

ACCESS TO JUSTICE FOR CHILDREN: PAKISTAN

This report was produced by Child Rights International Network (CRIN) in June 2013. 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?

Ratified international instruments do not automatically have the force of law in Pakistan, and must be incorporated through implementing legislation. Most commonly, provisions of international treaties including the CRC are addressed throughout national legislation in a piecemeal, subject-by-subject manner.

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law.

C. Has the CRC been incorporated into national law?

The CRC has not been incorporated into national law.

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

The CRC cannot be directly enforced in Pakistani courts.

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

There do not appear to be readily available examples of domestic courts using or applying the CRC or other relevant international instruments.

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 and their representatives are entitled to bring civil and criminal cases to challenge violations of their rights.¹ Where fundamental rights are at issue, the Constitution also provides for proceedings to enforce these rights before the High or

¹ Code of Civil Procedure, 1908, available at <http://www.ma-law.org.pk/pdflaw/CODE%20OF%20CIVIL%20PROCEDURE%201908.pdf>; Code of Criminal Procedure, 1898: http://www.lawsofpakistan.com/wp-content/uploads/2012/03/Code_of_criminal_procedure_1898.pdf. See also CRC/C/RESP/38, Written Replies by the Government of Pakistan to the Committee on the Rights of the Child, August 6, 2003, p. 31, available at <http://www.ohchr.org/EN/HRBodies/CRC/Documents/Written%20Replies/wr-pakistan-2.pdf> (“A person under 18 has a legal right to file a complaint before the Ordinary Civil and Criminal Courts of the land.”).

Supreme Courts.²

Any person may file a complaint against the Government administration related to the abuse of power or failure to fulfill public duties with the Federal Ombudsman (Wafaqi Mohtasib).³

In addition, a National Commission for Human Rights was approved in 2012.⁴ Once formed, the Commission will be able to accept individual complaints from victims of human rights violations or conduct inquiries into potential violations of its own initiative.⁵

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?

Children may bring civil cases in their own name with the assistance of a “next friend,” and civil courts also appoint a “guardian for the suit” for any child named as a defendant.⁶ Any consenting adult of sound mind without interests adverse to the child in question may act as a next friend or guardian for the suit.⁷ If the child already has a court-appointed guardian, it is presumed that guardian will serve as the child's next friend unless reasons related to the child's welfare dictate otherwise.⁸

All legal actions must be taken on behalf a child by his or her next friend or guardian of the suit.⁹ Agreements and settlements made by a next friend or guardian of the suit must be approved by the court.¹⁰ Next friends cannot retire without finding a suitable replacement, although courts may order the removal of a next friend whose interests become adverse or where other sufficient cause exists.¹¹ If a child reaches the age of majority after a suit has been filed, he or she may opt to continue the suit and proceed without the assistance of a next friend.¹²

There are no similar provisions for the appointment of next friends in criminal cases or proceedings initiated with the Federal Ombudsman or National Commission for Human Rights.

² Constitution, Articles 184, 185, 199.

³ Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, available at <http://www.theioi.org/downloads/68p6k/presidential-order-1983.pdf>; see also <http://www.mohtasib.gov.pk/>. Ombudsmen operating on the provincial level are also able to accept individual complaints, and may in some circumstances make special provisions for child complainants. See, e.g., <http://www.ccopunjab.org/>.

⁴ National Commission for Human Rights Act, 2012, available at http://www.na.gov.pk/uploads/documents/1342437418_845.pdf; see also President Zardari signs bill to establish human rights commission, The News, May 31, 2012, available at <http://www.thenews.com.pk/Todays-News-13-15008-President-Zardari-signs-bill-to-establish-human-rights-commission>.

⁵ National Commission for Human Rights Act, Sections 9, 12-13, 17.

⁶ Rules of Civil Procedure, 1908, Order XXXII, Sections 1, 3, available as an appendix to the Code of Civil Procedure.

⁷ Rules of Civil Procedure, 1908, Order XXXII, Section 4.

⁸ Rules of Civil Procedure, 1908, Order XXXII, Sections 4, 9.

⁹ Rules of Civil Procedure, 1908, Order XXXII, Section 5.

¹⁰ Rules of Civil Procedure, 1908, Order XXXII, Section 7.

¹¹ Rules of Civil Procedure, 1908, Order XXXII, Sections 8, 9.

¹² Rules of Civil Procedure, 1908, Order XXXII, Sections 12, 13, 14.

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

Parents or guardians would typically assist young children in filing civil complaints as next friends in line with the provisions above. Courts also have the power to appoint separate guardians to look after children or their property.¹³ Matters related to guardianship and custody are determined by family courts in line with established court procedures, and guardians appointed in this manner are in most cases expected to represent children and their interests in legal proceedings.¹⁴

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

The Pakistan Bar Council provides legal assistance to those who cannot afford it in specified civil matters, including litigation initiated in the public interest and cases filed to challenge abuse of Government power or neglect of public duties.¹⁵ The Bar Council's Central Free Legal Aid Committee is responsible for legal aid at the federal level, and may also provide assistance in filing complaints with the Federal Ombudsman.¹⁶ Form applications for free legal aid are submitted directly to the Committee for review, and must include information about both income earned and assets held.¹⁷

In addition, any person who has been arrested has the right under the Constitution to consult with and be defended by a legal practitioner of his or her choice.¹⁸ Specifically, both children accused of committing offences and child victims of crime have the right to free legal assistance at the expense of the Government.¹⁹ The Government has also established the Public Defender and Legal Aid Office to provide legal assistance to indigent persons involved in criminal proceedings, and any person interested in the welfare of a child may seek legal assistance from the Office on behalf of that child.²⁰

However, according to expert opinion, as at August 2015, there are still no funds from the Government to provide free legal aid to children in criminal proceedings despite the guarantee in the Juvenile Justice System Ordinance 2000.²¹

¹³ Guardians and Wards Act, 1890, available at

<http://www.ma-law.org.pk/pdflaw/The%20Guardian%20and%20Wards%20Act.pdf>.

¹⁴ Family Courts Act, 1964, available at <http://www.punjablaws.gov.pk/laws/177.html>; Family Court Rules, 1964, available at

http://sja.gos.pk/Statutes/Family%20Laws/THE_WEST_PAKISTAN_FAMILY_COURT_RULES_1965.htm.

¹⁵ Pakistan Bar Council Free Legal Aid Rules, 1999, Section 3, available at

<http://pakistanbarcouncil.org/wp-content/uploads/2012/07/1999.pdf>; Legal Practitioners and Bar Councils Act, 1973, Section 13(l), available at

<http://www.pakistanbarcouncil.org/wp-content/uploads/2012/07/1973.pdf>.

¹⁶ Pakistan Bar Council Free Legal Aid Rules, Section 5.

¹⁷ Pakistan Bar Council Free Legal Aid Rules, Schedule.

¹⁸ Constitution, Section 10.

¹⁹ Juvenile Justice System Ordinance, 2000, Section 3, available at

<http://punjablaws.punjab.gov.pk/index/showarticle/ref/d381f21f-bbc9-49b5-a3e9-44913f1ad580>.

²⁰ Public Defender and Legal Aid Office, 2009, Section 14, available at

http://www.na.gov.pk/uploads/documents/1302739628_780.pdf

²¹ Comments provided by Waheed Ahmad, Advocate of the High Court and Chairman of the Child Rights Committee, Lahore Bar Association, August 2015.

- 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)?

While it is not a limit on a child bringing a civil suit, his or her parent or guardian must be notified of and given a chance to object to any application to proceed as the child's next friend.²²

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?

Civil cases are brought by filing a complaint that sets out a concise statement of the facts on which the suit is based.²³ Notably, suits against the Government or a public official in his or her official capacity require two months' prior written notice to the defending party, and other special rules may apply during court proceedings.²⁴ In addition, civil courts must give notice to the Attorney-General before deciding any questions of constitutional law relating to Federal Government, and may add the Government as a defendant in the suit as necessary or desirable.²⁵

To initiate criminal proceedings, any person may submit a complaint or provide information to a magistrate that he or she knows or suspects an offence has been committed.²⁶ Once begun, these proceedings are usually pursued by the Public Prosecutor, although the presiding magistrate may permit a private individual to try the case.²⁷

Legal questions related to the enforcement of fundamental rights under the Constitution may be brought before the High Court or, where related to a matter of public importance,²⁸ reviewed by the Supreme Court.²⁹ These are often known as "judicial review proceedings" or "public interest litigation," and are less formal than civil or criminal procedures in terms of procedure and filing requirements.³⁰ Notably, the Supreme Court has established a special Human Rights Cell "to provide an expeditious and inexpensive remedy in matters relating to infringements of Fundamental Rights."³¹

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

Civil courts have the general power to make any order as necessary in the interests of

²² Rules of Civil Procedure, 1908, Order XXXII, Section 3.

²³ Code of Civil Procedure, Section 26; Rules of Civil Procedure, Order IV, Section 1.

²⁴ Code of Civil Procedure, Section 80; Rules of Civil Procedure, Order XXVII.

²⁵ Rules of Civil Procedure, Order XXVIA.

²⁶ Code of Criminal Procedure, Sections 190, 200.

²⁷ Code of Criminal Procedure, Sections, 493, 495.

²⁸ The notion of "public importance" has been construed broadly by the Supreme Court. See, e.g., *Benazir Bhutto v. Federation of Pakistan*, PLD 1988 SC 416.

²⁹ Constitution, Articles 184, 199.

³⁰ See, e.g., Faqir Hussain, Sustainable Development Policy Institute, *Public Interest Litigation* (1993), available at <http://www.sdpi.org/publications/files/W5-Public%20Interest%20Litigation.pdf>.

³¹ <http://www.supremecourt.gov.pk/web/page.asp?id=337>.

justice.³² Among other things, this includes the power to put in place injunctions requiring a party to cease or carry out a particular action; mandate that one party compensate another for harm caused; or issue declaratory orders to set out the respective rights of the parties.³³ Civil courts may also issue temporary injunctions to preserve the interests and property of the parties while a case is being decided.³⁴

The High Court and Supreme Court have specific powers to void the decision of any public authority; require public officials to justify their authority; bring any person held in detention before the Court for review; or order that a public authority either perform functions as legally required or refrain from taking actions that are legally prohibited.³⁵ In some circumstances, interim orders may be issued to prevent additional harm from occurring while a case is being considered.³⁶ To enforce fundamental constitutional rights, these Courts may also direct the actions of any person or authority as appropriate.³⁷

If the Federal Ombudsman substantiates a case of maladministration, it may make recommendations to the agency responsible and, if necessary, the President.³⁸ The Ombudsman also has the power to issue temporary injunctions and to demand implementation of its recommendations, orders or decisions.³⁹

Once in operation, the National Commission for Human Rights will be authorised to provide interim relief and adequate compensation to victims, and can further recommend the prosecution of human rights violations.⁴⁰ The Commission will also be able to suggest the adoption of new legislation or the amendment of existing laws to better safeguard human rights.⁴¹

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?

Civil complaints require the name, description and place of residence of the plaintiff and, if filed on behalf of a child, must state that the plaintiff is a minor.⁴² Criminal complaints require the reporting of facts that constitute a specific offence, which in most circumstances necessitates the identification of an individual victim or victims where these exist.⁴³

Judicial review proceedings to enforce fundamental constitutional rights do not require

³² Code of Civil Procedure, Section 151; see also Specific Relief Act, 1877, available at <http://www.ma-law.org.pk/pdflaw/THE%20SPECIFIC%20RELIIEF%20ACT,%201877.pdf>.

³³ See, e.g., Judicial Review of Administrative Action in Pakistan, available at <http://www.slideshare.net/kalashsh/judicial-review-of-administrative-action-in-pakistan>.

³⁴ Rules of Civil Procedure, Order XXXIX.

³⁵ Constitution, Articles 184, 185, 199. See also Code of Criminal Procedure, Section 491; Judicial Review of Administrative Action, available at <http://www.supremecourt.gov.pk/ijc/Articles/16/2.pdf>.

³⁶ Constitution, Articles 184, 199.

³⁷ Constitution, Articles 184, 199.

³⁸ See Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, Section 11.

³⁹ Ordinance No. 1 of 2013, Section 10, available at <http://202.83.164.28/wafaqimoh/userfiles1/file/Ordinance%20Correct.pdf>.

⁴⁰ National Commission for Human Rights Act, Section 18.

⁴¹ National Commission for Human Rights Act, Section 9.

⁴² Rules of Civil Procedure, Order VII, Section 1.

⁴³ Code of Criminal Procedure, Section 190.

the identification or involvement of individual child victims, provided that the plaintiff's name, relief sought and grounds for review are specified.⁴⁴ Similarly, the Federal Ombudsman can review broad claims of maladministration, but does not accept anonymous complaints.⁴⁵

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

Where a number of people have the same interest in a lawsuit, civil courts may grant permission for one or more of those persons to sue on behalf of all interested persons. In these circumstances, the Court must give notice at the plaintiff's expense to these persons either by personal service or, where this is impractical, public advertisement.⁴⁶ In addition, in cases involving multiple complaining parties, the plaintiffs may collectively and in writing authorise one or more persons to appear and act on their behalf.⁴⁷ Civil courts also have the power to combine cases that relate to the same matter or raise "common questions of law or fact."⁴⁸

While it is not technically a form of collective action, public interest litigation also offers a means to challenge human rights violations that affect a large number of children.

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 and individual advocates are permitted to initiate public interest litigation in their own names to challenge violations of children's rights.⁴⁹ Where a case has already been filed, third parties including non-governmental organisations and independent human rights experts may make submissions to the court on a particular point of law or a matter of judicial interpretation as a friend of the court, also known as an "amicus curiae."⁵⁰

Once in operation, the National Commission for Human Rights will also be empowered to intervene as a party in any proceedings involving violations of human rights.⁵¹

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?

⁴⁴ See, e.g., Supreme Court Rules, 1980, Order XXV, available at http://www.supremecourt.gov.pk/web/user_files/File/The_Pakistan_Supreme_Court_Rules.pdf.

⁴⁵ See Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, Section 10.

⁴⁶ Rules of Civil Procedure, Order I, Section 8.

⁴⁷ Rules of Civil Procedure, Order I, Section 12.

⁴⁸ Rules of Civil Procedure, Order I, Sections 1, 3.

⁴⁹ Constitution, Articles 184, 199; see, e.g., Muhammad Manir, Public Interest Litigation in the Supreme Court of Pakistan (2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1984583.

⁵⁰ See, e.g., <http://www.barhumanrights.org.uk/content/amicus-brief-pakistan-supreme-court-support-chief-justice>; http://www.supremecourt.gov.pk/web/user_files/File/C.M.A.3325_of_2012_dt_11-2-2013.pdf.

⁵¹ National Commission for Human Rights Act, Section 9.

Civil cases are instituted in the lowest court competent to try them, and can be filed in line with the Rules of Civil Procedure either where the actions in question occurred or where the defending party resides or works.⁵² Criminal trials are typically held within the jurisdiction in which the offence was committed, and the Code of Criminal Procedure indicates which level of court within that jurisdiction will have the competence to first hear the case.⁵³ As above, private prosecutions are typically begun before a Magistrate's Court.⁵⁴

The Supreme Court Rules set out how cases may be filed before Pakistan's highest court, and each branch of the High Court has established Rules of Procedure that govern the filing and review of civil cases before it and any subordinate courts.⁵⁵ Similarly, there are detailed rules for the filling and review of individual complaints with the Federal Ombudsman.⁵⁶

Under the Juvenile Justice System Ordinance, juvenile courts have exclusive jurisdiction to hear any case involving a child accused of an offence and generally follow the Code of Civil Procedure.⁵⁷ However, as at August 2015, no juvenile courts have actually been established in Pakistan.⁵⁸

Family courts hear cases related to marriage, guardianship and family affairs, and operate under separate Rules of Procedure.⁵⁹

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 above, child complainants or their representatives may apply for legal aid with the Pakistan Bar Council, which can also cover the cost of court and other administrative fees.⁶⁰

The costs for filing and pursuing most legal proceedings are set out in the Court Fees Act⁶¹, and in the case of civil claims for damages may relate to the amount sought.⁶²

⁵² Code of Civil Procedure, Sections 15, 20.

⁵³ Code of Criminal Procedure, Section 177, Schedule 2.

⁵⁴ Code of Criminal Procedure, Section 190.

⁵⁵ Constitution, Article 202; Code of Civil Procedure, Section 122; see, e.g., Rules and Orders of the Lahore High Court, available at http://www.lhc.gov.pk/rules_orders/volume1.pdf.

⁵⁶ See Wafiq Mohtasib (Investigation and Disposal of Complaints) Regulation, 2003, available at <http://www.nasirlawsite.com/laws/regulat.htm>.

⁵⁷ Juvenile Justice System Ordinance, Sections 4, 6.

⁵⁸ Comments provided by Waheed Ahmad, Advocate of the High Court and Chairman of the Child Rights Committee, Lahore Bar Association, August 2015.

⁵⁹ Family Courts Act; Family Court Rules.

⁶⁰ Pakistan Bar Council Free Legal Aid Rules, Section 9.

⁶¹ Subordinate or specialised courts may in some instances follow separate rules for determining court fees. See, e.g., Family Courts Act, Section 19 ("Notwithstanding anything to the contrary contained in the Court Fees Act, 1872, the court fees to be paid on any plaint filed before a Family Court shall be fifteen rupees for any kind of suit").

⁶² Court Fees Act, 1870, Schedules 1, 2, available at http://www.commonlii.org/pk/legis/pj/consol_act/ca1870124/.

Civil courts also allow for “paupers” without the means to pay court fees to file cases and appeals.⁶³ Persons wishing to sue as paupers must generally apply to do so in person and provide evidence of their financial state.⁶⁴ If the application and ultimately the lawsuit are successful, however, the plaintiff will be expected to reimburse court fees out of any proceeds made from the case.⁶⁵

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?

Lawyers do not appear to be permitted to base their fees on the outcome of a case, but may consider the contingency of compensation in fixing charges.⁶⁶ However, civil courts do have full discretion to allocate costs between the parties, which allows for complainants to seek the recovery of fees and other expenses associated with bringing a case from the defending party.⁶⁷

The Free Legal Aid Committees of the Pakistan Bar Council maintain lists of lawyers who are prepared to take cases either without charge or at a reduced fee, and may request that any lawyer conduct one case a year on a pro bono basis.⁶⁸

Pro bono legal services, legal aid and case support may also be available from a wide variety of organisations working in human and children's rights. Among others, these include AGHS Legal Aid⁶⁹, the Human Rights Commission of Pakistan⁷⁰, Lawyers for Human Rights and Legal Aid⁷¹, the Pakistan International Human Rights Organization⁷², the Pakistan Lawyers Foundation⁷³, Sanjog⁷⁴, Sahil⁷⁵ and the Society for the Protection of the Rights of the Child.⁷⁶

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?

Time limits for bringing cases range from 30 days to 60 years, with most levels set

⁶³ Rules of Civil Procedure, Orders XXXVIII; Order VLIV.

⁶⁴ Rules of Civil Procedure, Order XXXVIII, Sections 2, 3, 6.

⁶⁵ Rules of Civil Procedure, Order XXXVIII, Section 10.

⁶⁶ Pakistan Legal Practitioners & Bar Councils Rules, 1976, Section 154, available at <http://pakistanbarcouncil.org/wp-content/uploads/2012/07/1976.pdf>; see also Seafarers' Rights, Using Lawyers in Pakistan, available at <http://www.seafarersrights.org/wp-content/uploads/downloads/2012/11/WEB-Using-Lawyers-in-Pakistan.pdf>.

⁶⁷ Code of Civil Procedure, Section 35. The amount of legal fees recoverable from an opposing party may be regulated by the High Court. Legal Practitioners and Bar Councils Act, 1973, Section 60.

⁶⁸ Pakistan Bar Council Free Legal Aid Rules, Section 8.

⁶⁹ <http://aghsblog.wordpress.com/>; <http://aghsru.org.pk/>.

⁷⁰ <http://www.hrcp-web.org/>.

⁷¹ <http://www.crin.org/organisations/vieworg.asp?id=630>.

⁷² <http://www.pihro.org/>.

⁷³ <http://plfpc.org/>.

⁷⁴ <http://www.sanjog.org/>.

⁷⁵ <http://www.sahil.org/>.

⁷⁶ <http://www.sparcpk.org/>.

between 1 and 3 years.⁷⁷ Notably, lawsuits challenging a public action and complaints to the Federal Ombudsman must typically be filed within 90 days.⁷⁸

Periods of limitation do not begin to run for children until they reach the age of majority, but may not extend the time limit for bringing suit more than three years beyond this point.⁷⁹ In addition, if a complainant can show sufficient cause for not meeting the usual deadline, courts may still be willing to accept the case for consideration.⁸⁰

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?

Documentary evidence and witness testimony may be admitted as set out in the Evidence Order.⁸¹ Children are permitted to testify provided that they can understand the questions asked of them and give rational answers to those questions.⁸² Witnesses are generally required to testify under oath, although children under 12 who understand the duty of speaking the truth may be permitted to give unsworn testimony.⁸³

Children may also be permitted to give evidence in closed proceedings. Under the Juvenile Justice System Ordinance, juvenile courts are not open to the general public, and proceedings may only be attended by children's guardians, persons involved in the case, or anyone else granted permission by the court to be present.⁸⁴ Family court proceedings may be held either wholly or partially in private⁸⁵, and criminal proceedings may be closed to the public at the discretion of the judge.⁸⁶ In civil proceedings, however, evidence must be generally be given in open court.⁸⁷

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

The Rules of Civil Procedure dictate that cases must be heard within 15 days of the evidence being completed and decided within 30 days of being heard.⁸⁸ Under the Juvenile Justice System Ordinance, juvenile courts must reach resolution on cases

⁷⁷ Limitation Act, 1908, Schedule 1, available at

<http://www.ma-law.org.pk/pdf/Limitation%20Act%20-%201908.pdf>.

⁷⁸ Limitation Act, Schedule 1; Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, Section 10.

⁷⁹ Limitation Act, Sections 6, 8.

⁸⁰ Limitation Act, Section 5; Rules of Civil Procedure, Order VII, Section 6.

⁸¹ Evidence Order ("Qanun-e-Shahadat"), 1984, available at

http://www.mpil.de/shared/data/pdf/qanun-e-shahadat_order.pdf.

⁸² Evidence Order, Section 3.

⁸³ Oaths Act, 1873, Section 5, available at

<http://punjablaws.punjab.gov.pk/public/dr/THE%20OATHS%20ACT.%201873.doc.pdf>.

⁸⁴ Juvenile Justice System Ordinance, Section 6. In addition, no identifying information may be published about Juvenile Court proceedings without authorisation: Section 8.

⁸⁵ Family Court Rules, 1965, Section 10, available at

http://sja.gos.pk/Statutes/Family%20Laws/THE_WEST_PAKISTAN_FAMILY_COURT_RULES_1965.htm.

⁸⁶ Code of Criminal Procedure, Section 352.

⁸⁷ Rules of Civil Procedure, Order XVIII, Section 4.

⁸⁸ Rules of Civil Procedure, Order XX, Section 1.

within 4 months⁸⁹, and cases to enforce fundamental constitutional rights in which the High Court issues interim measures must be decided within 6 months.⁹⁰ The Federal Ombudsman aims to resolve complaints within 3 to 6 months of receiving them.⁹¹

Nonetheless, there are reports of extensive backlogs and delays in both the civil and criminal justice systems.⁹²

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

The procedures for filing civil appeals are set out in the Rules of Civil Procedure.⁹³ Decisions and certain court orders made by subordinate civil courts may generally be appealed to the High Court, although appeals relating to money awards under a certain amount are more limited.⁹⁴ In addition, where a civil appeal is not possible, parties may seek review of an order or decision if new evidence becomes available.⁹⁵

Appellate courts have the power to affirm, modify or reverse civil decisions, to send issues back for trial, and, where necessary, to accept and review additional evidence.⁹⁶ Civil judgments of the High Court may generally be appealed to the Supreme Court where the High Court certifies that the case involves a “substantial question of law as to the interpretation of the Constitution” or the High Court decision reversed a lower court decision involving disputes valued over a certain amount.⁹⁷ The Supreme Court also has the power to permit appeals on application for cases that fall outside these grounds.⁹⁸

Criminal appeals are provided for under the Code of Criminal Procedure.⁹⁹ Certain appeals to the High Court and ultimately Supreme Court are guaranteed by right, while others may be permitted on a discretionary basis.¹⁰⁰

Time limits for filing appeals vary with the order or decision to be challenged, and for most civil and criminal proceedings range from 20 to 90 days.¹⁰¹ Appeals from the High Court must generally be filed with the Supreme Court within 60 days, but those related to questions of constitutional law must be filed within 30 days.¹⁰² Applications for review of decisions that may not otherwise be appealed must also be filed with the

⁸⁹ Juvenile Justice System Ordinance, Section 4.

⁹⁰ Constitution, Article 199.

⁹¹ See <http://www.mohtasib.gov.pk/>.

⁹² See, e.g., Transparency International, Global Corruption Report 2007: Corruption in Judicial Systems, available at

http://www.transparency.org/whatwedo/pub/global_corruption_report_2007_corruption_and_judicial_systems.

⁹³ Rules of Civil Procedure, Orders XLI, XLV.

⁹⁴ Code of Civil Procedure, Sections 96, 100, 101, 104; Rules of Civil Procedure, Order XLIII.

⁹⁵ Rules of Civil Procedure, Order XLVII.

⁹⁶ Code of Civil Procedure, Section 107; Rules of Civil Procedure, Order XLI, Sections 27-29, 32. Courts may also refer certain issues of law or interpretation to higher courts for review during the course of legal proceedings. Rules of Civil Procedure, Order XLVI.

⁹⁷ Code of Civil Procedure, Sections 109, 111; Constitution, Article 185.

⁹⁸ Constitution, Article 185.

⁹⁹ Code of Criminal Procedure, Chapter XXXI.

¹⁰⁰ Code of Criminal Procedure, Section 411-A; Constitution, Article 185.

¹⁰¹ Limitation Act, Schedule 1, Sections 151-179.

¹⁰² Supreme Court Rules, 1980, Order XII, Section 2; Order XIII, Section 1; Order XXII, Section 1; Order XXIII, Section 1.

Supreme Court within 30 days.¹⁰³ Family court decisions may be appealed to either the High Court or the District Court within 30 days.¹⁰⁴ Appeals from Juvenile Court decisions must be filed within 30 days as dictated by the Code of Criminal Procedure.¹⁰⁵ Courts may, however, still accept an appeal after this time limit has lapsed where there are good reasons behind the delay.¹⁰⁶

- 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?

Because the Pakistani justice system relies on precedent, courts must generally follow their own and higher courts' decisions.¹⁰⁷ This means that a negative decision for children's rights from the Supreme Court could have detrimental effects across the country for many years.

In addition, concerns have been expressed over the independence of Pakistan's judiciary from Government influence at the higher levels and endemic corruption at the lower levels.¹⁰⁸ The Government has also been known to take action against prominent judges following politically unpopular decisions.¹⁰⁹

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

While there are extensive provisions for the execution of court decrees and orders¹¹⁰, there have been reports of lengthy delays in the execution of judgments before Pakistani courts.¹¹¹

- 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.

Pakistan operates a separate Federal Shariat Court to review legislation and certain court decisions for consistency with religious law.¹¹²

A number of bills relevant to children's rights and access to justice are currently under consideration. Most notably, a long-debated child protection bill would create separate

¹⁰³ Supreme Court Rules, Order XXVI, Section 1.

¹⁰⁴ Family Courts Act, Section 14; Family Court Rules, Section 22.

¹⁰⁵ Juvenile Justice System Ordinance, Section 13.

¹⁰⁶ Limitation Act, Section 5.

¹⁰⁷ See Constitution, Articles 189, 201.

¹⁰⁸ See, e.g., Transparency International, Global Corruption Report 2007: Corruption in Judicial Systems; Public Radio International, Pakistani judicial system groans under corruption, volume of cases (2012), available at

<http://www.pri.org/stories/world/asia/pakistani-judicial-system-groans-under-corruption-volume-of-cases-8268.html>.

¹⁰⁹ See, e.g., U.S. Law Library of Congress, Suspension and Reinstatement of the Chief Justice of Pakistan: From Judicial Crisis to Restoring Judicial Independence? (2007), available at <http://www.loc.gov/law/help/pakistan-justice.php>.

¹¹⁰ See, e.g., Rules of Civil Procedure, Order XXI.

¹¹¹ See, e.g., Pakistani Law Firm, Criminal Justice System in Pakistan (2012), available at <https://pakistanilaws.wordpress.com/tag/criminal-justice-system-in-pakistan/>.

¹¹² See Constitution, Chapter 3A.

child protection courts for children in need of care.¹¹³ As at August 2015, the existing national and provincial child protection centres and units set up under the various provincial acts are insufficient to reach out to and meet all needs of children. There are no government-run centres or facilities for children in Balochistan, Gilgit Baltistan, Fata and Azad Jammu and Kashmir, and the situation in Sindh too appears bleak.¹¹⁴

Regarding children in conflict with the law, the vast majority have not been convicted of any offence as yet but are awaiting the conclusion of their trials. Pakistan's criminal justice system is fraught with delays. Children who are arrested are subject to detention in conditions that usually have a detrimental effect upon the child's psychological and physical wellbeing. They face threats of physical abuse from investigating and detaining police officers and fellow inmates who may or may not be juveniles themselves. When registering the First Information Report (FIR), the local police often do not determine the age of the child, therefore the case is treated in the same way as an adult's case by the police and the judges.¹¹⁵

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

¹¹³ See Protection of Children Bill, 2009, available at http://www.na.gov.pk/uploads/documents/1302215481_467.pdf

¹¹⁴ Comments provided by Waheed Ahmad, Advocate of the High Court and Chairman of the Child Rights Committee, Lahore Bar Association, August 2015.

¹¹⁵ Ibid.