

ACCESS TO JUSTICE FOR CHILDREN: BAHRAIN

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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?

The CRC has the authority of national law in Bahrain. In order to become national law, international instruments must be ratified and published in the Official Gazette. As this process is completed with regard to the CRC,¹ it has the same legal status as national laws in Bahrain.²

Bahrain has also ratified the Optional Protocol to the CRC on the involvement of children in armed conflict, as well as the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography,³ but it has not signed or ratified the third Optional Protocol to the CRC on a communications procedure.

B. Does the CRC take precedence over national law?

Article 37 of the Constitution suggests that international treaties do not take precedence over Bahraini national law; they have force of law once concluded, ratified and published in the Official Gazette. Consequently, the CRC has the same standing as other national laws, so long as it does not contravene Islamic Sharia law, which is the principal source of Bahrain's legislation.⁴

C. Has the CRC been incorporated into national law?

Yes, the CRC has been incorporated into the law of Bahrain by way of Amiral Decree No. 16 of 1991, which was published in the Official Gazette, and the CRC came into force in Bahrain on 14 March 1992.⁵ As such, the provisions of the Convention can be invoked before national courts.⁶

¹ United Nations Treaty Collection, Convention on the Rights of the Child, Ratification status, available at: [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en&title=UN TC+publisher=](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en&title=UN+TC+publisher=)

² The Constitution of the Kingdom of Bahrain, Article 37, available at: <http://www.refworld.org/docid/48b54f262.html>.

³ Committee on the Rights of the Child, Reporting status for Bahrain, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=BHR&Lang=EN.

⁴ Ibid, Reporting Cycle I, State party's report - Bahrain, CRC/C/11/Add.24, 23 July 2001, para. 25.

⁵ Ibid, para. 36-37.

⁶ Ibid, para. 37.

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

As the CRC constitutes a part of Bahraini law and has equal status to national laws, it can be directly invoked before the national courts.

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

The research has not identified any instances where the Convention has been applied in domestic legal proceedings.

II. What is the legal status of the child?

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

Yes, cases challenging violations of children's rights may be brought before the Bahraini courts. The Constitution guarantees the right to litigation under law.⁷

If the rights violation amounts to physical or sexual abuse of the child, a complaint may be lodged orally or in writing to the Public Prosecutor, or to a judicial officer, who has the power to initiate criminal proceedings.⁸ Should the alleged perpetrators be the child's parents or guardian, it is for the Public Prosecutor to appoint a legal guardian to the child.⁹

The Public Prosecutor has exclusive jurisdiction over the initiation of criminal proceedings, unless otherwise stipulated by law.¹⁰ This exclusive jurisdiction over investigations and prosecutions is confirmed in the Criminal Procedure Law.¹¹ It is not possible to waive, halt or delay criminal proceedings, save where this is permissible under law.¹² It is not possible to initiate criminal proceedings unless they are founded upon an oral or written complaint from the victim of the crime or their 'personal guardian' [parents and guardian(s)] to the Public Prosecutor or a member of the judicial authority regarding any of the following crimes: adultery; refusing to hand over a child as instructed [by the court]; committing an indecent act with a female; libel and slander; and other crimes as stipulated for by law.¹³

A victim who has suffered personal harm may file an accompanying civil claim before the court presiding over the case at any stage during

⁷ The Constitution of the Kingdom of Bahrain (n 1), Article 20(f).

⁸ Law No. 37 of 2012 promulgating the Child Law, the Child Law, Article 45, available at (Arabic): <http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=2050#.VcTQH7y35C0>.

⁹ Ibid.

¹⁰ Law No. 42 of 2002 promulgating the Judiciary Authority Law, the Judiciary Authority Law, Article 49, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=6&LawArticleID=106772>.

¹¹ Law No. 46 of 2002 promulgating the Criminal Procedure Law, the Criminal Procedure Law, Article 5, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=6&LawArticleID=107883>.

¹² Ibid, Article 7.

¹³ Ibid, Article 9.

proceedings prior to the final judgment; but such claims cannot be accepted on appeal.¹⁴

The civil courts have jurisdiction over all civil and commercial matters, as well as matters of personal status for non-Muslims.¹⁵ Moreover, any subject matter or event or issue that is not stipulated for to the contrary in other legislation, falls under the jurisdiction of the civil courts whenever a claim is filed before them;¹⁶ this reaffirmed in the Criminal Procedure Law which states that the Civil Procedure Law is applicable over matters not covered by its provisions.¹⁷ Civil claimants must have a legally established real interest in making their claim or a potential interest if the purpose is to avoid or document imminent damage or harm.¹⁸

Cases may be brought on behalf of non-Bahraini children, resident in Bahrain, for matters with a Bahrain connection;¹⁹ such cases may relate to child support,²⁰ filial relations and guardianship,²¹ and matters of inheritance.²²

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?

Any person who has attained the age of 21 has the legal capacity to undertake any legal action available to them.²³ Consequently, cases must be brought by the child's parents or legal guardian(s) prior to their reaching the age of majority, which is 18 in Bahrain.²⁴ This suggests that between the ages of 18 and 21 some minor restrictions apply to the legal actions that may be undertaken by a person; these are stipulated for in legislation, as addressed below.

The law provides for intervention in instances where there is a conflict of interests in the appointment of child representatives. The Child Law states that the overriding imperative in all matters concerning children, irrespective of which body or organisation is responsible for the decisions and actions in question, is the child's best interests.²⁵ The Child Protection Centre ("Centre") is empowered to intervene in cases where the infant or young

¹⁴ Ibid, Article 22.

¹⁵ Law No. 12 of 1971 promulgating the Civil and Commercial Procedure Law, the Civil Procedure Law, Article 1, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=6&LawArticleID=103117>.

¹⁶ Ibid, Article 2.

¹⁷ The Criminal Procedure Law (n 11), Article 4.

¹⁸ The Civil Procedure Law (n 15), Article 5.

¹⁹ Ibid, Article 14.

²⁰ Ibid, Article 15(5).

²¹ Ibid, Article 15(7) and 15(8).

²² Ibid, Article 16.

²³ Law No. 7 of 1986 promulgating the Guardianship [over Money] Law, the Guardianship Law, Article 13, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=6&LawArticleID=106440>.

²⁴ The Child Law (n 8), Article 4.

²⁵ Ibid, Article 3.

child's interests are in conflict with those of their guardian.²⁶ In cases of alleged ill-treatment, the Centre can take action by having the child examined by a medical professional in order to confirm whether or not the child has indeed been subjected to any ill-treatment,²⁷ keeping a confidential record of all cases of ill-treatment,²⁸ and providing the infant or child with access to the courts, as well as helping them to enforce their rights.²⁹

If the violation is criminal in nature and the victim has not yet reached 15 years of age at the time of filing the complaint, then it must be filed on their behalf by their guardian.³⁰ Where the victim's interests are in conflict with those of their legal representative, or if they have none, the Public Prosecution will act in this capacity on their behalf.³¹

A child who was below 15 years of age at the time of an alleged crime and who is accused of said offence falls strictly under the jurisdiction of the Juvenile Court.³² This is because there can be no criminal responsibility for any person that committed a crime prior to their attaining the age of 15.³³

Bahraini law accords 'discerning minors',³⁴ *i.e.* any child that has attained seven years of age but not yet attained the age of majority, the right to dispose of their property and enter into contracts, and such actions may be deemed valid provided they are wholly to the child's advantage.³⁵ Children may also be granted the power to proceed with trading, as well as meeting and satisfying debts owed.³⁶

Furthermore, a child of 16 years of age may enter into a contract of employment, in accordance with the provisions of the Labour Law, and dispose of any earned wages.³⁷ However, such activities are subject to legal oversight and supervision by the child's parents or guardian(s) and the Council for Guardianship Over Minors' Funds.³⁸

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

Cases involving infants and young children are typically filed by their parents, guardians or legal representatives, as outlined in part II.B above.

²⁶ Ibid, Articles 44, 45.

²⁷ Ibid, Article 48.

²⁸ Ibid, Article 49.

²⁹ Ibid, Article 50.

³⁰ The Criminal Procedure Law (n 11), Article 10.

³¹ Ibid.

³² Law No. 15 of 1976 promulgating the Penal Code with the Amendments to the Law of 2005, the Penal Code, Article 32, available at (Arabic):<http://www.gcc-legal.org/DisplayArticle.aspx?country=6&LawArticleID=107467>.

³³ Ibid.

³⁴ Law No. 19 of 2001 promulgating the Civil Code, the Civil Code, Article 73, available at (Arabic):<http://www.gcc-legal.org/DisplayArticle.aspx?country=6&LawArticleID=102408>.

³⁵ Ibid, Article 74

³⁶ The Guardianship Law (n 23), Article 40.

³⁷ Ibid, Article 44.

³⁸ Ibid, Article 40.

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

The Constitution states that every person accused of an offence must have a lawyer present to defend them, with their consent.³⁹ There must be a lawyer present with defendants in criminal trials and their name is to be provided to the court at least four days prior to the hearing; if the court finds that the defendant has not authorised anyone to represent them, it shall appoint a lawyer on their behalf.⁴⁰

Children who are charged with a crime have a priority right to appoint counsel to defend them; if the child stands accused of a crime and neither the child nor their guardian has appointed counsel to defend the child, then the court must appoint a lawyer to represent the child and the State will cover the lawyer's fees, as estimated by the court.⁴¹ The state shall pay the lawyer's fees, as assessed by the court, provided that the young person pays the money back, if they can afford to do so.⁴² However, if the child is able to cover the lawyer's fees themselves, then they will be required to do so.⁴³ Additionally, children are exempt from paying any of the court expenses relating to juvenile justice cases involving them.⁴⁴

The Criminal Procedure Law provides that should the victim of crime not have legal capacity to act or does not have anyone to represent them legally, it is possible for the court before which criminal proceedings have been initiated, pursuant to a request from the Public Prosecutor, to appoint a representative to them with regard their accompanying civil claim, and under no circumstances shall this entail an obligation to cover the legal expenses.⁴⁵

Beyond the remit of these provisions, there does not appear to be a State-sponsored system of legal aid in operation in Bahrain.

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)?

No further limits or conditions were identified. It can be noted that, it is prohibited to waive criminal cases related to the ill-treatment of children;⁴⁶ this means that under no circumstances may the Public Prosecutor, or any member of the judicial authority, decide against the investigation and prosecution of such alleged crimes when presented with information regarding such transgressions.

³⁹ The Constitution of the Kingdom of Bahrain (n 2), Article 20(e).

⁴⁰ Ibid, Article 216.

⁴¹ Law No. 17 of 1976 regarding Juveniles, the Juveniles Law, Article 16, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=6&LawArticleID=107286>.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid, Article 41.

⁴⁵ The Criminal Procedure Law (n 11), Article 23.

⁴⁶ The Child Law (n 8), Article 45.

III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

The Constitutional Court is competent to watch over the constitutionality of laws and statutes;⁴⁷ as such, where a violation of the Bahraini Constitution is at issue, the Constitutional Court has adjudicative jurisdiction.⁴⁸ Also, the King may refer Bills to the Constitutional Court prior to promulgation for a review of constitutionality.⁴⁹ A case may be referred to the Constitutional Court in a number of ways, including: when a judge, during proceedings, becomes aware of the potential unconstitutionality of a law required in addressing issue at hand, they may halt proceedings and refer the issue of constitutionality to the Constitutional Court; the same process applies should the potential legislative unconstitutionality have been flagged up by one of the parties to proceedings to the judge in question, in this instance, however, a one month time limit is set in which the party may act in this regard.⁵⁰

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

Decisions of the Constitutional Court are final,⁵¹ they are also binding upon all State authorities.⁵² The Court also has exclusive jurisdiction over the corresponding executory measures.⁵³ Although not expressly stated, it would appear that a judgment of unconstitutionality of a particular law or provision would result in its suspension and repeal.

The Civil Code provides for the available civil measures under the Bahraini legal system, these are: compensation caused by the unlawful act;⁵⁴ strict performance;⁵⁵ performance in kind;⁵⁶ and compensation and monetary damages.⁵⁷

The following sanctions may be administered by the Juvenile Courts where a minor is found guilty of a crime: reprimand; 'delivery' [to their parents or guardian(s)]; enrollment in vocational training bodies, determined by a decision of the Minister of Labour and social affairs; the obligation to

⁴⁷ The Constitution of the Kingdom of Bahrain (n 2), Article 106.

⁴⁸ Law No. 27 of 2002 regarding the Constitutional Court, the Constitutional Court Law, Article 16, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=6&LawArticleID=107417>.

⁴⁹ Ibid, Article 17.

⁵⁰ Ibid, Article 18.

⁵¹ Ibid, Article 30.

⁵² Ibid, Article 31.

⁵³ Ibid, Article 32.

⁵⁴ The Civil Code (n 34), Articles 177-181.

⁵⁵ Ibid, Articles 202-205.

⁵⁶ Ibid, Articles 206-215.

⁵⁷ Ibid, Articles 216-228.

undertake ‘certain duties’; judicial examination/testing; placed in the care of public or private social welfare institutions; or placement in a specialised hospital.⁵⁸ ‘Delivery’ of the child is to be made to their a paternal relative, or whomsoever has guardianship over them; if neither can guarantee a sound upbringing for the child, the Juveniles Law stipulates the order of those to whom the child may be returned.⁵⁹ Children may be placed in social welfare institutions for no longer than ten years in the case of a crime, 5 years in the case of a misdemeanour, and three years where they are at risk of delinquency.⁶⁰

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 appears that there is no such possibility in the Bahraini legal system. The name of the party initiating proceedings is required for effecting service, and the name of the party filing the claim must be mentioned in the court hearing notice, regardless of whether it is the child bringing a claim themselves or their legal representative doing so on their behalf.⁶¹ In addition, the general rule under Bahraini law is that hearings are public unless the court, at its discretion or upon the request of a party to the action, orders that proceedings be conducted secretly in a closed hearing.⁶²

The Juveniles Law contains no provisions affirming that a child’s identity is to be kept a secret during proceedings. With regard to accused minors aged 15 to 18 years old, it would appear that the same required information is necessary as for their adult counterparts, and this includes their name.⁶³

Child victims of crime who have not yet attained 15 years of age may be handed over to a welfare institution in their best interests until the conclusion of proceedings; this is pursuant to a decision of the Public Prosecutor or the court before which the case has been brought.⁶⁴

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

Yes, joint civil actions are possible, subject to the multiple claimants involved having a joint interest in the case.⁶⁵ Intervenor applications are also permitted.⁶⁶

Victims in criminal cases are able to bring an action jointly,⁶⁷ whereby a waiver of an initiated action - i.e. deciding to drop the legal action prior to its

⁵⁸ The Juveniles Law (n 42), Article 6.

⁵⁹ Ibid, Article 8.

⁶⁰ Ibid, Article 12.

⁶¹ The Civil Procedure Law (n 15), Article 23.

⁶² Ibid, Article 55; the Criminal Procedure Law (n 11), Article 214.

⁶³ The Criminal Procedure Law (n 11), Article 137.

⁶⁴ Ibid, Article 251.

⁶⁵ Ibid, Article 73.

⁶⁶ Ibid, Article 74.

⁶⁷ Ibid, Article 13.

conclusion through a judicial decision - has no effect unless it is produced by all the victims who filed the complaint.⁶⁸ However, all parties to the action must be named and reference to them shall be made collectively.

It is unclear whether or not courts have the power to combine cases at their own volition in the interests of clear, consistent pronouncements of the law.

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?

There are currently no laws specifically permitting non-governmental organisations to file challenges in relation to any claims concerning children's rights.

Bahraini law permits certain 'societies' to establish legal personality through publication in the Official Gazette.⁶⁹ If the society becomes a legal entity, then it may acquire access to the courts and other government institutions. However, several restrictions apply to the involvement of said societies in legal proceedings, namely that they cannot touch on any matters that would affect the principles of Islam; the nation's unity or arouse factionalism or sectarianism;⁷⁰ not to operate in politics;⁷¹ and not to be affiliated with, participate in or join a society, body, club or federation with headquarters situated outside of Bahrain, without prior permission from the competent administrative authority.⁷²

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?

The Judicial Authority Law states that the civil courts system is made up of the Court of Cassation, the High Civil Court of Appeal, the High Civil Court, and the Lower Civil Court; these courts have jurisdiction over the civil, commercial and administrative matters raised before them.⁷³ This hierarchy of civil courts is confirmed in Article 7 of the Civil Procedure Law. With the exception of sovereign acts, the High Civil Court, via its administrative department, has jurisdiction to adjudicate in disputes between private individuals and government agencies or public institutions, except where otherwise stated by law.⁷⁴ Unless provided for by the provisions of the Judicial Authority Law, the jurisdiction of the Court of Cassation is covered

⁶⁸ Ibid, Article 15.

⁶⁹ Law No. 21 of 1989 promulgating the Law of Social and Cultural Societies and Clubs, Associations Carrying out Youth and Sports Activities and Private Organisations, the Societies Law, Article 1, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=6&LawArticleID=111655>.

⁷⁰ Ibid, Article 3.

⁷¹ Ibid, Article 18.

⁷² Ibid, Article 20.

⁷³ The Judicial Authority Law (n 10), Article 6.

⁷⁴ Ibid, Article 7.

by its own specific legislation.⁷⁵ Pursuant to a decision of the Supreme Judicial Council, the judge of a Lower Civil Court may be empowered to hear specific cases relating to criminal, civil, commercial, labour and ‘executory’ matters; it is possible to transfer a specialised judge from one court to another in such instances.⁷⁶

The Judicial Authority Law also addresses the Sharia Courts system in Bahrain. The courts consist of the High Sharia Court of Appeal, the High Sharia Court, and the Lower Sharia Court; each of these is composed of two ‘circles’ - the Sunni Sharia Department and the Jaa’fari Sharia Department.⁷⁷ These courts have jurisdiction over all matters of personal status for Muslims, with the exception of disputes relating to the assets of an estate and liquidation, these are to be referred to the competent civil court.⁷⁸ The jurisdiction of the Sharia courts is dependent upon the religious affiliation/denomination of the person(s) concerned at the time of the dispute.⁷⁹

Cases regarding personal status matters relating to Muslims fall under the jurisdiction of the Sharia Courts, determined according to the plaintiff’s sect [religious denomination] at the time when the case is filed.⁸⁰ Jurisdiction to hear matters related to inheritance, gifts, wills and endowment shall be determined according to the sect of the testator, gift-maker, legator or dedicator of a waqf.⁸¹ Additionally, the Lower Sharia Court specialises in cases regarding the child’s expenses, of all types, including claims for increase, reduction or forfeiture thereof, right to custody, maintenance and traveling with a child to another country, proof of inheritance, legacy, wills, gifts and drawing up inheritance deeds, attestation of statements of various kinds, authentication of documents related to personal status matters, and waqf deeds.⁸² Such legal actions are filed upon an application by the plaintiff to the Court, accompanied by a statement of claim, to be filed with the Case Registration Department,⁸³ and payment of the court fees in full.⁸⁴ The statement of claim must include the plaintiff’s name, surname, occupation, residential address or elected domicile, date of filing the statement with the court, the court examining the legal action, the issue of the legal action, the facts of the case, the plaintiff’s grounds for making such claims.⁸⁵ A duly processed claim shall receive a fixed date for a court hearing.⁸⁶

⁷⁵ Ibid, Article 8; it has not been possible to locate this ‘Court of Cassation Law’.

⁷⁶ Ibid, Article 12.

⁷⁷ Ibid, Article 13.

⁷⁸ Ibid.

⁷⁹ Ibid, Article 14.

⁸⁰ Ibid.

⁸¹ Ibid; a ‘waqf’ is an inalienable religious endowment in Islamic law, typically the donation of a building, plot of land, or money for Muslim-orientated religious or charitable purposes with no intention of reclaiming the assets.

⁸² Ibid, Article 17.

⁸³ Law No. 26 of 1986 regarding Procedures before Sharia Courts, the Sharia Courts Law, Article 1, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=6&LawArticleID=107316>.

⁸⁴ Ibid, Article 4.

⁸⁵ Ibid, Article 2.

⁸⁶ Ibid, Article 10.

Cases regarding the personal status of non-Muslims fall under the jurisdiction of the High Court, which is competent to adjudicate claims regarding matters concerning natural and legal guardianship, receivership and other important arrangements for the protection of minors, as governed by the laws of the country of nationality of the person(s) to be protected.⁸⁷ The procedure for filing such cases with the competent court consists of the filing of the application by the plaintiff, by means of a statement of claim submitted to the Case Registration Department,⁸⁸ and the payment of the fees in full.⁸⁹ The statement must contain the plaintiff's name, surname, occupation, place of residence or contact address, the defendant's name, surname, occupation, place of residence or elected domicile, the date of submission of the statement to the court, the court before which the case is being brought, the subject matter and facts of the case, and the plaintiff's grounds and supporting evidence.⁹⁰

With regard to criminal proceedings, the Court of Cassation's jurisdiction is stipulated in its own specific legislation; the High Criminal Court of appeal has jurisdiction over appeals hailing from the High Criminal Courts; the High Criminal Courts have jurisdiction over [certain] crimes and cases referred to them from the Lower Criminal Courts; and the Lower Criminal Courts have jurisdiction over crimes and misdemeanours.⁹¹ Jurisdiction is territorially determined with regard to the location at which the crime occurred, or the accused's place of residence, or where they were arrested.⁹² Where the accused is aged between 15 and 18 years old, special consideration is to be accorded to them and softer sentences administered.⁹³ Age is confirmed as a primary consideration for leniency in sentencing in the Penal Code.⁹⁴

Juvenile Courts have exclusive jurisdiction over cases where minors are accused of crimes or are at risk of delinquency, as well as other crimes and misdemeanours provided for under the Juveniles Law.⁹⁵ No civil claims can be made before the Juvenile Courts.⁹⁶ The Juvenile Courts have exclusive jurisdiction over matters of juvenile justice and instances where the child is exposed to a risk of delinquency.⁹⁷ Before ruling in the case, the court will review the report by the competent authority of the Ministry of Interior about the juvenile and their circumstances, covering all aspects and discussing the report at the hearing.⁹⁸ The court may order the removal from the hearing of the juvenile, their relatives, witnesses or members of the competent authority of the Ministry of Interior, if it is deemed to run against the best interests of

⁸⁷ The Civil Procedure Law (n 15), Article 21.

⁸⁸ Ibid, Article 23.

⁸⁹ Ibid, Article 24.

⁹⁰ Ibid, Article 23.

⁹¹ The Criminal Procedure Law (n 11), Article 181.

⁹² Ibid, Article 182.

⁹³ The Penal Code (n 32), Article 70.

⁹⁴ Ibid, Article 81.

⁹⁵ The Juveniles Law (n 42), Article 26.

⁹⁶ Ibid, Article 30.

⁹⁷ Ibid, Article 26.

⁹⁸ Ibid, Article 25.

the juvenile and/or prevents a potential conflict of interest.⁹⁹ As mentioned previously in the report, children aged between 15 and 18 years old are to be tried in adult criminal courts; however, special consideration is to be made regarding their age and this will reflect in greater leniency of sentencing.

The Judicial Authority Law states that all hearings are public, unless the court in question decides against this in the interests of public order and morality.¹⁰⁰

- 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?

The Court Fees Law states that it is possible for the Justice Minister, pursuant to the approval of the council of Minister, to issue an order delaying or exempting the payment, of some or all of the court fees, for those that can prove their lack of financial means to cover them.¹⁰¹ Such orders may not be passed to through inheritance; in such cases, a new order is to be sought by those concerned.¹⁰² If the party in question's capacity to cover the fees is proven at any point during proceedings, the Justice Minister may withdraw their order upon request of the court's Registrar General.¹⁰³

As a general rule, court fees are paid in advance upon filing a case, with an exception made for criminal proceedings.¹⁰⁴ Without prejudice to the provisions of the Civil Procedure Law, it is for the claimant to cover the fees for civil claims, appeals or judicial proceedings, and it is for the Case Registry Department to reject a claim where the required fees have not been paid in full.¹⁰⁵ In conjunction with the provisions of Article 197 [below] of the Civil Procedure Law, the losing party is to cover the fees and costs of the hearing, including the fees and costs of execution [of the judgment].¹⁰⁶

In civil matters, it is for the court before which proceedings have been conducted to decide upon the allocation/distribution of the fees upon rendering its final judgment, and these expenses are to be incurred by the losing party.¹⁰⁷ The court may order the payment of some or all of the fees by the winning party if 'such right is granted to the losing party', or if the winning party is responsible for incurring unnecessary expenses, or if they had left the other party in the dark over the evidentiary material at their

⁹⁹ Ibid, Article 27.

¹⁰⁰ The Judicial Authority Law (n 10), Article 3.

¹⁰¹ Law No. 3 year 1972 regarding Court Fees and Amendments, the Court Fees Law, Article 10, available at (Arabic): <http://www.gcc-legal.org/DisplayArticle.aspx?country=6&LawArticleID=107396>.

¹⁰² Ibid, Article 11.

¹⁰³ Ibid, Article 12.

¹⁰⁴ Ibid, Article 1.

¹⁰⁵ Ibid, Article 4.

¹⁰⁶ Ibid, Article 6.

¹⁰⁷ The Civil Procedure Law (n 15), Article 192.

disposal during proceedings.¹⁰⁸ Additionally, the aforementioned Article 197 of the Civil Procedure Law states that if each of the opposing parties failed in some of their applications [claims], the court may order that each party covers their own costs, or to distribute the costs amongst them as the court sees fit, or the court may order that one of the parties covers the costs in their entirety.

In criminal proceedings, any convicted persons are to cover the court fees, in part or in full.¹⁰⁹ If the judgment in an appellate court confirms the original decision, the court may order that the appealing party cover the costs in part or in full.¹¹⁰ It is for the claimant in a corresponding/accompanying civil claim to pay a sum beforehand based on an estimation of the costs to the Public Prosecutor, any experts used, witnesses and others.¹¹¹

A court may exempt or postpone a party from paying court fees, or reduce such fees, particularly owing to the inability of the party concerned to pay, where this has been proven, upon a decision of the Justice Minister, having obtained the approval of the Cabinet.¹¹² It would appear that this is applicable to all types of legal proceedings as there is no mention or indication to the contrary. Such an exemption would relate solely to the person subject to the decision.¹¹³

Before the Sharia Courts, it is for the claimant to pay the fees in full upon registering their claim.¹¹⁴ At the final judgment, it is for the court to order the losing party to cover the fees that it deems appropriate to the 'efforts of the attorneys/lawyers'.¹¹⁵

With regard the Constitutional Court, without prejudice to any legislative provisions exempting the payment of court fees, a fixed fee of 500 dinars is attributed to any claims made before the Court, in accordance with the provisions of the Court Fees Law.¹¹⁶

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?

The research has not identified any legislative provisions denoting the presence of an established practice of pro bono legal assistance in the Kingdom of Bahrain.

The Bahrain Center for Human Rights is a non-profit non-governmental

¹⁰⁸ Ibid, Article 196.

¹⁰⁹ The Criminal Procedure Law (n 11), Article 266.

¹¹⁰ Ibid, Article 267.

¹¹¹ Ibid, Article 27.

¹¹² The Court Fees Law (n 101), Article 10.

¹¹³ Ibid, Article 11.

¹¹⁴ The Sharia Courts Law (n 83), Article 4.

¹¹⁵ Ibid, Article 53.

¹¹⁶ The Constitutional Court Law (n 48), Article 27.

organisation that addresses issues of child rights; they promote democracy and human rights, report on human rights violations and undertake advocacy work.¹¹⁷

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?

There do not appear to be any special provisions that allow adults to bring cases for violations of their rights which occurred when they were children.

With regard the Sharia Courts, it is for the court clerk, the day after the registration of the claim, to inform the defendant party and present them with a copy of the effecting document; the defendant party then has 10 days to respond with a document presenting their planned defence and their evidentiary support.¹¹⁸

Under the Criminal Procedure Law, no complaint is to be accepted for a crime following the passage of three months from the date that the victim became aware of the crime, unless otherwise stipulated by law.¹¹⁹ The initiation of criminal proceedings is no longer possible following the passage of certain time limits: after ten years for crimes, three years for misdemeanours, and one year for ‘infractions’, from the day on which they took place, unless otherwise stipulated by law.¹²⁰ There are no reasons/justifications for which these periods, pursuant to the lapse of which potential proceedings are no longer possible, may be halted or suspended,¹²¹ these periods are only interrupted and reset following the charging of a suspect, the initiation of investigatory procedures or prosecution.¹²²

It is unclear what the limitation periods, if any, are regarding civil proceedings.

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

The required evidence is dependent on the type of violation. For civil and commercial matters, the Evidence Law sets out the types of evidence required in each case.¹²³ It is for the claimant to prove the disputed commitment/obligation and for the defendant to prove that this obligation has been satisfied/executed.¹²⁴ The facts that must be proven must be linked

¹¹⁷ Further information regarding the Bahrain Center for Human Rights is available at:

<http://www.bahrainrights.org/en>.

¹¹⁸ The Sharia Courts Law (n 83), Article 9.

¹¹⁹ The Criminal Procedure Law (n 11), Article 9.

¹²⁰ Ibid, Article 18.

¹²¹ Ibid, Article 19.

¹²² Ibid, Article 20.

¹²³ Law No. 14 of 1996 promulgating the Evidence Law in Civil and Commercial Matters, the Evidence Law, available at (Arabic): <http://www.gcc-legal.org/BrowseLawOption.aspx?country=6&LawID=3409>.

¹²⁴ Ibid, Article 1.

to the claim, resulting therefrom and admissible.¹²⁵ Any child that has not yet attained 15 years of age does not have the capacity to testify in court; their testimony may be heard by means of inference, however, and not under oath, provided they are fully aware of the situation.¹²⁶

The Criminal Procedure Law states that any person that is aware of a crime having been committed is to provide the Public Prosecutor or any ‘judicial officer’ with this information.¹²⁷ The accused, the victim, the claimant of corresponding civil damages and the person(s) responsible therefor, their agents and guardians may attend all investigative procedures.¹²⁸ The Public Prosecutor asks of every witness to provide their name, title, age, occupation, nationality, place of residence, and relationship to the accused and the victim.¹²⁹ Witnesses that have attained 15 years of age are obliged to testify under oath; the testimony of children under the age of 15 is possible for the purposes of inference only and not under oath.¹³⁰ The following persons are permitted to refrain from testimony against the accused, even if the crime was committed against the witness, their spouse, their relatives, their in-laws and if there are no other evidentiary sources: ascendants [parents, grandparents etc.], descendants, relatives and in-laws to the second degree, and a spouse, even if the marriage has been ended.¹³¹

The Civil Procedure Law provides for a list of similar required information from witnesses, stipulates the requirement for testimony to be made under oath but remains silent on the exemption of children that have not yet attained 15 years of age.¹³²

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

The research has not identified any conclusive information with regard to the standard duration of legal proceedings in the Kingdom of Bahrain.

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

If the judgment has been made by a Juvenile Court, then the child’s representative may appeal the decision via the permitted methods established by law for the benefit of the child.¹³³ The verdicts of the Juvenile Court may be appealed to the Appeals Chamber, located in the Higher Court, except for reprimand verdicts or verdicts handing the child over to their parents or guardian; such verdicts may only be appealed if there has been an error in the application of the law, for invalid judgments, or where a procedural error

¹²⁵ Ibid, Article 2.

¹²⁶ Ibid, Article 65.

¹²⁷ The Criminal Procedure Law (n 11), Article 47.

¹²⁸ Ibid, Article 84.

¹²⁹ Ibid, Article 117.

¹³⁰ Ibid, Article 119.

¹³¹ Ibid, Article 121.

¹³² The Civil Procedure Law (n 15), Article 115.

¹³³ The Juveniles Law (n 42), Article 32.

has affected the judgment.¹³⁴

With regard the Sharia Courts, it is possible to appeal matters that have been resolved conclusively during proceedings after a final judgment has been made.¹³⁵ The time limit for appeal is 30 days from the date of the judgment or the date on which the losing party was made aware of the decision, whether directly or through official publication.¹³⁶

In relation to commercial and civil cases, the High Court may hear appeals of decisions issued by the Small Claims Courts and decisions issued by the Courts of Execution.¹³⁷ The High Court of Appeal is competent to hear appeals of decisions issued in the first instance by a High Court.¹³⁸ Appeals may only be made against judgments regarding the [legal] issue of the case in the first instance, unless the law provides otherwise.¹³⁹ Litigants may agree that the verdict of the Court of First Instance is final, in which case there can be no appeal against the judgment, unless there a factor invalidating the judgment is found or where there has been an error in proceedings which has affected the judgment.¹⁴⁰ The time limit for appeals is 45 days from the date of the final judgment, unless otherwise stipulated by law.¹⁴¹

The Criminal Procedure Law states that it is possible for any accused or the Public Prosecutor to appeal decisions resulting from criminal proceedings before courts of the first degree.¹⁴² Appeal must be made within 15 days of the pronouncement of the decision concerned.¹⁴³

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?

It is difficult to ascertain with any certainty what the impact of a decision might be and the research has not identified any conclusive information or telling trends in this regard.

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

Specific information regarding such challenges remains unclear as the research has not identified any information regarding potential obstacles to the enforcement of decisions or concerns and consequent repercussions for positive decisions.

¹³⁴ Ibid, Article 33.

¹³⁵ The Sharia courts Law (n 83), Article 58.

¹³⁶ Ibid, Article 59.

¹³⁷ The Civil Procedure Law (n 15), Article 11.

¹³⁸ Ibid, Article 12.

¹³⁹ Ibid, Article 213.

¹⁴⁰ Ibid, Article 215.

¹⁴¹ Ibid, Article 216.

¹⁴² The Criminal Procedure Law (n 11), Article 292.

¹⁴³ Ibid, Article 294.

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.

The National Council for Childhood has a number of competences aimed at guaranteeing the rights of children in Bahrain: proposing a national strategy for childhood helping stakeholders to develop and promote projects and programs that serve and guarantee the rights of the child; monitoring and examining the problems concerning children and proposing appropriate solutions, including the proposal of legislation and recommendations to the competent official authorities in Bahrain; coordinating and cooperating with various government agencies and NGOs with regard to childhood issues; cooperation with regional organisations, Arab and international bodies working in the field of childhood and utilising their expertise to achieve these aims; working to create a database of information concerning all child-related issues and undertaking follow-up work with all concerned governmental and private bodies; and the preparation of national reports on international conventions signed by Bahrain, the CRC in particular.¹⁴⁴

Regarding the administration of a minor's funds, the Council for Guardianship over Minors' Funds, in conjunction with the Ministry of Justice and Islamic Affairs, monitors the actions of the child's guardian(s) in the best interests of the child and their assets.¹⁴⁵ Beyond this, it is unclear what further civil measures there are guaranteeing the best interests of the child; however, as stated above, the National Council for Childhood has a number of competences guaranteeing the rights of children in Bahrain by all public and private bodies in accordance with the Child Law's emphasis on the consideration for children's best interests as a general rule for all actions and decisions concerning them taken at all levels within the Kingdom of Bahrain.

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

¹⁴⁴ The Child Law (n 8), Article 12.

¹⁴⁵ The Guardianship Law (n 23), Article 10.