sup>

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

The Administrative Tribunal will have the power to take urgent temporary measures to preserve an individual's rights, when they are immediately at risk.<sup>107</sup>

In practice, reports state that due to a lack of resources, the judicial system is highly inefficient.<sup>108</sup> Prisoners in pretrial detention can wait several years for their trial.<sup>109</sup>

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

As stated in part IV.A above, most judicial decisions can be appealed to the Appellate Court. The Supreme Court is the cassation court.

Decisions from the Personal Status Tribunal are appealed within two months of the decision, to the personal status chamber at the Appellate Court.<sup>110</sup>

Judgements of the tribunal of first instance in criminal matters, and those given by the children's judge, can be appealed by any party to the proceedings, within 10 days of the decision.<sup>111</sup>

Individuals have 15 days from the date of the decision to appeal to the Supreme Court.<sup>112</sup> In criminal cases, that period is reduced to five days from the day following the decision.<sup>113</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?

There are reports of political pressure and threats against human rights advocates, which go unpunished.<sup>114</sup> The arbitrary arrest and detention of journalists, NGO workers, and judges, is reportedly quite common, as well as

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<sup>105</sup> Ibid, Chapter I, art. 42.

<sup>106</sup> Ibid.

<sup>107</sup> Loi n°56/AN/09/6ème L portant création d'un tribunal Administratif, 19 July 2009, Chapter III, art. 23 to 30.

<sup>108</sup> "Freedom in the World - Djibouti", Freedom House, 2014, available at : <https://freedomhouse.org/report/freedom-world/2014/djibouti#.VZvTsbxVKIN>.

<sup>109</sup> "Human Rights Report - Djibouti", US Department of State, 2013, p. 6.

<sup>110</sup> Loi n°8/AN/03/5ème L Relative à l'organisation des juridictions de statut personnel, à leurs compétences et aux règles de procédures, 25 June 2003, Title III, art. 22-23.

<sup>111</sup> Criminal Procedure Code, Book II, Title III, Chapter II, art. 397-398; and *Child Protection Code*, Title I, Chapter II, art. 76.

<sup>112</sup> Ordonnance n°79-027/PR/J portant création de la cour suprême, 10 April 1979, art. 9.

<sup>113</sup> Criminal Procedure Code, Book II, Title III, Chapter III, art. 423.

<sup>114</sup> "Human Rights Report - Djibouti", US Department of State, 2013; and "Freedom in the World - Djibouti", Freedom House, 2014.

torture.<sup>115</sup>

The Constitution states that the judiciary is independent from the legislative and executive powers.<sup>116</sup> However, this independence is to be guaranteed by the President of the Republic, through the Superior Council of the Magistrature (*“Conseil Supérieur de la Magistrature”*) which the President presides over.<sup>117</sup> In 2011, a judge was arrested for freeing political prisoners, demoted from his position of a magistrate by the Superior Council of the Magistrature and prosecuted for insult to the President and for inciting rebellion.<sup>118</sup>

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

There are reports of judicial corruption.<sup>119</sup> The President of the Republic oversees the execution of the judicial decisions,<sup>120</sup> which is an interference of the executive power into the judicial process.

- 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.

Two institutions are responsible for monitoring and reporting on children's rights in Djibouti: the National Human Rights Commission and its children's rights subcommission<sup>121</sup>, and the National Council of the Child.<sup>122</sup> Both of these institutions are run by the government,<sup>123</sup> which is known to be corrupted,<sup>124</sup> and to have little regard for human rights.<sup>125</sup>

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

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<sup>115</sup> “Djibouti : la Commission internationale de juristes exige la fin des persécutions des juges et des défenseurs des droits humains”, International Commission of Jurists, 8 February 2012, available in French at : <http://www.icj.org/djibouti-la-commission-internationale-de-juristes-exige-la-fin-des-perssecutions-des-juges-et-des-defenseurs-des-droits-humains/>.

<sup>116</sup> Constitution, art. 71.

<sup>117</sup> Ibid, art. 73.

<sup>118</sup> “Djibouti : la Commission internationale de juristes exige la fin des persécutions des juges et des défenseurs des droits humains”, International Commission of Jurists, 8 February 2012.

<sup>119</sup> “Human Rights Report - Djibouti”, US Department of State, 2013.

<sup>120</sup> Constitution, art. 36.

<sup>121</sup> See Décret n°2008-0103/PR/MJAP portant création de la Commission Nationale des Droits de l'Homme (CNDH), 23 April 2008, available in French at : <http://www.presidence.dj/jo/2008/decr0103pr08.php>; and Reply to list of issues on the second periodic report of Djibouti to the UN Committee on the Rights of the Child, CRC/C/DJI/Q/2/Add.1, 14 August 2008, question 1.

<sup>122</sup> See Décret n°2012-067/PR/MPF portant création et organisation du Conseil National de l'Enfant (CNE), 4 April 2012, available in French at : [http://www.presidence.dj/jo/texte.php?num=2012-067&date\\_t=2012-04-04&nature\\_t=D%E9cret](http://www.presidence.dj/jo/texte.php?num=2012-067&date_t=2012-04-04&nature_t=D%E9cret).

<sup>123</sup> Concluding observations of the Human Rights Committee on the initial report of Djibouti, CCPR/C/DJI/CO/1, 19 November 2013, para. 6.

<sup>124</sup> “Human Rights Report - Djibouti”, US Department of State, 2013, pp 16-17.

<sup>125</sup> “Djibouti : la Commission internationale de juristes exige la fin des persécutions des juges et des défenseurs des droits humains”, International Commission of Jurists, 8 February 2012.