



CHILD-FRIENDLY LEGAL AID STANDARDS AND PROCEDURAL GUIDELINES IN **IRAQ**




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1- INTRODUCTION


 Access to adapted, prompt, and effective legal aid is a fundamental right to which children and youth are entitled. It is a foundation for the enjoyment of other rights related to criminal justice, including the right to a fair trial and is an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.¹

 Most children and youth who are in contact with the law find the experience of legal proceedings confusing at best, and a source of fear, distress, and secondary victimization at worst. It is not unusual for them to have difficulty communicating with the adults involved, to mistrust police and judges, and to lack basic information and understanding about the processes and procedures. They also frequently face discrimination because of their age, gender, and other factors.²

 Iraq's legal system is complex and difficult to navigate for children and youth, especially if they do not have support from a legal professional who is, in turn, specialized and able to provide adequate legal defense and representation. Legal aid provides children and youth with the means to understand legal proceedings, defend their rights, and make their voices heard. It is a necessary component of access to justice for children and youth, and without it, their rights cannot be truly respected nor exercised.³

 Iraq issued its first specialized juvenile justice law in 1983 (The Juvenile Welfare Act No. 76), applicable in a complementary manner with several other regulatory pieces of legislation governing the penal system. In addition, in 2005, the Anti-Terrorism Act was passed. While there is a clear agenda to improve the juvenile justice system as part of broader efforts in Iraq to rebuild governance and the rule of state law after decades of conflict, the situation of children and youth is currently critical, particularly those facing terrorism charges and those already incarcerated on national security grounds.⁴

 Legal aid is not provided appropriately (or in many cases at all) to children and youth facing criminal charges in Iraq. The juvenile justice system thus lacks fundamental law enforcement standards of legal defense leading to an overreliance on confessions as the sole or most significant evidence for convictions. Legal aid providers in Iraq lack specialization in the cases of children and youth, and additionally, often find it very difficult to navigate the system to effectively provide legal aid.⁵

 In an effort to contribute to attaining justice for children which is accessible, age appropriate, adapted to and focused on the needs and rights of the child; Terre des Hommes (TdH) is presenting the "Child Friendly Legal Aid Standards and Procedural Guidelines in Iraq". Child-friendly justice refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level.



¹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

² Terre des Hommes. (2020). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

³ Terre des Hommes. (2020). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁴ Terre des Hommes. (2020). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁵ Terre des Hommes. (2020). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

2- OBJECTIVES

In order to contribute to a child-friendly justice system in Iraq, TdH has led the production of this Child Friendly Legal Aid Standards and Procedural Guidelines. Introducing child-friendly justice principles into the legal system will foster respect of children's rights while providing them with the full access to the justice they need. The guidelines represent a practical reference "for legal aid practitioners in the country to systematically manage the legal defense of cases of children and youth with all due guarantees".⁶

Apart from being a day-to-day reference for legal aid professionals, the Guidelines will be used "as a training, monitoring and guidance tool for justice and legal practitioners in country when addressing and making legal intervention for children offenders, victims and witnesses making sure the appropriate standards apply and abide to, and children are treated fairly, with respect, dignity and equality".⁷

Since January 2019, TdH has been a pioneering actor in justice for children and youth programming in Iraq. Within the current Access to Justice program, TdH aims at promoting justice practices which incorporates a restorative component as to provide appropriate solutions to (re)establish the concept of positive and child-friendly justice among offenders, victims and their communities, but also towards the stakeholders in country, from authorities to national civil society involved in child justice matters.⁸

These child friendly legal aid standards and procedural guidelines are written for the use of:

- Legal aid practitioners in Iraq.
- Tdh staff under Access to Justice Program.
- Tdh sister organizations working in the same field especially local Iraqi partners.
- Parents/legal guardians of children to assist them maneuver through the Iraqi justice system with a child-friendly lens.

3- METHODOLOGY

The production of the Child Friendly Legal Aid Standards and Procedural Guidelines in Iraq followed two phases:

Phase one: Desk review and identification

This phase included a thorough desk review of main project documentation and background (please refer to Annex 1: References). During this phase eight interviews were conducted with lawyers in Iraq to discern the context and capacities in which legal aid practitioners work within; and to match the content of the guidelines to the needs in the system.

It is important to note that the child friendly legal aid standards and procedural guidelines in Iraq builds on an important study conducted by TdH titled: Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system. This study provides an overview and analysis of the current regulatory and law enforcement provisions, practices, and gaps pertaining to the legal pathways for children in contact with the law within the Iraqi criminal justice system. Its methodology consists of an in-depth desk review, combined with 16 interviews with youth released after being charged as minors, legal practitioners, and justice authorities in four Iraqi governorates. This study also contains practical advice for lawyers providing legal aid to children and youth across the various stages of the criminal justice process. The Guidelines build on the study and the blockages and opportunities it details in the justice system, resulting in a tool which facilitates navigating the complexity in the system.

Phase Two: Production of the guidelines

This phase and based on the observations collected in phase one was dedicated for the production of the Child Friendly Legal Aid Standards and Procedural Guidelines in Iraq.

⁶ Terre des Hommes. (2020). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁷ As per Terre des Hommes.

⁸ As per Terre des Hommes.

4- GLOSSARY OF TERMS & ACRONYMS

GLOSSARY OF TERMS

Alternatives to detention

Alternatives to pre-trial detention: Measures that may be imposed on a child/youth who is being formally processed through the criminal (juvenile) justice system and that provide alternative means of supervising the child/youth pending her/his trial, rather than detention at a pre-trial detention center. Alternatives to post-trial detention: Measures at the sentencing stage that may be imposed on child/youth who is being formally processed through the criminal (juvenile) justice system and that provide community-based options for the reintegration, supervision, and rehabilitation of the child/youth, rather than serving the sentence at any form of detention center.⁹

Aftercare

Control, supervision, and care exercised over children/youth after they are released from juvenile facilities/detention, designed to support their return to families/community with less risk of recidivism (examples: probation, counseling, enrollment in a community program, other forms of treatment, referral to an alternative to detention, etc.). Aftercare is part of reintegration, but the concepts are not the same and should not be used interchangeably. Aftercare happens after completion of the sentence, once the child/youth is released and can return to her/his family, community, and environment. It usually lasts between 2 to 6 months after release. Reintegration, which may start even when the child/youth is deprived of liberty, refers to a more comprehensive process. It is recommendable that reintegration finishes between 6 months to 2 years after the aftercare phase starts, depending on the circumstances of the case and the person. Article 99 of the JWA defines aftercare as follows: "Aftercare means taking care of the juvenile after the end of the period of her/his placement in a rehabilitation school, in a way that guarantees her/his integration into society and her/his non-return to delinquency".¹⁰

Bail

The temporary release of an accused child/youth awaiting trial, sometimes on condition that a sum of money is paid to guarantee their appearance in court.¹¹

Child

The Convention on the Rights of the Child defines a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. In the Iraqi Civil Code, a child is defined as every human being below the age of 18 years. The Juvenile Welfare Act No. 76 of 1983 places children in the following categories, by age group:

- a. A "youngster" is a person under nine years of age;
- b. A "juvenile" is a person over 9 but under 18 years of age;
- c. A juvenile is designated as a "preadolescent" if he is over 9 but under 15 years of age;
- d. A juvenile is designated as an "adolescent" if he is over 15 but under 18 years of age.

Child-friendly

Child-friendly refers to situations, locations, or activities that guarantee the respect and the effective implementation of all children's rights at the highest attainable level. A child-friendly approach gives due consideration to the child's level of maturity and understanding, and the circumstances of her/his case.

⁹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹⁰ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹¹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

Criminal offence

There are three categories of criminal offence: felony, misdemeanor and infraction. The type of offence determines the severity of the penalty prescribed by the Code. If the penalty for any offence involves both detention and a fine, then the category of that offence will determine the extent of the period of detention prescribed by the Code.¹²

Defendant

The child/youth or accused in a court of law.

Deposition

A witness's sworn out-of-court testimony. It is used to gather information as part of the investigation process and, in some circumstances, may be used at trial.¹³

Deprivation of liberty

Any form of detention, imprisonment, or the placement of a child/youth in a public or private custodial setting, from which the child/youth is not permitted to leave at will, by order of any judicial, administrative, or other public authority. Pre-trial detention refers to the deprivation of liberty of children/youth in conflict with the law during the period between the moment of being charged and sentencing. Post-trial detention refers to the deprivation of liberty of children/youth in conflict with the law as part of a sentence, served at a detention facility.¹⁴

Indictment

The formal charging of a child/youth with a criminal offense.¹⁵

Juvenile

A juvenile is considered to be any person who commits an offence while between the ages of 9 and 18. If the juvenile is under the age of 15 at the time of committing the offence, s/he is considered to be a preadolescent but, if s/he is between the ages of 15 and 18, s/he is considered to be an adolescent.¹⁶

Legal aid

The provision of legal advice, assistance, and representation for: children/youth detained, arrested, or imprisoned; children/youth suspected or accused of, charged with, or convicted of a criminal offense; and victims and witnesses in the criminal justice process. Legal aid includes legal education, access to legal information, and other services provided through alternative dispute resolution mechanisms and restorative justice processes.¹⁷

Plaintiff

The person (or institution) that brings a case against another in a court of law.

Reintegration

Re-establishing roots and a place in society for children/youth who have come into conflict with the law, so that they feel part of and accepted by the community. Reintegration is a social, economic, and political process. Within TdH's A2J Program, reintegration

¹² Iraq Penal Code

¹³ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹⁴ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹⁵ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹⁶ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹⁷ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

may include measures, such as low-intensity individual or group counseling, family support, vocational training, community service, education, cultural and leisure activities, and life skills. The reintegration model promoted and applied in the A2J Program is holistic and multidimensional, and employs a socio-ecological approach that takes into account individuals, family, community, and broader systems.¹⁸

Testimony

Oral or written evidence given by a witness, under oath, at trial or in an affidavit or deposition.¹⁹

Statement

An account provided by the alleged offender, victim, witness, or other person of interest, taken during the investigation stages (police and/or judicial) in written form or orally.²⁰

Verdict

The formal decision made by the (juvenile) judge concerning the criminal case assessed during the trial.²¹

ACRONYMS

A2J	Access to Justice
BIC	Best interest of the child
CPC	The Criminal Procedural Code No. 23 of 1971
JP	Juvenile Police
JWA	The Juvenile Welfare Act No. 76 of 1983
ISIL	Islamic State of Iraq and the Levant
MENA	Middle East & North Africa
MoJ	Ministry of Justice
MoLSA	Ministry of Labor and Social Affairs
PC	The Iraqi Penal Code No. 111 of 1969
TdH	Terre des hommes – Lausanne Foundation
OHCHR	Office of the High Commissioner for Human Rights
UNAMI	United Nations Assistance Mission for Iraq



¹⁸ Definition adapted from Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹⁹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

²⁰ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

²¹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

5- GUIDING PRINCIPLES AND STANDARDS

Iraq is a party to eight of the nine core international human rights instruments, including: the International Covenant on Civil and Political Rights (since 1971); Convention on the Elimination of All Forms of Discrimination Against Women (since 1986); Convention on the Rights of the Child (since 1994, and its Optional Protocol on the involvement of children in armed conflict since 2008); International Convention for the Protection of All Persons from Enforced Disappearance (since 2010); and Convention Against Torture (since 2011).

This guide “Child Friendly Legal Aid Standards and Procedural Guidelines in Iraq” builds on the aforementioned international instruments and standards as well as on the Iraqi national laws relevant to the juvenile justice process and they are detailed and referenced throughout the document.

Convention on the Rights of the Child (CRC) and its Optional Protocols ²²

This human rights treaty, which recognizes children as human beings in their own right, sets out the rights of children in all areas of their lives.

Articles 37 to 40 encompass the main provisions applicable to children facing justice proceedings. The following children’s fundamental justice rights are of relevance:

The right to be timely and adequately informed, which shall be strictly applied in all judicial stages, including the provision of language-appropriate information about outcomes, appeals and complaint mechanisms, and support services for children, youth, and their families.

The right to be heard directly and to express views at all stages of the proceedings meaning that a child should not be precluded from being heard solely based on his/her age. Duly reasoned judgments and court rulings are to be provided, particularly if the child’s views have not been followed.

The right to free assistance of an interpreter to make sure that the child has understood all the information required to fully exercise their rights.

The right to access (free) professional legal advice and representation, from specialized legal professionals.

The right to protection of private and family life, following strict rules of confidentiality, including legal protection of personal data.

The right to a speedy judicial process, linked with protections for children and the application of their best interest. Time has a different significance for children as at this stage crucial decisions must be taken about their lives. For this, there exist exceptional competencies granted to judges: provisional decisions, preliminary judgments, and immediate enforceable decisions.

On the principles to be applied when acting as a professional assisting children in justice proceedings:

Best interest of the child (BIC), entails a legal obligation for justice operators “to consider the elements of “maximum efficiency” (maximum number of child rights) and of “minimum restriction” (children’s rights that are being limited or restricted based on the BIC are the minimum possible). The BIC shall be used as an interpretative, yet binding, guide to reconcile conflicting rights. It shall entail individualized child assessments.

Meaningful participation of children, comprises the right to information and the right to be heard and express opinions (linked with the access to justice fundamental rights highlighted above). Hence, appropriate ways to exercise these rights effectively should be put in place, centralizing respect for their views and opinions.

Dignity and dignified treatment, which comprises care, sensitivity, fairness, and respect. All children have equal rights, regardless of the offense committed.

²² Terre des Hommes. (April 2022). Guidelines on Access to Legal Aid for Children in Contact with the Law in Jordan- A practical tool to support legal professionals to provide child-friendly legal aid across the different stages of the criminal justice proceedings in Jordan.

Non-discrimination, requires ensuring equal and dignified treatment of all children when accessing justice.

Specialization, involving inter- and multi-disciplinarily approaches and knowledgeable professionals, including a comprehensive understanding of child and youth development.

General Comment (GC) No. 24 (2019) on Children’s Rights in the Child Justice System²³

It brings contemporary considerations to access to justice for children, reflecting on the developments that have occurred in the last decade as a result of the promulgation of international and regional standards on access to justice for children, the new knowledge about child and adolescent development, the evidence of effective practices, including those relating to restorative justice.

It institutionalizes the need of using non-stigmatizing language, referring to Child Justice as opposed to Juvenile Justice and to Children in Contact with the Law as opposed to Juveniles.

It acknowledges that children are provided less protection than the international law guarantees for adults. Children are to be guaranteed legal assistance from the onset of the proceedings, in the preparation and presentation of the defense, and until all appeals and/or reviews are exhausted.

It sets forth effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative, or other public authorities.

It emphasizes that child justice systems should not permit children to waive legal representation unless the decision to waive is made voluntarily and under impartial judicial supervision.

United Nations (UN) Principles and Guidelines on Access to Legal Aid in Criminal Justice systems²⁴

Guideline 10 contains ‘*Special Measures for Children*’:

- The right of the child to have a specialized lawyer assigned to represent him/her.
- Enabling the children who are detained, arrested, suspected, accused, or charged with a criminal offense to contact their parents.
- Prohibiting any interviewing of a child in the absence of his or her lawyer.
- Ensuring that children may consult freely and in full confidentiality with legal representatives.
- Ensuring the presence of the child’s legal guardian.
- Providing information on the legal rights appropriately for the child’s age and maturity, in a language that the child can understand, and in a manner that is gender- and culture-sensitive.
- Provision of information to parents, guardians, or caregivers should be in addition, and not an alternative, to communicating information to the child.
- Promotion of non-custodial measures, where legal practitioners shall direct legal defense to avoid deprivation of liberty of children.
- Establishing measures to ensure that judicial and administrative proceedings are conducted in an atmosphere and manner that allow children to be heard either directly or through a legal representative.

United Nations Security Council Resolution 2427 (2018) on Children and Armed Conflict

It emphasizes that children who have been recruited in violation of applicable international law by armed forces and armed groups and are accused of having committed crimes during armed conflicts should be treated primarily as victims of violations of international law.

²³ Terre des Hommes. (April 2022). Guidelines on Access to Legal Aid for Children in Contact with the Law in Jordan- A practical tool to support legal professionals to provide child-friendly legal aid across the different stages of the criminal justice proceedings in Jordan.

²⁴ Terre des Hommes. (April 2022). Guidelines on Access to Legal Aid for Children in Contact with the Law in Jordan- A practical tool to support legal professionals to provide child-friendly legal aid across the different stages of the criminal justice proceedings in Jordan.

It encourages access for civilian child protection actors to children deprived of liberty for association with armed forces and armed groups.

It urges to consider non-judicial measures as alternatives to prosecution and detention that focus on the rehabilitation and reintegration for children formerly associated with armed forces and armed groups taking into account that deprivation of liberty of children should be used only as a measure of last resort and for the shortest appropriate period of time, as well as to avoid wherever possible the use of pretrial detention for children.



Box 1- What does the best interests of the child mean in my practice?

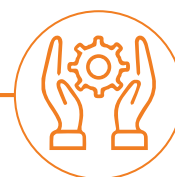
In all legal aid decisions affecting children, the best interests of the child should be the primary consideration. Legal professionals must be aware of this obligation and comply with it by evaluating and acting in the best interests of their child clients.

In practical terms this means:²⁵

- ✓ How a legal professional builds a relationship with a child: for example, s/he should commit time and resources to building a trusting relationship with the child to understand what is in the child's best interests;
- ✓ How the legal professional develops and adapts case strategies to achieve the optimal legal outcome: for example, the professional might decide that it is in a child's best interests to remain silent during a police interview or to advocate for diversion or restorative justice proceedings as an alternative to prosecution;
- ✓ How to interact with other key actors, such as the police, social worker, or judges, to ensure that the child's best interests are the primary consideration at different stages of the process: for example, a legal professional may decide it is in a child's best interests to advocate strongly that delays in a case be kept to a minimum; for a child-friendly environment in a court-room; or to reduce the need for repeated interviews by disclosing information to other professionals (with the child's consent);
- ✓ How to advocate for a child's best interests to be interpreted by the court. In many jurisdictions, a court will have the responsibility for acting in the child's best interests (for instance in family proceedings regarding residence orders). There may be a clear legal framework to follow defining relevant criteria to consider when defining a child's best interests. Legal professionals can provide the court with cogent arguments regarding a child's best interests.
- ✓ There is no definitive 'list' of factors to take into account when evaluating the best interests of a child. Such a list would be impossible to produce, as in every case the individual circumstances of each child will be different.
- ✓ Assessing the child's best interests is an ongoing task that will require constant revision and tweaking as circumstances change or the views of the child evolve.

Criteria to consider when assessing how to act in a child's best interests include: the child's general well-being; the child's physical, mental, spiritual, moral, psychological and social status; and the child's need for education and a healthy and safe environment.

Several different **approaches** should be considered when evaluating the best interests of the child: 1) Take a holistic view of the child's development and well-being on the basis of a good relationship with the child and knowledge of the child's life and circumstances beyond the strict legal issues of the case; 2) Consult with others to build up a holistic understanding of the child's needs and risks; 3) Have a broad, general understanding of common issues that can affect children – such as the impact of witnessing or experiencing violence, mental illness, drug and alcohol dependency and family breakdown – to help provide context for individual cases; 4) Take into account both long-term and short-term considerations for the child's future: what is in the child's immediate best interests should be balanced with that child's best interests in five, ten or more years; and; 5) Balance the risks of a course of action that you consider to be in the child's best interests with protective factors²⁶ in the child's life that can help mitigate the risks.



²⁵ UNICEF ECARO. (October 2018). Guidelines on child-friendly legal aid.

²⁶ Protective factors are conditions or attributes in individuals, families, and communities that promote the health and well-being of children. The six factors include: 1- Nurturing and attachment 2- Knowledge of parenting for child and youth development 3- Parental resilience 4- Social connections 5- Concrete supports for parents 6- Social and emotional competence of children.

Box 2- Checklist: Legal professionals working with children

All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them.

As a lawyer, providing effective legal aid to children involves more than understanding the relevant Iraqi laws and procedures. It also involves competencies and core values that the legal practitioners should embody. Such core values include:

- ✓ Care, compassion, and empathy
- ✓ Accountability
- ✓ Integrity and honesty
- ✓ Competence and professionalism
- ✓ Individual, social and cultural sensitivity
- ✓ Dignity, worthiness, and respect
- ✓ Justice and rights
- ✓ Transparency

1. Iraqi legal professionals should have knowledge of relevant national law and procedures, children's rights, children's developmental²⁷ stages and how to communicate with children.
2. Iraqi legal professionals should know when and how to seek specialized advice and support from appropriate professionals such as psychologists and social workers.
3. Iraqi legal professionals should have awareness and sensitivity when dealing with child victims and witnesses to avoid secondary victimization.
4. Iraqi legal professionals should take responsibility to attend training on an ongoing basis and keep updated to developments in law and practice relating to children.

Self-reflection: As a lawyer do I apply the following know-how to enhance my technical capacities when representing children?

- Do I apply risk assessment, problem-solving, analysis, and critical thinking?** Identify children at risk of abuse and neglect and assess the risks that children face, and whether immediate intervention to prevent further harm is required.
- Do I apply a child-centered practice?** Identify, understand and assess the child's rights and developmental needs and seek the views and wishes of children throughout the process while focusing on the best interest of the child in all decisions.
- Do I apply case planning, implementation, and follow-up?** Coordinate with the relevant agencies/ actors consistently to make sure that the child has access to the services needed. As well as review the situation of the child regularly.
- Do I apply "Do No Harm" principle?** Ensure joint responsibility and accountability of all relevant stakeholders to protect the child from harm and minimize possible negative effects and maximizing possible benefits.

²⁷ Working knowledge of physical, cognitive, emotional and social development of children.



6- JUSTICE PROCESS FOR CHILDREN IN IRAQS

This section presents the key legal procedural steps taken in cases of dealing with children in contact and in conflict with the law. The steps are presented sequentially as of the entry point of the child into the judicial system.

6.1 ACTORS AND THEIR ROLES

To facilitate the navigation of the system and who the children come in contact with during judicial proceedings, an Annex is provided to show the main actors and their role. Please refer to Annex 2: Actors and Roles.

6.2 STAGES OF CHILD-FRIENDLY JUSTICE PROCESS

6.2.1 ARREST AND INTERROGATION BY THE POLICE

Arrest is the action of taking a child into (juvenile) police custody for the purpose of charging her/him with a delinquent act.

At this stage a lawyer shall be attentive to the following rights and considerations:

- No child may be arrested if s/he is below the age of criminal responsibility, which in Iraq is nine years old.²⁸
- The child offender shall not be subjected to unlawful or arbitrary arrest. Arrest shall be used only as a measure of last resort and the shortest appropriate time.²⁹
- The Juvenile Police (JP) is the only security force in Iraq that may arrest and interview children/youth under arrest.³⁰ The juvenile shall be surrendered, on arresting her/him to the Juvenile Police in the cases where there are Juvenile Police therein to undertake presenting him before the examining judge or Juvenile's Court.³¹
- Police officers must ensure that the child caught in the act receive humane treatment, taking account of her/his age development and cognitive ability, and her/his dignity.³²
- Police officers must provide the child with medical assistance if s/ he suffers any injuries and record her/his statements about her/his health condition and if s/he was subjected to beating or harm prior to arrest.

²⁸ Article 233/B, CPC.

²⁹ CRC Article 37/B.

³⁰ Article 48, JWA.

³¹ Article 48, JWA.

³² Article 40-1 of the General Comment No.10 details dignified treatment of children in conflict with the law as follows:

- Treatment that is consistent with the child's sense of dignity and worth.
- Treatment that reinforces the child's respect for the human rights and freedoms of others.
- Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society.
- Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.

- Based upon prevailing circumstances, police shall search the child for any weapons or evidence which is material to the offence. The child is searched in cases when an offence is committed, or if the child has previous known records, or if a level of violence is exhibited during offence or upon arrest.
- Police officers shall search the child with decency, taking into account her/his age when stripping her/him of any arms or dangerous tools. If the child offender is a female, she should be searched by female police. Strip search of children is prohibited.
- Police officers shall make sure of the child's identity, age, address and her/his family's phone number. Her/his age should be verified before booking the child or taking her/his statements by going through her/his official documents such as her/his birth certificate or the identity card or passport of her/his father or mother. In the event that the police fail to obtain these documents, necessary measures need to be taken to delegate an expert to assess her/his age. At this stage the police shall refer the child to the investigation judge who will refer the child to the age determination committee.
- Police officers should explain to the child why they have been apprehended in a way that they can understand, and should not question children about their potentially offending behavior until a parent, guardian, trusted person or lawyer has arrived.³³
- Police officer shall inform the child's guardian of her/his detention immediately, asking the guardian to accompany her/his child, whenever appropriate. Any child apprehended by the police and suspected of wrongdoing should be given an immediate opportunity to contact a parent, guardian or trusted person and provided with access to a lawyer free of charge.³⁴
- In case the guardian is not accompanying the child, the police shall inform the guardian of the place of detention.
- Police officers shall allow the child to speak to the parent and family to comfort her/him and to have prompt access to a lawyer and to legal advice.
- The child shall stay in spaces dedicated for children only, s/he should never be mixed with other arrested adults. The gender of the child should be considered and males and females shall not mix.
- The juvenile should not be arrested in contraventions; s/he may be arrested in the felonies and misdemeanor for the purpose of examining her/him and studying her/his personality.³⁵
- Arrest or apprehension of a person is permitted only in accordance with a warrant issued by a judge or court or in other cases as stipulated by the law.³⁶



³³ Child-Friendly Justice and Children's Rights. (2012). Child Rights international Network. available from: CRIN

³⁴ Child-Friendly Justice and Children's Rights. (2012). Child Rights international Network. available from: CRIN. Article 60, JWA and Article 144, CPC.

³⁵ Article 52, JWA.

³⁶ Article 92, CPC.

Initial questioning:

- The questioning shall take place within the first 24 hours of arrest, following the verification of the child/youth's identity and age.³⁷
- The Juvenile Police investigator shall proceed with the interrogation at the station with the aim of obtaining critical information about the alleged crime and discovering relevant elements for dismissal or judicial investigation.³⁸
- It is to be noted that children/youth shall be interviewed in the presence of a lawyer in all cases³⁹. For evidentiary purposes, confidential recording of the interview is the preferred option. However, in many stations, the equipment is not available, and written reports of the interview and the statement of the child/youth are commonplace.⁴⁰
- If the conclusion of the police questioning/interview is dismissal, the child/youth shall be transferred to the custody of her/his parents or legal guardian without any criminal record.⁴¹
- If the conclusion of the police questioning/interview is to proceed with a judicial investigation, the child/youth will be officially charged with a crime, a criminal record file will be opened, and s/he referred to the Juvenile Investigation Court.⁴²
- If the arrest takes place after working hours or during public holidays and the child/youth must appear in the Juvenile Court, s/he shall be transferred by the JP to one of the observation schools until the Juvenile Courts resume work.⁴³
- The child/youth must not be kept at the police station or placed in any separate room at an adult detention center. Exceptions are made in specific cases stipulated by the law, such as imminent threats to other people or grounds of national security.⁴⁴

At the initial questioning by the police a lawyer's role shall be:

- 1- Obtain the power of attorney from the parents or legal guardian of the child/youth. Children should have the right to their own legal representation, in their own name, in proceedings where there is -or could be- a conflict of interest between the child and the parents or other parties.
- 2- Consider the child as a fully-fledged client with her/his own rights. As a lawyer you should bring forward the opinion of the child.
- 3- Promptly ascertain where the child/youth is being held and if the arrest was implemented in accordance with the applicable law and the above-mentioned guidelines.
- 4- Ensure receipt of all the minutes organized by the police in relation to the case during the previous stages. "Request all the transcripts and recordings of the questioning and verify that the transcripts and any translations summarizing the interview do not misrepresent the questioning record in a manner detrimental to the child/youth."⁴⁵

³⁷ Article 123/A, CPC.

³⁸ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

³⁹ Although in reality and as shared by TdH lawyers, in many cases children are interviewed by the police without the presence of a lawyer. For the best interest of the child this shall be avoided as far as possible.

⁴⁰ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁴¹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁴² Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁴³ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁴⁴ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁴⁵ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

5- Make sure the child is provided with medical assistance if s/he suffers any injuries and record her/his statements about her/his health condition and if s/he was subjected to beating or harm prior to or during arrest.

6- If the child/youth was subjected to any ill-treatment during arrest, a complaint should be filed as promptly as possible. The lawyer should not wait for the next stages of criminal proceedings do so.⁴⁶

7- Meet the child and introduce yourself and explain to the child your role in a kind and easy-to-understand language. (Follow guidelines in the box below: Considerations when meeting with the child). Carefully structure your meeting with the child. During this initial stage, the child may be confused, scared and intimidated. You should introduce yourself to the child and put her/him at ease by explaining the purpose of the meeting/interview, who is present, how long it will take, what will happen afterwards and how the provided information will be used. "It is important to understand that it can take some time before a child is relaxed enough to be comfortable talking, especially when the child is recalling events that are traumatic or involve intimate details."⁴⁷ Do not overpromise on what you are able to deliver or support in.

8- Provide the child with legal advice on her/his rights and the procedures that s/he is expected to face. It is critical to meet the child/youth prior to her/his police interrogation.⁴⁸

9- Document the following details about the arrest as accurately and comprehensively as possible to ensure an accurate account of the legal process:⁴⁹

- o Who carried out the arrest?
- o How many people were there among the arresting authorities?
- o Was an arrest warrant presented?
- o How did the arrest happen?
- o Was any person questioned at the time of the arrest?
- o Was the child/youth subjected to a body search?
- o Was the child/youth handtied?
- o Was the child/youth subjected to any means of pressure, threats, physical or verbal abuse during the arrest?
- o How was the child/youth taken to the police station or other place the child/youth is held?
- o Was the family informed of the reason for the arrest and how the child/youth was taken?
- o Was the child/youth provided with information by the arresting authorities?
- o Has any file been initiated at the place of arrest?

10- Explain to the child/youth that s/he should be cautious about anything they say during questioning as it can be ultimately used against her/him. Silence and lack of cooperation may be used against her/him during court proceedings. However, silence may be preferable in some circumstances, especially if a lawyer is not present.⁵⁰

11- Warn the child that her/his parents may be prevented from visiting during questioning and possibly also from attending court hearings.⁵¹

12- Explain to the child that in some instances, the police may engage in intense questioning without the lawyer being called. S/he needs to ask for the lawyer to be present and/or inform the lawyer as soon as possible of the events.⁵²

⁴⁶ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁴⁷ UNICEF ECARO. (October 2018). Guidelines on child-friendly legal aid.

⁴⁸ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁴⁹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁵⁰ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁵¹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁵² Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

13- Verify if the parents or relatives have been informed about where the child/youth is being held and whether s/he has been questioned. Note that in cases of security-related offenses, the notification to parents and the lawyer may be intentionally delayed. It is particularly important to exercise oversight and follow-up in these cases.⁵³

14- Closely monitor possible ill-treatment during arrest, interrogation, transfer to pre-trial, etc. The conditions of detention during the arrest are to be documented. If the child/youth is able to speak about it without it causing distress or further harm, a sworn testimony may be taken by the lawyer. If a complaint is filed by the lawyer, inform the child/youth of all the processes that may take place and prepare her/him accordingly.⁵⁴

15- Remain sensitive to your communication with the child and consider the case from the child's point of view not only from your point of view as an adult. Make sure that the child understands as much as possible the case and situation s/he is in.

- ✓ **Be alert** to disclosures from the child or other people, allegations, and/or suspicion of child maltreatment.
- ✓ **Ask questions** to clarify concerns and/or develop reasonable ground to suspect that a child has been maltreated, or is at risk of being maltreated.
- ✓ **Report or refer** all identified cases of child abuse through official channels for assessment, investigation, and/or immediate intervention, where required.



⁵³ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁵⁴ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

Box 3- Considerations when meeting with the child

These are some tips to follow when interviewing or questioning a child. The following points need to be considered at all incidents of meeting/interviewing the child, they do not apply to this stage only.

The setting:

- The place of interview should respect the privacy and confidentiality of the child. No other persons may be brought in and interviewed in the same space.
- The setting should be quiet and secure with minimal interruption by other police officers and personnel.
- Sit in such a way to allow an eye level contact with the child. If a small child is sitting on the floor, sit on the floor as well. Do not talk sitting behind a desk or a table, better to sit at the table together with the child. Sit close to the child but not too close. Do not enter "the child's territory", it might be too endangering for her/him.
- The fewer people present during your talk with a child, the better it is. In the case of the lawyer's first meeting with the child, the parent or guardian should be present if available.
- Never meet with the child alone in a room. Always make sure that the relevant parties are present.
- Preferably to call for the presence of a female colleague if the child is a girl.
- Allow a child to get used to the new place, to look the room over.
- You may be familiar with the environments you are meeting the child in (police station, place of detention, etc.), always be mindful of how alienating and frightening these environments could be for the child.

Greeting and the first contact:

- Greet a child by her/his first name.
- Engage in small talk to start the conversation before interviewing the child.
- Minimize the interaction with the child to one person (the lawyer).
- Be open and friendly.
- Introduce yourself to the child, introduce other people; tell the child who you are and what you are doing here and what the role is of other people present in a manner that is understandable to the child.
- Tell her/him what you are going to do.
- Be empathetic, pay attention to any symptoms of nervousness in the child.
- Start asking questions, beginning with questions pertaining to the child's life – where are you going to school, what do you like doing. Use the knowledge you have of the child to formulate the questions. For example: if you know that the child is lonely and does not have any friends, a question – "What is your best friend's name?" is a bad question. Do not ask questions that could be coercive such as, "Do you want to be my friend? Shall we stay friends?".
- Be sensitive to the child's needs, react if the child for example wants a drink or to go to the toilet.
- Inform the child that you will be taking notes so you can remember what s/he said and how the information would be used.

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- Be sensitive to the child's needs, react if the child for example wants a drink or to go to the toilet.
- Inform the child that you will be taking notes so you can remember what s/he said and how the information would be used.

General techniques for interviewing children:

- Use a language appropriate to the age, development and cognitive ability of the child.
- Avoid professional language and legal jargon.
- Use phrases containing only one question or one thought, simple words, simple tenses and short sentences.
- Avoid the use of if/then statements with young children.
- Use first names, i.e. Uncle Munir, do not use personal pronouns, such as “he”.
- Always ask the child to explain any words or expressions which you do not understand.
- Adjust the pace of the interview according to the child's abilities to open up. Be patient.
- If the child covers her/his face or eyes, lowers her/his voice or whispers, when answering the questions – let her/him do it.
- Be empathetic and manage your emotions, the tone of your voice, your expressions and body language; do not show shock, regardless of what the child says.
- Prompt narrative by stating “tell me more” or “what happened next?”
- Move from general questions to more specific ones regarding critical people and events.
- Be careful with yes-no questions, avoid closed or leading questions. (Please refer to Annex 3: Types of questions)
- Follow the list of questions that you must collect at this stage, and rephrase your written questions to child language.

What you must not do:

- Do not keep the child waiting for long periods of time to meet with you/talk to you. Be on time!
- Do not lecture during the interview.
- Never praise or promise an award for giving information.
- Do not coerce the answer, even if you know that the child is not telling the truth or is not disclosing a piece of information s/he must know. Do not pressure, if the child does not want to answer.
- Do not judge any of the answers, given by the child.
- Do not correct the "wrong answer", ask for clarification. If you feel that child is not providing the right answer to the question, do not lead her/ him by saying "you mean ... " instead ask for further clarifications to allow the child to provide the needed input.
- Do not lead the child by suggesting information regarding the case.
- Do not show annoyance when you do not manage to get the information you want to hear; better to stop and take a short break.
- Do not hurry the child who is not ready to talk. Give the child a break if needed.
- Do not make promises you can't keep, i.e. "Nothing bad is ever going to happen to you again".
- Never promise the child that you are not going to tell anybody about things you will hear from her/him. It might be that this case has to be reported further.
- Do not use a mobile, telephone, or check any communications during the interaction with the child.
- Never abuse the child physically or show any act of aggression in the presence of the child.
- In no circumstances should bad, abusive or negative language be used with the child.

Closing the interview:

- Explain to the child what will happen next.
- Praise the child for effort, not for the content.
- Ask the child if s/he has any questions and address these questions accordingly.
- Remember that it is about the child, not the parent: always keep the child at the center of the attention during the talk.
- If you need to speak to the parent or police officers, consider the presence of the child. If needed, you can speak to them separately to avoid the child hearing words they don't fully comprehend, which can potentially scare her/him.



6.2.2 JUDICIAL INVESTIGATION

At this stage a lawyer shall be attentive to the following rights and considerations:

- The investigation should be attended by whomever has the right to defend the child.⁵⁶
- The investigative judge, or investigating officer is responsible for gathering the evidence on the offence raised against the juvenile.⁵⁷
- Interview methods, such as video or audio-recording or pre-trial hearings in camera, should be used and considered as admissible evidence where possible.
- The juvenile accused of felony or misdemeanor shall be referred to the office of Personality Study to undertake medical, social and psychological checks and assessments on a request from the juvenile court.⁵⁸ Such checks help establish the reasons which might have driven the child to commit the offence, and will base the grounds for referrals as required.
- The investigative judge or (judicial) investigator must question the accused within 24 hours of his presentation, after proving his identity and informing him of the offence of which he is accused.⁵⁹
- Before questioning the accused the investigative judge must inform the accused that: i) s/he has the right to remain silent and no adverse inference may be drawn from the accused's decision to exercise that right; ii) s/he has the right to be represented by an attorney, and if s/he is not able to afford representation, the court will provide an attorney at no expense to the accused.⁶⁰
- The investigative judge or (judicial) investigator must determine whether the accused desires to be represented by an attorney before questioning the accused. If the accused desires an attorney, the investigative judge or (judicial) investigator shall not question the accused until he or she has retained an attorney or until an attorney has been appointed by the court.⁶¹
- The use of any illegal method to influence the accused and extract an admission is not permitted. Mistreatment, threats, injury, enticement, promises, psychological influence or use of drugs or intoxicants are considered illegal methods.⁶²

⁵⁶ Article 50, JWA.

⁵⁷ Article 234, CPC.

⁵⁸ Article 236, CPC.

⁵⁹ Article 123, CPC.

⁶⁰ Article 123, CPC.

⁶¹ Article 123, CPC.

⁶² Article 127, CPC.

Box 4: Representation and relationship with the client: child/ legal guardian

Establishing and maintaining a relationship with the child is of high importance during the different proceedings and shall base a foundation of good quality representation and assistance throughout the relevant steps:

- ✓ As feasible as possible, the same lawyer should handle and communicate with the child from the beginning till the end of the case.
- ✓ If a child expresses a wish for a lawyer of a specific gender this shall be accommodated when possible.
- ✓ The lawyer shall work closely with the child's legal guardians/family to support the case as much as possible.
- ✓ The lawyer should explain how her/his role is different from others that the child will encounter in the legal system- that their main task is to provide the child with the best support and representation.
- ✓ The lawyer shall keep the child and her/his legal guardians informed of every step and detail- preparing and supporting them by providing adequate information and advice.
- ✓ It is important for the lawyer to manage the expectations of the child and not promise to deliver outcomes that are not possible/clear throughout the progress of the case.
- ✓ The lawyer shall make sure to meet the child in person, and inform/ explain to the child what is and what shall happen next, as well as answering any questions the child may have. In-person meetings shall be the norm not only for the child's benefit, but also for the lawyer to have a greater understanding of the case of the child and the circumstances s/he is going through.
- ✓ The lawyer shall accompany the child, if need be, to the court or represent absent children.
- ✓ The lawyer shall prepare for all sessions/ meetings/ visits diligently by reading all relevant documents, background of the case, and knowing the applicable laws for the case of the child. Never attend unprepared!
- ✓ The lawyer shall monitor that the child is not exposed to any harm, and mitigate the emotional impact on her/him throughout the judicial journey.
- ✓ Have the child's best interest above any other consideration.

Box 5: Putting the child's right to privacy and confidentiality into practice

Legal professionals should uphold a child's right to privacy during legal proceedings and ensure that all communication with the client is kept confidential in accordance with professional codes of conduct. The right to privacy is vitally important as child victims and witnesses can be put directly in danger and experience severe emotional harm if their identity is disclosed.

- ✓ Court hearings involving children are held in private unless there are clear reasons why it is in the child's best interests for them to be public;
- ✓ Judgments are given in a way that the identity of the child is not revealed;
- ✓ Criminal records of children are not disclosed after they reach the age of majority;
- ✓ The media do not disclose information that could lead to a breach of a child's privacy. Litigation or complaints should be brought against media organizations that breach a child's privacy.

- ✓ Inform the child client that their exchanges will be confidential;
- ✓ Be vigilant about securing the confidentiality of all forms of communication; for example, if meeting with a client in a police station or the hallway of a courtroom, ensure that they cannot be overheard; and if speaking on the telephone with a child client who is in detention, check with the child if they can be overheard. Although this might be complicated in the context and reality of Iraq where hallways may be crowded, lawyers should strive to ensure confidentiality of communication as much as possible.
- ✓ Ensure that the child's personal data (such as case files) are protected in accordance with national law and are kept securely and cannot be accessed by third parties unless in accordance with the best interests of the child and data protection legislation.⁶³

Confidentiality check list:

- Access case information for a legitimate or authorised purpose only.
- Ensure that information you enter into your forms is accurate due to sensitivity of the information on the life of the child.
- Share information with other agencies/actors when required for legitimate purposes only, and on a "need-to-know" basis.
- Take special care in securing case files and documents.
- Do not disclose details of the case to any colleagues who are not relevant to the case.
- Do not disclose information to unauthorised and non-relevant recipients, even off-duty.
- Do not take photos or videos of the child with your mobile phone.



Bail request:

- A decision regarding bail is taken by the Juvenile Investigation Judge at the Juvenile Court. Therefore, the child/youth must wait to appear in court for the first investigation hearing, before there is the possibility of being released on bail until the trial proceedings begin.⁶⁴
- Bail shall be granted to children/youth charged with minor crimes (infractions and misdemeanors). Bail cannot be requested for crimes punishable by the death penalty in the Iraqi PC unless the child/youth is less than 14 years of age.⁶⁵
- The lawyer, in coordination with the parents or legal guardian, shall request release on bail. The Juvenile Investigation Judge may also decide to dismiss the charges or release the child/youth with or without bail. The judge may issue an arrest warrant in case the child/youth does not comply with the bail conditions.⁶⁶
- The Juvenile Investigation Judge takes into consideration various elements to reach a decision on bail requests. The two main elements are: (i) the ability of the parents/legal guardian to pay the bail and ensure that the child/youth will comply with the bail conditions (normally to appear regularly in court); (ii) further considerations pertaining to specific protection needs of the child/youth that would make it harmful for the child/youth to be in a pre-trial detention situation.⁶⁷

⁶³ UNICEF ECARO. (October 2018). Guidelines on child-friendly legal aid.

⁶⁴ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁶⁵ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁶⁶ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁶⁷ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

- Usually, the bail conditions entail attending hearings before the Juvenile Investigation Judge. Failure to comply leads to the issuance of arrest warrants.⁶⁸
- The Juvenile Investigation Judge may request an assessment of the child/youth's needs and family context from the Personality Study Department of the Juvenile Court to support the decision to release with or without bail. Waiting for the assessment usually delays the release process.⁶⁹



Settlement:

As stipulated by the CPC, the conditions of settlements are as follows, noting that settlements in the cases of children/youth are most likely to happen during the judicial investigation stage:⁷⁰

- If the crime allegedly committed is punishable by imprisonment for a period of 1 year or less and has been initiated by a complaint (and not ex officio), the settlement can be reached by the concerned parties without court approval. The case is closed at court, and an order of immediate release of the child/youth if in pre-trial detention shall be issued by the Juvenile Court. The settlement is treated as an "acquittal ruling."
- If the crime allegedly committed is punishable by imprisonment for a period exceeding 1 year, the court will continue with the case even if the concerned parties reach a settlement, but may take into consideration the settlement during sentencing and reduce the measure/penalty accordingly.

The request for an out-of-trial conclusion of the case through settlement can be requested at any time during the proceedings (judicial investigation and trial).

While the above settlement is regulated by court approval, settlement can also be resorted to as a customary dispute resolution mechanism especially in cases of felonies. The lawyer and customary dispute resolution actors in this case shall keep the best interests of the child as a guiding principle. While "the aim of customary dispute resolution mechanisms should be to preserve community harmony and safety, sometimes this happens at the expense of individual interests and particularly when dealing with child victims and witnesses. This is for instance apparent in cases of sexual relations out of wedlock or without the consent of families, as well as sexual assaults. Some of these situations may end up in early marriages between the offender and the child victim."⁷¹

Lawyers could have a key role in dealing with customary justice actors, ensuring that the best interests of the child are guaranteed and avoiding customary settlements that may violate the rights of any child. The reason to resorting to customary dispute resolution mechanisms in cases of children in conflict and in contact with the law, is to keep the child's best interest and mental and emotional well-being guarded at all times, as well as to avoid longer and potentially harmful judicial proceedings for them.



⁶⁸ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁶⁹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁷⁰ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁷¹ Customary Law and Juvenile Justice. (2016). Terre des Hommes.

Box 6: Transfer and transport of the child

Although the reality of transport and transfer of juveniles in Iraq from one location to another such as detention to juvenile court is characterized by limited resources;⁷² ideally when transporting the child, the following main guidelines shall be followed:

Transfers must be made in adequate conditions, with sufficient ventilation and light and without hardship and indignity.

- ✓ Separate children from adults during transportation.
- ✓ Separate males from females during transportation.
- ✓ Transport the child in a civilian car rather than a police/official car to avoid intimidation.
- ✓ Avoid restraining and handcuffing the child.
- ✓ Avoid assault, physical abuse, and psychological abuse when treating the child.
- ✓ Avoid stopping the car for unjustified breaks or speaking to the public about children in the car.
- ✓ Transport female children in the company of female personnel.
- ✓ Provide comfortable space in the car for the child.
- ✓ Base the transport on a formal documented request received by the relevant personnel.
- ✓ Carry out the transfer during daylight as a preference.
- ✓ Maintain the documents and belongings of the child in a safe space.

Although transport of children is not in the sphere of control of the lawyer, Lawyers shall be aware of the above guidelines. It is beneficial to know that the shortcomings in the transport process do affect the wellbeing of the child and in many cases the flow of the proceedings, such as in cases when the child misses their apportionment due to delays in pick up and transport.

At the judicial investigation stage a lawyer's role shall be:

- 1- Provide a comprehensive overview of the legal procedures to the client being the child or the parent/legal guardian at each stage of the different proceedings including how the case might evolve, including each of the child's rights, obligations, and options. Ideally, pre-prepared child-friendly graphics can be used to explain the who, what, when, why, and how to the child.

"It can be helpful to have leaflets available that set out in clear language basic information about the justice system and the role of the legal professional. These leaflets should be adapted for use by different age groups and in different contexts (criminal, civil and so on). Where such materials do not already exist, the legal professional should consider advocating for them to be produced by the Bar Association or a relevant ministry".⁷³

⁷² Interviewees shared that the juveniles are transferred in crowded vehicles, facing delays and missing the appointments of their hearing sessions.

⁷³ UNICEF ECARO. (October 2018). Guidelines on child-friendly legal aid.

- 2- Immediately explain the child's due process rights, using simple language to explain that s/he has the right to be informed of the charges against her/him in a language s/he understands, remain silent, have a parent, guardian, close relative at the proceedings, legal representation and legal aid.
- 3- When required, expedite the confirmation of the child's age. Do not expect a child to carry proof of identity. When the lawyer contacts the child's parent/guardian/ responsible adult s/he can ask them to bring identification, if possible. This can include a birth certificate, medical record at birth, or school records.
- 4- The presence of a lawyer during the judicial investigation stage is mandatory and s/he should be notified and present throughout.
- 5- The lawyer must be able to access all the case files and be allowed sufficient time to prepare an adequate defense.⁷⁴
- 6- During the judicial investigation, the lawyer shall visit the child/youth regularly if placed in a pre-trial detention center or released on bail.
- 7- The lawyer has to examine the Personality Study report including the results of the physical, mental and psychological assessment as well as paying attention to the social state of the juvenile and the environment s/he lives in, as these are considerations contributing to committing the crime and pivotal for the action following the judicial investigation stage.⁷⁵ It is advised to seek support from specialized professionals when appropriate to better understand the Personality Study report.
- 8- It is essential that the lawyer liaise with the authorities in charge of the judicial investigation of the case to closely follow any developments and the evidence/testimonies being collected.
- 9- If the lawyer has been denied access to the child/youth during the investigation phase, an appeal should be submitted to the Juvenile Court.
- 10- Submission of court requests (bail, referral for medical/psychological examination, access or issuance of civil documentation pertaining to the child/youth, etc.).
- 11- Submission of new evidence, requesting the annex of the case file, and interrogation of witnesses or other persons of interest that have provided information in the course of the investigation.
- 12- Submission of evidence and witnesses for the defense.
- 13- Conducting field visits, if need be, to verify the child's condition and address problems/needs s/he may face.
- 14- Directing the child/youth's questions to the Juvenile Investigation Judge.
- 15- Request direct attendance at depositions of witnesses.

The role of the lawyer during the judicial investigation stage is paramount in expediting the case and building a solid evidence-based defense prior to the trial stage. Where possible, the lawyer aims for an out-of-trial conclusion for the case through a settlement.⁷⁶

⁷² Interviewees shared that the juveniles are transferred in crowded vehicles, facing delays and missing the appointments of their hearing sessions.

⁷³ UNICEF ECARO. (October 2018). Guidelines on child-friendly legal aid.

⁷⁴ Article 57 CPC: The lawyer has the right to receive a copy of the investigation papers unless the investigative judge considers that to provide them would affect the course or confidentiality of the investigation.

⁷⁵ Article 14, JWA.

⁷⁶ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

Decisions of the Juvenile Investigation Judge after the end of investigation

- If the charges against the child/youth are not dismissed and s/he is not released on bail after the first hearing, the Juvenile Investigation Judge places the child/youth in pre-trial detention and mandates that the JP transfers the child/youth to the closest center while waiting for the trial.⁷⁷
- The decision to place a child/youth in pre-trial detention may only be taken by the Juvenile Investigation Judge with a court order for a maximum period of 6 months. However, the Public Prosecutor may submit a request for a longer period or an extension at the Juvenile Court.⁷⁸
- Pre-trial detention is mandatory for crimes punishable by the death penalty, unless the child/youth is less than 14 years of age. Pre-trial detention is permissible in cases of felonies and misdemeanors.⁷⁹
- The first step as mandated by the CPC is the recording in writing of the deposition of the plaintiff or informant, followed by the testimony of the victim and other witnesses of the prosecution, in addition to any information shared voluntarily by other persons of interest as deemed necessary by the Juvenile Investigation Judge.⁸⁰
- Each person providing testimony shall state their full name, occupation, place of residence, relationship to the alleged child/youth offender, and to the victim. Children/youth under the age of 15 are not required to take an oath prior to giving their statement. Any other witness shall take the oath and give testimony verbally, which is reflected in a written statement that shall be signed by her/him and the judge.⁸¹
- The Juvenile Investigation Judge may decide to interrogate the child/youth offender at this stage.⁸²



⁷⁷ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁷⁸ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁷⁹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁸⁰ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁸¹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁸² Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

Box 7: Searches and evidence collection

- The Juvenile Investigation Judge may request, at any stage of the proceedings, the appointment of experts to give their opinion or to conduct an assessment about any matter connected to the crime, the alleged offender, the victim, witnesses, or other persons of interest in the case.
- The CPC grants the Juvenile Investigation Judge the authority to issue search warrants pertaining to any relevant location that is connected to the crime under investigation.
- The searching of any person or entry of a house or other business premises for the purpose of a search is not permitted unless based on an order issued by the competent legal authority.⁸³
- If a female is to be searched, the search must be conducted by a female appointed for the purpose, with the identity or the searcher being recorded in the record.⁸⁴
- Crime scene officers are authorized within their areas of competence to inquire into offences and to receive any statements and complaints that may be made in regard to these offences. They are required to assist the investigative judge, (judicial) investigators, police officers and sub-officers, to pass on to them any information concerning the offences that may come into their possession, to apprehend those who committed the offences and to deliver them to the appropriate authorities. They are also required to record all action taken in official reports signed by them, stating the time and place the action was taken, and to deliver immediately to the investigative judge all statements, complaints, reports and other documents and all impounded items and substances.⁸⁵
- Crime scene officers are required to use all possible means to preserve evidence of an offence.⁸⁶

Safe way for child's participation in evidence collection:

- ✓ Be aware that for a child in conflict with the law, a child victim or witness this can involve reliving traumatic events and exposure to persons who have harmed them.
- ✓ Weigh up the advantages and disadvantages in each case when deciding the best course of action:
 - ? How essential the child's oral evidence is to further the case.
 - ? What is the quality of alternative evidence (for example if it has been recorded earlier).
 - ? The age, development and cognitive ability, vulnerability, understanding, capacity and competence of the child.
 - ? The support (or lack of support) that the child has from family or other sources.
 - ? The child's own wishes.

6.2.3 REMAND

Following the conclusion of the judicial investigation phase, the Juvenile Investigation Judge issues her/his decision. There are three possibilities:⁸⁷

1. The conduct of the alleged child/youth offender does not qualify as a crime punishable under Iraqi law, and the case is closed by the Juvenile Investigation Judge.
2. The evidence gathered presents solid grounds to refer the case to the relevant court to initiate the trial stage. The Juvenile Investigation Judge submits the bill of indictment with a request of remand in custody until the end of the judicial procedures.

⁸³ Article 73/A, CPC.

⁸⁴ Article 80, CP.

⁸⁵ Article 41 CPC.

⁸⁶ Article 42 CPC.

⁸⁷ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

3. The conduct of the alleged child/youth offender presents some elements that could constitute a crime punishable under the law, but the evidence gathered is not sufficient. The Juvenile Investigator Judge orders the conditional release of the child/youth and refers the case to the Public Prosecutor or extend the investigation process until new evidence is secured.

At the remand stage a lawyer's role shall be:

- 1- Continue managing expectations of the child and prepare her/him for the possibility that the Juvenile Investigation Judge may make a decision that the child does not like. The information should be put into context so that children can understand any choices available to them and weigh up the advantages and disadvantages of different options.
- 2- Keep informing the parents or legal guardians about developments and remember that informing the legal guardian is not a substitute for informing the child herself/ himself.
- 3- The lawyer should make every effort to prevent remand in custody (pre-trial detention) for the duration of the proceedings. Pre-trial detention of a child/youth should be a means of last resort.⁸⁸
- 4- In preparation for the hearing at the trial stage, the lawyer should have all the child/youth's files (from the police and judicial investigation stages).⁸⁹
- 5- In pleas for the release of the child/youth, the lawyer should make reference to any violation of the child/youth's rights that occurred during the criminal proceedings, including failure to safeguard her/his dignity and physical and psychological wellbeing, and any indication that the child/youth's basic rights and needs, including aspects of family ties, education, and recreation were or may have been unduly compromised.⁹⁰
- 6- Any form of conditional release must be properly assessed in advance and prepared by the lawyer with the parents/legal guardian and the child/youth. If the conditions of release are not met, the likelihood that the child/youth will be deprived of liberty for a longer period at the sentencing stage increases significantly.⁹¹

6.2.4 TRIAL

Box 8: Putting the child's right to participate into practice

This is an overarching guidance which applies to all stages of proceedings.

- ✓ Never underestimate children's capacity to make reasoned decisions about their own lives;
- ✓ Support children's ability to participate by building relationships of trust with them and communicating with them in a child-sensitive manner;
- ✓ Provide children with all the information they need to enable them to participate meaningfully;
- ✓ Give clear explanations of the long-term and short-term consequences of their decisions;
- ✓ Adequately prepare the child before any hearing, providing explanations as to how, when and where the hearing will take place, who the participants will be, and how the child's views will be taken into account;
- ✓ Ensure that children's interests, views and feelings are communicated as clearly as possible to relevant bodies;
- ✓ Take positive action to ensure that all children can participate, including children who have disabilities or challenges with communication;
- ✓ Inform the child of how the court or tribunal took into account her/his views in reaching a decision.

⁸⁸ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁸⁹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁹⁰ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁹¹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

- When a case is received at the Juvenile Court, the Juvenile Public Prosecutor shall be notified, as well as the alleged child/youth offender, her/his parents and/or legal guardian, the lawyer of the child/youth, the victim, witnesses, and any other person of interest, along with their legal representatives.⁹²
- Trial hearings are private, allowing for the attendance of only the parents/legal guardian, the lawyer, and the authorized court personnel. In addition, the hearings take place in ordinary rooms rather a courtroom.⁹³
- The presence of the alleged child/youth offender at the Juvenile Court during the trial stage is mandatory, except in crimes involving the violation of ethics and public morals, where the Juvenile Court may excuse her/his presence provided that the child/youth is duly represented.⁹⁴
- Children/youth shall be brought to the court in a humane and dignified manner (e.g., avoiding the use of handcuffs).⁹⁵
- At the trial stage, the Juvenile Public Prosecutor will call the child/youth, victim, witnesses, and any other person of interest, such as experts. Adults must testify under oath. The defense lawyer shall have the right to cross-examine the aforementioned individuals.⁹⁶
- As good practice in cases involving children and youth, the Juvenile Judge shall order a personality study before issuing her/his final verdict. This assessment is performed by various professionals at the Personality Study Department. A representative of this department attends the hearings at the trial stage and submits a report to the judge with the developments and recommendations to be considered by the court in the verdict (e.g., psychological/ medical follow-up, correctional plan, and its review, etc.).⁹⁷
- The Juvenile Judge assigned by the court shall issue her/his verdict, following the review of the personality study report, along with any additional report from the Personality Study Department; hearing the alleged child/youth offender, victim, witnesses, and other persons of interest; review of the experts' report; and listening to the closing arguments by both parties. Verdicts may not be based on one witness account. Sufficient evidence must be gathered such that charging may be beyond any reasonable doubt, and the evidence must be attached to the child/youth's file as the basis for the court's verdict.⁹⁸

At the trial stage a lawyer's role shall be:

- 1- Court- appointed lawyers called for the trial stage shall prepare diligently for the trial in order to provide a solid defense. As for private lawyers appointed by the parents/ legal guardian, these are involved at earlier stage and at this point can keep to the following points.
- 2- Familiarize the child in advance about the expected setting and environment of the courtroom: the layout, the equipment that may be used, the roles of different attending people.
- 3- Attempt to make the experience of the child at this stage safer and as comfortable as possible by requesting frequent breaks especially if asked by the child and request shorter sessions adapted to the child's capacity for attention and concentration.
- 4- The lawyer shall be aware that children should be protected, as far as possible, against images or information that could be harmful to their welfare. In deciding on disclosure of possibly harmful images or information to the child, the judge/or other parties should seek advice from other professionals, such as psychologists and social workers.

⁹² Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁹³ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁹⁴ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁹⁵ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁹⁶ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁹⁷ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

⁹⁸ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

- 5- In preparation for trial the lawyer preparing the defense of the case should consider the following elements:⁹⁹
- Is there a confession? Was it forced? How long would it take to challenge it, if at all possible?
 - Is the child/youth held in remand custody for the duration of the proceedings (pre-trial)?
 - What is the weight of the evidence against the child/youth? How long is it likely to take to challenge the evidence?

Once the above elements have been studied, an informed decision is to be taken in coordination with the child/youth and her/his parents/legal guardian, with the best interests of the child/youth as the primary concern.

6- The lawyer shall be aware that children should have the opportunity to give evidence in criminal cases without the presence of the alleged perpetrator.

- 7- At this stage, the lawyer should present any preliminary pleadings, and should:¹⁰⁰
- Highlight any indication that a statement or confession used as evidence against the child/youth was taken under duress, and request that the court disqualify it. In such a case, a secondary proceeding should be conducted to assess the claims that the confession was obtained under duress.
 - Not rely exclusively on the materials in the file prepared by the prosecution, and rather should collect and submit evidence to challenge the prosecution's account. Study the materials in the file carefully to identify weaknesses in the indictment (e.g., the transcripts in the file deviate from the video recordings, witness testimonies against the child/youth have inconsistencies, inaccuracies, etc.).

8- Advocate for child-friendly communication with the child, agree on use of short and simple questions and avoid aggressive questioning techniques, and resort to prepared visual aids when possible (such as maps).¹⁰¹

9- Request for the child to sit next to a supportive adult during the hearings, this may be a simple attempt but it would affect the child's perception of safety to a large degree. Otherwise ensure that the child is accompanied by a trusted person if available/ allowed in session. Comparably, check with the child if s/he is comfortable to have her/his legal guardian attending and explore options.

10- Remain vigilant with practitioners (other lawyers, judge, etc.) that they interact with the child in a respectful manner.

11- Repeat information to the child as needed and do not assume that s/he understands the details provided to her/ him from the first attempt.

6.2.5 SENTENCING

The verdicts issued by the Juvenile Court may include one or more of the following measures/penalties:¹⁰²

1. Imposing a fine (in cases of either infractions or misdemeanors).
2. Warning by the court not to repeat behavior, and the child/youth is transferred to the custody of her/his parents or legal guardian with a financial pledge for a period of up to 6 months (only applicable in cases of infractions).
3. Transferal to custody of the parents or legal guardian to implement the recommendations decided by the court tied with a financial pledge for a period not less than 1 year and up to 3 years (applicable in cases of infractions, misdemeanors, and felonies punishable with temporary imprisonment).
4. Placing the child/youth under probation/observation known as "behavior monitoring" (applicable in cases of misdemeanors and felonies punishable with temporary imprisonment).

⁹⁹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹⁰⁰ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹⁰¹ UNICEF ECARO. (October 2018). Guidelines on child-friendly legal aid.

¹⁰² Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

This is one of the alternatives to detention measures set forth in the JWA. The placement under observation may be for a period of between 6 months and 3 years. The implementation of this measure is conditioned on obtaining the written approval of the child/youth indicating her/his agreement to the requirements imposed for its implementation. If the child/youth is female, the behavioral monitor officer shall be a female social worker.

5. Placing the child/youth in a rehabilitation school. The length of the sentence is determined by the type of crime committed and its severity:
 - o For a period not less than 6 months and up to 3 years (misdemeanors);
 - o For a period not less than 6 months and up to 7 years (in felonies punishable with temporary imprisonment);
 - o For a period not less than 5 years and up to 15 years (in felonies punishable by life imprisonment or death)
- The verdict shall be read aloud in the presence of the child/youth and shall include the names of the judges, other parties of interest including victims and witnesses, representatives of the Public Prosecutor's office, a description of the crime, and the penalties/corrective measures imposed. The Juvenile Court shall specify the type of rehabilitation school to which the child/youth is assigned.¹⁰³
- The Juvenile Court is mandated to inform the child/youth, the child/youth's parents/legal guardian, and legal representative of the verdict.¹⁰⁴
- Following the issuance of the verdict, the Personality Study Department shall follow up with the child/youth regularly and inform the Juvenile Court on her/his evolution.¹⁰⁵
- Conditional release may be applicable and mandated by the Juvenile Judge when reviewing the case if s/he has completed two-thirds of the sentence and this period exceeds 6 months, and if it has been reported by the Personality Study Department that the child/youth has shown consistent progress and good behavior.¹⁰⁶
- The JWA stipulates aftercare obligations, stressing the reintegration approach of the measures in the verdict and its implementation. The MoJ has an Aftercare Unit that monitors the reintegration plans and progress of children and youth released from detention.¹⁰⁷



¹⁰³ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹⁰⁴ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹⁰⁵ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹⁰⁶ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹⁰⁷ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

If a juvenile commits an infraction...	... s/he should be cautioned in court rather than punished in accordance with the law or s/he should be handed over to one of her/his parents, legal guardians or foster parents with a warning to the latter to ensure the juvenile's good behavior or s/he should be fined whatever the penalty prescribed by law for an infraction may be. ¹⁰⁸
If a juvenile committed a misdemeanor...	...s/he will be sentenced by the following measures instead of the penalty restrictive of liberty: <ol style="list-style-type: none"> 1- To hand her/him over to her/his legal guardian or any one of her/his relatives to undertake the execution of what was decided by the court from recommendations to secure her/his good education and conduct. 2- To place her/him under conduct control. 3- To place her/him in the School of Rehabilitating the Boys if he is a boy or the School of Rehabilitating the youth if he is a youth for a period not less than 6 months and not to exceed 3 years.¹⁰⁹
If a child commits a felony...	...s/he shall be sentenced to confinement in a reform school for a period of not less than 2 years but not exceeding 5 years if the felony is punishable by the death sentence or life imprisonment and a period of not less than 1 year but not exceeding 4 years if the felony is punishable by imprisonment for a term of years. ¹¹⁰
If the youth committed a crime punishable by imprisonment for life or capital punishment...	... the Juvenile's Court should pass a judgement to place the child in the school of Rehabilitating the Youth for a term not less than (5) years and not to exceed (15) years. ¹¹¹

At the sentencing stage a lawyer's role shall be:¹¹²

1. The lawyer should appeal against conviction following the procedure as stated in the CPC, including with regard to timing.
2. The lawyer should ensure that all the conditions of the penalty/measure imposed are clearly included in the verdict issued. It is important to ensure that the lawyer, child/youth, and her/his parents/legal guardian have certified copies of the verdict.
3. If an appeal against conviction is being prepared, the lawyer must visit the child/youth deprived of liberty as much as possible to prepare the case and make sure that s/he is in the best possible state, including through close monitoring of the conditions of her/his detention, as any issues in this regard could be used as arguments in an appeal.
4. Once (and if) the deprivation of liberty sentence has been confirmed, the lawyer should follow up the case to ensure that appropriate reviews by the Personality Study Department are carried out (on which basis to request reduction of the sentence, conditional release, the possibility of converting the sentence into an alternative to detention sentence, monitoring of the conditions of detention, the provision of services, medical or otherwise, while the child/youth is in detention, etc.).
5. Promote the views and opinions of the child with other professionals.

¹⁰⁸ Article 73, JWA & Paragraphs 68,69 PC.

¹⁰⁹ Paragraphs 73 & 72, PC.

¹¹⁰ Article 77, JWA.

¹¹¹ Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

¹¹² Terre Des Hommes. (March 2022). Understanding the legal pathways for children in contact with the law within the Iraqi criminal justice system.

6.2.6 DETENTION

At this stage a lawyer shall be attentive to the following rights and considerations:

- Any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time.
- When deprivation of liberty is imposed, children should, as a rule, be held separately from adults. When children are detained with adults, this should be for exceptional reasons and based solely on the best interests of the child. In all circumstances, children should be detained in premises suited to their needs.
- The vast majority of children in conflict with the law should be diverted from the formal criminal justice system and alternative sanctions which promote their rehabilitation and reintegration into society should be used.
- Iraqi institutions which hold children should have their social rehabilitation and reintegration as the main objective of all policies and processes.

The Iraqi Commission for Human Rights indicates that there are few number of juvenile observation houses and rehabilitating schools, and they are confined only to the capital, Baghdad, and they do not exist in the governorates (except for the juvenile care homes in Ninewa governorate, which were affected by the war on ISIL as well as the rehabilitation/ observation reformatory school for boys in Mosul established in 2021 by Ministry of Justice).¹¹³ Additionally, juveniles are placed in prisons and pretrial detention facilities for adults, even if they are in separate cells and rooms, but this means that juveniles do not have the care prescribed by the juvenile welfare law.¹¹⁴

- If a juvenile, who has been sentenced to a period of confinement in a reform school or a school for young offenders, has completed two thirds of her/his sentence, the court that has passed that sentence may, on the application of the juvenile, one of her/his parents, legal guardians or foster parents and after examining a report from the director of the school in which s/he is confined or on the application of the public prosecutor, order the release of that juvenile, if it is clear that her/his behavior has improved.¹¹⁵

At the detention stage a lawyer's role shall be:

1. Prioritize as far as possible options of alternatives to detention for the juvenile.
2. Explore options of leniency and suspension of sentence.
3. When sentenced, advocate and submit an application to the Juvenile Court to release the child conditionally based on the two-thirds of the sentence period.
4. Be aware that given the vulnerability of children deprived of liberty, an importance lies on family ties and promoting the reintegration into society. Support maintaining regular and meaningful contact with parents, family and friends through visits and correspondence if safe and appropriate.
5. Promote the right of the child in receiving appropriate education, vocational guidance and training, psychosocial support, medical care, and access to leisure, including physical education and sport.
6. Promote the right of the child and her/his family to access programs that prepare children in advance for their return to their communities, with full attention given to them in respect of their emotional and physical needs, their family relationships, housing, schooling and employment possibilities and socio-economic status.
7. Meet and interview parents, guardians and other relatives who have access to the child to gain further insights into the treatment of the child in detention.

¹¹³ The Iraqi High Commission for Human Rights. (2020). Shadow Report to Assess Iraq's Compliance with the Convention on the Rights of the Child, and the CRC's Recommendations and Concluding Observations.

¹¹⁴ The Iraqi High Commission for Human Rights. (2020). Shadow Report to Assess Iraq's Compliance with the Convention on the Rights of the Child, and the CRC's Recommendations and Concluding Observations.

¹¹⁵ Paragraph 77, PC.

¹¹⁶ Article 84, JWA.

Box 9 - Treatment of females in detention

“Women and girls deprived of their liberty differ from men and boys in many regards... they have different health, hygiene and sanitary needs; they are at a higher risk of substance abuse, self-harm, mental health issues, HIV and other STDs, and may have experienced past physical, emotional or sexual abuse”.¹¹⁷

The Beijing Rules state that young female offenders placed in an institution deserve special attention as to their personal needs and problems. Their fair treatment shall be ensured. The UN Rules for the Treatment of Women Prisoners and non-custodial Measures for Women Offenders (the Bangkok Rules) emphasize how damaging detention can be for girls and recognize the need for different treatment “solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles... shall not be deemed to be discriminatory”.¹¹⁸

Lawyers shall remain alert to the following measures:

- ✓ Female juveniles shall have equal access to all supportive services including education, vocational training, health care, counselling for sexual abuse or violence.
- ✓ Female juveniles should be held separately from adults as well as from boys since they are at particular risk of physical and sexual abuse, particularly when detained in mixed-sex facilities, or where a general lack of facilities for girls results in placement in adult facilities.
- ✓ Be alert to situations where lack of female staff in facilities detaining girls may increase the risk of male staff engaging in ‘sanctioned sexual harassment,’ including improper touching during searches, or watching girls while they dress, shower, or use the toilet.
- ✓ Be alert of situations when male staff may also use their positions of authority to demand sexual favors.
- ✓ Children living with their mothers in prison shall be protected and be able to access developmentally appropriate services including education. children living in prison should never be treated as prisoners themselves.



¹¹⁷ Penal Reform International. (2011). Safeguarding Children in Detention: Independent Monitoring Mechanisms for Children in Detention in MENA.

¹¹⁸ Penal Reform International. (2011). Safeguarding Children in Detention: Independent Monitoring Mechanisms for Children in Detention in MENA.

7- CHILD VICTIMS AND WITNESSES

Child victims and witnesses should be treated in a caring and sensitive manner taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.¹¹⁹ Child victims and witnesses of crime may be at risk of intimidation, reprisals, secondary victimization or their lives may be threatened.

In this section the lawyer is introduced to principles and procedures to consider when dealing with a child witness or a victim. Child victims and witnesses denotes “children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders”.¹²⁰

Rights of Child Victims and Witnesses

The right to be treated with dignity and compassion	The right to be protected from discrimination	The right to be informed	The right to safety
The right to be heard and to express views and concerns	The right to effective assistance	The right to privacy	The right to be protected from hardship during the justice process
The right to special preventive measures		The right to reparation	

- Interference in the child’s private life should be limited to the minimum needed.
- In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.
- All interactions should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child.
- Child victims and witnesses should have access to a justice process that protects them from discrimination based on the child’s, parent’s or legal guardian’s race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.
- Child victims and witnesses should be promptly and adequately informed of the services available to them (health, psychological, social, and legal). They also should be informed about the process and procedures of their case.
- Child victims and witnesses should be enabled to express freely and in their own manner their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to provide testimony and their feelings about the conclusions of the process.
- Child victims and witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training.

¹¹⁹ ECOSOC Resolution 2005/20: Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

¹²⁰ ECOSOC Resolution 2005/20: Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

- Child victims and witnesses should have their privacy protected as a matter of primary importance. Measures should be taken to protect children from undue exposure to the public.
- Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process.
- Child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery.
- Special strategies are required for child victims and witnesses who are particularly vulnerable to recurring victimisation or offending.

Principles when dealing with child witnesses and child victims¹²¹

- (a) Dignity. Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected;
- (b) Non-discrimination. Every child has the right to be treated fairly and equally, regardless of his or her or the parent's or legal guardian's race, ethnicity, color, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status;
- (c) Best interests of the child. While the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development;
- (i) Protection. Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect;
- (ii) Harmonious development. Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development;
- (d) Right to participation. Every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.

Dealing with cases which concern a child victim or witness

- Gather the details of the case to capture the context as required:
 - ✓ Who are parties concerned?
 - ✓ Where did the incident occur? When did the incident occur?
 - ✓ What is the seriousness of the incident?
 - ✓ Is the child in pain or injured?¹²²
 - ✓ Is the child in the location of the incident?
 - ✓ Who are the people around the child?

¹²¹ Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime - ECOSOC Resolution 2005/20.

¹²² Assess the health and emotional status of the child.

- Consideration should be given to the child victim/witness fatigue, psychological trauma, and medical needs; thus assess the length of the interview on the spot. (Please refer to Annex 4: signs of trauma)
- Be aware that the child may be distressed or in fear of their life. Consider the welfare of the child especially in case of injuries and medical needs.
- It is important to identify and assess the risk that the child witness/ victim may be going through. Risk assessment, as well as early evidence gathering to support following justice proceedings is very important. Effective early response during initial investigation will prevent escalation and re-victimisation.

Practitioners often apply the RARA model to assess the risk:

Remove the risk: for instance, by advocating for the arrest of the suspect.

Avoid the risk: for instance, by obtaining orders against the perpetrator, or relocating the victim in place unknown to suspect (safety homes).

Reduce the risk: this could be a preventative measure such as crime prevention and use of protective legislation.

Accept the risk: by safety planning and regular review of the risk assessment and the offender.

For more details on the risk assessment, refer to Annex 5: safety and risk assessment.

- Ensure that the child victim of physical or sexual assault undergoes a medical examination as promptly as possible within 24 hours. Medical treatment as required should be provided to the child as well as counselling and psychological support.
- Listen to what the child is saying, recognise and respect the wishes of the victim.
- Reassure the child that her/his confidentiality is respected wherever possible.
- Follow questioning considerations in Box No. 3 when interviewing the child.
- Approach the family/caregivers as needed unless the child requests otherwise.
- Resort to the referral system for child victims as needed.
- Consider and promote separate waiting rooms for child victims and witnesses.
- Girl or boy child rescued from sexual exploitation should be treated as child in need of care and protection.

Handling the child witness

- Each witness who has attained the age of fifteen years is to be required, before he gives evidence, to swear an oath that the evidence he will give shall be the truth. Any person who has not attained the aforementioned age may be heard for the purpose of evidential inquiry without being on oath.¹²³ Testimony of children under the age of 15 is considered as supporting evidence only.¹²⁴
- When a child is asked to sign any document, the document should be explained to her/him in detail explaining what is written in it and what will be the impact of the child signing it. The child should be informed that if s/he does not agree with what is written, s/he can say what modification needs to be made.
- When providing the statement, the child witness shall state all the facts s/he knows of without any addition or omission.
- Avoid subjecting the child to stating his/her testimony repeatedly and at different occasions.
- In case there is a threat on the life or wellbeing of the child witness, practitioners shall refer the child to referral services to provide the child with a safe shelter especially if the current home of the child does not ensure that.

¹²³ Article 60, CPC.

¹²⁴ The Code of Criminal Procedure, article 226.

Box 10 - Victim-Centered Approach

This approach is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a non-judgmental manner. A victim-centered approach seeks to minimize re-traumatization associated with the criminal justice process by empowering survivors as engaged participants in the process.¹²⁵

This approach shall:¹²⁶

- Prioritize the safety, privacy and well-being of the victim.
- Ensure that personnel are adequately prepared in responding to victims.
- Recognize that victims are never responsible for the crimes committed against them and that offenders are always responsible for their crimes.
- Understand the impact of victim trauma and how it affects victim behavior.
- Limit the number of times a victim has to talk about the incident. Reception officers and first responders should ask only the minimum number of questions to identify the nature of the allegation, provide medical treatment, and secure any evidence, witnesses, and suspects.
- Acknowledge and respect the victim's input.
- Maintain the victim's privacy and confidentiality.
- Ensure the victim is kept up-to-date at every step in the criminal justice process.
- Respond with sensitivity and professionalism to all victims, irrespective of their gender, socio-economic status, sexual behavior, substance abuse, mental and physical challenges.
- Treat each victim with consideration, professionalism, and compassion, and avoid judging the victim according to your personal values, morals, and opinions.



¹²⁵ Human trafficking taskforce: e-guide.

¹²⁶ National Centre for Victims of Crime- Washington.

8- RELEASE, REHABILITATION AND REINTEGRATION

At this stage a lawyer shall be attentive to the following rights and considerations:

- Conditional release is applicable in cases of good conduct during the sentencing period.
- The Juvenile Court may decide to put the juvenile who is released conditionally under probation supervision for a period not less than six months and to exceed a year.¹²⁷
- A released child shall be handed over to her/his legal guardian or a relative to ensure continuation of education and good conduct. If the child has no legal guardian or relative to support, the child shall be placed in establishments of Social Reform until the child reaches the age of 18 for males and 33 for females.¹²⁸
- Probation Control is one of the measures to support the child in her/his reform, while placing the child in her/his natural environment.¹²⁹ The Juvenile's Court shall issue the decision of supervision for a period not less than six months and not exceeding three years.¹³⁰
- If the juvenile who is put under probation control is a female the probation controller should be a female as well.¹³¹
- The probation controller should visit the juvenile under supervision in her/his house as well as school to observe the child's conditions.¹³² The probation officer shall submit a monthly report about the progress of the child to the juveniles' court and the public prosecutor. Ending the probation/supervision period is dependent on these reports.
- International standards promote a holistic approach to rehabilitation and reintegration which addresses both the practical and emotional needs of the child. In Iraq, MoLSA undertakes the supervision and management of the juvenile rehabilitation housing centers (Dar al ahdath),¹³³ while the detention centers prior to this phase are run by the MoJ: Observation schools, Rehabilitation schools for young minors (Sabi Hadath), Rehabilitation schools for grown minors (Fata hadith), and adult youth schools.

In reality, practitioners refer to lack of success of the aftercare programs that are supposed to be provided by the aftercare department of MoLSA through providing an appropriate opportunity to integrate the juvenile into the community in which she/he lives.¹³⁴

The Iraqi High Commission for Human Rights also highlights the shortage of juvenile care houses and lack of capacity building programs to develop the expertise, skills and knowledge of employees in a manner that ensures their success in developing and implementing juvenile rehabilitation and reintegration into society programs.

Aftercare is part of reintegration, but the concepts are not the same and should not be used interchangeably. Aftercare happens after completion of the sentence, once the child/youth is released and can return to her/his family, community, and environment. It usually lasts between 2 to 6 months after release.

Reintegration, starting when the child/youth is in contact with the law, refers to a more comprehensive process. It is recommendable that reintegration finishes between 6 months to 2 years after the aftercare phase starts, depending on the circumstances of the case and the person. Article 99 of the JWA defines aftercare as follows: "Aftercare means taking care of the juvenile after the end of the period of her/his placement in a rehabilitation school, in a way that guarantees her/his integration into society and her/his non-return to delinquency".

¹²⁷ Article 85, JWA.

¹²⁸ Article 86, JWA.

¹²⁹ Article 87, JWA.

¹³⁰ Article 89, JWA.

¹³¹ ARTICLE 92, JWA.

¹³² Article 94, JWA.

¹³³ Article 9, JWA.

¹³⁴ The Iraqi High Commission for Human Rights. (2020). Shadow Report to Assess Iraq's Compliance with the Convention on the Rights of the Child, and the CRC's Recommendations and Concluding Observations.

At the stage of release, rehabilitation and reintegration a lawyer's role shall be:

1. Informing the juvenile and her/his legal guardian of the probation conditions and the consequences of not conforming to them.
2. Taking written approval and consent of the youth on issuing the decision of placing her/him under probation.
3. Explore whether the child has the prospect of early release.

In case of release:

4. The lawyer shall assess the rehabilitation and reintegration services provided to the child throughout detention, these factors could serve the lawyer's efforts when attempting to secure early release:¹³⁵
- ✓ Assess whether rehabilitation begins from the day a child arrives in a detention center and continues until s/he has discharged any sentence entirely.
 - ✓ Assess the extent to which children in detention have guaranteed access to a range of meaningful rehabilitative activities which promote the child's physical and mental health, foster self-respect and a sense of responsibility and develop attitudes and skills that will prevent re-offending.
 - ✓ Review the extent to which children can enjoy appropriate physical conditions and have access to care and facilities which facilitate their continuing education and personal and social development.
 - ✓ Consider whether children are allowed to visit their home and family prior to their release as an integral part of preparations for them and their family for their leaving the institution.
 - ✓ Explore to what extent do detention facility staff work with other agencies on reintegration and is there provision for planning for a child's release looking at accommodation, education or vocational training or employment, counselling, medical support and any financial support, as well as working with the family to prepare the child's return.
5. Work collaboratively with agencies, departments and actors around the child for the welfare and the best interests of the child and to make sure that her/his rights are upheld.
 6. Understand that all actors around the child have an important role and that they all need to work together to deliver the child's rights.
 7. Be aware how the system works and who the different actors are and be able to explain the roles to the child client.
 8. Explore positive traditional justice mechanisms and customs if they favor the interest of the child and her/his reintegration in the community. Remain alert to traditional justice mechanisms that are contrary to Iraqi and international law. (Such as the "jalwa" or forced evictions of families and the transfer of their property to victims as reparations. Where such acts amount to a form of collective punishment and is contrary to Iraqi and international law.)¹³⁶
 9. Be aware of service providers that help children and the services they offer as well as the referral channels available for the child after release.

In Annex 5 there are two helpful tools which can be used by the lawyer at the release and reintegration phases but also in other phases as required. The tools can help in better understanding the context and the environment the child comes from:

1. Safety and risk assessment tool. It is of utmost importance to be aware of the risks that the child client faces(ed) prior, during and after the judicial process. When possible, the assessment should be completed in silo and should be in consultation with other actors including the child, his/her legal guardian, and other child protection practitioners. Once the main risk factors are identified, the lawyer can act with legal professionals and other child protection practitioners to support the child and her/his wellbeing as needed. The assessment must take into account both the risks and protective factors.

¹³⁵ Penal Reform International. (2011). Safeguarding Children in Detention: Independent Monitoring Mechanisms for Children in Detention in MENA.

¹³⁶ OHCHR. (2017). Promotion and Protection of Rights of Victims of Sexual Violence Captured by ISIL/or in Areas Controlled by ISIL in Iraq.

2. The ecomap. An ecomap is a graphic and useful way of identifying all of the systems at play in the child's life. It is a representation of the choices that should be available to the child to access the right support and resources. The child is placed at the center of the diagram; each person and organization that forms a part of the child's network is placed within a circle around her/ him.



9- CHILDREN FORMERLY ASSOCIATED WITH ARMED FORCES/GROUPS

Children held in detention during armed conflict are some of the most invisible children. Few children have access to a lawyer or are given the reasons why they have been detained. Many are held for long periods of time without charge, and often with no contact with their family. Evidence abounds that such children are particularly vulnerable.¹³⁷

This section introduces the reader to the issues faced by children charged on grounds of national security and provides recommendations and pathways to lawyers so they can have a more viable role in such cases.

The reasons why girls and boys become associated with armed groups and armed forces vary significantly based on the context, the armed actors involved, as well as community and family dynamics. Pathways to association- also applicable to Iraq- include: "forced recruitment, propaganda, economic incentive, family ties, community pressure, a close relationship with an armed group fighter, and child marriage."¹³⁸

Lawyers in Iraq come into contact with cases of children facing charges under Iraq's anti-terrorism law, especially after the war against ISIL in the country. A report by UNAMI¹³⁹ points out some concerns detectable in these anti-terrorism trials, among them: violations of fair trial standards; overreliance on confessions with frequent allegations of torture or ill-treatment; broad or vague definition of terrorism which does not distinguish between those who participated in violence and those who joined ISIL for survival and/or through coercion; and restrictions on the publicity of hearings and lack of victim attendance in proceedings. In reality,¹⁴⁰ the trials under national security are mostly characterized by the lack of adequate time and facilities to prepare defense, lack of effective legal representation, and reliance on anonymous informants and intelligence reports.

Definition of terrorism

Every criminal act committed by an individual or an organized group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals.¹⁴¹

Article 1 of the anti- terrorism law of Iraq.

While Article 2.1 of draft UNGA Comprehensive Convention on International Terrorism states "any person commits an offence within the meaning of the present Convention if that person, by any means, unlawfully and intentionally, causes:

- (a) Death or serious bodily injury to any person; or
- (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or
- (c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act.

¹³⁷ The Alliance for Child Protection in Humanitarian Action. (2022). CAAFAG Program Development Toolkit Guidelines. New York.

¹³⁸ The Alliance for Child Protection in Humanitarian Action. (2022). CAAFAG Program Development Toolkit Guidelines. New York.

¹³⁹ United Nations Assistance Mission for Iraq. (2020). Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL.

¹⁴⁰ As detailed in the UNAMI report and as shared by interviewed lawyers in the country.

¹⁴¹ For more details on the offences against the internal security of the State, please refer to paragraphs 190-222 of Iraq Penal Code.

81% of children in terrorism-related cases had court-appointed lawyers, where there was generally no continuity between court between court-appointed lawyers who represented defendants during the investigative hearings and those who represented them at trial.¹⁴² As a consequence, the court-appointed defense lawyers rarely had prior knowledge of the evidence presented during the investigative hearings or of the case itself. Similarly, private lawyers raised concerns that they were frequently not granted permission to access to court files, in particular during the investigation phase.¹⁴³ Some interviewed lawyers have also shared that they prefer to avoid such cases fearing intimidation and risking their own safety and security.

In this complex situation, following are some actions which may support lawyers when dealing with children in terrorism-related cases:

- Apply the child-friendly principles and guidance presented in the different stages throughout this document.
- Challenge the evidence when possible, especially when the court is relying only on a confession.
- Be aware that the use of evidence obtained through torture or ill-treatment in proceedings of any kind is contrary to international law.¹⁴⁴
- Note that ISIL deliberately created a climate of extreme fear in areas they controlled. Of those tried on the basis of their 'membership' or 'association' with ISIL, some may simply have been unable to flee, were forced to live under ISIL rule, and complied with the group's social norms under conditions of coercion.¹⁴⁵
- Ensure that defendants have sufficient time, facilities and opportunity to prepare and present their case to the investigative and trial courts under conditions that do not place them at a substantial disadvantage, including appropriate access to case files, ability to comment on circumstances, to adduce and challenge evidence, and to cross-examine witnesses.¹⁴⁶
- Note that children should not be detained or prosecuted solely for their suspected association with or membership of designated terrorist groups and in contexts where designated terrorist groups are operating.¹⁴⁷
- Note that children should not be detained or prosecuted for crimes committed by family members. Many children come into contact with armed groups, including groups listed as terrorist by the UN through family links but it should not be assumed that these children are members of the groups or have carried out acts to support these groups, and such a determination should be made on a case-by-case basis.¹⁴⁸

In light of the seriousness and severity of the crimes committed by ISIL and other terrorist groups, it is imperative to hold perpetrators duly to account. Nonetheless, the broad application of the Federal Anti-Terrorism Law to any form of 'membership' or 'association' with a terrorist organization, alongside a lower standard of proof and serious disadvantage for defendants to present their cases, also risks amounting in its effect to a form of collective punishment of certain communities in the Iraqi population.¹⁴⁹



¹⁴² As detailed in the UNAMI report and as shared by interviewed lawyers in the country.

¹⁴³ United Nations Assistance Mission for Iraq. (2020). Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL.

¹⁴⁴ Article 37(1)(c) of the Constitution of Iraq also sets out clearly that 'any confession made under force, threat, or torture shall not be relied on.

¹⁴⁵ United Nations Assistance Mission for Iraq. (2020). Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL.

¹⁴⁶ United Nations Assistance Mission for Iraq. (2020). Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL.

¹⁴⁷ The Alliance for Child Protection in Humanitarian Action. (2022). CAAFAG Program Development Toolkit Guidelines. New York.

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10- MISCONDUCT AND COMPLAINT MECHANISMS

During the journey of the child in the justice system of Iraq, s/he may be a victim of misconduct of practitioners. Misconduct is the inappropriate conduct or illegal actions by police or legal officers in connection with their official duties. Such actions may lead to obstruction of justice.

Well-functioning complaints and accountability mechanisms not only protect the child herself/ himself but they also protect security forces and detention staff from wrongful allegations and safeguard the reputations of the respective entities.

Children in conflict and in contact with the law, their representatives or legal guardians shall be informed of the avenues and channels they can resort to in case they wish to register a complaint against official personnel. The basis for complaints can be due to coercion, beating, or neglect of duties, or any form of abuse or misuse of the power which is granted to them.

Following is a list of bodies that the child or his/her family or legal representative can refer to regarding complaints:

- The Iraqi High Commission for Human Rights
- Human Rights committee under the Iraqi parliament
- Supreme Judicial Council
- Prosecution office
- Ministry of Justice
- Director of detention facility
- Ministry of Interior
- Other judicial and other independent authorities

Leaflets or posters of the above bodies and their contact details shall be visible to children and their families at police stations, courts, and other main locations during the judicial journey of the child. The lawyer can hand such leaflets to legal guardians or adults supporting the case of the child.

The lawyer shall promote the child's right to complain and assist with making a complaint taking into account the child's age and capacity.

Difference between 'Concerns' and 'Complaints'

A concern is when a person expresses dissatisfaction about a service provision and wants, for example: an explanation; something to be done, or done differently; or, simply, to tell the agency how they are feeling.

The agency/ department can receive a concern over the phone, in person, via email, or in many other, informal, ways. Most concerns should be able to be resolved through informal discussions between the agency and the person with the concern.

A complaint is when a person complains about something that a government employee/legal officer did or didn't do and wants their allegations to be formally and impartially investigated, and to be provided with a written response/ action.

- ✓ Such complaints should not be censored either in terms of content or substance and children and their legal guardians/ legal representatives should be free from fear of reprisals.¹⁵⁰
- ✓ Children have to be aware of their rights and the complaints procedure and this information should be presented in a child friendly manner, which also takes into consideration any learning difficulties, illiteracy, language barriers etc.
- ✓ The Havana Rules emphasize that any complaint should be dealt with and the child informed of the response without delay.
- ✓ Determine how easily children can bring complaints in practice; for example, do detention centers have systems of locked boxes where children can 'post' complaints; do they have access to child helplines; and do they have access to writing materials.¹⁵¹
- ✓ The Havana Rules state that children have the right to assistance to make complaints. In particular, "[i]lliterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints".
- ✓ Consider whether staff are assigned for the specific purpose of responding to verbal complaints from children including gender considerations.¹⁵²

¹⁵⁰ Rule 76, Havana Rules.

¹⁵¹ Penal Reform International. (2011). Safeguarding Children in Detention: Independent Monitoring Mechanisms for Children in Detention in MENA.

¹⁵² Penal Reform International. (2011). Safeguarding Children in Detention: Independent Monitoring Mechanisms for Children in Detention in MENA.

- ✓ The documentation, independent investigation, prosecution and, if applicable, sanction of the perpetrators of acts of torture or other forms of ill-treatment, contribute to the deterrence of such acts and aim at avoiding their recurrence.
- ✓ Clearly outline the complaint procedures – confidential, safe and accessible to all detainees including children – and require that they are made widely known.
- ✓ Widely disseminate the information regarding protection measures and the mechanisms by which those who feel they are at risk of torture or ill-treatment can apply for protection.
- ✓ Disciplinary complaints against legal aid providers should be promptly investigated and adjudicated in accordance with professional codes of ethics before an impartial body and subject to judicial review.¹⁵³

However, in reality, the mechanisms to address complaints of torture or ill-treatment do not appear to be effective nor do they provide remedy. Complaints and signs of torture in Iraq are often ignored by authorities. Many detainees choose not to report such treatment due to fear of retaliation or for the belief that their complaint would be fruitless.¹⁵⁴ In spite of this reality, calls and efforts to secure better standards for children going through legal proceedings continue. The government is repeatedly urged to investigate all allegations of torture and other cruel, inhuman or degrading treatment or punishment of children in a prompt and independent manner, and ensure that such acts receive an appropriate response through judicial process.¹⁵⁵

It is worth mentioning that legal aid providers themselves should also have the independence and protection to be able to carry out their work effectively, freely and independently. They should be able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel and to consult with their clients freely and should not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.¹⁵⁶

¹⁵³ Draft United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

¹⁵⁴ UNAMI. (August 2021). Human Rights in the Administration of Justice in Iraq: legal conditions and procedural safeguards to prevent torture and ill-treatment.

¹⁵⁵ Committee on the Rights of the Child. (13 March 2015). Concluding observations on the combined second to fourth periodic reports of Iraq.

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ANNEX 2- ACTORS & THEIR ROLES

Professional party	Role
Private lawyer appointed by the parents/ legal guardian	<p>The lawyer requires a power of attorney issued by the parents/legal guardian to be able to access the child/youth and all the files concerning her/him as a condition sine qua non before any legal aid commences.</p> <p>The lawyer must be accredited by the Iraqi Bar Association and shall be in possession of a license grade C.</p> <p>Usually, the service contract agreed with private lawyers includes a retainer fee, which most families cannot afford.</p>
Public lawyer appointed at the Juvenile Court by the Juvenile Judge	<p>Represent and defend the person accused of a crime when s/he does not have one. However, it is to be noted that accessing a lawyer through court appointment leaves the child/youth with no legal aid or representation in the essential initial stages of the process (arrest, interrogation, initial investigation).</p> <p>Article 144 of the CPC states that the lawyer shall attend all court hearings and act in the best interest of their clients.</p> <p>The lawyer must be accredited by the Iraqi Bar Association. There are few lawyers in Iraq who are specialized in cases of children and youth.</p> <p>It is to be noted that the lawyers interviewed highlighted the low financial compensation they receive to support these cases, which has a direct impact on the worktime they put into them (mandatory attendance only to court hearings in the majority of cases).</p> <p>One of the key challenges court-appointed lawyers face is accessing the case file in order to study it prior to hearings, which limits the lawyer's ability to properly defend the child/youth.</p> <p>There is generally no continuity between court-appointed lawyers who represent defendants during the investigative hearings and those who represent them at trial. As a consequence, the court-appointed lawyers rarely have sufficient knowledge of the case.</p>
Lawyers from aid organizations	<p>A power of attorney is required for the lawyer to access the child/youth and the case file.</p> <p>In practice, it is worth noting that lawyers from aid organizations usually have a high case load, affecting the quality of support provided.</p>
Police investigators (from the JP)	<p>Tasked with taking the initial affidavit from the child/youth, the role of police investigators is limited to the first 24 hours of arrest. They fall under the structure of the Mol, though the police investigators within the JP have an additional observation and monitoring line with the Juvenile Court.</p>
Judicial investigators	<p>Law graduates with specialized "investigation training" are legally tasked with carrying out the investigation, collecting relevant evidence, and taking testimonies. They prepare the investigation file and refer it to the Juvenile Investigation Judge.</p>

<p>Juvenile Investigation Judges</p>	<p>Juvenile Investigation Judges are graduates from the Iraqi Judicial Institute with the authority to expand the investigation, refer to forensics, call on the participation of other experts (medical, social, etc.) during the investigation, review the testimonies of the child/youth, witnesses, and others. S/he may also interrogate the child/youth, witnesses, and other persons of interest. S/he has the capacity to grant bail, release the child/youth, decide on proceeding with an indictment, etc.</p> <p>S/he sits in the Juvenile Court, a specialized branch of the judiciary created by the JWA.</p> <p>Additionally, the JWA states that in cases where a Juvenile Investigation Judge is not present/available, a (non-specialized) Investigation Judge may be put in charge of the case, but s/he must apply the specialized procedures and rules as set forth in the JWA.</p> <p>It is worth noting that it is the responsibility of the Juvenile Investigation Judge to ensure that the child/youth has legal representation at all times.</p> <p>S/he should appoint a lawyer if the child/youth does not have one (court-appointed lawyer) as soon as possible, and certainly before the child is interrogated at the judicial investigation stage.</p>
<p>Observation schools</p>	<p>Under the umbrella of the Ministry of Justice (MoJ).</p> <p>Children and youth are detained in observation schools during the judicial investigation phase (pre-trial detention), following a detention order issued by a judicial authority.</p> <p>The observation schools are located in Baghdad and Mosul. Thus, although the JWA mandates that if children/youth are detained during the investigation phase, they should be held in observation schools, outside Baghdad and Mosul, children/youth are detained in separate cells in adult detention centers.</p>
<p>Rehabilitation schools for young minors (Sabi hadath)</p>	<p>Under the umbrella of the MoJ.</p> <p>For minors between 9 and 15 years old, following a sentence/court ruling mandating detention.</p> <p>Boys and girls are housed separately.</p>
<p>Rehabilitation schools for grown minors (Fata hadath)</p>	<p>Under the umbrella of the MoJ.</p> <p>For minors between 16 and 18 years old, following a sentence/court ruling mandating detention.</p> <p>The school located in Baghdad only houses girls (for pre-trial and post-trial detention). The school located in Mosul only houses boys.</p>
<p>Juvenile rehabilitation housing centers (Dar ta'heel ahdath)</p>	<p>Under the umbrella of the Ministry of Labor and Social Affairs (MoLSA).</p> <p>These centers provide a place for homeless minors until they reach the age of 18 years old, which requires a judicial order from the Juvenile Court.</p> <p>A separate unit was created for female children and youth, whether homeless or facing any protection risk. They may remain at the center until they reach 22 years old, are married, or transferred to the custody of their parents/legal guardian/family members.</p>

<p>Personality Study Departments</p>	<p>The JWA mandated the establishment of Personality Study Departments in all Juvenile Courts.</p> <p>Each department includes specialized medical doctors, social workers, and psychologists.</p> <p>The department undertakes medical, social, and psychological checks and assessments based on a request from the Juvenile Court.</p>
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ANNEX 3- TYPES OF QUESTIONS

Questions are open or closed, familiarise yourself with the following types and examples.

Type	Example
<p>Open questions</p> <p>Open questions start with words such as where, what, how and leave the child free in their answer.</p>	<p>Some examples:</p> <ul style="list-style-type: none"> • What are the names of the people involved? • What is their relation to the child? • Where did the incident occur? • When did the incident occur? • What is the date and time that you observed ...?
<p>Closed questions</p> <p>You can only answer 'yes' or 'no' to closed questions. Unless you're after specific information try and avoid these questions as much as possible.</p>	<p>Some examples:</p> <p>Do you get angry quickly?</p> <p>Pay attention to:</p> <p>Closed questions usually contain advice or an opinion, and are referred to as leading questions:</p> <p>"Did you talk to your parents about this?"</p> <p>"Have you been attending school lately?"</p>

Common reactions of children to trauma¹⁵⁷

Practitioners working with children shall be aware of these signs when dealing with traumatised children (indicative but non-exhaustive list).

- **Sleep disturbance:** frequent nightmares, waking in the night, bedwetting.
- **Separation anxiety:** refusing to go to school, upset when left with a childcare provider.
- **Hyper-vigilance:** worried, fearful, easily startled.
- **Physical complaints:** headaches, stomach aches, other aches and pains with no clear medical cause.
- **Irritability:** increased aggressive behaviour, angry outbursts, difficult to soothe.
- **Emotional upset:** tearfulness, sadness, talking about scared feelings or scary ideas.
- **Regression:** loss of skills learned at an earlier age, “babyish” behaviour.
- **Withdrawal:** loss of interest in friends, school or activities child used to enjoy.
- **Blunted emotions:** shows no feelings at all, not bothered by anything, dissociation.
- **Prone to distraction:** trouble concentrating at school or home, daydreaming.
- **Changes in play:** repeatedly acting out violent events in play, less able to play spontaneously and creatively.

¹⁵⁷ National Centre for Children Exposed to Violence – USA.

ANNEX 5- SAFETY AND RISK ASSESSMENT

The framework for the safety and risk assessment includes seven dimensions that lawyer shall be aware of: 1) Child’s vulnerability; 2) Type, severity, and frequency of harm; 3) History of abuse/torture; 4) Risk of further harm; 5) Extent of emotional harm or psychosocial need; 6) Source of harm; 7) Parenting/ caregiving skills at home of the child (in case of release).

Safety and Risk Assessment – Levels of Risk

Level of Risk	Low Risk	Medium Risk	High Risk
Overview of Risk	<ul style="list-style-type: none"> • The home is still safe for the child • The current evidence does not indicate likelihood of serious harm • The child is potentially at risk if services are not provided to prevent further abuse 	<ul style="list-style-type: none"> • The child is likely to suffer some degree of harm without an effective protective intervention plan • There is limited evidence that the child is at risk of immediate serious injury or death • The child is currently in hospital with a suspected or confirmed abuse/torture concern • The child has previously been removed from the care of their family • The child has siblings that have already been removed from the care of their family • The child is currently living in a family environment with a known history of drug and alcohol abuse, mental illness, or domestic violence 	<ul style="list-style-type: none"> • There are identifiable indicators of the potential risk of serious harm. The event could happen at any time and the impact would be serious • The child needs urgent medical attention, is likely to be seriously harmed or injured (incl. self-harm), or subjected to immediate and ongoing sexual abuse, or be permanently disabled, trafficked or die if left in her/his present circumstances without protective intervention • The child’s physical and health safety are endangered, requiring immediate intervention

The child’s developmental needs and overall wellbeing are assessed as follows:

- Physical health: growth and physical and psychological health condition, and medical care.
- Emotional/cognitive/behavioral condition: signs of extreme behavior, age/ developmental appropriateness of behavior, signs of anxiety/ stress/ fear, appropriateness of communication style.
- Education: enrolment and attendance, behavior and performance in school.
- Learning factors: cognitive development, signs of developmental delays, social circles, recreational activities.
- Relationships: with caregivers, siblings, other members of the household, peers, and social relationships.

ANNEX 6- THE ECOMAP

An ecomap is a graphic and useful way of identifying all of the systems at play in the child's life. It is a representation of the choices that should be available to the child to access the right support and resources. The child is placed at the center of the diagram; each person and organization that forms a part of the child's network is placed within a circle around her/ him.

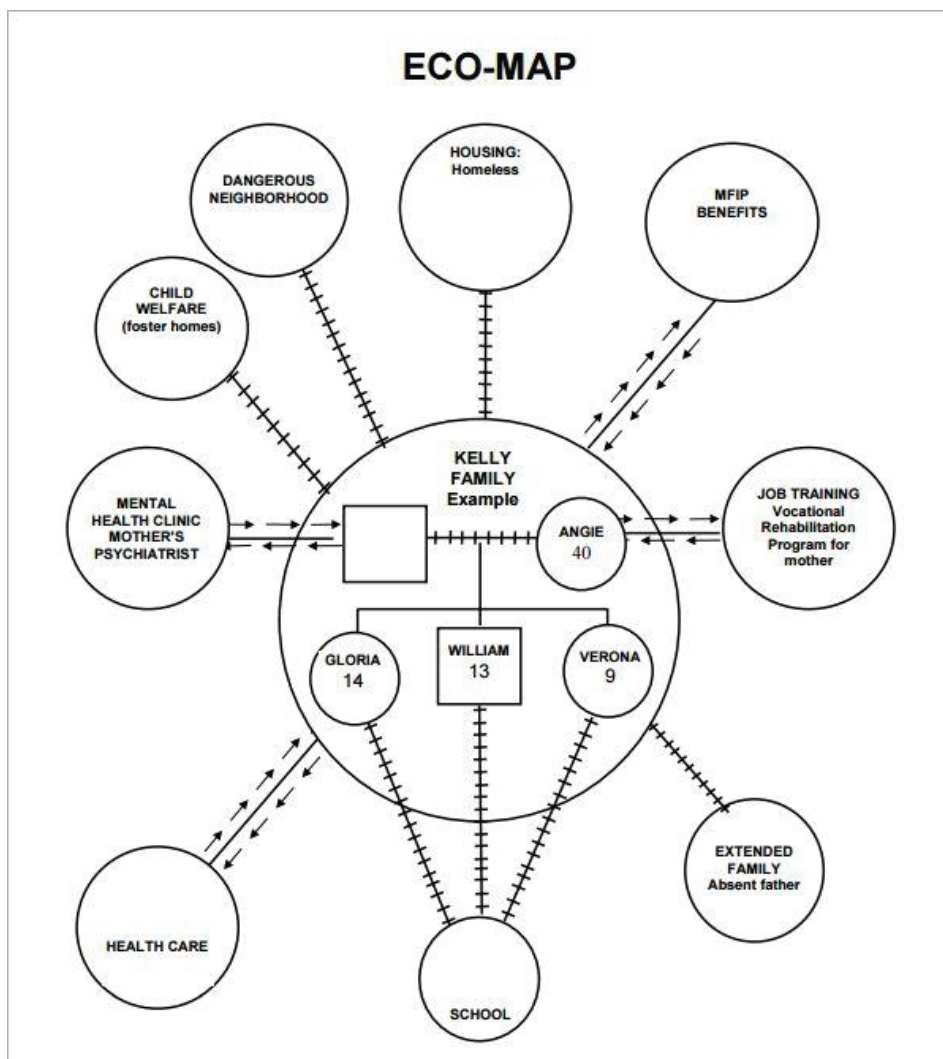
This ecomap can help the lawyer understand the context and actors around the child prior to arrest or after release and accordingly make better judgement of the interventions and legal advice provided to her/his client.

Steps of drawing an ecomap:

1. On a piece of paper, draw a circle in the middle and place the child there.
2. Draw smaller circles around the child to represent different people (actors) in the child's life. Actors in that specific case can be government bodies (ministries, law enforcement etc.), non-governmental organizations (NGOs) (charities, projects etc.), parents (parental organizations), children, educational institution (schools etc.).
3. Draw lines to indicate the nature of the link or relationship. For example:

_____ Strong
 - - - - - Weak
 - · - · - · Stressful





Example of an ecomap:

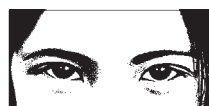


Every child in the world
has the right to a childhood.
It's that simple.



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