

ACCESS TO JUSTICE FOR CHILDREN: SAUDI ARABIA

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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?

Saudi Arabia (or “KSA”) ratified the CRC on 26 January 1996,¹ whilst inserting a reservation in relation to Shari'ah law, which states: “[The Government of Saudi Arabia enters] reservations with respect to all such articles as are in conflict with the provisions of Islamic law”.²

According to the Basic Law of Governance of Saudi Arabia, international agreements are approved and amended by Royal Decree and become effective from the date of publication in the Official Gazette.³ This indicates that, theoretically, the CRC has the same legal status as domestic legislation and can be directly invoked in domestic court proceedings.⁴

However, on many occasions, the UN Committee on the Rights of the Child (“CRC Committee”) has raised its concerns with regard to the lack of progress in reforming domestic legislation and the general reservation to the Convention insofar as it conflicts with Islamic law. This has raised serious concerns as to the compatibility of domestic law with the object and purpose of the Convention.⁵ KSA has ratified the Optional Protocols to the Convention on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, but so far has not reported to the CRC Committee on the implementation of these protocols.⁶

B. Does the CRC take precedence over national law?

¹ Office of the High Commissioner of Human Rights: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=152&Lang=en, (accessed June 6, 2015).

² United National Treaty Collection: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDec, (accessed June 3, 2015).

³ Basic Law of Governance Royal Order No. (A/91) 27 Sha’ban 1412H – 1 March 1992 Published in Umm al Qura Gazette No. 3397. 02 Ramadan 1412H - 5 March 1992, Articles 70 and 71, available at: <http://www.shura.gov.sa/wps/wcm/connect/ShuraArabic/internet/Laws+and+Regulations/The+Basic+Law+Of+Government/The+Basic+Law+Of+Government/> (Arabic), <http://www.wipo.int/edocs/lexdocs/laws/en/sa/sa016en.pdf> (English).

⁴ UN Committee on the Rights of the Child, *Summary Record of the 1114th Meeting (Chamber A)*, CRC/C/SR.1114, 30 January 2006, available at: http://tbinternet.ohchr.org/_layouts/bodyexternal/Download.aspx?symbolno=CRC%2fC%2fSR.1114&Lang=en; For further details, see: Human Rights Watch, *Adults Before Their Time*, 2008, available at: <http://www.hrw.org/reports/2008/03/24/adults-their-time>.

⁵ CRIN, *Saudi Arabia: National laws*, 2012, available at: <https://www.crin.org/en/library/publications/saudi-arabia-national-laws>.

⁶ OHCHR, *Ratification, Reporting & Documentation for Saudi Arabia*, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx.

The CRC does not take precedence over national laws. If there is a conflict between the CRC and Shari'ah law, Shari'ah law always prevails.

Although it remains unclear whether the CRC can be raised in national courts with regard to regulations that originate from the King, Council of Minister and the Consultative Council,⁷ Article 14 of the 2013 Law of Protection from Abuse states that the provisions and procedures provided for in the mentioned law shall not prejudice the obligations of other competent authorities, nor shall they prejudice any more favourable right of protection from abuse stipulated in another law or an international convention to which the Kingdom is a party.⁸

Similar wording can be found in the Law of the Protection of the Child⁹ ("Child Protection Law"), issued in November 2014. Article 21 states that the rules and procedures of the Law shall not prejudice any more favourable protection for the child stated in any other law or convention that the Kingdom is party to. Further, one of the objectives of the law, as stated under Article 2, is: "Reaffirming Islamic Shari'ah principles, laws and international conventions that the Kingdom is party to, which guarantee the rights of the child and protects it from all forms of abuse and negligence".

Despite the existence of such provisions, judges have broad discretion in deciding whether to uphold articles of the CRC, based on the merits of each case and in accordance with Shari'ah principles.

C. Has the CRC been incorporated into national law?

The CRC was automatically incorporated into national law upon ratification and official publication (see part I.A above). Furthermore, elements of the CRC have been incorporated into national law through a number of laws and regulations including the Law of Protection from Abuse and the Child Protection Law.

However, the general reservation made by Saudi Arabia means that the Convention may only be applied as long as it does not conflict with Shari'ah. A simple example of a principle of the CRC which may arguably be in conflict with certain interpretations of Shari'ah, is the non-discrimination of children based on sex, as there may be differing rules applicable to girls and boys in cases of custody for instance. In 2005, the Committee of the Rights of the Child condemned the treatment of children by Saudi Arabia and strongly opposed the practice of imposing the death penalty on juveniles, a practice that is claimed to be in accordance with Shari'ah law.¹⁰

In its Concluding Observations of 2006, the Committee on the Rights of the Child welcomed the work of the Saudi National Commission for Childhood, which was preparing a comprehensive manual of domestic legal instruments related to children

⁷ CRIN.

⁸ Law of Protection from Abuse, Royal Decree No. M/52, Dated 15/11/1434H – corresponding to 21 September 2013 G, available at: <http://www.e-moh.com/vb/t18865/>.

⁹ Law of the Protection of the Child, issued by Royal Decree No. M/14, dated 03/02/1436 H (corresponding to 25 November 2014), available in Arabic at: http://mosa.gov.sa/portal/uploads/smartsection/13_NHT.pdf

¹⁰ Human Rights Watch, *Saudi Arabia: Follow U.N. Call to End Juvenile Death Penalty*, 2006, <http://www.hrw.org/news/2006/01/28/saudi-arabia-follow-un-call-end-juvenile-death-penalty>.

with a view to amending laws to render them fully compatible with the Convention.¹¹ However, the Committee reiterated its concerns from the previous report with regard to the lack of progress in reforming domestic legislation and the general reservation to the Convention insofar as it conflicts with Islamic law. In its thematic observations on the State's report, the Committee urged Saudi Arabia to amend legislation with regards to most of the areas covered.¹²

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

Provided that the provisions of the CRC do not conflict with Shari'ah law and if they are found to be more beneficial than domestic laws, they may be enforced in the courts.¹³

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

Research suggests that the CRC has not been cited in domestic court decisions. Due to the lack of a transparent system of recording and publishing court rulings especially in cases involving children, the incidents where judges documented their reasoning while citing provisions of the CRC directly, if any, cannot be confirmed.

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?

Two types of lawsuits can be filed in domestic courts to challenge violations of children's rights: criminal lawsuits or personal status claims.

A criminal lawsuit is filed when a child has suffered from emotional or physical violence. It is either filed by the public prosecutor (and thus does not require the complaint of the victim), or by legal guardians or tutors of the child. The public prosecution can also conduct an investigation into the reasons behind the abandonment of legal guardians over the child and has the right to file a lawsuit to punish those who refrained from their obligations.¹⁴ If the public lawsuit is dropped (e.g. due to the lack of evidence), the child's guardian, mother or his/her relatives have the right to file a private criminal lawsuit and the court shall take it into consideration.¹⁵ The criminal judge can also appoint a person to demand a change of custody if the environment in which the child lives is unsafe.

Personal status lawsuits can only be filed by the parties and not by the public prosecutor. Shari'ah procedure is applicable to these lawsuits and cases usually concern custody, visitation rights, housing, breastfeeding sustenance and alimony.¹⁶ If the child's

¹¹ UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Saudi Arabia*, CRC/C/SAU/CO/2, 17 March 2006, para. 9, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSAU%2fCO%2f2&Lang=en.

¹² Ibid., paras 7, 8, 10.

¹³ Law of Protection from Abuse.

¹⁴ Appellate judge Saad Al-Haqabani, p. 13.

¹⁵ Ibid.

¹⁶ Ibid., p. 12.

guardian, relatives or parents refuse to file these types of cases, children can be represented by the Ministry of Social Affairs. Lawsuits concerning monetary rights of children are also filed in front of Shari'ah courts, e.g. disputes over property owned by a child.

Various non-judicial mechanisms exist to report child abuse, which may then be referred to a court by an authority. Under the Child Protection Law, any person, including a child, who witnesses child abuse or neglect may report that incident. The Law states that the relevant authorities shall facilitate the reporting procedures specially if the violation was reported by the abused child. The Bureau of Investigation and Public Prosecution ("BIPP") is the relevant authority responsible for investigating any violation of the provisions of the law and must file a lawsuit against the perpetrator at the relevant court.¹⁷ The Law states that the Implementing Regulation shall specify the reporting procedures, however the regulation has not been issued yet, therefore it is unclear how the child or any concerned party can report violations under this law.

Under the Protection from Abuse Law, any individual who witnesses abuse must report the incident to the authorities so that formal action can be taken.¹⁸ The Protection from Abuse Law broadly defines the term "abuse" to include a number of actions and behaviours, such as negligence of a representative or a guardian in protecting the rights of the child.¹⁹ The Department of Social Protection, which offers assistance to any victim of domestic violence and abuse, including children,²⁰ offers a toll free number (No 1919) and a website (www.hemayah.org) to receive a report by any individual who has witnessed abuse or domestic violence.²¹ Alternatively, an individual may submit a report to the Police, Ministry of Social Affairs ("MOSA"), National Commission For Human Rights,²² BIPP, Social Protection Committees in the different KSA regions, regional governing authorities, National Family Security Program,²³ hospitals, educational institutions, charities, or National Association for Human Rights.²⁴

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?

There are no such provisions in the Law of Procedure before Shari'ah Courts²⁵ or the Criminal Procedure Law²⁶ that explicitly mention that a child is not permitted to bring a case on her/his own behalf. However, Article 149 of the Criminal Procedure Law implicitly refers to this by providing that if the person who suffered from harm lacks

¹⁷ Child Protection Law, Article 23.

¹⁸ Law of Protection from Abuse, Articles 3-4.

¹⁹ Ibid., Article 1.

²⁰ For more Information, see <http://mosa.gov.sa/portal/modules/smartsection/item.php?itemid=13>

²¹ For more Information, see <http://mosa.gov.sa/portal/modules/smartsection/item.php?itemid=13>

²² <http://www.hrc.gov.sa/sites/ar/default1.aspx>.

²³ <http://nfsp.org.sa/>.

²⁴ Ministry of Social Affairs official website:

<http://mosa.gov.sa/portal/modules/smartsection/item.php?itemid=13>

²⁵ Law of Procedure before Shari'ah Courts enacted by Royal Decree No (M/ 1) dated 22/01/1435H, corresponding to 26/11/2013 G, available at: http://www.moj.gov.sa:50/downloads/Tanfeeth_list_2.pdf.

²⁶ Law of Criminal Procedure promulgated by Royal Decree No (M/2) dated 22/01/1435 H, corresponding to 26/11/2013 G, available at: <http://www.moj.gov.sa:50/downloads/file1.pdf> (Arabic), http://www1.umn.edu/humanrts/research/saudiArabia/criminal_procedure.html (English).

legal capacity and has no guardian or representative, a competent court in which the criminal action has been filed shall appoint a person to seek a private right of action on his/her behalf.

In light of the above, it appears that the guardian or representative of a child is the responsible party for raising a claim before a competent court in order to seek the enforcement of the child's rights. If there is no guardian or representative for the child (or the guardian himself or herself was the perpetrator), a concerned court will be in charge of appointing a representative to pursue the claim.²⁷ Legal action for child abuse could be brought by a concerned authority if it is found that the child's guardian or representative is passive in the abuse incident of the concerned child. Furthermore, a negligent guardian or representative could be subject to severe penalties according to the Protection from Abuse Law.²⁸

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

There are no particular stipulations regarding infants or younger children. Broadly speaking, a claim could be raised on behalf of young children by their guardian. In case there is no guardian, the MOSA should take on this responsibility and act as guardian for the child.²⁹

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

The concept of legal aid is not recognised under Saudi law. Moreover, there is no government body responsible for providing such a fund for vulnerable groups such as low income individuals or families. There is no such provision in any applicable law or regulation in KSA that stipulates free or subsidised legal assistance to be provided specifically to children or their representatives to access the legal system.

The new Criminal Procedure Law refers to the right to receive legal assistance as a right for persons with a low income, but this right is limited to cases of serious crimes.³⁰ It is not yet clear how this provision will be applied and administered in practice.

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)?

There are no other such conditions or limits on children or their representatives. If a child does not have a guardian or tutor, or if he or she was abused by his or her guardian or one of his parents, the court appoints a legal representative to defend the child's rights.³¹

²⁷ Law of Protection from Abuse.

²⁸ Ibid., Article 3.

²⁹ Regulatory list of the Protection from Abuse, available at: http://mosa.gov.sa/portal/uploads/smartsection/13_LTNHE.pdf.

³⁰ The Law of Criminal Procedure, Article 139.

³¹ Court Procedures in Cases of Child Abuse, page 6.

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?

There is no constitutional court in Saudi Arabia where individuals would be able to challenge laws and regulations based on constitutional grounds. However, the Board of Grievances has jurisdiction over claims that attempt to challenge or reverse an administrative decision.³² Individuals may seek compensation by the Board of Grievances if they are able to prove that they have incurred direct and actual loss as a result of an administrative decision.³³

A large area of the law of KSA is regulated by administrative decisions which include ministerial decisions. Nearly every major regulation that is issued by royal decree is complemented by 'implementing rules' that attempt to further explain the provisions of the regulation. Such implementing rules are often issued by a ministerial decision which can be challenged before the Administrative Court by virtue of being an administrative decision.³⁴ However, in light of the lack of a proper constitutional court or an alternative established legal vehicle, challenging regulations issued by royal decrees remains difficult. A regulation that is issued by royal decree can only be amended or revoked by a subsequent royal decree, typically issued by the King.

The National Society for Human Rights,³⁵ established by the government, can receive complaints by children or their parents, relatives, neighbours or teachers. The Society can also monitor child abuse cases.³⁶ In 2008, a women's branch was established to investigate cases of human rights violations against women and children, but it has not consistently carried out serious investigations or brought cases against perpetrators.³⁷

Other non-judicial mechanisms may be available such as petitioning to the King, a minister, or to the Shoura Council (a consultative council appointed by the King). However, the results and effectiveness of such petitioning mechanisms remain largely uncertain and activists remain generally sceptical of their usefulness in effecting real social change.

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

³² Law of the Board of Grievances, Royal decree no. M/51, 17 Rajab 1402, corresponding to 10 May 1982, available at: https://www.saudiembassy.net/about/country-information/laws/Board_of_grievances_law.aspx.

³³ Ibid., Article 8.

³⁴ Ibid.

³⁵ National Society for Human Rights, available at: <http://nshr.org.sa/>.

³⁶ *Combined third and fourth periodic reports of Saudi Arabia to the UN Committee on the Rights of the Child*, CRC/C/SAU/3-4, 20 Feb 2014, para. 33, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSAU%2f3-4&Lang=en.

³⁷ Freedom House, *Freedom in the World 2015: Saudi Arabia*, available at: <https://freedomhouse.org/report/freedom-world/2015/saudi-arabia#.VXr5gLzL-p8>.

Administrative courts may issue decisions that revoke administrative measures.³⁸ Further, courts may order the monetary compensation of a claimant. In quantifying such damages, the courts would only consider actual and direct losses. Indirect and consequential losses are not considered to be retrievable damages under Shari'ah law.³⁹

Judges can also order the temporary housing of a child in a public institution, as well as order unexpected detections and investigations.⁴⁰ Immediate execution of these measures can be ordered.⁴¹

Under the Protection from Abuse Law, unspecified government agencies may intervene in cases of domestic abuse by ensuring that victims have access to adequate health services, taking measures to prevent the recurrence of abuse, providing societal and family counselling, summoning the offender to sign pledges or obliging them to undergo psychological treatment or rehabilitation. If the agency finds that the abuse has reached a level where it threatens the life, safety or health of the victim, it can further refer the case to an administrative authority or security services, which can make an emergency intervention. Where it determines, through its own discretion, that the abuse has reached a level of criminality, it can refer the offender to criminal justice authorities for arrest and prosecution. The penalty for domestic abuse is between one month and one year in prison and/or a fine of between 5,000 (\$1333) and 50,000 (\$13,330) Saudi Riyals, unless Sharia law provides for a harsher sentence. Judges can double the specified penalties for repeat offenders.⁴²

Under the Child Protection Law, the competent court will exercise its discretion in determining a punishment for the violation of any right set out in the law.⁴³

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?

The Law of Procedure before Shari'ah Courts states that it is not permissible to bring a claim in which a person or entity does not have a real interest.⁴⁴ However, bringing a claim based on 'potential interest' may be sufficient.⁴⁵ The presiding judge would have discretion to decide whether a claimant has what would be viewed as 'real interest' in a case. In light of the inefficiencies in recording cases and difficulties in accessing court decisions, it would be difficult to detect a pattern or even the existence of a pattern in the decisions of judges on such cases.

According to Article 60 of the Law of Procedures before the Board of Grievances, matters that are not regulated under the said regulations fall under the rules of the Law of Procedure before Shari'ah Courts. Therefore, Article 3 of the Law of Procedure before Shari'ah Courts applies also to administrative cases and thus could limit parties

³⁸ Ibid.

³⁹ Al Jadaan & Partners Law Firm, *Overview of Saudi Domestic and Foreign Corporate Laws*, available at: http://www.aljadaan.com/files/file/Overview_of_the_Saudi_Arabian_Legal_System.pdf.

⁴⁰ Court Procedures in Cases of Child Abuse, page 10.

⁴¹ Ibid., page 15.

⁴² Law of Protection from Abuse, Article 2.

⁴³ Child Protection Law, Article 23.

⁴⁴ Law of Procedure before Shari'ah Courts, Article 3.

⁴⁵ Ibid., Article 4

with no or remote interest in a claim to successfully bring a claim against an administrative decision.

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

Collective action or group litigation is not possible in Saudi Arabia. The previous version of the Law of Procedure before Shari'ah Courts contained a provision that explicitly entitled a minimum of three citizens to collectively file a claim solely on the basis of public interest provided that there is no official authority responsible for that relevant public interest.⁴⁶ However, the new Law of Procedure before Shari'ah Courts promulgated in 2013 removed reference to such right to collective action.

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

Third parties to cases including non-governmental organisations (NGOs) are generally restricted from taking part in the judicial process. Saudi Arabia has no associations law and has historically approved licenses only for charitable organisations.⁴⁷

Practically speaking, utilising litigation for the purposes of enforcing human rights and instigating reform has not been commonly used by human rights practitioners in KSA. The Saudi judicial system has not been sensitive in regards to human rights questions and abuses, which hinders NGOs from resorting to litigation.⁴⁸

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?

Cases that involve issues related to custody and family law would be brought in front of the personal status courts while cases that involve violence against children would typically be brought in front of a criminal court.⁴⁹

Currently, however, no stand-alone criminal court exists in the country and, depending on the seriousness of the case, a case regarding child abuse may be brought in front of the general courts or the district court.⁵⁰ The new Law of the Judiciary⁵¹ provides for a new court system where criminal cases are to be heard at a designated criminal court. Even though the law has come into force, its application remains partial and criminal cases are still being heard at the general courts and the district court, in accordance with

⁴⁶ Ibid., Article 5.

⁴⁷ Freedom House, *Freedom in the World 2015: Saudi Arabia*.

⁴⁸ Human Rights Watch, *World Report 2015*, p. 460, available at:

http://www.hrw.org/sites/default/files/whhttp://www.saudilegal.com/saudilaw/19_law.htmlr2015_web.pdf.

⁴⁹ The Law on the Protection from Abuse; Court Procedures in Cases of Child Abuse.

⁵⁰ Ibid.

⁵¹ Law of the Judiciary, issued by Royal Decree number M/71 dated 19/9/1428H, corresponding to 1 October 2010 G, Article 9, available at: http://www.moj.gov.sa/ar-sa/pages/judgment_systems.aspx.

the older court system. Ultimately, all criminal cases will be heard at a stand-alone criminal court as per the new Law of the Judiciary.

Claims against public authorities must be preceded by filing a complaint with the concerned authority, and a lawsuit can only be initiated once the complaint has been rejected or 60 days have passed without a response from the authority.⁵²

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

See part II.D above.

There are no costs for filing cases. Parties would only have to cover the cost of legal counsel, if they elect to seek legal representation.

- 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?

Currently there is nothing in the laws of Saudi Arabia requiring legal professionals to take on mandatory pro-bono work. The concept of pro bono has been introduced recently through a draft regulation prepared by the Ministry of Justice.⁵³ This draft stipulates that every lawyer shall provide free legal services (consultations and representation in court) to at least nine less privileged litigants a year.

Furthermore, some lawyers provide legal services on a voluntary basis either independently or in coordination with existing organisations. For example, the National Society for Human Rights ("NSHR"), an NGO, has an arrangement with the Lawyers Committee at the Chamber of Commerce by which NSHR at times refers cases that require legal assistance to certain members of that Committee. However, such voluntary pro bono work remains on a relatively low scale compared to the existing need for free or subsidised legal aid. The NSHR also offers legal advice to those in need by assisting them with the necessary procedures for filing complaints or bringing claims at the appropriate forum.

- 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?

⁵² Chambers & Partners, 'Saudi Arabia - law and practice', 2014-2015, available at: http://www.chambersandpartners.com/guide/practice-guides/location/241/6622/1434-200#questiongroup_290; Saudi Legal, 'Saudi Arabian law overview', available at: http://www.saudilegal.com/saudilaw/19_law.html.

⁵³ H. Toumi, *Saudi lawyers to offer legal help to the poor*, 15 February 2015, available at: <http://gulffnews.com/news/gulf/saudi-arabia/saudi-lawyers-to-offer-legal-help-to-the-poor-1.1457124>; we have been unable to obtain a copy of the draft law.

Neither the Criminal Procedure Law nor the Criminal Code refer to statutes of limitation for filing a case. In addition, Islamic law as applied in Saudi Arabia generally does not recognise that legal rights can expire by the passage of time.

Yet there exists the principle of “non-hearing of a case” (*A’adam sama’a Al Da’awa*),⁵⁴ meaning a claimant loses the right to bring a claim due to lack of action, which can result in a case becoming time-barred. There is no clear stipulation as to when this doctrine may be invoked and it depends on the facts of the case, and the court’s evaluation as to whether the lack of action should lead to losing the right to action.⁵⁵ It remains under the discretion of the courts whether to hear a case.⁵⁶

There are no explicit provisions in KSA’s laws that would allow young adults to bring cases about violations of their rights as children.

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?

Saudi Arabia lacks a codified civil law and therefore rules of evidence are extracted from the Law of Procedure before Shari’ah Courts. Accordingly, the following methods of evidence are admissible:

- Interrogation and confession⁵⁷
- Oath⁵⁸
- Preview⁵⁹
- Testimony⁶⁰
- Expertise⁶¹
- Documented evidence⁶²
- Clues⁶³

Children can be questioned in the absence of a lawyer.⁶⁴ Even though representatives of the MOSA are supposed to be present during interrogations inside juvenile detention centres, Human Rights Watch has documented incidents in which those representatives were either not helpful to children or were not present in the first place as children were

⁵⁴ Abdel Jawad, *Time limitation of crime and punishment in Islamic jurisprudence (Taqadom Al Jarima Wal Oukouba Fil Fiqh al Islami)*, 2010, available at:

<http://www.afaqlaws.net/Views/ViewResearch.aspx?artid=4>.

⁵⁵ Ibid.

⁵⁶ H. A. Ghazzawi et. al, *Legal Practice Guide 2014-2015*, available at:

<http://www.chambersandpartners.co.uk/guide/practice-guides/location/241/6622/1434-200>.

⁵⁷ The Law of Procedure before Shari’ah Courts, Articles 104-110.

⁵⁸ Ibid., Articles 111-115.

⁵⁹ Ibid., Articles 116-120.

⁶⁰ Ibid., Articles 121-127.

⁶¹ Ibid., Articles 128-138.

⁶² Ibid., Articles 139-155.

⁶³ Ibid., Articles 156-158.

⁶⁴ Human Rights Watch, *Adults Before their Time: Children in Saudi Arabia’s Criminal Justice System*, 2008, p. 52, available at:

https://books.google.co.uk/books?id=V_pslzzyfc0C&printsec=frontcover#v=onepage&q&f=false.

questioned outside allocated juvenile centres.⁶⁵

There are no further particular rules, procedures or practices for dealing with evidence that is produced or presented by children.

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

It is unclear how long it might take to get a decision from the court as to whether there has been a violation. According to the procedures in criminal cases involving violence against children, trial dates are set after eight days from the date of accusation. This period can be shortened to 24 hours as long as parties are notified. In front of criminal courts, this period is no less than three days, and this period can also be shortened to one hour.⁶⁶ In a circular issued by the Ministry of Justice, judges were instructed to pay special attention to issue quick decisions whenever possible in cases involving children. The same circular had called for the handling of cases involving children in a secret hearing which guardians or witnesses can attend upon the discretion of the judge.⁶⁷

In relation to criminal cases specifically, according to our unofficial communication with an officer at the BIPP, criminal cases involving violence against children are generally expedited and decided within a shorter timeframe (in a matter of months). Further, the BIPP and judges presiding on certain cases at times receive Royal Orders ordering an expedited ruling on a specific case. A Royal Order would usually be issued in regards to cases that attract a lot of media attention. The officer further explained that delays may be caused by the need for deeper investigations and the gathering of additional evidence.

Generally speaking, litigation in Saudi Arabia is a lengthy and exhaustive process, especially in light of the extensive case load and the current inefficiencies in the court system. Timeframes for issuing decisions vary from one case to another depending on the merits of each case.

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

In principle, it is possible to appeal any decision, including decisions concerning children's rights, within 30 days after its issuance by the court.⁶⁸ If a litigant does not file an appeal during this period he or she loses the right to appeal.⁶⁹

Regarding proceedings before Shari'ah courts, all judgments can be appealed except for judgments in petty cases as defined by the Supreme Judicial Council in a decision made by its general panel at the recommendation of the Minister of Justice.⁷⁰ Moreover, if the

⁶⁵ Ibid.

⁶⁶ Appellate judge Saad Al-Haqabani, p. 15.

⁶⁷ Al-Sayegh, *Child rights in front of courts: Jurisprudence and regulations with applications in Shari'ah courts*, Rajab 1431 H, June 2010 G, p. 23, available at: http://adlm.moj.gov.sa/upload_active/%D9%86%D8%AD%D9%88%20%D8%AB%D9%82%D8%A7%D9%81%D8%A9%20%D9%82%D8%B6%D8%A7%D8%A6%D9%8A%D8%A97.pdf.

⁶⁸ The Law of Procedure before Shari'ah Courts, Article 178.

⁶⁹ Ibid.

⁷⁰ Ibid., Article 179.

party against whom judgment is rendered is an endowment administrator, guardian, trustee, official of the public treasury, or the representative of a government agency, or if he or she was absent, the court must forward the judgment to the appellate court for review regardless of the subject matter of the judgment.⁷¹

In criminal cases, the accused, the prosecutor and the claimant of the private prosecution are entitled to appeal any judgment whether it relates to conviction, acquittal, or lack of jurisdiction.⁷² When the case involves a death sentence, stoning, amputation or retaliatory punishment (“qisas”), the judgment must be appealed even if no litigant so requests.⁷³ Sentences which carry the death penalty, stoning, amputation or retaliatory punishment that have been affirmed by an appellate court are not final unless affirmed by the Permanent Panel of the Supreme Judicial Council.⁷⁴

The highest court within the hierarchy of the judicial system in KSA is the High Court, which is equivalent to a supreme court or court of last resort in some jurisdictions.⁷⁵ The relevant parties to the case have a right to appeal the judgment issued by the court of appeal to the High Court in one of the following circumstances:

- Where such a judgment is contrary to Sharia or relevant laws;
- Where a court that rendered the judgment has not been established in accordance with applicable laws;
- Where a judgment is rendered by a court that has no jurisdiction over the matter; or
- Where there is an error in either fact or law.

As at the date of this report, the High Court has not been fully operational, hence there is still ambiguity in its rules and jurisdiction.

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?

Since Saudi Arabia follows a civil law system, there is no system of binding precedent. Therefore, the impact of a negative decision may be less significant than it would be in common law jurisdictions.

The judiciary, which must coordinate its decisions with the executive branch, is not independent,⁷⁶ which makes positive decisions in favour of some crucial children’s rights, such as freedom of expression and belief, freedom from discrimination organisational rights or rights of girls highly unlikely.

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

Freedom House in 2012 documented the weakness of compliance mechanisms to

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid., Article 194.

⁷⁴ Ibid., Article 11.

⁷⁵ Article 9 Law of the Judiciary issued by Royal Decree number M/71 dated 19/9/1428 H, corresponding to 1 October 2007 G

⁷⁶ Freedom House, *Freedom in the World 2015: Saudi Arabia*.

implement judicial rulings.⁷⁷ Since these reports, a new Enforcement Law has been introduced, which creates specialised forums to enforce national or international judgments, as well as foreign arbitral awards.⁷⁸

The Execution Judge is responsible for, among other things, enforcing and overseeing the enforcement of all judgments and awards in the KSA, except for judgments and decisions related to administrative and criminal cases.⁷⁹ Therefore, if the case is defined as a criminal case, the enforcement of the decision shall be through the Administrative Governor, but if it is a civil case (e.g. a child custody case), the Execution Judge as a matter of urgency can take all possible means to speed up the process of enforcing the decision, either through the police or even by entering the convict's residence.⁸⁰

In theory, the new Enforcement Law means that the process of enforcing judgments and awards in the KSA is significantly improved and awards should be far less susceptible to enforcement challenges than previously. However, the practical aspects of the new Law await the test of practical application in the Saudi courts.⁸¹

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.

Below is a list of considerations that are relevant to the matter in question and needs to be considered:

- The primary source of law in Saudi Arabia is Islamic law, Shari'ah. In addition to Shari'ah, laws in Saudi Arabia are derived from enacted legislation passed by the Government that must conform to Shari'ah principles. If there is a conflict between Shari'ah law and enacted law, Shari'ah law prevails. Where there is no enacted legislation in relation to a particular issue, reference is made to relevant Shari'ah laws.
- Saudi Arabia lacks a codified civil code or criminal code. Substantive civil and criminal law is derived directly from Shari'ah sources and therefore may contain different rules. There are however, procedural laws that govern the proceedings of civil, criminal, and administrative laws including the Law of Criminal Procedure and the Law of Procedure before Shari'ah Courts.
- As cited above, in relation to children's rights, two of the most relevant laws are the Child Protection Law and the Law of Protection from Abuse.
- Unlike other jurisdictions, Saudi Arabia lacks a legal precedent system (a system of recording and reporting judicial opinions and outcomes). In the absence of such a precedent system, it can be difficult to predict a court's interpretation of

⁷⁷ Freedom House, *Countries at the Crossroads 2012: Saudi Arabia*, available at:

https://freedomhouse.org/report/countries-crossroads/2012/saudi-arabia#.VXr_rzL-p8.

⁷⁸ The Law on Enforcement promulgated by Royal Decree No (M/53) dated 13/8/1433 H, corresponding to (03/07/2012 G, available at: <http://www.moj.gov.sa:50/downloads/tanfidsystem.pdf>.

⁷⁹ Ibid., Article 2.

⁸⁰ Ibid., Article 3.

⁸¹ DLA Piper official website, see: http://www.dlapiper.com/en/uk/insights/publications/2013/06/qualitative-shift-saudi-arabias-new-enforcement-___/.

complex issues that may arise in any given fact scenario.

- Judges in Saudi Arabia have broad discretionary authority. This in addition to the lack of codified substantive civil and criminal codes may lead to inconsistencies in the attitude of courts towards children and therefore it can be difficult to generalise practices and reach definitive conclusions based on a single or a number of court cases.
- Cases involving children are often held in private sessions, with access by members of the public often prohibited to protect the privacy of the child. In the absence of publicly available court records, it can be difficult to reach conclusions as to the reality and shortcomings of children's access to justice in KSA.
- Unlike the more defined areas of Saudi Arabian law, such as corporate and commercial law, this area of the law which involves dealing with children is heavily influenced by the legal culture which often defines the boundaries of acceptable behaviour towards children, the role of the parents and the limitations of the state/court, amongst various other elements. Such cultural norms and principles which may not always be in line with human rights norms need to be properly understood and addressed.
- There is no clear provision in Saudi Law that sets the age of majority. Even though some laws, such as Article 2 of the Saudi Labour Law, define the age of minority to mean any person below 18 years of age,⁸² the age of majority recognised by the court remains subject to the judges' absolute discretion based on a number of factors, such as the attainment of puberty or the appearance of the child.⁸³ Human Rights Watch reported on a decree of the Council of Senior Scholars in 2002 which stipulates four conditions to the attainment of majority in “qisas” cases,⁸⁴ i.e. cases that carry a potential death sentence, stoning, amputation or retaliatory punishment. These include turning 15 years of age, the occurrence of wet dreams, the appearance of pubic hair, or menstruation for girls.
- As judges have discretionary power when presiding over criminal cases involving children to decide that a child has reached the age of majority at an earlier age, capital punishment is imposed for offences committed by persons before they have reached the age of 18.⁸⁵ Corporal punishment of children is lawful and widely used in the home and it is a lawful penal sanction.⁸⁶
- De jure and de facto discrimination against girls and de facto discrimination against children born out of wedlock were issues of particular concern to the CRC Committee in its last review of Saudi Arabia's compliance with the CRC, as well as disparities in the enjoyment of economic and social rights experienced

⁸² Labour Law Royal Decree No. M/51 23 Sha'ban 1426, corresponding to 27 September 2005, available at: <http://www.gulftalent.com/repository/ext/Saudi-Labour-Law.pdf>.

⁸³ Human Rights Watch, *Iran and Saudi Arabia: Laws that Treat Children as Adults*, 2008, available at: http://www.hrw.org/reports/2008/crd0908/2.htm#_ftn20.

⁸⁴ Ibid.

⁸⁵ Ibid., paras 32-35.

⁸⁶ Ibid., para. 44.

by non-nationals' children and other vulnerable groups, such as children belonging to religious minorities.⁸⁷ Non-Saudi (migrant) workers' children without legal residence status do not have access to health services or to education.⁸⁸

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⁸⁷ UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Saudi Arabia*, paras 27-29.

⁸⁸ *Ibid.*, paras 69-70.