

ACCESS TO JUSTICE FOR CHILDREN: JORDAN

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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?

Jordan became a signatory to the CRC on 29 August 1990 and subsequently ratified the convention on 24 May 1991.¹

Ratified international instruments do not automatically have the force of law in Jordan. According to the Jordanian Constitution, treaties which affect the public or private rights of Jordanians shall not be valid unless approved by the National Assembly.² Following approval, they must be published in the Official Gazette before passing in to law.³

In the case of Jordan, lack of publication in the Official Gazette pursuant to ratification had resulted in an inadequate level of conformity to the standards of protection outlined in the CRC, which consequently could not be relied upon in domestic litigation concerning children's rights.⁴ This uncertainty was addressed following the concerns expressed by the Committee on the Rights of the Child in its concluding observations in 2006; this led to the CRC's publication in Jordan's Official Gazette in October 2006, which renders it domestically enforceable.⁵

Jordan has also ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography on 4 December 2006; as well as the Optional Protocol to the CRC on the involvement of children in armed conflict on 25 May 2007.⁶

B. Does the CRC take precedence over national law?

¹ Further information regarding signatures and ratifications of the CRC is available at: https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en.

² Jordanian Constitution, Article 33 (ii), available at: http://www.kinghussein.gov.jo/const_ch4.html#CHAPTER%20FOUR.

³ Manara Network for Child Rights, Country Profile of Jordan, August 2011, page 25, available at: www.ibcr.org/editor/assets/Jordan%20Country%20Profile.pdf

⁴ Ibid.

⁵ Ibid.

⁶ Ibid, page 18.

In accordance with the principle of the primacy of treaties, international treaties take precedence over national laws, with only the Constitution occupying a higher position in the hierarchy of laws in Jordan.⁷ As such, the CRC ranks above national laws in Jordan.

The Jordanian government has, however, expressed reservations regarding articles 14, 20 and 21 of the CRC. These articles cover the protection of a child's freedom of thought, conscience and religion; the obligation to provide alternative care where a child is deprived, whether temporarily or permanently, of their family environment; and the establishment of an adoption system that guarantees the best interests of the child, respectively. The Committee has previously criticised the reservations for their "broad and imprecise" character,⁸ but has confirmed that, with regard to these reservations, sufficient protection is afforded to Jordanian children, primarily through the Constitution.⁹

Jordan has sought to ensure harmonisation of domestic law with the principles and provisions of the Convention. However, as previously indicated, should there be a conflict between a national law and a provision of the Convention, the provision of the Convention will prevail.¹⁰

That being said, given the significant body of laws impacting on children's rights, among a variety of legislative instruments, there remains some confusion for both governmental and non-governmental service providers, as well as children and their families, as to the rights of the child.¹¹ The division of relevant provisions contained in protective instruments across a variety of domestic laws allows for inconsistencies to occur during application. In order to address this state of affairs, a draft Juvenile Law is currently under consideration by the Upper House of the Jordanian Parliament, the Senate, having been approved by the Lower House of Parliament last year.¹² Ratification of this law would be a significant step forward as Jordan attempts to align its domestic legislation with international standards.

C. Has the CRC been incorporated into national law?

As aforementioned, Jordan ratified the CRC on 24 May 1991. Following criticism of the convention's lack of enforceability after ratification, the Jordanian government sent the CRC to the National Assembly in 2004 in

⁷ Committee on the Rights of the Child, Combined fourth and fifth periodic reports of States parties due in 2011 - Jordan, 1 March 2013, paragraph 5, available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2fPPRiCAqhKb7yhsiaA1%2f6oIxyVVmNojGiLiCeAK3cZ80e1vzssjQMhMXcfMUL2DEllerYkM7zFtTQo92W1G7k%2bYHRE8j0K53O%2fzMPj8c4pXXX9%2fR7E%2bznZ5xrY>.

⁸ Manara Network for Child Rights, Country Profile of Jordan, August 2011, page 20.

⁹ Committee on the Rights of the Child, Combined fourth and fifth periodic reports of States parties due in 2011 - Jordan, 1 March 2013, paragraph 2.

¹⁰ Ibid, paragraph 6.

¹¹ Manara Network for Child Rights, Country Profile of Jordan, August 2011, page 26.

¹² Update provided by Penal Reform International, available at:

<http://www.penalreform.org/news/jordan-moves-restorative-justice-adoption-noncustodial-alternatives-children/>.

order to receive the approval of both Houses, the Senate and the Chamber of Deputies respectively, so that it could be published in the Official Gazette. The CRC was published in the Official Gazette in October 2006, consequently rendering it domestically enforceable.¹³

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

As stated in part I.C above, following the CRC's publication in the Official Gazette in October 2006, the CRC can now be directly enforced in Jordanian courts.¹⁴

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

It has not been possible to identify any specific examples of domestic courts referring to or applying the CRC, although the Jordanian Court of Cassation has confirmed that international instruments shall prevail in the event that there is a conflict with national law. In *Ruling No. 945/2009*, for instance, the Court stated that: “*Both Sharia and ordinary law jurisprudence establish that the international treaties which States sign are at the pinnacle of the hierarchy of laws of those States and are considered to prevail, for the purposes of application, should there be a conflict between their provisions and those of a national law*”.¹⁵

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, it is possible for children and/or their representatives to bring cases in the domestic courts to challenge the violation of the child's rights.¹⁶

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?

According to the Rules of Penal Trials Code No. (9) for the Year 1961 and the Amended Code No. (16) for the Year 2001 (Criminal Procedure Law), if the victim of the crime has not yet reached 15 years of age, then the complaint shall be lodged by the child's guardian.¹⁷

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

¹³ Manara Network for Child Rights, Country Profile of Jordan, August 2011, page 25.

¹⁴ Ibid.

¹⁵ Committee on the Rights of the Child, March 2013, paragraph 7.

¹⁶ Rules of Penal Trials Code No. (9) for the Year 1961 and the Amended Code No. (16) 2001, Article 3 (2), available at:

[https://www.ihl-nat/a24d1cf3344e99934125673e00508142/19111d4d64619686c12573d300543129/\\$FILE/Jordan%20-%20Code%20of%20Criminal%20Procedure.pdf](https://www.ihl-nat/a24d1cf3344e99934125673e00508142/19111d4d64619686c12573d300543129/$FILE/Jordan%20-%20Code%20of%20Criminal%20Procedure.pdf).

¹⁷ Ibid.

In the case of infants and young children, cases will typically be brought using the standard process with a number of notable exceptions. Under normal circumstances, a case will need to be brought by presenting the claim at court. As stated above, this claim will need to be brought by the guardian of the child in the event that the child has not attained the stipulated age of 15 years old. In the event that the interests of the victim are incompatible with those of the person who represents them, in situations where the child has been assaulted by a close relative for example, then the Public Prosecutor will act as their representative.¹⁸

The case shall be brought against the defendant before the competent judicial authority in either the area where the crime was committed, the domicile of the defendant or the jurisdiction of the area the defendant was arrested in.¹⁹

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

There does not appear to be a system of state-sponsored legal aid in operation in Jordan; a concern raised by the Committee on the Rights of the Child in 2006, which has not yet been addressed. Regrettably, legal assistance for children coming into contact with the justice system is also omitted from the aforementioned draft Juvenile Law currently before parliament.

Additionally, it appears that Jordan's Bar Association is in fact expressly against the provision of free legal assistance, as demonstrated by the case of a former member of Bar, Samar Maharab, who was expelled for providing free legal assistance to those who do not have the financial means to cover the high lawyers' costs, as well as refugees within Jordan.²⁰

There are, however, a limited number of NGOs which are dedicated to promoting and protecting human rights in the region, which may be accessible for legal assistance in cases relating to the CRC.²¹

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 do not appear to be any further conditions or limits regarding children, or their chosen legal representatives, which would prevent them from bringing cases before the courts.

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

¹⁸ Ibid, Article 3 (3).

¹⁹ Ibid, Article 5(1).

²⁰ Amman.net, *The Expulsion of a Lawyer for Providing Free Legal Aid from her Law Firm*, available at: <http://ar.ammannet.net/news/100756>.

²¹ The Mizan Law Group for Human Rights and Legal Aid is one such organisation, further information regarding their work is available at: http://www.mizangroup.jo/index_en.php.

- 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?

In accordance with article 24 of Jordan's Civil Code, whenever there is an inconsistency between domestic law and Jordan's obligations under a ratified international treaty or instrument, such as the CRC, the obligations arising from the latter override the domestic provisions.²² The primacy of ratified international treaties is addressed in part I.B.

As stated in part II.B above, children can bring a case to court regarding violations of their rights but must do so through a guardian if they are under 15 years of age.

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

Local courts have full powers to review and issue decisions in relation to all violations that occur in Jordan.²³ The courts are capable of sentencing the convicted defendant to custodial sentences or fines, as well as granting compensation to the victim(s) concerned.

- 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 not possible to challenge a violation of children's rights without naming a specific victim, as set out in article 5(2) of the Civil Procedure Law.²⁴ The Jordanian courts will not accept a case or appeal if there is no direct interest for the person filing the case.²⁵

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

It is possible for a number of claimants to be represented collectively by an attorney and to bring a group action where there is a case of multiple violations, this is stipulated in the Jordanian Civil Procedure Law.²⁶ However, as mentioned in part III.C above, it will not be possible to bring an action without naming the victims.

²² Law No. 43 of the Year 1976, the Civil Code, is available at (Arabic): http://www.plc.gov.ps/menu_plc/arab/files/%D8%A7%D9%84%D8%A7%D8%B1%D8%AF%D9%86/%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86%20%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A.htm.

²³ Law No. 24 of the Year 1988, the Civil Procedure Law, Articles 36-47 dealing with territorial jurisdiction, available at (Arabic): http://azzam.co/index.php?option=com_content&view=article&id=131&Itemid=145.

²⁴ Ibid, Article 5(2).

²⁵ Ibid, Article 3.

²⁶ Ibid, Article 70(1).

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?

As stated previously, in accordance with article 5(2) of the Civil Procedure Law, it is not possible for an NGO to file a claim, as they have no direct interest in the case. However, as mentioned in part II.D, some dedicated NGOs do engage with the juvenile justice system, providing legal assistance for children and their families.

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?

Three main types of courts exist in Jordan;²⁷ civil courts, military courts and religious courts. Civil and criminal cases that are not under the jurisdiction of a specific court are adjudicated by the civil court system. The civil court system consists of five separate courts, established over a four tier hierarchical system.²⁸ Each courts has its own particular admissibility criteria and operational processes.

Different religious jurisdictions exist corresponding to the multiple confessions in Jordan. Religious courts have jurisdiction over matters of personal status; as such, they deal primarily with family law matters.²⁹ Matters of inheritance are also under the jurisdiction of religious courts; however, it is Sharia law that must be applied in this context, irrespective of one's confessional affiliation.³⁰

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

As stated in part II.D, there is no system of state-sponsored legal assistance in operation in Jordan, to the detriment of child complainants unfortunately. Additionally, the Jordanian Bar Association appears to sanction its members for providing free legal assistance.

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

²⁷ Jordanian Constitution, Article 99.

²⁸ Further information regarding the Jordanian civil court system is available at: http://jordan.usembassy.gov/acs_jordanian_legal_system.html.

²⁹ Ibid.

³⁰ Ibid.

practicing 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?

In recognition of the deficiency in the protection of children's rights and interests when coming into contact with the justice system, resulting from the lack of subsidised legal aid, the Ministry of Justice has taken steps to ameliorate this state of affairs with the aim of protecting the rights of children. In partnership with Chief Security Officers, the Ministry of Justice has been providing capacity-building training to local lawyers regarding juvenile justice.³¹ NGOs have also been taking part in this training process.

Also, the involvement of Conduct Monitors in cases concerning juvenile defendants is a sign of positive steps taken by the Jordanian government in order to guarantee the rights of Jordanian children coming into contact with the justice system. These Conduct Monitors are present at police stations and courts providing assistance to children and their families; they are social workers whose role it is to prepare background reports on the child's background and circumstances in order for the judge concerned to have a better understanding of the child's situation.³² However, once more, the lack of resources and effective training of staff is a cause for concern and undermines the potential success of such a measure.

- 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?

As a general rule, the prescription period for civil claims is 15 years in Jordan. This is subject to change, however, if the civil claim relates to a tortious act; in which case, the prescription period is reduced to three years from the date on which knowledge of the act is acquired by the injured party, this time period is not to exceed 15 years from the date of the occurrence of the act in any case.³³

There does not appear to be a particular set of legislative provisions concerning young adults and any violations of their rights that they may have suffered when they were 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?

There are no evidential restrictions under Jordanian law, as stipulated by the Criminal Procedure Law;³⁴ however, if Jordanian legislation provides for

³¹ Manara Network for Child Rights, Country Profile of Jordan, August 2011, page 69.

³² Ibid, page 68.

³³ Please see the 'Statutory of Limitations' section of the following report compiled by Bakr & Odeh Advocates and Legal Consultants, available at: <http://www.chambersandpartners.com/guide/practice-guides/location/241/7312/1545-200>.

³⁴ Rules of Penal Trials Code No. (9) for the Year 1961 and the Amended Code No. (16) 2001, Article 147(2).

certain evidential requirements in a particular case, these must be abided by.

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In accordance with Article 74 of the Criminal Procedure Law, evidence from children under the age of 14 years old is admissible and they are not to be subjected to the same formalities as adults in doing so.³⁶ Otherwise, it would appear that the same rules and procedures apply as those for adult complainants; evidential matters in civil proceedings are addressed by articles 72-85 of the Jordanian Civil Code.³⁷

Protective safeguards for child witnesses of crime are also in place; article 158 of the Criminal Procedure Law allows for the implementation of modern technologies in order to facilitate the testimony of witnesses under the age of 18 years old whilst simultaneously protecting their identities.³⁸

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

Generally speaking, the court or the Public Prosecutor (depending upon the severity of the offence) will decide on whether there has been a violation during the first court hearing, typically within one month of the complainant filing the claim. Unfortunately, courts can usually take between two to three years to give final judgment. This time-frame can vary significantly depending on whether the decision is appealed, the type of violation and other related factors. Such delays are endemic in the legal systems of countries in the region and this is contrary to the interests of children and the Rule of Law.

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

The Appeals Courts hear all appeals from the Courts of First Instance and the Magistrates Courts. All matters of fact and law are reviewed by a three judge panel.³⁹ The Court of Cassation is the highest appellate court in Jordan; it generally hears cases concerning felonies and judgments exceeding JD 500 in value but can also accept other cases at the President of the Court's discretion.⁴⁰ This Court also pronounces on jurisdictional disputes. Articles 256 to 291 of the Criminal Procedure Law outline the regulations for appeals in criminal proceedings; whilst for civil proceedings it's Articles 176 to 190 of the Civil Procedure Law.

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?

³⁵ Ibid, Article 147(3).

³⁶ Ibid, Article 74.

³⁷ Law No. 43 of the Year 1976, the Civil Code, Articles 72-85.

³⁸ Rules of Penal Trials Code No. (9) for the Year 1961 and the Amended Code No. (16) 2001, Article 158.

³⁹ Further information regarding appeals of legal judgments in Jordan's legal system is available at: http://jordan.usembassy.gov/acs_jordanian_legal_system.html.

⁴⁰ Ibid.

It is difficult to comment on the potential implications of a negative decision. The facts of the case in question will be key to any potential public dismay. However, there do not appear to be any notable incidents of discontent or political backlash regarding cases involving children's rights.

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

The primary challenge, as with all legal systems, will be the effective monitoring of decisions and making sure that correct implementation has taken place. This also encompasses the fostering of an environment where the importance of effective monitoring becomes an established norm and where positive decisions regarding children's rights are not only upheld but also respected and guaranteed by the relevant authorities.

- 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.

As Jordan is a Muslim country, the answers to the questions above relate, in the most part, to cases where a child has fallen victim to a crime or where a child's safety is of concern. This is due to the fact that, in Muslim countries, it is the religious courts that have jurisdiction over matters of personal status, this includes family law matters and these invariably have implications for Jordanian children.⁴¹ The discrepancy between civil law and religious law can be seen, for example, in the case of children born out of wedlock; although deemed 'illegitimate' in religious terms and consequently accompanied by a great deal of social stigma, Article 19 of the Civil Code provides for their official registration in the same manner as that of children of married parents.⁴² Although there may be *de jure* non-discrimination amongst children regarding this issue, *de facto* discrimination still remains and needs to be addressed by the government and dedicated NGOs in the best interests of Jordanian children.

One of the major deficiencies of the Jordanian legal system with regard to the protection of children's rights is the lack of specialised juvenile courts.⁴³ The dispersal of pertinent legislation regarding children's rights across a number of sources is also problematic and means that legislative lacunae exist within the legal system. It is with these issues in mind that reform has been attempted in the form of the aforementioned draft Juvenile Law currently before parliament. This bill follows a significant set of legislative reforms implemented in 2002 aimed at protecting the rights of Jordanian children in contact with the legal system and aims to build on them; these include, notably, the prohibition of detaining children in adult facilities and a broad discretion accorded to judges to administer alternative punitive measures to imprisonment.⁴⁴ The draft legislation accounts for the

⁴¹ Jordanian Constitution, Article 103 (2).

⁴² Law No. 43 of the Year 1976, the Civil Code, Article 19.

⁴³ Manara Network for Child Rights, Country Profile of Jordan, August 2011, page 68.

⁴⁴ *Ibid*, page 26.

establishment of dedicated juvenile courts and also raises the minimum age of criminal responsibility to 12 years old for both sexes.⁴⁵ It must be noted, however, that the scarce resources available mean that the Ministry of Justice leans more in favour of capacity-building exercises and training methods, as opposed to the more costly establishment of specialised courts. Should the bill pass into law, this will be an important aspect to keep an eye on.

The draft Juvenile Law, however, still falls short of the desired standard on certain matters. A notable area of concern is the omission of state-sponsored legal aid from its provisions.⁴⁶ It is a troubling development that the issue of free legal assistance for children coming into contact with the legal system has not been addressed by this bill.

On a more positive note, there appears to be a promising trend of cooperation between NGOs and government ministries dealing with juvenile justice around the organisation of workshops dealing with the nature of the vulnerabilities of children coming into contact with the law and their specific needs that must be accounted for.⁴⁷ NGOs have also been involved in awareness-raising efforts regarding the CRC directed at families, universities and the training that judges receive in collaboration with the Judicial Institute.⁴⁸ The expertise of these dedicated NGOs are a vital resource for Jordanian juvenile justice and will most certainly be called upon once the draft Juvenile Law has passed through parliament.

As with a number of the countries in the region, the issue of refugees must also be addressed. Jordan has a long history when it comes to receiving those fleeing conflict in neighbouring countries. Most prominent amongst these refugee populations are the Palestinians, divided into two groups, those that have acquired Jordanian citizenship, the majority, and those that have not.⁴⁹ A considerable number of these live in refugee camps and these can be subject to overcrowding. The United Nations Relief and Works Agency (UNRWA) administers these camps, as well as schools and health facilities for their population; however, refugee children may be at a disadvantage in comparison to their Jordanian counterparts due to their precarious legal status. In addition, Jordan's refugee hosting capacity has been stretched considerably in recent times following the outbreak of conflict in Iraq and Syria, with many people displaced as a consequence of the bloodshed and chaos unleashed by Islamic State militants. This state of affairs is stretching Jordan's limited resources to breaking point and it remains unclear how the children concerned are being treated by the juvenile justice system.⁵⁰

⁴⁵ Ibid, page 68.

⁴⁶ Ibid, page 69.

⁴⁷ Ibid, page 70.

⁴⁸ Ibid, page 72.

⁴⁹ Facts and figures regarding the refugee population of Jordan is provided by the United Nations Relief and Works Agency (UNRWA), available at: <http://www.unrwa.org/where-we-work/jordan>.

⁵⁰ Further information regarding this crisis is provided by the United Nations High Commissioner for Refugees, available at: <http://www.unhcr.org/pages/49e486566.html>.

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