

ACCESS TO JUSTICE FOR CHILDREN: YEMEN

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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?

Yemen ratified the CRC on 1 May 1991.¹ Yemen has also acceded to the Optional Protocols to the CRC on children in armed conflict,² and sale of children.³

While the Government has stated that “international treaties and optional protocols which the Republic of Yemen has ratified have the force of law”, it is unclear whether this is accepted in practice. Furthermore, the Convention has not been invoked in domestic courts.⁴

B. Does the CRC take precedence over national law?

No, the CRC sits alongside national law.⁵

C. Has the CRC been incorporated into national law?

A number of laws, regulations, decisions and ministerial orders have been issued in an attempt to incorporate or implement provisions of the CRC. The Children’s Rights Act No. 45 of 2002 (“Children’s Rights Act”) covers the substance and provisions of the CRC and incorporates a number of other provisions from relevant Yemeni legislation. Other laws related to the subject matter of the CRC include the following:

- Social Welfare Act (No. 31, 1996; No. 17, 1999);
- Welfare and Rehabilitation of Disabled Persons Act (No. 61, 1999);
- Civil Code (No. 14, 2002);
- Juveniles Act (No. 24, 1992; No. 24, 1997);

¹ UN Treaty Collection, ‘Convention on the Rights of the Child’, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en#17.

² UN Treaty Collection, ‘Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict’, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en.

³ UN Treaty Collection, ‘Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography’, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en.

⁴ CRIN, ‘Yemen: national laws’, available at:

<https://www.crin.org/en/library/publications/yemen-national-laws>.

⁵ This information was provided by Abdulsam Rashid, Lawyer for Sisters Arab Forum for Human Rights (SAF).

- Penal Code (No. 12, 1994);
- Personal Status Act (No. 20, 1992);
- Civil Service Act (No. 19, 1991);
- Non-Governmental Associations and Institutions Act (No. 1, 2001); and
- Disabled Welfare and Rehabilitation Act (No. 16, 1999).

The 1991 Constitution of the Republic of Yemen (as amended in 1994)⁶ contains some provisions that directly or indirectly address the rights of children. In particular:

- Article 30 provides that the State shall protect mothers and children and cater for the welfare of young people;
- Article 54 establishes a right to education, and requires the government to give special attention to young people, to protect them against perversions, and to provide them with religious, mental and physical education and the appropriate environment to develop their aptitude in all fields; and
- Article 56 establishes social security for all citizens in cases of illness, disability, unemployment, old age or the loss of support, and calls on the government to especially guarantee this for the families of those killed in war according to the law.

However, there are still areas of the law that are not compatible with the Convention, particularly regarding the definition of the child, legal age of majority, minimum age of criminal responsibility, minimum age for marriage, family law and the administration of juvenile justice.⁷ In its 2014 concluding observations, the Committee on the Rights of the Child “urges the State party to expedite the process to adopt the draft amendments on the rights of the child with the aim of harmonising its domestic legislation with the rights and principles of the Convention and its Optional Protocols, and to guarantee children’s rights in its new Constitution.”⁸

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

Yes, the CRC can be directly enforced in the courts, though this may not be practical if the violations involve State authorities (see part V below).

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

No examples could be found.

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

⁶ Available at: <http://www.al-bab.com/yemen/gov/con94.htm>.

⁷ CRIN.

⁸ UN Committee on the Rights of the Child, *Concluding observations on the fourth periodic report of Yemen*, CRC/C/YEM/CO/4, 25 February 2014, para. 10. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fYEM%2fCO%2f4&Lang=en.

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

Yes, violations of children's rights would be heard following the procedures regulated by the Civil Procedure Law and the Criminal Procedure Law of Yemen; there is no separate judicial procedure for violations of children's rights. A lawsuit can only be brought directly before a court of the first instance by the child's guardian, trustee or caretaker, or by a lawyer appointed by the child's guardian if the subject of the violation is of a civil, personal or administrative nature. A case would be brought by the public prosecution before a criminal court if the rights violation constitutes a crime punishable by law (see part III.A below).⁹

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 not bring cases by themselves. Instead, the case would be brought by the child's guardian, trustee or caretaker, or by a lawyer appointed by the child's guardian.¹⁰

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

See part II.B above.

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

The law does not guarantee a child victim the right to legal assistance by providing a free-of-charge legal representative (i.e. attorney-at-law) to the child victim.¹¹

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)?

It is not clear whether a child would be able to choose legal representation without the consent of their parents or guardian. The child's legal representative, such as their guardian, custodian or caretaker, or a lawyer appointed by any of the aforementioned persons, should, however, be present. If such persons are not present and/or their consent has not been obtained, the public prosecution would have the legal capacity to represent the child without consent from the parents or guardian.¹²

⁹ Information in this section was provided by Abdulsam Rashid, Lawyer for Sisters Arab Forum for Human Rights (SAF).

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

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?

For violations of the Constitution, national legal rules or the CRC that constitute an infringement of the civil or personal rights of a child (such as the child's right to nursery, feeding, alimony, housing, paternity, seeing his/her parents, maintenance of his/her money, etc), a lawsuit can be filed directly before a court of first instance. Such a lawsuit is filed by submitting a written pleading showing the name and capacity of the defendant body or person who allegedly committed the violations, or showing and listing the incidences of such violations. The initiator of the lawsuit must have legal capacity to litigate on behalf of and represent the child (i.e. a guardian of the child, such as the father, mother, grandfather, brother or uncle, or the legal custodian of the child). If such persons are not available, or the perpetrator is the child's guardian or custodian, the public prosecution should duly represent the child in the claim before the civil courts.

If the violation constitutes a crime punishable by law, the public prosecution will file a criminal case before the court. Such crimes include infringing upon the child's right to life, freedom, or physical integrity, subjecting the child to any form of torture or psychological, physical or sexual abuse, or any abuse that may expose him/her to danger. In such cases, the public prosecution – under its executive competence and once it becomes aware of the violation or has been informed of the violations by any person – shall begin investigation into the violation and file a criminal case against the perpetrator before a court. It is then the responsibility of the legal representative of the child victim to follow up on the hearing procedures, file civil lawsuits concerning the material and civil consequences and damage resulting from the crime, and bring in evidence.

For violations committed by administrative bodies which directly affect the rights of a certain child or children, it would be possible to revert to the judiciary to complain about the administrative body's action or inaction. For example, a competent authority's refusal to grant citizenship to a child may be challenged by filing a complaint with a court of first instance about the administrative decision to obtain a ruling to compel the competent authority to grant citizenship to the child.¹³

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

National courts have the absolute authority to examine all incidents of violations experienced by children, whether of a criminal, civil, personal or administrative nature. However, the connection between their jurisdiction and their authority to examine the incidents of violations are limited to the bringing of a lawsuit before them by a legal representative of the child.

¹³ Ibid.

Remedies, under applicable laws, vary with each case. They include: (1) establishing and recognising the correct subject of the violation; (2) ordering the violation to be stopped, if it is ongoing; (3) punishing the perpetrator, if the violation is punishable by law; and (4) repairing the damage resulting from the violation, compensating the victim, and taking any precautionary measures to prevent the child from being abused or endangered in any way.¹⁴

- 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?

It is a condition of filing a lawsuit that the victim(s) be named. A lawsuit without naming the victim would be rejected in form and would be struck off the roll.¹⁵

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

Provided the child victims' representative has the legal capacity, it is possible to collectively move to file a lawsuit.¹⁶

- 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?

For civil society organisations to be allowed to file or intervene in a case being heard by a court, the following two conditions should be met: (1) the organisation should be granted a power of attorney by the custodians or guardians of the child authorising it to file a lawsuit or to intervene in the case; and (2) the organisation should have a legal representative (lawyer) who holds a professional license and who would file the lawsuit and represent the child before the court.¹⁷

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?

For civil cases, the lawsuit must be filed before the civil court which has jurisdiction over the defendant's place of domicile.

For criminal cases, the lawsuit will be filed by the public prosecution before the court whose jurisdiction covers the scene of the crime or the place of arrest of the accused. Where the accused is a child aged 15 years or younger, the case must be heard in a juvenile court. In practice, however, juveniles are still

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

frequently treated as adults and tried in ordinary courts (see part V below for more information).¹⁸

For administrative cases, the lawsuit must be filed before the civil or administrative court whose jurisdiction covers the defendant body.

The law does not require any documents upon filing the lawsuit except for an instrument proving the capacity of the filing party. Any documents substantiating the lawsuit, if any, may be attached thereto.¹⁹

- 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.

No expenses are required except for the legal fees that are payable by law upon filing a civil case only.²⁰

- 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?

There is a shortage of organisations interested in providing legal assistance to child victims of abuse or at risk of abuse and danger. Although some of them exist, they concentrate their programs and activities in some provincial capitals and within specified periods of time rather than on an ongoing basis. Thus, there is an extremely large number of child victims who do not have access to free-of-charge legal assistance through an attorney-at-law, with the exception of some individual cases where some attorneys-at-law act as volunteers.²¹

- 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?

This issue is subject to the legal rules governing statutes of limitations, which differ according to the type of lawsuit (civil or criminal), as detailed below:

¹⁸ 'Governance and institutional reform', available at:

http://ec.europa.eu/europeaid/documents/case-studies/yemen_governance_juvenile_justice_en.pdf.

¹⁹ Information in this section was provided by Abdulsam Rashid, Lawyer for Sisters Arab Forum for Human Rights (SAF).

²⁰ Ibid.

²¹ Ibid.

- For complaint-based crimes (including non-serious assault on the victim's body), the complaint must be filed within four months of the date of the crime;
- For non-serious crimes, a criminal case must be filed within three years of the date of the crime;
- For serious crimes, a criminal case must be filed within 10 years of the date of the crime, with the exception of murders punishable by the death penalty, blood money or indemnity (which are not subject to time limitations); and
- For civil cases, the time limit for filing a case ranges from three to five years.

National legislation contains special provisions permitting an adult to file a complaint or a lawsuit regarding violations committed against him/her when he/she was a child. In such cases, the individual's right to file a complaint or a lawsuit is preserved as his/her lack of legal capacity at the time of the violation renders the periods of limitation inapplicable in accordance with the general legal rules.²²

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The types of evidence required for proving a given violation are as follows: acknowledgment of the defendant perpetrator; testimony of witnesses; written documents containing a proof of the violation; expert reports and medical reports; and/or judicial presumptions derived from the reality of the situation.²³

The Evidence Act No. 21 of 1992, as amended in 1996, sets out the conditions concerning witnesses and the admissibility of a child's testimony in civil or criminal cases. Article 27(1) provides that a witness must be a discerning, exemplary and reputable adult. Under Article 31, a child capable of discernment is not competent to testify, but his/her statements concerning what he/she witnessed are heard as evidence in the fact-finding and information-gathering process. Under Article 32, the testimony of children about what happened between them is admissible, provided that there were no adults involved and that they are predominantly thought to be telling the truth. The admissibility of children's testimony is, however, restricted to disputes amongst children in which there are no adults involved.²⁴

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

²² Ibid.

²³ Ibid.

²⁴ *Fourth periodic report of Yemen to the UN Committee on the Rights of the Child*, CRC/C/YEM/4, 23 October 2012, paras 64-65. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fYEM%2f4&Lang=en.

There is no specified time limit for the passage of a judgment as it depends on the circumstances of each lawsuit. However, the minimum time limit is five months and the maximum is three years.²⁵

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

Yemeni law guarantees the parties to a lawsuit the right to appeal the judgments passed by courts of first instance before a court of second instance (i.e. a court of appeal), and further to file an objection-for-cassation against the judgments of the court of appeal before the Supreme Court of the Republic of Yemen.²⁶

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 potential for political backlash or repercussions of a negative decision if the judgment is passed against an official body (see part IV.I below).²⁷

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

Enforcement of decisions against certain authorities and a lack of judicial independence are identified as problems in Yemen. According to Freedom House in 2015: “[t]he judiciary is nominally independent, but it is susceptible to interference from the executive branch and political factions. Authorities have a poor record on enforcing judicial rulings, particularly those issued against prominent tribal or political leaders. Lacking an effective court system, citizens often resort to tribal forms of justice or direct appeals to executive authorities.”²⁸ A 2015 report by the UK Foreign & Commonwealth Office states that the “judiciary remained subject to government interference, and judges continued to face harassment, armed attacks, and kidnappings.”²⁹

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.³⁰

Relevant laws

²⁵ Information in this section was provided by Abdulsam Rashid, Lawyer for Sisters Arab Forum for Human Rights (SAF).

²⁶ Ibid.

²⁷ Ibid.

²⁸ Freedom House, ‘Yemen’, 2015, available at:

<https://freedomhouse.org/report/freedom-world/2015/yemen#.VS07qcYqo7A>.

²⁹ UK Foreign & Commonwealth Office, ‘Yemen - country of concern’, 12 March 2015, available at:

<https://www.gov.uk/government/publications/yemen-country-of-concern--2/yemen-country-of-concern>.

³⁰ Information in this section was provided by Abdulsam Rashid, Lawyer for Sisters Arab Forum for Human Rights (SAF).

The following national laws must be taken into account when contemplating such legal action:

- Civil Procedure Code;
- Criminal Procedure Code;
- Penal Code; and
- Children's Rights Act.

In September 2013, the Cabinet approved a draft law on the establishment of an independent national human rights institution in Yemen. This draft law contains a chapter on the establishment of an observatory for children's rights. However, as at the date of this report, this draft law has yet to be adopted by parliament. In its 2014 concluding observations, the Committee on the Rights of the Child urged the government to expedite the adoption of the draft law and to prioritise the creation of the observatory for children's rights as a mechanism able to receive, investigate and address complaints by children.³¹

In January 2015, the government proposed a new constitution, however this was rejected by the Houthi rebels. The status of any new constitution will depend on the ongoing conflict between government forces and rebels in Yemen, which the UN warns is "on the verge of total collapse".³²

Violations by State authorities

For violations of children's rights under the Constitution or the CRC committed by State authorities, such as violations of children's right to health or education, or regarding children's involvement in armed conflict, it would be impractical to file lawsuits before the national courts in order to compel such authorities to fulfil their obligations under these instruments. Eliminating such violations requires political decisions and a serious approach to be adopted by the State to stop and prevent these violations.³³

Juvenile courts

Despite the presence of juvenile courts, children in conflict with the law are often dealt with in the adult criminal justice system. In particular, juveniles aged between 15 and 18 years are treated as adults by the justice system due to provisions in the Yemeni Juvenile Care Act, which state that only children aged 15 years and younger should be referred to the juvenile system. In its 2014 concluding observations, the Committee on the Rights of the Child urged the government to review this Act to ensure that all children in conflict with the law are referred to the juvenile justice system. It also urged the government to increase the number of specialised juvenile court facilities and designate

³¹ UN Committee on the Rights of the Child, paras 19-20.

³² BBC, 'Yemen on verge of total collapse, UN human rights chief warns', 31 March 2015, available at: <http://www.bbc.co.uk/news/world-middle-east-32133203>.

³³ Information in this section was provided by Abdulsam Rashid, Lawyer for Sisters Arab Forum for Human Rights (SAF).

specialised judges for children, and to ensure the provision of qualified and independent legal aid to such children.³⁴

Best interests of the child

According to a 2012 report by a NGO coalition in Yemen, in practice, some judges do not consider the best interests of the child.³⁵ In its 2014 concluding observations, the Committee on the Rights of the Child recommended that the government expedite the adoption of the proposed amendments to the Children's Rights Act, which would require the principle of the best interests of the child to be applied in all administrative and judicial proceedings.³⁶

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

³⁴ UN Committee on the Rights of the Child, paras 85-86.

³⁵ The NGOs coalition for the rights of the child, 'Updated fourth alternative report about the situation of the children in Yemen', 2012, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fNGO%2fYEM%2f15820&Lang=en.

³⁶ UN Committee on the Rights of the Child, paras 31-32.