

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

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

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

International conventions and treaties must be ratified pursuant to signature and incorporated into domestic law in order to acquire the same legal status as national laws. International conventions and treaties are presented before the National Assembly for signature and ratification and must be subsequently published in the Official Gazette, *Kuwait Al-Yawm*, to have legal effect.<sup>1</sup> This process has been successfully completed with regard to the CRC, as such it has been incorporated into national law and has acquired the same status as domestic legislation.<sup>2</sup> Kuwait has also ratified the Optional Protocol to the CRC on the involvement of children in armed conflict, as well as the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.<sup>3</sup> Unfortunately, however, Kuwait has not signed or ratified the third Optional Protocol to the CRC on a communications procedure, allowing the UN Committee on the Rights of the Child to hear complaints alleging that a child's rights have been violated, a crucial mechanism with regard to access to justice.

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

The CRC is a source of law of equal status to domestic legislation following ratification but there is no indication that it is to be accorded special consideration above and beyond that which is accorded to national laws during proceedings.

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

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<sup>1</sup> Constitution of the State of Kuwait, Article 70, available at: <http://www.kuwaitconstitution.org/kuwaitconstitutionenglish.html>.

<sup>2</sup> Committee on the Rights of the Child, Reporting Cycle I, State party's report - Kuwait, published 9 December 1996, page 4, available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KWT&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KWT&Lang=EN).

<sup>3</sup> United Nations Human Rights, Office of the High Commissioner for Human Rights, Ratification status for Kuwait, available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en).

Yes, the CRC has been ratified and published in the Official Gazette on 6 October 1991, thereby incorporating it into national law.<sup>4</sup> Moreover, Kuwaiti law continues to reflect some of the broad and basic principles of the CRC, most notably in the Kuwaiti Constitution which obliges the Kuwaiti State to care for the young and to protect them from exploitation and from moral, physical and spiritual neglect.<sup>5</sup>

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

No, the CRC cannot be directly enforced by the Kuwaiti courts. Any treaty concerning the public or private rights of citizens, or which involves the amendment of the laws of the State of Kuwait, shall only come into force when made by a law.<sup>6</sup> Consequently, the provisions of the CRC are enforced indirectly by virtue of Decree No. 104/91.

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

It is not common practice to make court decisions publicly available. Consequently, it is difficult to ascertain with any precision the extent to which Kuwaiti courts have referred to or applied the CRC or other relevant international instruments. There is some indication that the CRC is relied upon in judicial proceedings.<sup>7</sup> Nevertheless, it is worth noting that Kuwaiti law diverges from the CRC on a number of points; it would appear unlikely that national courts would enforce the provisions of the CRC in such instances where they are in contradiction with national law or the principles of Islamic Shari'a. For example, reservations have been noted regarding the citizenship rights of children and the regime of adoption.<sup>8</sup> It follows that Kuwaiti courts are likely to deviate from the provisions of the CRC where such discrepancies arise between the provisions of the CRC and Kuwaiti national law.

## 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?

Yes, it is possible for cases challenging violations of children's rights to be brought before Kuwaiti courts. With regard to civil proceedings, what is

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<sup>4</sup> Ratification is pursuant to (Amiri) Decree No. 104/91 (n 2).

<sup>5</sup> Constitution of the State of Kuwait (n 1), Article 10.

<sup>6</sup> Ibid, Article 70.

<sup>7</sup> Kuwait Times, 'Court uphold's expatriate's right for free treatment - Top priority for children's rights', 9 March 2014, available at: <http://news.kuwaittimes.net/court-upholds-expatriates-right-free-treatment-top-priority-childrens-rights/>

<sup>8</sup> Decree No. 104/91, Article 1. These reservations concern Articles 7 and 21 of the CRC specifically and are available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDec).

important is that the party initiating proceedings has an interest in the matter as established by Kuwaiti law.<sup>9</sup> Regarding criminal matters, once reported to the police, it is the Public Prosecutor's Office that will initiate an investigation and any subsequent judicial proceedings.<sup>10</sup>

It is important to state that Kuwait's current legislation regulating access to justice - notably the Penal Code (1960), the Civil Code (1980), the Criminal Procedure Law (1960) and the Civil and Commercial Procedure Law (1980) - predates not only Kuwait's accession to the CRC but also the CRC itself. As such, the provisions contained therein do not take special consideration of the rights of children coming into contact with the justice system. There is, however, a Juveniles Law which stipulates a number of protective measures for juveniles that have been charged with either felonies or misdemeanours.<sup>11</sup>

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

Anyone under the age of 21 does not have legal capacity to undertake any legal action.<sup>12</sup> Consequently, cases must be brought by the child's legal representative.

Kuwaiti law does exempt 'discerning minors' from oversight or approval by a guardian in undertaking specific activities that have legal consequences.<sup>13</sup> For example, a minor who attains the age of 15 is not necessarily subject to guardianship over his or her affairs within the limits prescribed by the law.<sup>14</sup> Accordingly, a 15-year old may enter into contractual agreements and dispose of any earned wages.<sup>15</sup> Furthermore, a minor who is 18 years of age may be granted the power to manage his or her assets<sup>16</sup> and may execute a will.<sup>17</sup> However, such

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<sup>9</sup> Law No. 38 of 1980 on Civil and Commercial Procedures, Article 2, available at (Arabic): <http://www.e.gov.kw/Documents/Arabic/Forms/MOJ/%D9%82%D8%A7%D9%86%D9%88%D9%86%20%D8%A7%D9%84%D9%85%D8%B1%D8%A7%D9%81%D8%B9%D8%A7%D8%AA%20%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A%D8%A9%20%D9%88%D8%A7%D9%84%D8%AA%D8%AC%D8%A7%D8%B1%D9%8A%D8%A9%20%D9%88%D8%A7%D9%84%D9%82%D9%88%D8%A7%D9%86%D9%8A%D9%86%20%D8%A7%D9%84%D9%85%D9%83%D9%85%D9%84%D9%87%20%D9%84%D9%87.pdf#>.

<sup>10</sup> Law No. 17 of 1960 Regarding Criminal Procedure, Article 8, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=1&LawArticleID=5625>.

<sup>11</sup> Law No. 3 of 1983 Regarding Youths, Article 30, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=1&LawArticleID=6080>.

<sup>12</sup> Civil Code, Law No. 67 of 1980, Article 96(2) establishes the age of maturity at 21 years of age, available at (Arabic): <http://www.e.gov.kw/Documents/Arabic/Forms/MOJ/%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86%20%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A.pdf#>.

<sup>13</sup> Ibid, Article 86, according to which a discerning minor is anyone aged 7 and above.

<sup>14</sup> Law No. 51 of 1984 Regarding Personal Status, Article 208, available at (Arabic): <http://www.e.gov.kw/Documents/Arabic/Forms/MOJ/%D9%82%D8%A7%D9%86%D9%88%D9%86%20%D8%A7%D9%84%D8%A3%D8%AD%D9%88%D8%A7%D9%84%20%D8%A7%D9%84%D8%B4%D8%AE%D8%B5%D9%8A%D8%A9.pdf#>.

<sup>15</sup> Civil Code (n 9), Article 94.

<sup>16</sup> Civil Code (n 9), Article 88.

activities are subject to legal oversight and supervision and any litigation that results from such activities must be brought by the child's representative.

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

A case is typically filed by the parent, guardian or representative acting as the infant or child's legal representative. Under Kuwaiti law, it is the father who assumes guardianship, followed by the paternal grandfather and a paternal relative, in that order.<sup>18</sup> In cases where the infant or young child's interest conflicts with that of the guardian, the court may appoint a guardian for the infant or young child upon request by the Public Authority for the Affairs of Minors,<sup>19</sup> or otherwise the Authority may assume the role of legal representative on behalf of the infant or young child where the court has not made such an appointment.<sup>20</sup> The Public Authority for the Affairs of Minors is primarily concerned with matters of concern to the management of minors' assets and finances, as well as inheritance.

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

Kuwaiti courts do not have a special office or programme providing free or subsidised legal assistance to those in need of it.

With regard to criminal proceedings, the Juveniles Act, accords juvenile defendants the right to choose their own legal representative.<sup>21</sup> If the youth stands accused of a felony, and neither the youth nor their guardian has appointed counsel to defend the youth, the court must appoint a lawyer to represent the youth.<sup>22</sup> However, if the youth is accused of a misdemeanour, the appointment of counsel to defend the youth remains at the discretion of the court.<sup>23</sup> No civil lawsuits may be brought before the juvenile courts, however.<sup>24</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 guardians have to agree to a case being brought?)

Yes, Kuwaiti law places limitations on children or their chosen legal representatives bringing cases before the courts. If a child is under 21 years of age, then a claim is filed by, and in the name of, the guardian or legal representative acting on behalf of the minor. As aforementioned in part II.B, in accordance with the Personal Status Law, a child is subject to guardianship until

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<sup>17</sup> Civil Code (n 9), Article 95.

<sup>18</sup> Personal Status Law (n 11), Article 209.

<sup>19</sup> Civil Code (n 9), Article 122.

<sup>20</sup> Law No. 67 of 1983 Regarding the Establishment of the Public Authority for Minor Affairs, Article 2, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=1&LawArticleID=99219>.

<sup>21</sup> Law No. 3 of 1983 Regarding Youths (n 8), Article 30.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid, Article 38.

they have attained the age of legal majority, or until they have reached 15 years of age, subject to them being of sound mind.<sup>25</sup> This would suggest that a minor of 15 years or above, who has not yet reached the age of majority, is capable of bringing a case before court in their own name in certain circumstances. Upon reaching the age of majority (21 years under Kuwaiti law), a case may be brought by any person in their name.<sup>26</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 manner of bringing a legal challenge depends on the specific violation and the governing law which applies. The proper court to which a challenge is brought is dependent on the adjudicative jurisdiction under which such governing law would fall. Where an alleged violation of the Kuwaiti Constitution is at issue, the Constitutional Court would adjudicate and pronounce on such matters.<sup>27</sup>

Disputes may be submitted to the Constitutional Court via two possible means: either at the request of the National Assembly or the Council of Ministers; or at the request of any tribunal during the course of proceedings, should an issue arise, having been raised by one of the parties, requiring the pronouncement of the Court on the matter.<sup>28</sup> In such circumstances, the progression of the proceedings would be dependent upon the constitutionality of the legislation in question. Appeal to the Constitutional Court regarding the suspected unconstitutionality of legislation has been extended to all natural or legal persons, should they have a direct and personal interest.<sup>29</sup>

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

Civil remedies are provided in the form of material and moral damages, depending on the harm suffered by a claimant and the type of violation at issue.<sup>30</sup> The court may also refer a case to a group of experts, the Experts Department, when the court finds itself not in a position to evaluate the appropriate remedy in any given case.<sup>31</sup> Both parties to the proceedings are to be heard impartially by said experts;<sup>32</sup> the parties are to personally present themselves before the experts,

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<sup>25</sup> Law No. 51 of 1984 Regarding Personal Status (n 11), Article 208.

<sup>26</sup> Civil Code (n 9), Article 96(2).

<sup>27</sup> Law No. 14 of 1973 Regarding the Establishment of the Constitutional Court, Article 1, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=1&LawArticleID=73094>.

<sup>28</sup> Ibid, Article 4.

<sup>29</sup> Ibid, Article 4bis.

<sup>30</sup> Civil Code (n 9), Articles 230, 231.

<sup>31</sup> Decree Law No. 40 of 1980 Promulgating the Law Regulating Experts, Article 1, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=1&LawArticleID=117190>.

<sup>32</sup> Ibid, Article 11.

it is also possible for a party's guardian may do so on their behalf.<sup>33</sup> The decision may be challenged upon appeal.<sup>34</sup>

As aforementioned in part III.A, the review of the constitutionality of laws is possible in Kuwait and the matter can be raised by either party to the proceedings. Should the Constitutional Court find that a particular piece of legislation is unconstitutional, it is to be set aside and the competent authorities are expected to take the necessary measures to correct these irregularities and any implications that they may have had on previous settlements or decisions.<sup>35</sup>

Specific Kuwaiti legislation often prescribes the penalties in the event that any violation of its provisions occurs; in the criminal context, it is the Penal Code that sets out the relevant penalties in its Book I, Part III.<sup>36</sup>

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

A challenge can involve one or more individual child victims. The name of the party initiating the proceeding is required for effecting service, and the name of the party filing the claim must be stated in the notice of service, regardless of whether it is a minor bringing a claim or their legal representative on their behalf.<sup>37</sup> There are no provisions under Kuwaiti law specifically aimed at protecting a minor from the publicising of their participation or involvement in a civil action; with regard to the juvenile court, please see part IV.E below. In addition, the general rule under Kuwaiti law is that hearings are public unless the court, at its discretion or upon the request of a party to the action, orders that the proceeding be conducted privately.<sup>38</sup>

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

Yes, joint action is possible. Such a request is to be made by those concerned prior to the commencement of proceedings, or orally in the presence of all interested parties at the start of the hearing and recorded in the minutes.<sup>39</sup> All

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<sup>33</sup> Ibid, Article 12.

<sup>34</sup> Ibid, Article 23.

<sup>35</sup> Law No. 14 of 1973 Regarding the Establishment of the Constitutional Court (n 25), Article 6.

<sup>36</sup> Penal Code, Law No. 16 of 1960, Articles 57-91, available at (Arabic): <http://www.e.gov.kw/Documents/Arabic/Forms/MOJ/%D9%82%D8%A7%D9%86%D9%88%D9%86%D8%A7%D9%84%D8%AC%D8%B2%D8%A7%D8%A1%D9%88%D8%A7%D9%84%D9%82%D9%88%D8%A7%D9%86%D9%8A%D9%86%D8%A7%D9%84%D9%85%D9%83%D9%85%D9%84%D8%A9%D9%84%D9%87%D9%88%D8%A7%D9%84%D8%A7%D8%AC%D8%B1%D8%A7%D8%A1%D8%AA%D8%A7%D9%84%D8%AC%D8%B2%D8%A7%D8%A6%D9%8A%D8%A9.pdf#>

<sup>37</sup> Law of Civil and Commercial Procedures (n 6), Article 8.

<sup>38</sup> Ibid, Article 64.

<sup>39</sup> Ibid, Article 87. A joint action may be made subject to a plaintiff having an 'interest' in the action. The provision establishing the principle that a plaintiff must have an interest in the action is set out in Articles 2 of the Law of Civil and Commercial Procedures.



parties to the action must be named and reference to them shall be made collectively.

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 research did not identify any legislative provisions allowing for non-governmental organisations in Kuwait to file challenges in relation to any claims concerning children's rights. It is also unclear whether they can intervene in cases that have already been filed.

**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?

Kuwait's court system is organised according to three levels of courts. A decision by the Court of First Instance may be reviewed by the Court of Appeal and, subsequently, the Court of Cassation.<sup>40</sup>

Cases are filed in the Court of First Instance and decisions can be contested in the Court of Appeal, the first two levels of the court system in Kuwait. These first two levels are concerned with substantive and factual matters of a dispute or claim. At the third level, the Court of Cassation acts as a supervisory court which reviews the judgments of lower courts, focusing primarily on questions of law.<sup>41</sup>

There is a one primary general court located in Kuwait City and three other courts located in the remaining governorates in Kuwait. The primary general court reviews disputes of all types regardless of the monetary amounts claimed in an action. However, the other three courts only review claims with a monetary value exceeding five thousand Kuwaiti Dinars (K.D. 5,000).<sup>42</sup> The primary general court consists of a number of chambers, each of which is tasked with reviewing cases within a specific legal field such as civil, commercial, criminal, administrative, labour and family law matters.

An action is initiated upon filing a statement of claim at the Clerk's Department of the relevant court and paying any fees due.<sup>43</sup> The statement of claim should contain all the details of the claim, grounds for submitting such claim, particulars of the plaintiff and the defendant, place of notification, name and signature of the court summoner and the recipient. A duly processed statement of claim will

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<sup>40</sup> Further information regarding the judicial system of Kuwait is available at: <http://www.arazzaqlaw.com/judicial-system-of-kuwait/>.

<sup>41</sup> Law of Civil and Commercial Procedures (n 6), Article 151.

<sup>42</sup> Ibid, Article 9.

<sup>43</sup> Ibid, Article 45.

bear an official stamp indicating the date of the first hearing, title and number of the chamber along with the date of its filing.<sup>44</sup>

Law No. 3 of 1983 Regarding Youths specifically addresses issues regarding juveniles coming into contact with the justice system following charges for criminal behaviour, whether felonies or misdemeanours.<sup>45</sup> In so doing, it has established a special juveniles court to hear cases involving youths charged with felonies or misdemeanours.<sup>46</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?

In general, court fees are paid upon filing a case.<sup>47</sup> A court may exempt a party from paying court fees upon the request of the party, especially where the party is indigent and the likelihood of success in proceedings is high.<sup>48</sup> Such an exemption is inclusive of all court fees.<sup>49</sup>

As mentioned in part II.D, juveniles who are charged with a felony or misdemeanour have a priority right to appoint the counsel of their choosing to defend them.<sup>50</sup> If the youth stands accused of a felony, and neither the youth nor their guardian has appointed counsel to defend the youth, the court must appoint a lawyer to represent the youth.<sup>51</sup> However, if the youth is accused of a misdemeanour, the appointment of counsel to defend the youth remains at the discretion of the court.<sup>52</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 children's rights organisation, or under an agreement that does not require payment of legal fees up front?

There is no formal or specific practice in this regard and it is unclear how widespread a practice of pro bono legal advice may be in operation in Kuwait. There are some human rights organisations in Kuwait which may provide assistance with regard to complaints, such as the Kuwait Child's Rights Society,

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<sup>44</sup> Ibid, Article 45.

<sup>45</sup> Law No. 3 of 1983 Regarding Youths (n 8), Article 1.

<sup>46</sup> Ibid, Article 25.

<sup>47</sup> Law No. 17 year 1973 on Court Fees, Article 22, available at (Arabic):

<http://www.gcc-legal.org/DisplayArticle.aspx?country=1&LawArticleID=83185>.

<sup>48</sup> Ibid, Article 14.

<sup>49</sup> Ibid.

<sup>50</sup> Law No. 3 of 1983 Regarding Youths (n 8), Article 30.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.



the Kuwaiti Bidoon Human Rights Organisation and the Kuwait Society for Human Rights.<sup>53</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 Civil Code does not contain specific provisions concerning limitation periods. The Penal Code sets out the limitation period at 10 years from the date of the violation.<sup>54</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 required evidence is dependent on the type of violation at issue.

The Civil Code states that the requirements concerning evidence are to be confirmed once an examination of the factual events, as well as the conduct of the parties in said regard, have been ascertained.<sup>55</sup> The rest of the Civil Code does not contain specific provisions pursuant to this rule or any reference to special measures concerning evidence given by children. The Law Regarding Evidence in Civil and Commercial Matters sets out the type of evidence required in each instance.<sup>56</sup>

In criminal matters, the Criminal Procedure Law states that the accused can, at any time, raise whatever defence may be available to them or pursue any other means available to them as evidence.<sup>57</sup> Article 99 of the Criminal Procedure Law regulates witness testimonies.

Law No. 3 of 1983, which deals with juveniles charged with felonies or misdemeanours, states that the juvenile court is to sit in camera and the hearing is not to be made public;<sup>58</sup> the only permitted attendees are the juvenile (although they may be exempt at the court's discretion), their relatives, witnesses, legal representatives, probation officers and any persons specifically authorised by the court.<sup>59</sup> These conditions are aimed at safeguarding the juvenile's interests during the hearing.

- F. Resolution. How long might it take to get a decision from the court as to whether

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<sup>53</sup> Further information available at: <http://kuwaitchildrights.com/>; <http://humanrightsconnected.org/organizations/kuwaiti-bidoon-human-rights-organization-kbhro> and <http://humanrightsconnected.org/organizations/kuwait-society-for-human-rights> respectively.

<sup>54</sup> Penal Code (n 23), Article 4.

<sup>55</sup> Civil Code (n 9), Article 6.

<sup>56</sup> Law No. 39 of 1980 Regarding Evidence in Civil and Commercial Matters, available at (Arabic): <http://www.gcc-legal.org/BrowseLawOption.aspx?country=1&LawID=1009>.

<sup>57</sup> Ibid, Article 98.

<sup>58</sup> Law No. 3 of 1983 Regarding Youths (n 8), Article 29.

<sup>59</sup> Ibid.

there has been a violation?

It has not been possible to ascertain with any certainty what the average duration for proceedings in the State of Kuwait may be. The duration of proceedings may vary depending on the nature and circumstances of a given case, also dependent upon whether or not the case is referred to the Experts Department for assessment. With regard to criminal cases, the duration is dependent upon the period of time required to obtain the necessary evidence for the Public Prosecutor to adequately present a case.

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

Appealing a civil judgment is subject to the provisions of the Law of Civil and Commercial Procedure.<sup>60</sup> Where the subject of the appeal concerns a procedural matter, a judgment may be appealed to the Court of Cassation in accordance with the provisions of the Law of Civil and Commercial Procedure.<sup>61</sup>

A litigant may seek review of a final judgment in specific instances as set out in the Law of Civil Procedure,<sup>62</sup> subject to a limitation period where applicable.<sup>63</sup> A judgment in which the monetary amount claimed does not exceed one thousand Kuwaiti Dinars (K.D. 1,000) is final and may not be appealed. Judgments awarding monetary claims ranging from one thousand and one Kuwaiti Dinars (K.D. 1,001) to five thousand Kuwaiti Dinars (K.D. 5,000) may be appealed at the Partial Appeals Court. A judgment awarding an amount exceeding five thousand Kuwaiti Dinars (K.D. 5000) may be appealed at the High Court of Appeal and, subsequently, at the Court of Cassation. Generally, a judgement issued by the Court of First Instance becomes enforceable at the discretion of the court and, in any case, if it is not appealed within 30 days after the date of its issuance.<sup>64</sup>

The right to appeal pursuant to decisions in criminal trials is accorded to both the defendant(s) and the Public Prosecutor, it is to be heard by the criminal division of the Court of Appeal.<sup>65</sup>

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

It is difficult to ascertain with any certainty what the impact of a decision might be. In highly publicised cases, or cases concerning or implicating issues

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<sup>60</sup> Law of Civil and Commercial Procedures (n 6), Articles 137-147.

<sup>61</sup> Ibid, Articles 152, 153.

<sup>62</sup> Such instances include fraudulent activities affecting the outcome of the judgment, new evidence which a party failed to present, a judgment that provides for more or less than what has been requested by the parties, or where the party against whom the judgment has been rendered is not a proper party in the litigation. See Law of Civil and Commercial Procedures (n 6), Article 148.

<sup>63</sup> Ibid, Article 149.

<sup>64</sup> Ibid, Article 141.

<sup>65</sup> Law No. 17 of 1960 Regarding Criminal Procedure (n 10), Article 8.

regarding deeply-entrenched sociocultural and religious norms and practices, it is likely that the court's decision will invite a certain degree of public scrutiny. It is unclear whether such instances could have further repercussions.

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

The Law of Civil Procedure permits the challenging of a court decision prior to enforcement.<sup>66</sup> Such a challenge has the effect of postponing the execution of a judgment should it be defeated.

- V. **Additional factors.** Please list any other laws, policies, or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

As stipulated in the Penal Code, a child under seven years of age cannot be held criminally responsible in any regard.<sup>67</sup>

The aforementioned Law No. 3 of 1983 Regarding Youths specifically addresses issues regarding juveniles coming into contact with the justice system following charges for criminal behaviour, whether felonies or misdemeanours.<sup>68</sup> In so doing, it has established a special juveniles court to hear cases involving youths charged with felonies or misdemeanours.<sup>69</sup> The juvenile court has sole jurisdiction over matters of juvenile delinquency and the corresponding legal proceedings.<sup>70</sup> The juvenile court also has tutelary authority in instances referred to it by the Juvenile Welfare Authority where the minor is at risk of becoming delinquent.<sup>71</sup> Such a juvenile may be returned to their guardian, having received guarantees as to their looking after; likewise with regard to a trusted host, should there not be a guardian to which the juvenile can be assigned; or, the juvenile may be delivered into the care of one of the appropriate social welfare institutions established in Kuwait for juveniles.<sup>72</sup>

Defendants that are over seven years old but that have not yet attained the age of 15 are not subject to punitive measures as contained in the Penal Code; instead, the juvenile court judge has discretionary competence over a number of non-punitive measures.<sup>73</sup> Likewise, with due regard for a juvenile defendant's age, any accused between the ages of 15 and 18 is granted legal protection against the criminal penalties of death or life imprisonment under the Act.<sup>74</sup>

Further guarantees are prescribed in Law No. 3 of 1983 with the child's best interests in mind; the judgments of the juvenile court are not deemed to

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<sup>66</sup> Law of Civil and Commercial Procedure (n 6), Article 211.

<sup>67</sup> Penal Code (n 23), Article 18.

<sup>68</sup> Law No. 3 of 1983 Regarding Youths (n 8), Article 1.

<sup>69</sup> Ibid, Article 25.

<sup>70</sup> Ibid, Article 26.

<sup>71</sup> Ibid, Article 19.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid, Article 6.

<sup>74</sup> Ibid, Article 14.

constitute part of an individual's criminal record,<sup>75</sup> a provision aimed at not hindering a juvenile's future career prospects; any sentences are to be served in special juvenile penal institutions, which shall be regulated and administered by the Ministry for Social Affairs and Labour, in consultation with the Minister of the Interior;<sup>76</sup> as well as the prominent role played by probation officers throughout proceedings with regard to advice, counselling and the provision of 'moral aid'.<sup>77</sup>

The Kuwait Ministry of Social Affairs and Labour is currently reviewing Law No. 3 of 1983, with a view to addressing shortcomings which have emerged since its enactment, in order to bring it in line with the provisions of the CRC.<sup>78</sup>

A draft law, aimed at consolidating the subject of children's rights into one piece of legislation and affording protections specifically afforded to children in the event that their rights are violated, has been mooted.<sup>79</sup> Further developments and any potential date regarding the enactment of this law are unknown.

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

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<sup>75</sup> Ibid, Article 15.

<sup>76</sup> Ibid, Article 17.

<sup>77</sup> Ibid, Article 40.

<sup>78</sup> Committee on the Rights of the Child, List of issues in relation to the second periodic report of Kuwait, Written replies of Kuwait (Arabic), 12 September 2013, para. 109.

<sup>79</sup> Kuwait Times, 'Children of the World', 24 September 2013, available at: <http://news.kuwaittimes.net/children-world/>.