

ACCESS TO JUSTICE FOR CHILDREN: LEBANON

This report was produced by DLA Piper in November 2014 but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.

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

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

Under Lebanon's civil law system, ratified international treaties become an integral part of domestic law¹ and are self-executing.² Lebanon ratified the CRC on 14 May 1991 and is accordingly bound by it. Lebanon has also ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography on 08 November 2004.³

In Lebanon, the President of the Republic negotiates and ratifies international treaties in coordination with the Prime Minister and with the approval of the Council of Ministers.⁴ Most international treaties can be ratified only after their ratification is approved by the Chamber of Deputies.⁵ The ratification of the CRC has been approved by Law No. 20 of 30 October 1990.⁶

B. Does the CRC take precedence over national law?

Yes it does. Article 2 of the Lebanese Civil Procedure Law makes it clear that international treaties take precedence over the law.⁷

However, the CRC states in its Article 41 that "*nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in: (a) The law*

¹ Redress Report - Lebanon, page 2, available at:

<http://www.redress.org/downloads/country-reports/Lebanon.pdf>.

² Lebanon - IIPA 2011 Special 301 Report on Copyright Protection and Enforcement, page 1, available at: <http://www.iipa.com/rbc/2011/2011SPEC301LEBANON.pdf>.

³ Further information regarding Lebanon's ratification of international treaties and conventions available at:

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=LBN&Lang=EN.

⁴ The Lebanese Constitution 1926 (and subsequent amendments), Article 52, available at:

<http://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>.

⁵ Ibid.

⁶ Intermarc ECCS Lebanon, further information available at:

<http://www.intermarceccs.com/2012/06/15/article-5/>.

⁷ Euro-Mediterranean Human Rights Network report, February 2010, 'L'indépendance et l'impartialité du système judiciaire', page 8, available at (French):

http://www.euromedrights.org/files/EMHRN%20Publications/Justice_report_FR_Liban_pour_web_655047619.pdf.

of a State party [...]". Accordingly, in a decision of 14 July 2008, the juvenile court judge of Beirut decided that, as per Article 41 of the CRC, the provisions of local laws take precedence when such provisions are more conducive to the realisation of the rights of the child and that such a provision is not contrary to Article 2 of the Lebanese Civil Procedure Law.⁸

C. Has the CRC been incorporated into national law?

As stated above, the ratification of the CRC was approved by Law No. 20 of 30 October 1990, which included the text of the CRC. Following this ratification, the Higher Council for Childhood was formed in 1994 with the aim of monitoring the implementation of the CRC and analysing the legal situation.⁹

Further to the ratification of the CRC, Law No. 422 of 06 June 2002 came into effect in response to the need to reform the legal system.¹⁰ This law is the fruit of the collaboration of national and international experts. The United Nations Office on Drugs and Crime supported a concerted reform effort carried out between 1999 and 2002, pursuant to which the law came into effect.¹¹ Central to this initiative was the consideration of the interest of the child as an essential element driving the reform process; the need to balance punishment for crimes committed with the guarantee of the rights and well-being of any child coming into contact with the justice system.¹²

At the heart of the reform was the establishment of a Department for Minors as part of the Ministry of Justice.¹³ The focus of this department is the reintegration of juveniles into Lebanese society, as well as developing preventive and protective action plans. Another key institutional reform has been the establishment of the Minors Brigade, a specialised police unit dealing with juveniles, although it is unclear whether or not it is in fact operational.¹⁴ The reorganisation of the system of information on juvenile offenders has been equally important.¹⁵ Projected reform of prisons and the conditions in detention centres has also been discussed, as well as training for professionals dealing with juvenile offenders' affairs.

This process of legislative reform in Lebanon has definitely been positive and constitutes an improvement in the protection of the rights of children in their interactions with the justice system. However, there remains considerable obstacles to overcome before the Lebanese justice system becomes fully

⁸ Further information regarding the need to analyse national legislation in compliance with the CRC in Save the Children, Child Rights Situation Analysis for Lebanon, page 57, available at: <http://resourcecentre.savethechildren.se/sites/default/files/documents/1948.pdf>.

⁹ Ibid, page 47.

¹⁰ Law No. 422 of 06 June 2002, available at (Arabic): <http://ahdath.justice.gov.lb/law-ahdath%20-1.htm>.

¹¹ Juvenile Justice Initiatives in Lebanon, page 7, available at: http://www.unodc.org/pdf/crime/forum/forum3_note2.pdf.

¹² Ibid.

¹³ 'Enfants victimes d'infractions pénales - Parler et Agir Pour les Protéger dans le Cadre de la Protection Judiciaire' report, Ministère de la Justice, page 2, available at (French): <http://ahdath.justice.gov.lb/PDF/Brochures/french/Doc%20Parents.pdf>.

¹⁴ Juvenile Justice Initiatives in Lebanon, page 10, available at: http://www.unodc.org/pdf/crime/forum/forum3_note2.pdf.

¹⁵ Ibid.

compliant with the CRC; most notably the detention conditions for girls, social programmes addressing the issue of recidivism and judicial protection of minors who are victims.¹⁶ Achieving these aims will be challenging in such a diverse and multi-confessional society.

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

Yes, the CRC can be directly enforced. Lebanese courts apply ratified international treaties directly in their decisions.¹⁷

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

Yes, examples can be found of domestic courts applying the CRC. The CRC should be applied by judges in three jurisdictions: the administrative, judicial and religious. To date, there are no known examples of religious courts applying the CRC. On the other hand, the judicial courts have applied the CRC, but reported cases are rare. Several examples of the use and application of the CRC by the judicial courts are collated in the book of Judge Fawzi Khamis on the Protection of Children at Risk.¹⁸

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, children and their representatives can bring cases in domestic courts to challenge violations of children's rights. The person or entity permitted to bring the claim depends on the nature of the proceedings and the court which has jurisdiction. For instance, Lebanese law accords the judicial authority the power to intervene wherever a child's interests are at risk. Article 26 of Law No. 422 of 2002 states that the juvenile court judge may intervene in order to ensure the protection of children at risk pursuant to a complaint brought by a child, their parents, their guardian(s), those that are responsible for the child, social workers, the public prosecution or pursuant to a report.¹⁹ The Juvenile Judge may also intervene automatically in cases of urgency.²⁰

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

The answer to this question depends on the nature of the proceedings and the court which has jurisdiction. In relation to cases brought before the juvenile

¹⁶ Ibid, page 12.

¹⁷ G J Assaf, Application of International Human Rights Instruments by the Judiciary in Lebanon, in E Cotran and A Omar Sherif (eds.), *The Role of the Judiciary in the Protection of Human Rights*, CIMEL Book Series No, Kluwer Law International 1997, pages 87-88.

¹⁸ Judge Fawzi Khamis in collaboration with Judge Fadi Al-Aridi, *Protecting Children at Risk in Light of the Law and Jurisprudence in Lebanon*, Friedrich Ebert Stiftung, 2nd edition, Lebanon, 2011.

¹⁹ Law No. 422 of 06 June 2002, Article 26.

²⁰ Ibid.

court judge (mentioned in part II.A above), the relevant judge can intervene pursuant to a complaint brought by a child of any age. The complaint does not need to have any specific form. It can be made either in writing or orally. It can even be a simple phone call made by the child to a child protection association. Such a call can trigger investigations to be ordered by the juvenile court judge.²¹ When a child makes a complaint of this nature, the juvenile court judge will ask for social assistance through the Union for the Protection of Juveniles.²²

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

Cases brought before the juvenile court judge can be brought by the child directly, or on their behalf by any third party (described in greater detail in part II.A above) aware of the violation. However, different proceedings apply dependent upon which court has jurisdiction and it is typically the child's parents or guardian(s) that would bring the case on the child's behalf.²³

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

Yes, children or their representative are eligible for legal aid. Legal aid is mainly provided by the Bar Association Legal Aid Commission, subject to certain conditions. In Lebanon, legal aid to indigent persons in criminal and civil cases is prescribed by statute,²⁴ and this would include cases relevant to the violation of children's rights.²⁵

In the religious courts system, financial barriers to justice, insufficient legal aid and trained lawyers are a real problem. Lebanon is a multi-confessional state and this is represented in the plurality of religious courts, each with their own operational specificities.²⁶

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)?

In the case of children at risk, no limits or conditions apply before the juvenile court judge, please see part II.A above. In other cases, the conditions or limits would depend on the nature of the proceedings and the courts which have

²¹ Khamis, *Protection of Children at Risk*, 2011, page 43.

²² 'Enfants victimes d'infractions pénales - Parler et Agir Pour les Protéger dans le Cadre de la Protection Judiciaire' report, Ministère de la Justice, pages 11, available at (French): <http://ahdath.justice.gov.lb/PDF/Brochures/french/Doc%20Parents.pdf>.

²³ Save the Children, Child Rights Situation Analysis for Lebanon, page 65, available at: <http://resourcecentre.savethechildren.se/sites/default/files/documents/1948.pdf>.

²⁴ Further information about the legal aid system in Lebanon is available at: http://pdf.usaid.gov/pdf_docs/PNADU749.pdf.

²⁵ Law No. 422 of 06 June 2002, Article 42.

²⁶ For further information about the obstacles to accessing religious courts in Lebanon, please see the Human Rights Watch report, *Unequal and Unprotected*, 19 January 2015, available at: <http://www.hrw.org/en/node/131842/section/7>.

jurisdiction.²⁷

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 most common way to challenge violations of a child's rights is to bring a claim before the civil courts or the religious courts. However, cases involving children at risk are handled by the juvenile courts.²⁸

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

The courts have the power to award money damages or to issue injunctions.²⁹ With regard to juvenile courts specifically, such courts have the power to order protective measures.³⁰ For instance, the juvenile court judge may take a decision to protect a child from the risk that they would incur if they were to go and live with the parent who, following a divorce, was granted custody pursuant to the decision of a religious court - in Lebanon, it is the religious courts that have jurisdiction to decide matters of custody following a divorce. However, a juvenile court judge may decide that the child will potentially be placed at risk with the parent who has been accorded custody (further to the religious court's decision) and may take the necessary protective measures in the child's best interest, even if this means that the child will live (mostly temporarily) with the other parent, the one which was not granted custody. The juvenile court judge will not be overruling the decision of the religious court; however, they would be protecting the child from potential harm by taking the appropriate measures as deemed necessary.³¹

- 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?

²⁷ There is a system of religious courts operating alongside the civil courts system in Lebanon. These religious courts have jurisdiction over matters of personal status primarily and their particularities can vary dependent upon confessional specificities.

²⁸ 'Enfants victimes d'infractions pénales - Parler et Agir Pour les Protéger dans le Cadre de la Protection Judiciaire' report, Ministère de la Justice, page 12, available at (French): <http://ahdath.justice.gov.lb/PDF/Brochures/french/Doc%20Parents.pdf>.

²⁹ For further information on sentencing in civil case, please see Part IV of the Lebanese Code of Civil Procedure, available at (Arabic): http://ar.jurispedia.org/index.php/%D9%82%D8%A7%D9%86%D9%88%D9%86_%D8%A3%D8%B5%D9%88%D9%84_%D8%A7%D9%84%D9%85%D8%AD%D8%A7%D9%83%D9%85%D8%A7%D8%AA_%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A%D8%A9_%D8%A7%D9%84%D8%AC%D8%AF%D9%8A%D8%AF_%28lb%29#.D8.A7.D9.84.D8.A8.D8.A7.D8.A8_.D8.A7.D9.84.D8.B1.D8.A7.D8.A8.D8.B9_-_D8.A7.D9.84.D9.85.D8.AD.D8.A7.D9.83.D9.85.D8.A9.

³⁰ Law No. 422 of 06 June 2002, Article 5.

³¹ 'Enfants victimes d'infractions pénales - Parler et Agir Pour les Protéger dans le Cadre de la Protection Judiciaire' report, Ministère de la Justice, page 15-16, available at (French): <http://ahdath.justice.gov.lb/PDF/Brochures/french/Doc%20Parents.pdf>.

It would appear that a legal challenge must directly involve one or more named juvenile victims. However, a report may be made to the security forces without naming a specific victim and investigations may start accordingly.³² Also, the Constitutional Council can rule on the constitutionality of a law relevant to children's rights without involving a specific victim.³³

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

Yes, collective actions or group litigation are possible.³⁴

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?

Non-governmental organisations can bring cases before the juvenile court judge in relation to children at risk, with regard to family law issues in particular. However, they cannot intervene in cases without proving their interest or capacity.³⁵

The Union for the Protection of Juveniles in Lebanon (UPEL) is a social organisation that plays an important role regarding cases of ill-treatment of children; their social representatives assist the child concerned in all of the judicial follow-up stages.³⁶

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

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

A case can be filed in a judicial, administrative or religious court. Cases relevant to children at risk are filed before the juvenile court judge, whose powers and jurisdiction are described in part II.A; the juvenile court judge may also intervene automatically in cases of urgency.³⁷ The juvenile court judge will then order an investigation, which will usually be led by a social worker. The investigation procedure and trial in juvenile cases are confidential.³⁸

³² Law No. 422 of 06 June 2002, Section IV on Juvenile Justice.

³³ Lebanese Constitution 1926, Article 19.

³⁴ For further information regarding collective action in Lebanon, the Lebanese Ministry of Justice is available at (French): <http://www.justice.gov.lb/CP/viewpage.aspx?id=465&language=3>.

³⁵ Save the Children, Child Rights Situation Analysis for Lebanon, page 66, available at: <http://resourcecentre.savethechildren.se/sites/default/files/documents/1948.pdf>.

³⁶ Further information regarding l'Union pour la Protection de l'Enfance au Liban (UPEL) available at: <http://www.upel.org/index.htm>.

³⁷ Further information regarding the protection of children against neglect, abuse and delinquency available at: <http://www.loc.gov/law/help/child-rights/lebanon.php#f36>.

³⁸ Further information regarding the importance of social workers and representatives in the Lebanese approach to juvenile justice is provided by the aforementioned UPEL, available at: <http://www.upel.org/index.htm>.

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

As aforementioned, the law mandates the availability of legal aid to indigent persons in both criminal and civil cases. In criminal cases, the suspect or accused is entitled to the appointment of a legal aid lawyer, regardless of their financial status. In civil cases, legal aid in Lebanon is mainly dependent upon the financial situation of the party requesting it; however, legal aid may be refused if it is apparent that the case has no merit. It is common for the bar associations in Lebanon to rely heavily on trainee lawyers to appear in cases where legal aid is requested, this includes juvenile cases. The trainees lack adequate training and supervision, which in turn affects the quality of the representation provided to legal aid clients.³⁹

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?

Legal aid should, in principle, be available; however, due to lack of funding, quality assistance, etc., other options are simultaneously available in Lebanon. For instance, law firms and individual lawyers provide assistance on a pro bono basis. However, the systematic provision of pro bono services by law firms and lawyers is not a tradition in Lebanon. Free legal assistance is typically provided by some firms in association with NGOs.⁴⁰

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 civil cases, the case should be brought no later than ten (10) years after a violation. In criminal cases, it is three (3) years for a minor offence, and ten (10) years for a crime.⁴¹

There are no special provisions to allow young adults to bring cases involving violations of their rights which occurred when they were children, but adults can bring such cases as long as the periods mentioned above have not expired. As for children at risk, they can request protective measures as long as the risk subsists and these can be granted immediately by the juvenile court judge in urgent cases, as mentioned in part II.A.

³⁹ USAid, Legal Aid in Lebanon Report, page 23, available at: http://pdf.usaid.gov/pdf_docs/PNADU749.pdf

⁴⁰ Ibid.

⁴¹ For further information, please see the Lebanese Codes of Civil Procedure and Criminal Procedure respectively.

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?

All evidence is accepted when a child is at risk. The judgment is based on the conviction of the presiding judge.⁴² Although sentencing is usually open to the public, closed proceedings are adopted throughout the trial, as well as the follow up and investigatory procedures in the best interests of the child.⁴³ Further, the juvenile court judge has the ability to order investigative measures through UPEL and the system of utilising social workers in instances where children have been ill-treated, as aforementioned in part III.E.

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

Decisions should be handed down fairly quickly in the case of children at risk. Juvenile court judges have a wide discretion, under Article 2 of Law No. 422 of 06 June 2002, to grant whatever measures they deem appropriate, in accordance with the law, as a remedy for the violation in question.⁴⁴ For other cases, particularly civil cases, a decision from the court may take years.⁴⁵

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

Appeal is possible,⁴⁶ but in the case of children at risk before the juvenile court judge, the decision can be enforced despite the lodging of an appeal where the child's best interests are at stake. Further information regarding the powers of the juvenile court judges can be found in part II.A.

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 is no system of precedents in Lebanon, as there is in countries where a Common Law system is in place. This means that judges are not bound by previous decisions and a negative decision should not have a material impact on future cases.⁴⁷

In relation to positive decisions, these are in principle enforced. However, when religious courts are involved in the matter, these courts will try to enforce their contradictory decisions at the same time and use their power to this effect. This may, for instance, result in a delay in enforcing the decision of the juvenile

⁴² For further information regarding the rules on evidence in civil cases, please see Part III of the Lebanese Code of Civil Procedure.

⁴³ Law No. 422 of 06 June 2002, Article 40.

⁴⁴ Ibid.

⁴⁵ Unfortunately, as with most states in the region, delays in judicial proceedings are endemic and this practice is counterproductive with regard the protection of children's rights whenever they come into contact with the justice system.

⁴⁶ Law No. 422 of 06 June 2002, Article 44.

⁴⁷ Further information regarding Lebanon's legal system is available at:

<http://www.loc.gov/law/help/legal-research-guide/lebanon.php>.

court.⁴⁸

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

The dual system in Lebanon is of real concern as religious courts hold authority on matters of personal status, including matters of concern to the child, such as custody. The application of the provisions of the CRC on these matters is left to the discretion of the religious courts, who usually apply their own rules and provisions. To date, there is no record of the provisions of the CRC being used or applied before religious courts.⁴⁹

- 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.

For a country with an estimated population of some 4.46 million people,⁵⁰ Lebanon is home to a disproportionately large number of refugees. The influx of these refugees is a direct result of the turmoil that has plagued the region for decades now; they consist primarily of Palestinians who have been systematically displaced from their land since 1948, Iraqis fleeing the threat of ISIL militants and waves of refugees from Syria afflicted by the ongoing civil war that has devastated their country.⁵¹

There are 12 major refugee camps in Lebanon, with Palestinian refugees constituting around 10 per cent of the population of Lebanon.⁵² These refugees are not formally recognised as citizens and as such, do not enjoy a number of important rights that Lebanese citizens possess. A great number of these refugees live in abject poverty.⁵³ These refugees are accorded limited legal status in Lebanon.⁵⁴

This state of affairs is without question detrimental to refugee children with regard to matters of access to justice. This disparity, in the quality of services provided by the State, between Lebanese citizens and refugees reinforces the latter's vulnerability, particularly in terms of contact with the justice system.⁵⁵ This inequality in the treatment

⁴⁸ Ibid, on the simultaneous autonomy of both civil and religious courts and the potential for conflicts between the two systems.

⁴⁹ Convention on the Rights of the Child - Child's Rights Monitor Report, available at: <http://www.inf.org.lb/child/report.html>.

⁵⁰ Further information available at: http://www.google.co.uk/publicdata/explore?ds=d5bncppjof8f9_&met_y=sp_pop_totl&idim=country:LB N:LBY:JOR&hl=en&dl=en#!ctype=l&strail=false&bcs=d&nselm=h&met_y=sp_pop_totl&scale_y=lin&ind_y=false&rdim=region&idim=country:LBN&ifdim=region&hl=en_US&dl=en&ind=false.

⁵¹ Lebanon has received the largest number of Syrian refugees in the world. For further information, please see the United Nations High Commissioner for Refugees report, available at: <http://www.unhcr.org/pages/49e486676.html>.

⁵² Further information is available through the United Nations Relief and Works Agency (UNRWA), available at: <http://www.unrwa.org/where-we-work/lebanon>.

⁵³ Ibid.

⁵⁴ For further information regarding the obstacles facing refugees in Lebanon, please see the Norwegian Refugee Council report on 'Consequences of Limited Legal Status for Syrian Refugees in Lebanon', available at: <http://resourcecentre.savethechildren.se/sites/default/files/documents/9687105.pdf>.

⁵⁵ Save the Children, Child Rights Situation Analysis for Lebanon, page 11, available at: <http://resourcecentre.savethechildren.se/sites/default/files/documents/1948.pdf>.

of children from different backgrounds is a key issue for Lebanon to address in accordance with Article 2 of the CRC. However, it must be noted that it is understandable that the large volume of refugees should place great strain upon the State's resources. As suggested by the United Nations High Commissioner for Refugees,⁵⁶ it is imperative that the international community displays solidarity and plays a role in supporting Lebanon with the demands of this humanitarian crisis. This, in turn, should facilitate for the implementation of the required amendments for the guarantee of equal rights for children whenever coming into contact with the justice system.

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

⁵⁶ Further information on the United Nations High Commissioner for Refugees report and recommendations, available at: <http://www.unhcr.org/pages/49e486676.html>.