



Lawyers' Manual for the Protection of the Child in Conflict with the Law

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Preamble

1. Manual's objective

In accordance with the Convention on the Rights of the Child (Convention), the child must be provided with assistance, which may not necessarily¹ be legal in all circumstances, but which must be appropriate. States parties enjoy discretion to determine how such assistance is provided, such as through social workers.

In addition, States parties to the Convention undertake to take appropriate measures to implement the rights of the child and to make the principles and provisions of the Convention widely known, through appropriate and active means, among adults and children alike (art. 42 of the Convention). Accordingly, States Parties are obligated to develop training and capacity-building for all those working with and for children².

It is essential for the quality of the administration of child justice that all the professionals involved receive appropriate training on the content and meaning of the Convention in general and in particular training on the provisions that relates to their daily work. The training should be systematic and continuous and should not be limited to information on the relevant national and international legal provisions. It should include established and emerging information from a variety of fields on, inter alia, the social and other causes of crime, the social and psychological development of children, with special focus on girls and children belonging to minorities or indigenous peoples, and the available measures to deal with children in violation of the law, in particular the alternative measures for judicial proceedings. A special consideration should also be given to the possible use of new technologies such as video "court appearances", while noting the risks of others, such as DNA profiling."³

In this context, this manual aims to:

- Provide a reference tool for lawyers working with children in conflict with the law within a system of procedures consistent with international standards, national legislation and best practices.
- Achieve coordination and integration among those involved with children in conflict with the law, in particular among social service providers and lawyers.

¹ A number of States parties expressed reservations about this guarantee (article 40, paragraph 2 / b /ii of the Convention on the Rights of the Child), arguing that only legal assistance is required, i.e. through a lawyer.

² CRC General Comment No. 5 (2003), General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42, 44/6), para. 53. The CRC general comment No. 1 (2001) on the aims of education.

³ CRC General Comment No. 24 (2019) on children's rights in the child justice system, para. 112.

<https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>

2. Methodology of the manual

The present manual will shed light on the rights particularly provided for in the Convention on the Rights of the Child and its Optional Protocols in addition to the comments of the Committee on the Rights of the Child (CRC) explaining the Convention provisions, in particular CRC General Comment No. 24 of (2019) on children's rights in the child justice system, as well as other relevant international texts, and comparative law, particularly Lebanese and Tunisian laws.

3. Content of the Manual

The manual contains general provisions on children in conflict with the law, in addition to the role of lawyers in protecting the rights of children in conflict with the law. The Manual also focuses on the importance of cooperation between social service providers and lawyers in order to protect the child.



Some of the terms used in the Manual may be unfamiliar but derive from their original reference, for example the “ No retroactive juvenile justice or unintended punishment of children,” included in CRC General Comment No. 24 of (2019) on children's rights in the child justice system.

Also, the term “juveniles” was sometimes used instead of “children” according to the source, for example, in the “UN Rules for the Protection of Juveniles Deprived of their Liberty”, as well as Lebanese Law No. 422 of 6 June 2002 on the protection of minors that are in conflict with the law or are at risk, etc...

4. The beneficiary of the Manual

The beneficiaries of the present manual are lawyers working with children in conflict with the law in particular in their dealing with social services providers. This relationship is very important given that it consecrates the best interest of the child.

Introduction

On November 20, 1989, the UN General Assembly unanimously approved the text of the Convention on the Rights of the Child (hereinafter Convention). In September 1990, after its ratification by 20 countries, it became a binding legal instrument. States subsequently ratified it or acceded to it, to become the most universally accepted human rights instrument. To this date, all countries of the world, except the United States of America, have become party to the Convention.

The Convention is comprised of 54 articles and three optional protocols. It unequivocally illustrates the fundamental human rights that children must enjoy anywhere and without discrimination. The Convention recognizes the interdependence and equal importance of all rights (civil, political, economic, social and cultural)⁴ that enable all children to develop their mental and physical abilities, personalities and talents to the fullest extent possible⁵.

For further protection, in 2000, the UN General Assembly unanimously adopted the two Optional Protocols to the CRC on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. The third Optional Protocol was adopted by the UN General Assembly in 2011 and it provides for a Communications Procedure to allow individual children to submit complaints to the CRC regarding specific violations of their rights under the Convention and the first two Optional Protocols to conduct the relevant investigation.

We hereinafter tackle the provisions on (1) the protection of children in conflict with the law i.e. any child alleged to, accused of or proven to have violated the Penal Code by reviewing the general provisions on the child in conflict with the law as well as (2) the role of lawyers in protecting the rights of the child in conflict with the law and finally (3) the importance of cooperation between lawyers and social service providers.



“Children in contact with the justice system” refers to children who come into contact with the justice system as victims or witnesses, children alleged as, accused of or recognized as having infringed criminal law, or children who are in any other situation requiring legal proceedings, for example regarding their care, custody or protection, including cases involving children of incarcerated parents” (Paragraph 6(c))

⁴ It is the international legal instrument that encompasses the full range of universal human rights - civil, political, economic, social and cultural rights as well as other aspects of humanitarian law.

⁵ General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), paragraph 7.

of the 2014 United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice)

Therefore, the criminal justice system covers:

- 1- Children in conflict with the law subject of the present manual (in some cases “children in dispute with the law”);
- 2- Children victims or witnesses.

1. General provisions on the child in conflict with the law

1.1 Child Definition

“[...] a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” (Art. 1 of the Convention)

Comparative Law



Lebanese Law

The juvenile subject to Law No. 422 of June 6, 2002 on the protection of juveniles in conflict with the law or at risk (hereinafter Law No. 422) is a person under eighteen years of age (art. 1).

Tunisian Law

Within the meaning ascribed in the Code for Protection of the Child issued in 2005, “every person under the age of eighteen years ... (art. 3).

1.2 The concept of the child in conflict with the law

“Every child alleged as, accused of, or recognized as having infringed the penal law [...]” (art. 40 of the Convention) and “young person who is alleged to have committed or who has been found to have committed an offence,” according to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Rule 2.2 (c))

In its General Comment No. 24 (2019)⁶, the Committee on the Rights of the Child encouraged State Parties “to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee

⁶ CRC General Comment No. 24 (2019) on children’s rights in the child justice system, paragraph 22.

commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention.”

Comparative Law



There is a large array of minimum ages of criminal responsibility ranging from the very low age of seven years (for example in Article 3 of Lebanese law No. 422 stipulating “a person who has not attained the age of seven at the time of the offense shall not be criminally prosecuted”; and (art. 1) stating that “The juvenile to which this law applies is a person under eighteen years of age ...”); or eight years and the maximum age level raised to 14 (Libyan law) or 16 years.

Article 71 of the Tunisian law (Code for Protection of the Child) defines a “delinquent” as “Children, aged between 13 and 18 years old, to who are attributed a violation, misdemeanour [...]”. However, Article 68 of the Code for Protection of the Child provides that a child who has not attained the age of thirteen years shall be “irrefutably presumed as lacking the capacity to violate criminal laws...” and therefore shall not be referred to the criminal justice services. But, such child may be deemed as a children with a “difficult case” and thus benefit from the protection mechanisms established for the threatened child (i.e. at risk).

Age assessment



➔ If there is no proof of age by birth certificate, the authority should accept all documentation that can prove age, such as notification of birth, extracts from birth registries, equivalent documents or school reports. Documents should be considered genuine unless there is proof to the contrary. Authorities should allow for interviews with or testimony by parents regarding age, or for permitting affirmations to be filed by teachers or religious or community leaders who know the age of the child.

➔ Only if these measures prove unsuccessful, the child may be subjected to a comprehensive assessment of the child’s physical and psychological development, conducted by specialist paediatricians or other professionals who are skilled in combining different aspects of development [...]. States should refrain from using medical methods based on, inter alia, bone and dental exam analysis, which may be inaccurate, with wide margins of error, and can also be traumatic and lead to

unnecessary legal processes. In the case of inconclusive evidence, the child shall have the benefit of the doubt⁷.

Case Law

Lebanese criminal cassation, Decision No. 1/2001, dated 9/1/2001:

“Whereas the principle is that, age is determined by the official records of civil status, yet the criminal judge, within the scope of examining the matter of his competence, may rely on other means of proving the age of the defendant when there are suspicions regarding these records for serious, clear and legitimate reasons, which is a matter corroborated by Article 201 in addition to Article 6 of the Civil Code allowing the court, even if no allegation of forgery is submitted before it, to reject any document if it clearly appears based on said document’s condition or the circumstances of the case that the said document is forged, provided that it indicates in its judgment the circumstances and presumptions on which it was based for this purpose; and

Whereas, in the light of the statement of the accused and her father, it appeared to the court that the content of the produced civil abstract indicating that the defendant was born on 1/12/1978 is marred by serious suspicion that legitimately justifies the inability of relying on this abstract to determine the age of her birth; and

Whereas, in the absence of an official record stating correctly the age of the defendant, it reverts to this court to estimate the age in the light of the available evidentiary elements, including the statements she herself made in the preliminary investigation that she was born in 1975; and

Whereas the crime attributed to the accused occurred 02/08/1994, on which she [the accused] had reached adulthood, therefore this court and not the juvenile court would be competent to examine the present case.”

Mount Lebanon Criminal Court, Decision No. 581/2006, dated 13/7/2006:

- ➔ The decision of the accusatory authority deemed the accused as an adult on the date of the offense is based on the forensic report in accordance with X-Rays and physical observation.
- ➔ The production by the accused of a copy of an individual civil record confirming that he was a minor on the date of the offense.

⁷ CRC General Comment No. 24 (2019) on children’s rights in the child justice system, paragraphs 33 and 34

- ➔ The individual civil record is deemed an official document having probative force *erga omnes*, and the contrary may only be proven by invoking forgery of by virtue of another official deed that cancels the first deed. It was established that the accused was a minor on the date of the offense.

1.3 The international legal framework for the rights of children in conflict with the law

The international legal framework refers to international texts relevant to the rights of children in conflict with the law which, in addition to the Universal Declaration of Human Rights (1948), includes international and regional conventions, as well as general comments of committees of the UN human rights conventions, in particular the Committee on the Rights of the Child, as well as the guiding principles and standard rules⁸:

➔ Most important international conventions⁹:

- The four Geneva Conventions of August 12, 1949 and the two Additional Protocols of June 8, 1977¹⁰, in particular on the recruitment of children.
- International Covenant on Economic, Social and Cultural Rights (December 16, 1966)
- International Covenant on Civil and Political Rights (December 16, 1966)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (December 10, 1984).
- The United Nations Convention on the Rights of the Child, adopted by the General Assembly in its resolution 44/25 of November 20, 1989 and the three Protocols to the Convention on the Rights of the Child:
 1. First Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (resolution 54/263 of May 25, 2000).
 2. Second Optional Protocol on the involvement of children in armed conflict (resolution 54/263 of May 25, 2000).
 3. Third Protocol concerning the communications procedure (resolution 66/138 of December 19, 2011).

⁸ To see all international texts please visit: <https://www.ohchr.org/EN/pages/home.aspx>

⁹ According to the chronological order.

¹⁰ Additional Protocol I on the Protection of Victims of International Armed Conflicts and Additional Protocol II on the Protection of Victims of Non-International Armed Conflicts. Additional Protocol III (December 8, 2005) creating a new emblem, i.e. the red crystal added alongside the emblems of the Red Cross and Red Crescent.

- Rome Statute of the International Criminal Court (July 17, 1998).
- Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (No. 182) of June 17, 1999.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) of November 15, 2000.

→ **Most important regional conventions¹¹:**

- Charter of the Rights of the Arab Child (1984).
- Arab Charter on Human Rights, 2004¹².
- African Charter on Human and Peoples' Rights (June 27, 1981)¹³.
- African Charter on the Rights and Welfare of the Child (1990).
- European Convention on the Exercise of the Rights of the Child (1996).

→ **Principles and Rules¹⁴:**

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by the General Assembly in its resolution 40/33 of November 29, 1985.
- United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), adopted by the General Assembly in its resolution 45/112 of December 14, 1990.
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), adopted by the General Assembly in its resolution 45/113 of December 14, 1990.
- Guidelines for Action on Children in the Criminal Justice System, annexed to Economic and Social Council resolution 1997/30 of July 21, 1997.
- Rules and guidelines on children associated with armed forces or armed groups / Paris Principles (February 2007).
- United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, adopted by the General Assembly in its resolution 69/194 of December 18, 2014.

→ In addition to guidelines on the role of the lawyer, in particular:

- Basic Principles on the Role of Lawyers (1990);

¹¹ Arab, African and European. In addition to the Covenant on the Rights of the Child in Islam (2005)

¹² In particular, chapter 33

¹³ In particular, article 18, paragraph 3, on the duty of the State to ensure the rights of the child “as provided for in international declarations and conventions”.

¹⁴ In chronological order

- UN Principles and Guidelines on Access to Legal Assistance in Criminal Justice Systems (2012)¹⁵.

➔ **General comments of the Committee on the Rights of the Child on children in conflict with the law:**

1. General comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child.
2. General comment No. 5 (2003). General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)
3. General comment No. 6 (2005) on Treatment of Unaccompanied and Separated Children Outside their Country of Origin.
4. General comment No. 8 (2006) on The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)
5. General comment No. 12 (2009) on the right of the child to be heard.
6. General comment No. 13 (2011) on the right of the child to freedom from all forms of violence.
7. General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)
8. General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women / General Comment No. 18 of the Committee on the Rights of the Child on harmful practices.
9. General comment No. 21 (2017) on children in street situation.
10. Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration.
11. Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.
12. General comment No. 24 replaces general comment No. 10 (2007) on children's rights in juvenile justice. It reflects the developments that have occurred since 2007 as a result of the promulgation of international and regional standards, the Committee's jurisprudence, new knowledge about child and adolescent development, and evidence of effective practices, including those relating to

¹⁵ A/RES/67/187.

restorative justice. It also reflects concerns such as the trends relating to the minimum age of criminal responsibility and the persistent use of deprivation of liberty. The general comment covers specific issues, such as issues relating to children recruited and used by non-State armed groups, including those designated as terrorist groups, and children in customary, indigenous or other non-State justice systems¹⁶.

2. The role of lawyers in protecting the rights of children in conflict with the law

Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Legal aid is the foundation for the enjoyment of other rights, including the right to a fair trial, [as specified in Article 11 paragraph 1 of the Universal Declaration of Human Rights], as a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.

For the purposes of the Principles and Guidelines on Access to Legal Assistance in Criminal Justice Systems¹⁷, the term “legal aid” includes legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.

The primary providers of legal aid are lawyers, but the Principles and Guidelines also suggest that States involve a wide range of stakeholders as legal aid service providers in the form of non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and

¹⁶ General Comment No. 24 (2019), paragraph 1.

¹⁷ The United Nations Principles and Guidelines on Access to Legal Assistance in Criminal Justice Systems for 2012 are among the most prominent international instruments that reinforce the importance of providing legal assistance to ensure access to justice.

academia¹⁸.” (the UN Principles and Guidelines on Access to Legal Assistance in Criminal Justice Systems)

Principle 11 of the Guidelines and Principles states, “Legal aid provided to children should be prioritized, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.”

According to Rule 15.1 of United Nations Standard Minimum Rules for the Administration of Juvenile Justice, “Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.”

In summary, in addition to the right of everyone to protect, assert and defend his/her rights at all stages of criminal proceedings, there are special procedures for children in conflict with the law that the lawyer must be familiar with. Moreover, dealing with children requires specialized skills derived from international principles and national legislation.

2.1 Overview of the general role

According to the Basic Principles on the Role of Lawyers¹⁹, the following principles must be met:

- 1) All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings. (para 1)
- 2) All persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer and in any case not later than forty-eight hours from the time of arrest or detention. (para 7)
- 3) All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials. (para 8)
- 4) Qualifications and training: Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the

¹⁸ States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution. (Principle 1 of the UN Principles and Guidelines on Access to Legal Assistance in Criminal Justice Systems)

¹⁹ Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

lawyer and of human rights and fundamental freedoms recognized by national and international law. (para 9)

- 5) Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice. (para 12) The duties of lawyers towards their clients shall include:
 - a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;
 - b) Assisting clients in every appropriate way, and taking legal action to protect their interests;
 - c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.
- 6) Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to **uphold human rights and fundamental freedoms recognized by national and international law** and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession. (para 14)
- 7) Lawyers shall always loyally respect the interests of their clients. (para 15)

As it appears, the lawyer seeks to uphold human rights, including the rights of the child, in conflict with the law, which demonstrated the importance of the role of the lawyer in the procedures related to children.

2.2 The role of the lawyer in procedures related to children in conflict with the law

The Convention on the Rights of the Child²⁰ requires that every child is entitled to assistance, not necessarily legal in all circumstances²¹, but which must appropriate (art. 40). It reverts to States parties to determine how such assistance should be offered, such as through social workers, provided that the service provider enjoys sufficient knowledge of the legal aspects of the child justice process and has received appropriate training on working with children in conflict with the law and provided this assistance is offered free of charge.

²⁰ Article 14/ 3/d/ of the International Covenant on Civil and Political Rights specifies, “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...] To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

²¹ A number of States parties have expressed reservations about this guarantee (article 40, paragraph 2 / b / 2, of the Convention on the Rights of the Child), arguing that only legal assistance is required, ie through a lawyer.

NB: Article 14/ 3/d/ of the International Covenant on Civil and Political Rights → The right to legal representation is a minimum guarantee in the criminal justice system for all persons, and should equally apply to children. Although the article allowed a person to defend himself/herself in person in any case where “the interests of justice so require”, that person will be assigned legal assistance.

A. Importance of the role of the child lawyer

- According to the Committee on the Rights of the Child²², States should ensure that the child is guaranteed legal or other appropriate assistance from the outset of the proceedings, in the preparation and presentation of his/her defence and until all appeals and/or reviews are exhausted.
- The Convention recommends that States provide effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative or other public authorities. Child justice systems should not permit children to waive legal representation unless the decision to waive is made voluntarily and under impartial judicial supervision.
- If children are diverted to programmes or are in a system that does not result in convictions, criminal records or deprivation of liberty, “other appropriate assistance” by well-trained officers may be an acceptable form of assistance, although States that can provide legal representation for children during all processes should do so, in accordance with Article 41. Where other appropriate assistance is permissible, the person providing the assistance is required to have sufficient knowledge of the legal aspects of the child justice process and receive appropriate training.
- A lawyer is the only intervener who must be present throughout the entire judicial process (as well as after its completion). It is therefore important that the child be represented by the same lawyer during the different stages whenever possible.

What are the necessary competencies of Juveniles' lawyers?

Lawyers, in particular, must:

- Understand their distinctive roles in child justice procedures.
- Have a good understanding of how the child justice system works and the role of everyone involved.
- Continuously communicate with various intervening professionals.

²² General Comment No. 24 (2019), paragraph 49 and follows.

- ➔ The CRC emphasizes that continuous and systematic training of professionals in the child justice system is crucial to uphold those guarantees.²³ A comprehensive child justice system requires the establishment of specialized units within the police²⁴, the judiciary, the court system and the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.²⁵
- ➔ Lawyers should, in particular, receive training on the provisions related to children in conflict with the law, whether national or international, in particular the Convention on the Rights of the Child and its three protocols (especially if the state ratified the protocol(s) since most national legislation provides for supremacy of ratified International conventions over national laws.
- ➔ Training must not be limited to introducing national and international legal provisions, since professionals should be able to work in interdisciplinary teams, and should be well informed about the physical, psychological, mental and social development of children and adolescents, as well as about the special needs of the most marginalized children.²⁶ Consideration should also be given to the possible use of new technologies such as video "court appearances," while noting the risks of others, such as DNA profiling²⁷.

Comparative Law



Lebanese law

Article 2 of the Civil Procedure Code stated that "International treaties ratified by the Lebanese Parliament are part of the domestic legal system and have supremacy over domestic laws" .

Tunisian law

Article 20 of the Constitution expressly states that "International agreements approved and ratified by the Assembly of the Representatives of the People have a status superior to that of laws and inferior to that of the Constitution."

²³ General Comment No. 24 (2019), paragraph 39.

²⁴ Rule 12 of Beijing Rules specifies that, "In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose."

²⁵ General Comment No. 24 (2019), paragraph 106.

²⁶ General Comment No. 24 (2019), paragraph 39.

²⁷ General Comment No. 24 (2019), paragraph 112.



A lawyer must be familiar not only with national laws but also with the international standards, social and psychological aspects of the child and modern technologies.

Is the presence of lawyers mandatory?

- ◆ Every child must have legal or other appropriate assistance in the preparation and presentation of his or her defence.
- ◆ It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid. (Principle 3 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems)

Comparative Law



Lebanese law

- ➔ The presence of a lawyer alongside a juvenile is mandatory in criminal and other trials (article 42 of Law 422).
- ➔ If the juvenile's parents or guardians fail to provide him with a lawyer, the court may appoint a lawyer or request said appointment from the President of the Bar Association (article 42 of Law 422).
- ➔ If a litigant's situation does not enable him/her to pay trial fees and expenses, he/she may apply for “judicial aid” (Article 425 of the Lebanese Code of Civil Procedure).

Tunisian law

- ➔ The public prosecutor shall allocate a lawyer if the child has not previously assigned a lawyer to defend him/her according to Article 77 of the Code for Protection of the Child, if the acts attributed to the child are of a serious nature and the Public Prosecutor must automatically appoint a lawyer to assist the child in case the child has not chosen one.
- ➔ The investigating judge (and the children's judge²⁸) is obliged to inform “parents, tutor or custodian of the criminal proceedings. In the absence of a choice of a lawyer by the child or his or her legal representative, the judge instructs the head of the national lawyers’ commission branch to appoint him/her a lawyer ex officio.” (Article 93 of Code for Protection of

²⁸ Legal provisions on children's judge did not explicitly mention the issue of allocating a lawyer. However, article 87, paragraph 3, stipulates that the children's judge shall take into account the provisions of article 93 of this Code. Referring to article 93 on the proceedings before the children's investigating judge, the legislator obliged the investigating judge to do so.

the Child).

- ➔ “Legal aid” is a constitutional principle. Article 108 of the 2014 Constitution stipulates that the law facilitates access to justice and provides legal assistance to those without financial means (in addition to Law No 52/2002 dated 3 June 2002 relating to the granting of legal aid)

CASE LAW

1- Lebanese Criminal Cassation, Decision No. 62/1999 of 13/14/1999²⁹.

The right of a minor to have a lawyer present on his side during the trial is a matter related to public order, and depriving him/her of this entails the annulment of the proceedings.

The ground for cassation based on the violation of the law by failing to secure the right of defense of appointing a lawyer to an accused minor:

Under article 45 of the Juvenile Delinquents Law, “the juvenile court shall not be entitled to prosecute juvenile offenders unless a lawyer is appointed and if the juvenile's parents or juvenile protection association do not appoint a lawyer for the juvenile, the court shall automatically appoint one.”

Whereas the court issuing the challenged decision, by proceeding with the misdemeanor trial in the absence of the accused juvenile’s lawyer due to sickness and without automatically appointing another lawyer to defend him, has violated the law or neglected the right of defense related to public order, and would have made a flawed measure affecting its verdict since what is based on illegitimacy is illegitimate (*Ex injuria jus non oritur*) and therefore the verdict must be squashed and the appeal must be accepted in the merits without the need to address other reasons.

2- European Court for Human Rights

- ➔ The Court found a violation “of Article 6 paragraph 1 of the European Convention on Human Rights on account of the lack of legal assistance to the applicant while he was in police custody. (Salduz vs. Turkey, November 27, 2008).

- ➔ The case of Panovits³⁰ v. Cyprus related to a 17 year old child accused of murder and robbery. The police contacted the applicant’s father and invited him and the applicant to visit the police station. The applicant was arrested and taken into a separate room for questioning in the absence of his father and lawyer. The Court considered that it was unlikely, given the applicant’s age, that he was aware that he was entitled to legal

²⁹ <http://www.legallaw.ul.edu.lb/>

³⁰ ECtHR, *Panovits v. Cyprus*, No. 4268/04, 11 December 2008.

representation before making any statement to the police. Moreover given the lack of assistance by a lawyer or his guardian, it was also unlikely that he could reasonably appreciate the consequences of his proceeding to be questioned without the assistance of a lawyer in criminal proceedings concerning the investigation of a murder. Court takes note of the Government's argument that the authorities had remained willing at all times to allow the applicant to be assisted by a lawyer if he so requested. It observes that the authorities failed to inform him he could request the assignment of a lawyer free of charge if necessary. The Court moreover finds that neither the applicant nor his father acting on behalf of the applicant had waived the applicant's right to receive legal representation prior to his interrogation in an explicit and unequivocal manner. The Court concludes that there has been a violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 of the Convention on account of the lack of legal assistance to the applicant in the initial stages of police questioning.

- ➔ The case of *Bouamar v. Belgium*³¹, the European Court of Human Rights found that there was a breach of paragraph 1 of Article 5 of the Convention for the Protection of Human Rights for the following reasons: holding hearings to determine the detention of the applicant in the absence of his lawyer; there was no effective decision on the "lawfulness of the detention" because the domestic courts rejected the applicant's appeals as "devoid of purpose."

Relationship between the lawyer and the other parties

Whether the lawyer is the one chosen by the child (or his/her parents) or appointed by the court, he must interact with other parties, and in particular:

- Must have a good understanding of how the child justice system works and the role of everyone involved in the child justice system and be able to explain their roles to the child, especially the social services system that has a key role in children's issues.
- The lawyer must be in contact with all those involved in the child justice

Relationship with the Child	<ul style="list-style-type: none"> ➔ Good communication is the main key to build the relationship between social service providers and the child. In order to gain the confidence of the child, in particular, a social service providers must : ➔ Adapt his/her language and deal differently with children, always keeping in mind that each child has different individual needs. ➔ Use a child-friendly language: simplify language, use short sentences, use humor but without the use of irony and idioms
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³¹ ECtHR, *Bouamar v. Belgium*, No. 9106/80, 29 February 1988.

	<p>that the child may not understand.</p> <ul style="list-style-type: none"> → Use tools that explain to each child the information he/she needs to know and adapt to each child's level of maturity and abilities (for example, using graphics and images). → Avoid leading questions (for example, don't ask "Do you understand?") Because children will often agree, and the child may automatically answer "Yes." → Meet the child in an environment adapted to the child's needs (allocating a special room at the lawyer's firm). → Inform the child of his/her rights in child-friendly language and make sure that he/she understands these rights. → Listen to the child at each stage of the proceedings, and relay his / her opinion to other stakeholders during the proceedings and relay his/her opinion to other involved parties during the proceedings. This is essential to ensure the child's right to participate efficiently in the trial. → Invite the child to efficiently participate in decisions relating to him/her, knowing that the child also has the right to remain silent. → Answer all of the child's questions and make sure he understands the answer correctly. → Talk to the child about the role of each party involved in the judiciary. → Inform the child about the various options for measures that can be taken. This includes avoiding judicial proceedings (alternative measures). → Repeat statements made by the child because this allows the child to think about the actual content of what he said and enables the lawyer to verify if the child has correctly understood.
<p>Relationship with the Child's Parents</p>	<ul style="list-style-type: none"> → The Convention on the Rights of the Child requires the adjudication of a case in the presence of a legal counsel or other appropriate assistance and in the presence of his or her parents or legal guardians, unless this is deemed to be against the child's best interest³², especially if he or she takes into account his or her age or situation (art. 40, 3). → Parents or legal guardians should be involved in possible solutions related to measures to be presented to the court in the best interests of the child. → The lawyer's relationship with the child should not be affected by his or her relationship with the parents or legal guardians. The lawyer must work in the best interests of the child and not

³² CRC Comment No. 14 para. 61, "Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm [...]"

	in the interests of the parents, even if he or she was appointed by them.
Relationship with other parties involved in children justice	<p>→ As mentioned above, it is essential for the lawyer to know how the child justice system works and to know all those involved in the system, since the lawyer cannot promote the rights of the child alone; he or she needs to cooperate with other involved parties.</p> <p>→ For example, many children appearing in court have developmental disabilities and / or severe language problems. The cooperation of lawyers with other key players (such as social service providers, psychotherapists and specialized physicians) is therefore vital.</p> <p>→ Various key players taking part in the proceedings mainly include judicial police, public prosecutors, judges, interpreters (if necessary), psychologists (if necessary), physicians (if necessary), etc.</p> <p>→ Children in conflict with the law often face other issues such as school exclusion, family and housing problems, health problems, etc. A lawyer needs to be adequately familiar with the role of social services providers for children (for more on the issue of a lawyer's relationship with social service providers, see Part 3 of the Manual).</p>

When does the role of the lawyer starts and ends?

→ States should guarantee the right to legal assistance at all stages of the criminal justice process for any person who is detained, arrested or suspected of a crime punishable by imprisonment or death or accused of such a crime. Children should receive legal assistance on the same terms as adults or on more lenient terms.

→ According to Article 14, paragraph 3 (b), of the International Covenant on Civil and Political Rights every person should be allowed "To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing." According to the Article 40, paragraph 2 (ii) of the Convention, States Parties shall ensure that every child is "informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence. Moreover, Article 16 of the Convention provides for the respect of the child' right to be protected against interference in his/ her correspondence and privacy.

➔ In accordance with Principle 7 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, “States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process. Effective legal aid includes, but is not limited to, unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files and adequate time and facilities to prepare their defence.”



The lawyer's role begins immediately when the child is arrested or summoned for investigation and ends with the end of the measure taken against him/her.

At all stages of criminal justice proceedings, the lawyer shall:

- ❖ Pay special attention to the rights of the child (see paragraph (b) on guarantees of fair trial for children in conflict with the law).
- ❖ Keep the concerned parties updated on all recent development in the case (child, parents...).
- ❖ Offer counselling and assist the child in understanding the charges against him / her and provide information in a manner appropriate to his/her age and maturity.
- ❖ Obtain an interview with the child and his / her caretakers, whether his or her parents, guardian or custodian, and get informed precisely of the type of crime committed by him or her and obtain comprehensive information on his or her social and family status.
- ❖ Make sure that the child is not subjected to cruel and degrading treatment.
- ❖ Attend all proceedings on time.
- ❖ Prepare the legal framework for the child's plan, i.e. the necessary preparations for effective representation of the child (including: case facts analysis, research, analysis of relevant legal articles and court decisions).

☞ **During the investigation procedure**

- ❖ The lawyer must attend the interrogation sessions and the investigation of the child.
- ❖ Ensure the availability of rights and safeguards guaranteed by legislation during the investigation stages.
- ❖ Request interim pre-trial release.

☞ **At the pre-trial stage**

- ❖ Timely submission of pre-trial applications provided they are consistent with the law and briefly communicated to the court for approval.
- ❖ The lawyer should be aware of the impact of these applications, particularly with regard to the rights of the child to a prompt trial.

⚡ During the trial

- ❖ The lawyer must be able to exercise the right to defend the child.
- ❖ Submit appropriate objections and precautionary measures during the trial.
- ❖ Directing the court to resort to non-custodial measures and procedures.

⚡ During sentencing and post-trial

- ❖ Seek the lightest sentence against the child.
- ❖ Visit the child and facilitate the visit of parents.
- ❖ Ensure that children deprived of their liberty are held in accordance with the law (see the paragraph on treatment and conditions).
- ❖ Request for the replacement of the measure against the child.

B. Fair trial guarantees of the child in conflict with the law

Article 40, paragraph 2, of the Convention on the Rights of the Child contains a list of rights and guarantees, all of which aim to ensure that every child in conflict with the law is treated properly and is guaranteed a fair trial. One of the prerequisites for the proper and effective implementation of these rights and guarantees is the competence of persons involved in the administration of the judiciary. The training of professionals, such as police officers, prosecutors, legal representatives of children, judges, observers, social workers and others is extremely important and should be systematic and ongoing. Professionals should behave under all circumstances in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. (convention art. 40, para. 1).



Most of these guarantees can be found in article 14 of the International Covenant on Civil and Political Rights. However, the implementation of these guarantees with regard to children involves special aspects.

In accordance with Guideline 10 on Special measures for children of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, States should ensure special measures for children to promote children's effective access to justice and to prevent stigmatization and other adverse effects as a result of their being involved in the criminal justice system, including:

- (a) Ensuring the right of the child to have counsel assigned to represent the child in his/her own name in proceedings where there is or could be a conflict of interest between the child and his / her parents or other parties involved;
- (b) Enabling children who are detained, arrested, suspected or accused of, or charged with a criminal offence to contact their parents or guardians at once and prohibiting any interviewing of a child in the absence of his / her lawyer or other legal aid provider, and parent or guardian when available, in the best interests of the child;
- (c) Ensuring the right of the child to have the matter determined in the presence of the child's parents or legal guardian, unless it is not considered to be in the best interests of the child;
- (d) Ensuring that children may consult freely and in full confidentiality with parents and/or guardians and legal representatives;
- (e) Providing information on legal rights in a manner appropriate 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;
- (f) Promoting, where appropriate, diversion from the formal criminal justice system and ensuring that children have the right to legal aid at every stage of the process where diversion is applied;
- (g) Encouraging, where appropriate, the use of alternative measures and sanctions to deprivation of liberty and ensuring that children have the right to legal aid so that deprivation of liberty is a measure of last resort and for the shortest appropriate period of time;
- (h) 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 representative or an appropriate body in a manner consistent with the procedural rules of national law. Taking into account the child's age and maturity may also require modified judicial and administrative procedures and practices.

All of the guarantees recognized in article 40, paragraph 2, of the Convention on the Rights of the Child constitute minimum standards, which means that States parties can and should attempt to establish and respect higher standards in areas such as legal assistance and the involvement of the child and his or her parents' participation in the judicial process.

Guarantees are not limited to the implementation of the provisions set out in articles 37 and 40 of the Convention, but should also take into account the general principles established in articles 2 (non-discrimination), 3 (primary consideration in the best

interests of the child), 6 (the child's right to life, survival and development) and 12 (the child's right to be heard).

Below are the rights that lawyer must be aware of to defend the child in conflict with the law and which shall be respected in all proceedings:

1) Non-discrimination³³

- The right to non-discrimination means that the rights contained in the Convention on the Rights of the Child apply to every child within the jurisdiction of the State party "irrespective of the child's or his/ her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status" and without discrimination "on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. (art. 2 of the Convention)
- In particular, gender-sensitive attention should be paid to girls [...] and accommodation should be made for children with disabilities, which may include physical access to court and other buildings, support for children with psychosocial disabilities, assistance with communication and the reading of documents, and procedural adjustments for testimony³⁴.



In accordance with the principle of non-discrimination, a lawyer may not refuse to defend a child because of his nationality, color, religion, etc. and must make sure that the child in conflict with the law is not subject to discrimination.

2) Primary consideration for the best interests of the child

- In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (art. 3, para 1 of the Convention)³⁵

³³ The Committee on the Rights of the Child has identified four general principles of the Convention on the Rights of the Child necessary for the interpretation and enforcement of all children's rights (general comment No. 5 (2003) on general measures to implement the Convention on the Rights of the Child, para. 12 and general comment No. 12 (2009) on the right of the child to be heard.):

1. Non-discrimination,
2. Primary consideration for the best interests of the child;
3. The right to life, survival and development (art. 6 of the Convention);
4. The right of the child to be heard.

³⁴ CRC General Comment No. 24 (2019) para. 40

³⁵ CRC General Comment No. 4 on the right of the child to primary consideration for his/her best interests

- ➔ For the protection of the best interests of the child, for example, the traditional objectives of justice, such as repression and retribution, shall be replaced by objectives such as rehabilitation and correctional justice when dealing with children in conflict with the law. It is not in the best interests of the child to grow up in circumstances where the involvement of the child in criminal activities may become an increased or dangerous possibility. Various measures should therefore be taken for the full and equal enjoyment of the right of an adequate standard of living (Article 27), of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health and access to such health care services (article 24), education (articles 28 and 29), and protection from all forms of violence or physical or mental harm or abuse (article 19), economic or sexual exploitation (articles 32 and 34), and the right to other care or protection services for children.
- ➔ Principle 11 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems states that “In all legal aid decisions affecting children, the best interests of the child should be the primary consideration.”

The concept of the best interests of the child

- ➔ The Convention on the Rights of the Child has not defined the concept of “best interests of the child”. However, in accordance with the UNHCR Guidelines on “Determining the Best Interests of the Child” (May 2008), the term “best interests” broadly describes the well-being of a child. Such well-being is determined by a variety of individual circumstances, such as the age, the level of maturity of the child, the presence or absence of parents, the child’s environment and experiences.
- ➔ The concept of the best interests of the child is designed to ensure the full and efficient enjoyment of all rights recognized in the Convention on the Rights of the Child.
- ➔ The application of the principle with regard to children in conflict with the law includes: separation of children from adults in prison (art. 37 of the Convention), procedural safeguards, including the presence of the child's parents during court hearings in criminal cases involving children infringing the law (art. 40/2/b/ii).

How to assess the best interests of the child

- ➔ The concept of the child’s best interests is flexible and adaptable.→ It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs.³⁶ These circumstances relate to the individual characteristics of

³⁶ CRC General Comment No. 14, para 32

the child or children concerned, such as, inter alia, age, sex, level of maturity, experience, belonging to a minority group, having a physical, sensory or intellectual disability, as well as the social and cultural context in which the child or children find themselves, such as the presence or absence of parents, whether the child lives with them, quality of the relationships between the child and his or her family or caregivers, the environment in relation to safety, the existence of quality alternative means available to the family, extended family or caregivers, etc.³⁷

- ➔ The elements that must be taken into account when assessing and defining children's best interests, are: (1) the child's views, (2) the identity of the child³⁸ and (3) the Preservation of the family environment and maintaining relations.³⁹ In accordance with the UNHCR Guidelines on the Determination of the Best Interests of the Child (2008) A "best interests determination" (BID) describes the formal process with strict procedural safeguards designed to determine the child's best interests for particularly important decisions affecting the child. [...] This process should ensure the appropriate and non-discriminatory participation of the child, who must be able to express his/her views and to have such views given due weight in accordance with the child's age and level of maturity."

Comparative Law



The principle of the primary consideration for the best interests of the child is enshrined in many national laws, for example, article 47 of the **Tunisian Constitution** (also article 4 of the Code for Protection of the Child), article 2 of the Lebanese **Law No. 422**, and article 7 of the **Algerian Child Protection Act**.

³⁷ CRC General Comment No. 14, para 48

³⁸ The identity of the child includes characteristics such as sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality. Although children and young people share basic universal needs, the expression of those needs depends on a wide range of personal, physical, social and cultural aspects, including their evolving capacities. The right of the child to preserve his or her identity is guaranteed by the Convention (art. 8) and must be respected and taken into consideration in the assessment of the child's best interests. CRC General Comment No. 14, para 55

³⁹ CRC General Comment No. 14, para 52

CASE LAW

Single Penal Judge in Jeb Jenin (Lebanon), Decision No. 625/2015, dated 30/10/2015:

The law establishes special guarantees for the prosecution of a minor who is in conflict with the law or at risk to protect all the rights of the minor and to secure his/her best interest. These are public order rules and may not be violated.

3) The right of the child to be heard⁴⁰

- ➔ The right of all children to be heard constitutes one of the fundamental values of the Convention. The Committee on the Rights of the Child (the Committee) has identified article 12 as one of the four general principles of the Convention, [...] which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights.⁴¹
- ➔ Children in conflict with the law have the right to be heard (article 12/2). This right has to be fully observed during all stages of the judicial process, from the pre-trial stage when the child has the right to remain silent, to the right to be heard by the police, the prosecutor and the investigating judge. It also applies through the stages of adjudication and disposition, as well as implementation of the imposed measures. In case of diversion, including mediation, a child must have the opportunity to give free and voluntary consent and must be given the opportunity to obtain legal and other advice and assistance in determining the appropriateness and desirability of the diversion proposed.⁴²
- ➔ The child should have the right to express his / her views freely and these views shall be given due weight in accordance with the age and maturity of the child (Article 12/1) throughout the child judicial process. This means that the child must

⁴⁰ Article 12 of the Convention:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

+ CRC General Comment No. 12 (2009) on the right of the child to be heard.

⁴¹ CRC General Comment No. 12 (2009) on the right of the child to be heard, para 2

⁴² CRC General Comment No. 12 (2009), para 58 and 59

not only be informed of the charges against him / her, but must also be informed of the process of child justice itself and of possible measures, so that he / she can participate efficiently in the proceedings. The child should be given the opportunity to express his / her views on diversions that may be imposed and his / her determined desires or preferences in this respect must be given due consideration. Researches show that the active involvement of children in this implementation often contributes to a positive outcome.

- ➔ “Freely” means that the child can express his / her views without pressure and can choose whether or not he / she wants to exercise her or his right to be heard. “Freely” also means that the child must not be manipulated or subjected to undue influence or pressure⁴³. The child, however, has the right not to exercise this right. Expressing views is a choice for the child, not an obligation. It must be ensured that the child receives all necessary information and advice to make a decision in favor of his / her best interests⁴⁴.
- ➔ Simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views⁴⁵. The decision maker has to inform the child of the outcome of the process and explain how his / her views were considered. The feedback is a guarantee that the views of the child are not only heard as a formality, but are taken seriously⁴⁶.
- ➔ By requiring that due weight be given in accordance with age and maturity, article 12 makes it clear that age alone cannot determine the significance of a child’s views. Children’s levels of understanding are not uniformly linked to their biological age. Research has shown that information, experience, environment, social and cultural expectations, and levels of support all contribute to the development of a child’s capacities to form a view. For this reason, the views of the child have to be assessed on a case-by-case examination⁴⁷.
- ➔ Article 12 does not impose an age limit on the right of the child to express his or her views. The Committee on the Rights of the Child has prohibited States parties from setting age limits whether in law or in practice, which may limit the right of the child to be heard in all matters affecting him/her.
- ➔ A child should not be interviewed more often than necessary, in particular when harmful events are explored. The “hearing” of a child is a difficult process that can have a traumatic impact on the child⁴⁸. A child cannot be heard effectively where the

⁴³ CRC General Comment No. 12 (2009), para 22

⁴⁴ CRC General Comment No. 12 (2009), para 16

⁴⁵ CRC General Comment No. 12 (2009), para 28

⁴⁶ CRC General Comment No. 12 (2009), para 45

⁴⁷ CRC General Comment No. 12 (2009), para 29

⁴⁸ CRC General Comment No. 12 (2009), para 24

environment is intimidating, hostile, insensitive or inappropriate for her or his age.⁴⁹

- ➔ After the child has decided to be heard, he or she will have to decide how to be heard: “either directly, or through a representative or appropriate body”. The representative may be a parent, or both parents, a lawyer or other (social worker for example)⁵⁰. The child must, furthermore, receive information about the option of either communicating directly or through a representative⁵¹.

Comparative Law



Lebanese law

Applications of principle:

- ➔ The juvenile judge shall decide on the extension of the non-custodial measure after hearing the juvenile, the person in charge of him / her or to whom he /she was handed and the social representative (article 12 of Law 422).
- ➔ The juvenile shall be held at the discipline institute for a minimum period of three months. If he/she completes 21 years old at the institute, the judge may, at the request of the juvenile or the social representative, upon obtaining a social investigation, and a report of the director of the institute and after hearing the juvenile, release him/her and, if necessary, place him/her under release on probation. (Article 14 of Law 422).
- ➔ The juvenile judge may, based on the report of the person responsible for the juvenile and the social investigation, after hearing the juvenile, replace the measure taken with a more severe or lighter measure and terminate or suspend it under conditions that he determines if he sees this as useful (art. 19 of Law 422).

Tunisian law

The Code for the Protection of the Child guarantees the child “the right to express his or her views freely” and guarantees that these views are given due consideration in accordance with the child's age and maturity. For this purpose, the child shall in particular have the opportunity to express his / her views and to be involved in judicial proceedings and in the social and educational measures concerning his or her situation (Article 10). The code not only states the child's right to expression, but also to efficient participation in decision-making.

⁴⁹ CRC General Comment No. 12 (2009), para 34

⁵⁰ CRC General Comment No. 12 (2009), para 35

⁵¹ CRC General Comment No. 12 (2009), para 41

Applications of principle:

- ➔ The children's judge shall examine the violations without the presence of the child unless the child so desires (article 73 of the Code for the Protection of the Child).
- ➔ The child shall be present upon examination of the file to consult on the measures or punishment before the children's judge (article 90 of the Code for the Protection of the Child).
- ➔ The judgment shall be issued by the children's judge or the children's court after hearing the child (article 95 of the Code for the Protection of the Child).
- ➔ The child has the right to appeal (article 104 of the Code for the Protection of the Child).
- ➔ The child has the right to request a decision on execution difficulties and all emergency matters and to request the re-examination of the file (article 110 of the Code for the Protection of the Child).
- ➔ The child has the right to request a change to the decision in absentia (article 111 of the Code for the Protection of the Child).
- ➔ The child may submit a request for mediation (article 116 of the Code for the Protection of the Child)

4) Non-retroactive application of child justice⁵²

- ➔ This means that no child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
- ➔ The rule that no heavier penalty shall be imposed than the one that was applicable at the time when the criminal offence was committed, as set out in article 15 of the International Covenant on Civil and Political Rights, also applies to children in States parties to the Covenant. No child should be punished with a heavier penalty than the one applicable at the time of the offence, but if a change of law after the offence provides for a lighter penalty, the child should benefit⁵³.

5) Presumption of innocence⁵⁴

- ➔ The presumption of innocence requires that the burden of proof of the charge is on the prosecution, regardless of the nature of the offence.

⁵² Convention on the Right of the Child, art. 40 para 2.a

⁵³ CRC General Comment No. 24 (2019), para 42

⁵⁴ Convention on the Right of the Child, art. 40, para 2 (b) (i))

- ➔ Suspicious behaviour on the part of the child should not lead to assumptions of guilt, as it may be due to a lack of understanding of the process, immaturity, fear or other reasons.⁵⁵

6) The right to protection from all forms of violence⁵⁶

- ➔ States parties, furthermore, shall ensure that all persons who, within the context of their work, are responsible for the prevention of, protection from, and reaction to violence and in the justice systems are addressing the needs and respecting the rights of children⁵⁷.
- ➔ **Definition of violence**⁵⁸. “All forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or Exploitation, including sexual abuse” as listed in article 19, paragraph 1, of the Convention. The term violence has been chosen here to represent all forms of harm to children. In common parlance the term violence is often understood to mean only physical harm and/or intentional harm. However, the Committee emphasizes most strongly that the choice of the term violence in the present general comment must not be interpreted in any way to minimize the impact of, and need to address, non-physical and/or non-intentional forms of harm (such as, inter alia, neglect and psychological maltreatment).⁵⁹



In a series of judgments, the **European Court of Human Rights** has incrementally condemned corporal punishment of children, first in the criminal system, then in schools including private schools and then at home: *Tyrer v. United Kingdom*,

⁵⁵ CRC General Comment No. 24 (2019), para 43

⁵⁶ Article 19 of the Convention on the Rights of the Child: “1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.” + CRC General Comment No. 13 (2011) on The right of the child to freedom from all forms of violence

⁵⁷ CRC General Comment No. 13 (2011), para 5

⁵⁸ For the purposes of CRC General Comment No. 13 (2011) on The right of the child to freedom from all forms of violence

⁵⁹ CRC General Comment No. 13 (2011), para 4

1978; *Campbell and Cosans v. United Kingdom*, 1993; *Costello-Roberts v. United Kingdom*, 1998⁶⁰.

7) Principle of protection of the child's privacy⁶¹

→ A child in conflict with the law shall be treated in a manner consistent with the promotion of the child's sense of dignity and worth, and therefore his or her privacy must be fully respected at all stages of the proceedings. This is in addition to the general principle set forth in Article 16⁶².



The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") stressed the importance of the protection of the juvenile's right to privacy at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. (Rule 8)

Guideline 10 on Special measures for children of United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems states that "The privacy and personal data of a child who is or who has been involved in judicial or non-judicial proceedings and other interventions should be protected at all stages, and such protection should be guaranteed by law. This generally implies that no information or personal data may be made available or published, particularly in the media, that could reveal or indirectly enable the disclosure of the child's identity, including images of the child, detailed descriptions of the child or the child's family, names or addresses of the child's family members and audio and video records."

→ States parties should respect the rule that child justice hearings are to be conducted behind closed doors. Exceptions should be very limited and clearly stated in the law.

→ If the verdict and/or sentence is pronounced in public at a court session, the identity of the child should not be revealed. Furthermore, the right to privacy also means that the court files and records of children s should be kept strictly confidential and

⁶⁰ Refer to the judgments issued by the European Court of Human Rights on the following address: <http://www.echr.coe.int/echr>

⁶¹ Convention on the Right of the Child (art. 40, para. 2 vii).

⁶² Article 16: "1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. 2. The child has the right to the protection of the law against such interference or attacks."

closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case.⁶³

- Case-law reports relating to children should be anonymous, and such reports placed online should adhere to this rule.⁶⁴
- There should be lifelong protection from publication regarding crimes committed by children. The rationale for the non-publication rule, and for its continuation after the child reaches the age of 18, is that publication causes ongoing stigmatization, which is likely to have a negative impact on access to education, work, housing or safety. This impedes the child's reintegration and assumption of a constructive role in society. States parties should thus ensure that the general rule is lifelong privacy protection pertaining to all types of media, including social media.⁶⁵
- Furthermore, the Committee recommends that States parties introduce rules permitting the removal of children's criminal records when they reach the age of 18, automatically or, in exceptional cases, following independent review.⁶⁶

Comparative Law



Lebanese law

It is prohibited to publish the photo of the juvenile and to publish the facts of the investigation and trial or its summary in books, newspapers, cinema, and any other media. The final judgment may be published provided that the defendant's name, nickname and surname are mentioned only in initials. Any violation of these provisions shall entail a sanction of imprisonment from three months to one year and a fine of one to five million LBP or one of these two sanctions (Article 48 of Law 422).

Tunisian law

Article 6 of the Code for the Protection of the Child, sets out the principle of respect for the child's private life; Article 12 guarantees the right of the child to whom the charge is attributed "to a treatment that protects his/her honour and person." To this end, judicial hearings are confidential and the publication of pleadings and decisions of judicial bodies is prohibited⁶⁷

⁶³ CRC General Comment No. 24 (2019), para 67

⁶⁴ CRC General Comment No. 24 (2019), para 68

⁶⁵ CRC General Comment No. 24 (2019), para 70

⁶⁶ CRC General Comment No. 24 (2019), para 71

⁶⁷ Public hearings in judicial hearings is one of the principles of a fair trial, but the trial of children has its own specificity, which makes confidentiality a means of protecting the child in conflict with the law in his or her private life, this is why judgments shall be rendered separately for each case with the attendance of defendants in other cases. Persons who are allowed to attend the hearings are limited by the text and are generally those whose attendance is strictly necessary (the purpose of confidentiality is to ensure respect for the child's private life).

Case law

Lebanese Criminal Cassation, Decision No. 4/2011 Publications, dated 10/2/2011:

Although article 48 of Law No. 422/2002 permits the publication of final judgments against juveniles, it stipulates that the name, nickname and surname of the defendant should not be mentioned except in initials, which the newspaper did not adhere to. The Court of Publications, by convicting the director in charge of the publication in accordance with the said article 48, in addition to article 26 of Law No. 104/77, would have properly applied the law. Whereas the foregoing may not be revoked by invoking the fact that the respondent had reached adulthood on the date of publication of the news subject of the complaint and therefore this precludes the application of the provisions of Article 48 since the protection conferred by Law No. 422/2002 to the juvenile extends over time even when the latter reaches the age of adulthood.

8) The right to effective participation in the proceedings⁶⁸

- ➔ To effectively participate, a child needs to comprehend the charges and possible consequences and options in order to direct the legal representative, challenge witnesses, provide an account of events and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Proceedings should be conducted in a language the child fully understands or an interpreter is to be provided free of charge.
- ➔ Proceedings should be conducted in an atmosphere of understanding to allow children to fully participate. Developments in child-friendly justice provide an impetus towards child-friendly language at all stages, child-friendly layouts of interviewing spaces and courts, support by appropriate adults, removal of intimidating legal attire and adaptation of proceedings, including accommodation for children with disabilities⁶⁹.

Comparative law

Review paragraph 3 (Right of the child to be heard)

9) Prompt and direct information of the charge(s)⁷⁰

⁶⁸ Convention on the Rights of the Child (art. 40 (2) (b) (iv))

⁶⁹ CRC General Comment No. 24 (2019), para 46

⁷⁰ Convention on the Rights of the Child (art. 40 (2) (b) (ii))

Every child has the right to be informed promptly and directly of the charges brought against him or her. Promptly means as soon as possible after the first contact of the child with the justice system. The child should be notified in a language he / she understand⁷¹.

10) Legal or other appropriate assistance

- ➔ The person providing the assistance is required to have sufficient knowledge of the legal aspects of the child justice process and receive appropriate training on working with children in conflict with the law and to offer assistance free of charge. As required under article 14 (3) (b) of the International Covenant on Civil and Political Rights, the child and his or her assistant must have adequate time and facilities for the preparation of his/her defence.
- ➔ Under the Convention on the Rights of the Child, the confidentiality of communications between the child and his or her legal representative or other assistant is to be guaranteed (Convention -art. 40 (2) (b) (vii)), and the child's right of protection against interference with his or her privacy and correspondence is to be respected (art. 16).⁷²

11) Decisions without delay and with the involvement of parents or guardians⁷³

- ➔ The time between the commission of the offence and the conclusion of proceedings should be as short as possible with respect to children in conflict with the law. The longer this period, the more likely it is that the response loses its desired outcome and the more the child is subject to stigmatization. In this context, Article 37 (d) of the Convention states that every child deprived of his or her liberty shall have the right to challenge the legality of the deprivation of his or her liberty and to a prompt decision on any such action. However, decisions issued without delay must be the outcome of a process that makes sure human rights and legal safeguards are fully respected.
- ➔ Parents or legal guardians should be present throughout the proceedings because they can provide general psychological and emotional assistance to the child and contribute to effective outcomes. However, the judge or competent authority may decide to limit, restrict or exclude their presence in the proceedings, at the request of the child or of his or her legal or other appropriate assistant or because it is not in the child's best interests.⁷⁴

⁷¹ CRC General Comment No. 24 (2019), para 47

⁷² CRC General Comment No. 24 (2019), para 53

⁷³ Convention on the Right of Child (art. 40 (2) (b) (iii))

⁷⁴ CRC General Comment No. 24 (2019), para 54 et seq.

Comparative Law



Lebanese law

- ➔ When the juvenile is brought before the Public Prosecution or the judicial police in the crime committed for investigation, the person responsible for the investigation shall immediately inform his/her family, guardians or persons responsible for him/her. (Article 34 of Law 422).
- ➔ The investigating judge may, when initiating an investigation with a juvenile, follow the same procedure (Article 35).
- ➔ The court shall hear the juvenile alone, and may exempt him or her from attending the trial, or from some of its proceedings, in particular, if it considers that this is in the juvenile's best interest and in this case it would content itself with the presence of his or her parent, guardian or representative and the trial shall be deemed to be held in presence. Trial proceedings could be continued against the juvenile alone if it is in his or her interest to expedite the appropriate measure against him or her (Article 43).

Tunisian law

Parents, providers and custodians have the following rights:

- ➔ Attendance before the judicial police officer at the hearing of the child under the age of fifteen.
- ➔ Be notified by the investigating judge to follow up on the proceedings.
- ➔ Attend hearings
- ➔ Intervene in the proceedings, especially through mediation, by appealing judgments and decisions and reviewing a child's file, etc.



The lawyer shall prepare his or her defense without delay.

Parents are involved in the proceedings unless their presence is not in the child's best interest.

12) Not to compel the child to testify against himself or to confess guilt.

The Convention on the Rights of the Child requires, in accordance with article 14, paragraph 3 (g), of the International Covenant on Civil and Political Rights, that the child must not be compelled to testify or confess guilt. This means, in the first place, that torture or cruel, inhuman or degrading treatment for the purpose of extracting a confession or statement constitutes a violation of the rights of the child (art. 37(a)). Such statement or confession shall not be invoked as evidence (article 15 of the

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

Comparative Law



Lebanese law

A juvenile who violates the law shall benefit from a fair and humane treatment (Article 2 of Law 422).

Tunisian law

Article 2 of the Code for the Protection of the Child provides for the protection of children from all forms of violence, harm, physical, moral or sexual abuse [...]



The lawyer shall verify that the child has not been subject to coercion.

13) Right of appeal⁷⁵

Appeals shall be adjudicated by a **higher competent**, independent and impartial authority or judicial body.

Comparative Law



Lebanese law

The juvenile judge shall render his judgments in the last degree with respect of the public interest case. These judgments remain subject to appeal through a retrial.

Judgments issued in cases of felonies are subject to review by the Court of Cassation.

Judgments with respect to civil obligations are subject to appeal (Article 44 of Law 422).

The sentenced juvenile may object through his or her guardian or the person responsible for him or her to judgments issued against him in absentia (Article 45).

⁷⁵ Convention on the Right of the Child (art. 40 (2) (b) (v))

14) Free assistance of an interpreter⁷⁶

- If a child cannot understand or speak the language used by the juvenile justice system, he/she has the right to get free assistance of an interpreter. This assistance should not be limited to the court trial but should also be available at all stages of the juvenile justice process. It is also important that the interpreter has been trained to work with children. The condition starting with “if”, “if the child cannot understand or speak the language used”, means that a child of a foreign or ethnic origin for example, who - besides his/her mother tongue - understands and speaks the official language, does not have to be provided with the free assistance of an interpreter.
- With reference to the rights enshrined in article 23 and given the high level of vulnerability of **children with disabilities**, the following elements of the treatment of children with disabilities (allegedly) in conflict with the law be taken into account: a) A child with disability who comes in conflict with the law should be interviewed using appropriate languages and otherwise dealt with by professionals such as police officers, attorneys/advocates/social workers, prosecutors and/or judges, who have received proper training in this regard.⁷⁷

C. Dispositions related to the child in conflict with the law

- The reaction to an offence should always be proportionate not only to the circumstances and the gravity of the offence, but also to the personal circumstances (age, lesser culpability, circumstances and needs, including, if appropriate, the mental health needs of the child). A strictly punitive approach is not in accordance with the principles of child justice spelled out in article 40 (1) of the Convention. Where serious offences are committed by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need for public safety and sanctions. Weight should be given to the child's best interests as a primary consideration as well as to the need to promote the child's reintegration into society.
- Recognizing the harm caused to children and adolescents by deprivation of liberty, and its negative effects on their prospects for successful reintegration, the Committee recommends that States parties set a maximum penalty for children accused of crimes that reflects the principle of the “shortest appropriate period of time” (Convention on the Rights of the Child, art. 37 (b)).⁷⁸
- When a child is deprived of his or her liberty, he has guaranteed rights →¹ The right to medical examination by qualified professionals and in a manner that respects the

⁷⁶ Convention on the Right of the Child (art. 40 (2) (vi))

⁷⁷ CRC General Comment No. 9, para 74.

⁷⁸ CRC General Comment No. 24 (2019), para 76 et seq.

privacy of the child, the right to visit and communicate with parents, the right to physical integrity, etc.

Comparative Law



Lebanese law

A juvenile who violates the law should benefit from humane and fair treatment; the manner by which the child is prosecuted, investigated, shall be subject to special procedures that save him, to the extent possible, from normal criminal procedures through adopting amicable settlements and solutions, away from liberty depriving measures. (Article 2 of Law 422).

Tunisian law

Article 79 of the Code of Protection of the Child states that “the children's judge or children's court shall take, as the case may be, appropriate means of prevention, relief, surveillance and education. Exceptionally, they may, based on facts and the personality of the child, punish the child who has reached the age of fifteen with a criminal penalty. In this case, the punishment shall be served in an appropriate and competent institution”:

- ▶ The legislator confirmed the adoption of social means, excluding the criminal penalties and rendering them an exception, provided that their primary purpose is to redress and rehabilitate the child, as indicated in article 99 of the Code of Protection of the Child, allowing a criminal penalty when such penalty is deemed required for the child's rehabilitation.
- ▶ Exceptionally, a child who has reached the age of fifteen can be punished with a criminal penalty. A child who has not reached the age of fifteen cannot be punished with a criminal penalty but only subject to the appropriate means of prevention, relief, surveillance and education

Case law

Juveniles Judge in Zahle (Lebanon), Decision No. 4/2014, dated 4/9/2014:

In implementation of the provisions of Article 3 of the Convention on the Rights of the Child, and the provisions of Articles 2, 7, 10 and 19 of the law on the protection of juveniles in conflict with the law or at risk No. 422/2002 the penalty imposed on the juvenile must be replaced with a rehabilitation measure and the child must be placed under the measure of release on probation for one year in order to safeguard the minor's interest and rights and to guarantee that all signs of criminal behavior are eliminated from the child's personality and behavior and with the aim of ensuring his rehabilitation outside the framework of the penal institution.



The lawyer must:

- ➔ *Be knowledgeable of and understand the child justice system in order to be able to propose non-custodial measures.*
- ➔ *Verify that the judge has applied the principle of detention as a measure of last resort.*
- ➔ *Verify that the decision has been regularly reviewed when the child is being deprived of his / her liberty.*
- ➔ *Visit the child when deprived of liberty.*
- ➔ *Help the child to stay in touch with his parents or legal guardians during deprivation of liberty.*

1) Protection of the child from corporal punishment and other cruel or degrading forms of punishment

- ➔ The Committee defines “corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices).
- ➔ In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.⁷⁹.



The Committee recognizes that there are exceptional circumstances in which teachers and others, e.g. those working with children in institutions and with children in conflict with the law, may be confronted by dangerous behaviour which justifies the use of reasonable restraint to control it. Here too there is a clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish. The principle of the minimum necessary use of force for the shortest necessary period of time must always apply. Detailed guidance and training is also required, both to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control.⁸⁰

⁷⁹ CRC General Comment No. 8, para 11

⁸⁰ CRC General Comment No. 8, para 15

- ➔ Article 37 of the Convention requires States to ensure that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”. This is complemented and extended by article 19, which requires States to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”. There is no ambiguity: “all forms of physical or mental violence” does not leave room for any level of legalized violence against children.⁸¹
- ➔ Corporal punishment and other cruel or degrading forms of punishment of children take place in many settings, including within the home and family, in all forms of alternative care, schools and other educational institutions and justice systems - both as a sentence of the courts and as a punishment within penal and other institutions - in situations of child labour, and in the community.⁸²



In a decision issued by the **African Commission on human and people's rights**⁸³ in 2003⁸⁴ on a communication related to imposing the penalty of lashing against students, the commission concluded that the penalty violates Article 5 of the African Charter on human and people's rights, which specifies that cruel, inhuman or degrading punishment and treatment shall be prohibited. The African Commission requested the Government of Sudan to amend its laws to abolish the penalty of lashes and take appropriate measures to ensure compensation of the victims. The decision stated that “there is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture under the Charter and contrary to the very nature of this human rights treaty.”

2) Abolishing the death penalty

- ➔ Article 37/a of the Convention on the rights of the child reiterates the internationally recognized standard (for example Article 6/5 of the International Covenant on the Civil and Political Rights) that capital punishment shall be imposed for offences committed by persons below eighteen years of age.
- ➔ Despite the clarity of the text, a few States parties assume that the rule prohibits only the execution of persons who are below the age of 18 years at the time of

⁸¹ CRC General Comment No. 8, para 18

⁸² CRC General Comment No. 8, para 12

⁸³ The African Commission on Human and Peoples' Rights monitors the implementation of the African Charter on Human and Peoples' Rights.

⁸⁴ African Commission on Human and Peoples' Rights, Curtis Francis Doebbler v. Sudan, Commission Comment No. 236/2000 (2003), para. 42.

execution. The Committee reiterates that the explicit and decisive criterion is the age at the time of the commission of the offence⁸⁵. This means that the death penalty may not be imposed for a crime committed by a person under the age of 18 regardless of the age at the time of trial, sentencing or execution.

3) No life imprisonment without parole

No child who was below the age of 18 at the time he or she committed an offence should be sentenced to life imprisonment without the possibility of release or parole.



Article 25 of the Convention on the Rights of the Child recognizes the right of every child who has been placed by the competent authorities for the purposes of care, protection or treatment, to a periodic review of the circumstances relevant to his or her placement.

In the case that children are sentenced to life imprisonment with the possibility of release or parole, the aims of article 40 (1) of the Convention must be realized. This means, inter alia, that a child sentenced to life imprisonment should receive education, treatment and care aiming at his/her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on his or her possible release. Life imprisonment makes it very difficult, if not impossible, to achieve the aims of reintegration. The Committee strongly recommends that States parties abolish all forms of life imprisonment, including indeterminate sentences, for all offences committed by persons who were below the age of 18 at the time of commission of the offence.⁸⁶

Comparative Law



Lebanese law

The juvenile shall be sentenced with reduced penalties according to the following:

- ▶ In the offenses and misdemeanors, the penalties observed in the law, including fines, shall be reduced by half.
- ▶ In felonies, if the felony is punishable by death or hard labor for life, it shall be reduced to imprisonment for five to fifteen years. In other offenses, the minimum and maximum imprisonment limit shall be reduced by half (Article 15 of Law 422).

⁸⁵ CRC General Comment No. 24 (2019), para 79

⁸⁶ CRC General Comment No. 24 (2019), para 81

Tunisian law

Delinquents shall not be sentenced to death and life imprisonment. According to article 43 of the Criminal Code, "If the penalty imposed is one of death or of life imprisonment, it shall be replaced by a term of imprisonment of 10 years. If the penalty incurred is a term of imprisonment, it shall be reduced by one half, provided the pronounced sentence does not exceed five years. Supplementary penalties shall not apply ... (residence ban, denial of exercise of rights, etc.) as well as the rules of recidivism" (Article 43 of the Criminal Code)

4) Treatment and conditions

Every child deprived of liberty is to be separated from adults, including in police cells. A child deprived of liberty is not to be placed in a center or prison for adults. The permitted exception to the separation of children from adults stated in article 37 (c) of the Convention – "unless it is considered in the child's best interests not to do so" – should be interpreted narrowly and the convenience of the States parties should not override best interests. The above rule does not mean that a child placed in a facility for children should be moved to a facility for adults immediately after he or she reaches the age of 18. The continuation of his or her stay in the facility for children should be possible if that is in his or her best interests and not contrary to the best interests of the children in the facility.⁸⁷

Every child deprived of liberty has the right to maintain contact with his or her family through correspondence and visits. To facilitate visits, the child should be placed in a facility as close as possible to his or her family's place of residence. Exceptional circumstances that may limit this contact should be clearly described in law and not be left to the discretion of the authorities.⁸⁸

In all cases of deprivation of liberty, the lawyer shall ensure that the following principles and rules are observed:

- Children should be provided with a physical environment and accommodation conducive to the reintegrative aims of residential placement. Due regard should be given to their needs for privacy, for sensory stimuli and for opportunities to associate with their peers and to participate in sports, physical exercise, arts and leisure-time activities;
- Every child has the right to education suited to his or her needs and abilities, including with regard to undertaking exams, and designed to prepare him or her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him or her for future employment;

⁸⁷ CRC General Comment No. 24 (2019), para 92

⁸⁸ CRC General Comment No. 24 (2019), para 94

- Every child has the right to be examined by a physician or a health practitioner upon admission to the detention or correctional facility and is to receive adequate physical and mental health care throughout his or her stay in the facility, which should be provided, where possible, by the health facilities and services of the community;
- The staff of the facility should promote and facilitate frequent contact by the child with the wider community, including communications with his or her family, friends and other persons, including representatives of reputable outside organizations, and the opportunity to visit his or her home and family. There is to be no restriction on the child's ability to communicate confidentially and at any time with his or her lawyer or other assistant;
- Restraint or force can be used only when the child poses an imminent threat of injury to himself or herself or others, and only when all other means of control have been exhausted. Restraint should not be used to secure compliance and should never involve deliberate infliction of pain. It is never to be used as a means of punishment. The use of restraint or force, including physical, mechanical and medical or pharmacological restraints, should be under close, direct and continuous control of a medical and/or psychological professional. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately;
- Any disciplinary measure is to be consistent with upholding the inherent dignity of the child and the fundamental objectives of institutional care. Disciplinary measures in violation of article 37 of the Convention must be strictly forbidden, including corporal punishment, placement in a dark cell, solitary confinement or any other punishment that may compromise the physical or mental health or well-being of the child concerned, and disciplinary measures should not deprive children of their basic rights, such as visits by legal representative, family contact, food, water, clothing, bedding, education, exercise or meaningful daily contact with others;
- Solitary confinement should not be used for a child. Any separation of the child from others should be for the shortest possible time and used only as a measure of last resort for the protection of the child or others. Where it is deemed necessary to hold a child separately, this should be done in the presence or under the close supervision of a suitably trained staff member, and the reasons and duration should be recorded;
- Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or any other proper independent authority, and to be informed of the response without delay. Children need to know their rights and to know about and have easy access to request and complaints mechanisms;
- Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on

their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting;⁸⁹

Comparative Law



Lebanese law

The penalty shall be imposed by placing the juvenile in the disciplinary institute or in a juvenile prison, as determined by the judge (art. 15 of Law 422).

Tunisian law

A child may be subject to a criminal sanction, subject to the provisions of the Code, if it appears that his or her rehabilitation requires it. In this case, the sanction shall be served in a specialized institution (the Correctional Center), when this is not possible, in a prison ward dedicated to children (Article 99 of the Code for Protection of the Child).

The child handed to an educational welfare and rehabilitation institution or who is placed in a detention facility shall have the right to health, physical and moral protection, as well as the right to social and educational care, taking into account his age, sex, abilities and personality (article 15 of the Code for Protection of the Child).

Case law

European Court for Human Rights

In the case of *Güveç v. Turkey*⁹⁰, a 15 years old boy was arrested on suspicion of membership of the PKK. He was detained in an adult prison where he was kept with adults for a period of over five years. The European Court for Human Rights observed that the applicant's detention in an adult prison was in contravention of the applicable Regulations which were in force at the time and which reflected Turkey's obligations under International Treaties inter alia Article 37 of the Convention on the Rights of the Child which states that every child deprived of liberty shall be separated from adults. The court noted that the conditions of his detention had adversely affected his mental health and had led him to attempt suicide. The Court further considers that the national authorities have manifestly failed to provide adequate medical care for him. Having regard to the applicant's age, the length of his detention in prison together with adults, the failure of the authorities to provide adequate medical care for his psychological problems, and, finally, the failure to take steps with a view to preventing his repeated

⁸⁹ CRC General Comment No. 24 (2019), para 95

⁹⁰ ECtHR, *Güveç v. Turkey*, No. 70337/01, 20 January 2009.

attempts to commit suicide, the Court entertains no doubts that the applicant was subjected to inhuman and degrading treatment. There has accordingly been a violation of Article 3 of the European Convention on Human Rights.

Tunisian Administrative Court / First Instance / May 24, 2017⁹¹

After a child was sentenced to six months' imprisonment for acts such as extremely violent assault, he was put in prison at the age of 16 instead of being placed in a correctional facility. As a result, the child, after being released from prison, suffered neurological disorders and mental illness after being assaulted in prison.

The court held that the placement of the plaintiff, as a child, in prison without being separated from the rest of the prisoners pursuant to the provisions of article 94 of the Code on the Protection of the Child was an error on the part of the administration and entitles the injured person to seek compensation for the ensuing sustained damage.

The court ruled that the officer-in-charge of state litigation with the Ministry of Justice shall pay the plaintiff compensation for his physical and moral harm.



In 2006, the United Nations Office on Drugs and Crime and UNICEF issued the **Manual for the Measurement of juvenile justice indicators**⁹² and have been holding since 2008 regional training workshops on the use of the indicators in the Middle East, North Africa and South Asia.

⁹¹ Not published

⁹²

www.unodc.org/pdf/criminal_justice/Manual_for_the_Measurement_of_Juvenile_Justice_Indicators.pdf

3. The importance of cooperation between lawyers and social services providers

Legal aid plays an important role in facilitating diversion and the use of community-based sanctions and measures, including non-custodial measures; promoting greater community involvement in the criminal justice system; reducing the unnecessary use of detention and imprisonment; rationalizing criminal justice policies; and ensuring efficient use of State resources. (United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems)

Non-governmental organizations can and do play an important role in preventing children delinquency, also in managing child justice. The Committee therefore recommends that States parties seek the active involvement of such organizations in the development and implementation of their comprehensive child justice policy and, where appropriate, provide them with the necessary resources for this involvement.⁹³

States should recognize and encourage the contribution of lawyers' associations, universities, civil society and other groups and institutions in providing legal aid. Where appropriate, public-private and other forms of partnership should be established to extend the reach of legal aid. (United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principle 14)

Comparative Law



Lebanese Law

UPEL⁹⁴ is an association of public utility that works for juveniles who have problems of moral disorder or difficulties with the law. These juveniles conflict with justice, laws and regulations and therefore need control, protection, prevention and care.

UPEL has helped the youth for more than seventy five years through volunteers, social workers and others. UPEL has been mandated by the government to secure social services to the juvenile courts, to ensure juveniles an education, to address the prevention of hazards, by pushing for decrees and laws, most recently Law 422/2002.

UPEL guarantees social welfare charges in the juvenile courts in the six governorates of Lebanon.

UPEL also operates a center in Al-Fanar area to shelter juveniles who are in conflict with the law. This center is capable of receiving ninety juveniles between detainees and convicts between the ages of twelve and eighteen

⁹³ CRC General Comment No. 24 (2109), para 110

⁹⁴<http://ahdath.justice.gov.lb/index.htm>

years. The center subjects each juvenile to the educational, vocational, health and psychological programs developed by UPEL that are appropriate to the Juvenile's level.

Social work at UPEL includes prevention, protection, correction and rehabilitation.

Boys and girls under the age of 18 on all Lebanese territory will benefit from this social work.

UPEL sponsors the juvenile, rehabilitates him/her, helps him/her stabilize, develop his/her personality, regain self-confidence and helps him/her reintegrate into society.

The juvenile will have access either to literacy courses and school enrolment or various vocational courses in cooperation with the Lebanese National Employment Organization including carpentry, blacksmithing, electricity works, hotel works, sewing, computer programming and others ... These trainings provide the juvenile with job opportunities allowing him/her to ensure future livelihood.

Stakeholders: Parents, courts, internal security forces, accredited private sector, forensic doctors, relevant ministries and the Higher Council for Childhood are partners in society to secure the interests of children at risk or in conflict with the law.

3.1 Fields of cooperation

The importance of cooperation between lawyers and social service providers is particularly evident in their attendance with children, in social reporting, in interventions without recourse to judicial proceedings, in alternative measures and in communications to United Nations conventions committees such as the Committee on the Rights of the Child.

A. Attendance with children and social inquiry reports

Children in conflict with the law are in need of legal, psychological, social and educational protection within a justice system for children. International standards have stressed the importance of the assistant social, psychological, educational and consultative role of the justice system for children and emphasized the importance of social inquiry reports when dealing with children in conflict with the law. These standards described social inquiry reports as an indispensable aid in most legal proceedings involving juveniles. This is based on the necessity that the competent

authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc.

Principle 16.1 of United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) states, “In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.”

Comparative Law



Lebanese law

- ➔ When bringing the juvenile before the Public Prosecution or the judicial police on count of offense for investigation, the investigating officer shall immediately contact the accredited social representative and invite him/her to attend the investigation. The representative shall be present within six hours as of the time of his invitation. The investigation may not commence unless the representative is present under the pain of disciplinary prosecution. If the representative is unable to attend for any reason, the Public Prosecution or the Juvenile Department at the Ministry of Justice shall appoint a social representative from one of the associations classified in this department to appear with the juvenile during the investigation. The presence of the social representative is not sufficient. The representative must undertake social research and submit its findings to the person carrying the investigation with the juvenile (article 34 of Law 422.)
- ➔ The investigating judge, at the beginning of the investigation of the juvenile, shall follow the procedures set forth above (Article 35 of Law 422.)
- ➔ If a social file has not been opened for the juvenile within the scope of the prosecution, investigation and trial proceedings, the juvenile court shall, prior to sentencing, obtain a social investigation by the authorized social representative or by the representative commissioned by the court to carry out this task from among social workers.
- ➔ The investigation shall include the necessary information on the financial and social situation of the juvenile, his/her social, school and professional environment, his/her ethics, the degree of his/her intelligence, his/her mental and health status and his/her criminal backgrounds, with the appropriate correction measure. All according

to the current situation at the time of the offense and at the trial⁹⁵.

- ➔ The court may place the juvenile at probationary facility for a period not exceeding three months prior to the verdict if the social investigation or inspection requires such a measure. This time limit shall be extended only by a justified decision (Article 41 of Law 422).
- ➔ The Juvenile Court shall enforce the rendered judgments through its affiliated clerk office and shall instruct the accredited social representative to accompany the juvenile to the institute or institution to which he or she has been sentenced (art. 49 of Law 422).

Tunisian law

The Children's Judge shall collect through social research all information on the financial and cultural status of the family, the child's personality and precedents, attendance at the school, circumstances of upbringing and education, and, where appropriate, order a health file to be added to the social file by conducting a medical and psychological examination of the child. This report shall imperatively contain the opinion of competent experts and their practical suggestions that would help the court to make the necessary and appropriate decisions and means (article 87 of the Code for the Protection Child).

CASE LAW

1- Lebanese Criminal Cassation Decision No. 138/2018, dated 8/3/2018:

The issue of attendance of a juvenile representative besides the juvenile during interrogation is mandatory according to the text of article 34 of Law No. 422/2002, however, the lawyer must invoke the invalidity of the investigation due to the absence of the juvenile representative before the indictment is issued and the submittal of the case file before the criminal court, otherwise his request will be rejected, as happened in the case below...

The issuance of the indictment conceals the defects that may have marred the preliminary investigation, which requires the rejection of the allegation made by the Claimant that the text of article 34 of Law No. 422/2002 was violated by the fact that a social representative did not appear with the minor during the preliminary investigation and that the minor parents or guardians were not informed, in particular, since the Claimant did not challenge the indictment.

⁹⁵ The court may order when necessary any medical examination, whether physical, psychological or mental.

Lebanese Criminal Cassation, Decision No. 234/2013, dated 3/10/2013⁹⁶:

Failure to adhere to the confidentiality of the trial of a minor, holding a public trial, and the absence of a juvenile representative, entail the annulment of the trial proceedings infringing the fundamental principles during trial:

The Court of Cassation overturned the challenged criminal decision pursuant to Article 296 (b) and (d) of the Criminal Code of Procedure on the violation of the law and infringement of the Fundamental Standards During Trial since the Ordinary Criminal Court held a public trial for a minor prosecuted with adults without the presence of a representative from the Union for the Protection of Juveniles in violation of the provisions of Article 33 and Article 40 of Law No. 422 dated 6/6/2002 and of the obligation imposed on the ordinary court to provide the juvenile with all legal guarantees, especially the confidentiality of the trial.

B. Interventions that avoid resorting to judicial proceedings

- ➔ State authorities can use two kinds of measures: i) measures without resorting to judicial proceedings and ii) measures in the context of judicial proceedings. According to Article 40 (3) of the Convention, “[States parties shall seek to promote...] whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings”, providing that human rights and legal safeguards are fully respected. Given the fact that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice that can and should be used in most cases.⁹⁷
- ➔ States parties are required to promote the establishment of measures for dealing with children without resorting to judicial proceedings, with respect to children committing minor offenses and children committing offenses for the first time... Dealing with all of these cases without resorting to judicial proceedings is in line with the principles specified in Article 40 (1) of the Convention. In addition to avoiding stigmatization and criminal records, this approach yields good results for children, is congruent with public safety and has proved to be cost-effective.⁹⁸
- ➔ It is necessary that the competent authorities – in most States the public prosecutor – will continuously explore the possibilities of avoiding a court process or conviction, through diversion and other measures. In other words, diversion options should be offered from the earliest point of contact, before a trial commences, and be available throughout the proceedings.

⁹⁶ <http://www.legallaw.ul.edu.lb/>

⁹⁷ Protecting the Rights of Children in Conflict with the Law

⁹⁸ CRC General Comment No. 24, para 15

Conditions of diversion before the competent judiciary

- Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he or she freely and voluntarily admits responsibility, without intimidation or pressure, and that the admission will not be used against the child in any subsequent legal proceeding;
- The child's free and voluntary consent to diversion should be based on adequate and specific information on the nature, content and duration of the measure, and on an understanding of the consequences of a failure to cooperate or complete the measure;
- The law should indicate the cases in which diversion is possible, and the relevant decisions of the police, prosecutors and/or other agencies should be regulated and reviewable;
- The child is to be given the opportunity to seek legal or other appropriate assistance relating to the diversion offered by the competent authorities, and the possibility of review of the measure;
- The completion of the diversion should result in a definite and final closure of the case. Although confidential records of diversion can be kept for administrative, review, investigative and research purposes, they should not be viewed as criminal convictions or result in criminal records⁹⁹.

C. Alternative measures

Non-custodial measures such as release on probation, which is a measure provided for in comparative law such as Lebanese and Tunisian law (dubbed "guarded freedom").

Comparative Law



Lebanese law

Law No. 422 provided for the guarded freedom (Article 5), which is "placing the juvenile under the surveillance of the social representative or authority designated for this purpose under the supervision of the judge" (Article 10).

Tunisian law

If a measure is to be taken or a criminal sanction is to be imposed, it may be permitted to place the child under a system of guarded freedom until he or she reaches the age of twenty (article 101 of the Code for the Protection of the Child).

The children's investigating judge and the children's judge may place the child under the system of pre-trial guarded freedom measure as a

⁹⁹ CRC General Comment No. 24, para 18

temporary measure (Articles 91 and 93 of the Code).

The child judge can approve this measure as an **initial measure** limited to offenses pursuant to Article 73 of the Code.

The children's judge (or children's court) may decide, in addition to the initial measures provided for in Article 99 of the Code, to place the child under the guarded freedom system as a **complementary disciplinary means** (implementing the decision on guarded freedom when the child leaves the disciplinary institution).

The possibility of placing the child under the guarded freedom system as a supplementary measure until the child reaches the age of twenty years, i.e. after the end of childhood in order to inform the child of all means of protection (subsequent protection) (Article 101 of the Code).

- ➔ Principle 16.1 of United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") states, "In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority."
- ➔ In order to provide effective care for the child in conflict with the law, it is essential that the lawyer be aware of all social institutions working in the field of child protection in conflict with the law, either to propose a specific institution as a measure or to visit the child upon placement. Thus, the importance of social service providers is evident at every stage of the public prosecution until enforcement of the judgment.

Comparative Law



Lebanese law

The protection measure: is the delivery of the juvenile to his parents or one of them or to the legal guardian or his/her family provided that the recipient enjoys the ethical guarantee and the ability to raise him/her under the supervision of the social representative in charge. In the absence of any of these persons in Lebanon or if the above conditions are not met, the juvenile may be handed over to a trusted family or to a **social or health institution accredited by the competent ministries or others if the accredited institutions do not have the required competencies** (Article 9 of Law No. 422).

Juveniles who have not attained the age of twelve years may not be arrested unless they are found to be begging or homeless. They shall be arrested in a

specialized social institution (Article 35 of Law No. 422).

The data system at the Lebanese Ministry of Justice shows that 75% of offences are minor offences, and are mainly property related. In fact, young people are mostly charged with (petty) theft, often committed as a means of survival. The fact that most offences reported are considered minor offences is a strong argument for the use of alternative measures¹⁰⁰.

Tunisian law

If the acts attributed to the child are evidenced, the children's court (or children's judge) shall take measures by virtue of a justified decision, including placing the child in a public or **private institution dedicated to education and vocational training and qualified for this purpose** (Article 99 of the Code of Protection of the Child).

CASE LAW ON ALTERNATIVE MEASURES

Lebanon

1) On February 2018, the investigating judge in North Lebanon issued a decision ordering two Muslim young men arrested for insulting the Virgin Mary to memorize Quranic verses from Surat Al-Omran glorifying the Virgin Mary, as a condition for their release. This was aimed to make them “learn about tolerance between religions and Muslims' love for the Virgin Mary, contrary to the horrible ideas that extremists place in their minds.” After the judge confirmed that the young men had memorized the Quranic verses, she ordered their release.

2) On April 2018, the Investigative Judge in Mount Lebanon issued a decision to release the detainee A.G. on the condition that he memorizes a verse from the Holy Quran from Surat Maryam and gave him several days to appear before him again, provided that he had memorized the said verse. This decision comes against the backdrop of a clash between a number of young men in the region of (...) during which A.G. desecrated divine religion and insulted monotheistic religions in what was considered an offense of provoking sectarian strife.

REMARKS: With regard to the first decision (the second decision is inspired by the first), which is a precedent in the history of the Lebanese judiciary, the judge enforced a provision in Article 111 of the Code of Criminal Procedure. She replaced the defendants' detention sanction by release them subject to “one or more of the [following] conditions” the judge deems necessary. Remarkably, the mentioned legal article, on which the investigating judge relied, does not explicitly

¹⁰⁰ Protecting the rights of children in conflict with the law, p. 108 https://www.unodc.org/pdf/criminal_justice/Protecting_children_en.pdf

mention among the conditions reading the Quran. But the judge was resourceful as she benefited from the terms “notably¹⁰¹.” → This is in application of article 40, paragraph 4, of the Convention on the Rights of the Child.

Tunisia

Children's court judgment No. 1957 dated 1/2/2018, issued by the children's judge¹⁰²

Principle

“Children in conflict with the law shall enjoy, irrespective of their place of birth, nationality or sex, the protection measures stipulated in the new Tunisian Constitution, the Code for the Protection of the Child and all international conventions guaranteeing the protection of the rights of the child ratified by the Tunisian State. These measures shall take into account all aspects related the child for effectiveness and efficiency purposes. This includes informing the concerned diplomatic authorities of any case of a child with a non-Tunisian nationality and whose family is outside Tunisia, including guaranteeing to such child all the services provided by the state institutions until the completion of the notification and deportation procedures as required for the child’s best interest.”

Text of the judgment:

The children judge Mrs. (...) with the Court of First Instance of Sfax II in the hearing held on 1/2/2018 in the **presence of the child protection delegate, child consultants and the Assistant Undersecretary of the Republic** and with the assistance of the clerk of the hearing Mr. (...), issued the following judgment:

Public interest:

On the one hand,

And on the other hand, the child:

¹⁰¹ Testimony of the judge issuing the decision: “On February 8, two young men appeared before me and they were guilty of not knowing what they have done. When I interrogated them, it appeared to me that their ignorance and misinformation led them to commit an act without knowing its ensuing consequences..... As a human being and a judge obliged to ensure the application of the law, I had to approach the matter in a constructive and useful manner. I relied on Article 111 of the Code of Criminal Procedure, which states that “the Investigating Judge may, irrespective of the nature of the offence, release the defendant and place him under judicial supervision, with one or more of the following conditions that such supervision requires, notably [...]” The Article listed some of these conditions. This article allowed me to choose the educative approach, not only criminal punishment. I had several options, so I resorted to the principle that a true believer holds in his heart great respect for others. I held that a Muslim cannot be a true Muslim without applying the teachings of the Quran. I went back to the Kuranic texts that honor the Virgin Mary and invoked Surat Al-Omran to remind these two young men that, by their actions, they desecrate Islam before desecrating the Virgin Mary. [...] My experience as a judge is based on my strong belief that everything is developing, then why not the law? Why not approach the judiciary in an educative manner?” <http://www.alkalimaonline.com/Newsdet.aspx?id=267847>

¹⁰² Not published

Born in (...) holder of the Moroccan nationality, represented by attorney (...).

Referred to this court by virtue of the referral decision issued by the Public Prosecution on 5/12/2017 on charge of entering and staying in Tunisia without a visa in accordance with the provisions of Article 23 of Law 8/3/1968 on the situation of foreigners in Tunisia.

At the hearing:

Whereas after the referral of the child by virtue of the above referral decision, a hearing for the case published was set on 5/12/2017, during which the child confirmed that he was Moroccan, that he was living in Tunisia without documents, that he had entered the Tunisian territory clandestinely through Libya and spent nearly a year in Tunisia, during which he worked and was able to raise a sum of three thousand dinars that he paid to the smuggler sailing from Tunisia to Italy — the smuggling group was identified — whereas he expressed his remorse since he had no guidance as his father is dead and his family is in Morocco and his readiness to stay in Tunisia after regularizing his situation; and whereas the Child Protection Delegate was present after being summoned given that the matter is related to a child at risk, requested postponement to be able to inform the Moroccan embassy and prepare a report regarding the status of the child and suggested temporarily placement at the Center for Social Guidance and Support in Sfax to ensure his protection since he has no guardian; and whereas the Public Prosecution was granted competence to examine the case,

Whereas it was decided at the end of the hearing to notify the Moroccan Embassy through the child protection delegate of the status of the child (...) holder of the Moroccan nationality and to **keep the child until the completion of the procedures and researches in a state of liberty, place him in the Center for Social Guidance and Support in Sfax**, confiscate his passport pending this completion of the case until appropriate measures are taken to ensure his safety and keep him from getting involved in cases of illegal and unsafe travel during this period.

Whereas several hearings were held, most recently on 1/2/2018, attended by the Child Protection Delegate, accompanied by the representative of the International Organization for Migration (IOM) in Tunisia, who submitted a report indicating that he coordinated with the IOM and the Moroccan diplomatic authorities to ensure the deportation of the child and his handing over to his family there and to guarantee his future by enabling him to launch a project that provides him with a livelihood and prevents him from leaving his country clandestinely;

Whereas the Child Protection Delegate also indicated that he is keen on completing the procedures to ensure the best interest of the child and requested the Center for Social Guidance and Support in Sfax where the child is placed to hand him all the child's documents to carry out the remaining procedures, in particular after setting the date of travel on 5/2/2018;

Whereas after hearing all the parties, the following judicial ruling was issued:

The measure prescribed for the child in conflict with the law:

The First Instance court issued a judgment in presence convicting the child, [.....] for entering the Tunisian country and residing therein without a visa; ordering his handing over to his guardian as required for his best interest by deporting him to Morocco through the **International Organization for Migration**, which shall bear the expenses incurred thereon, lifting the attachment imposed on all the supporting documents related to the child and submitting same to IOM representative Mrs. (...) to complete the travel procedures set for 5/2/2018, keeping the child ... until that date at the Center for Social Guidance and Support in Sfax where he was staying throughout the proceedings stages; entrusting the Child Protection Delegate to follow up on the travel procedures and provide us with the relevant report in the meantime and giving permission for execution based on the draft.

D. Submitting complaints to the CRC

The Committee on the Rights of the Child (CRC) is the body of 18 Independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties. It also monitors implementation of two Optional Protocols to the Convention. The Committee also publishes its interpretation of the content of human rights provisions, known as general comments on thematic issues (24 comments¹⁰³) and organizes days of general discussion. On 19 December 2011, the UN General Assembly approved a third Optional Protocol on a communications procedure (OPIC), which allow individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols.



Arab countries that ratified OPIC to date:

- i) The Tunisian State (2018)¹⁰⁴; ii) the State of Palestine (2019); and iii) Morocco signed it on (2012).

For a list of countries ratifying OPIC, visit the OHCHR website:

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

¹⁰³ To this date

¹⁰⁴ The Tunisian parliament ratified a basic draft law approving the accession of the Republic of Tunisia to the Third Protocol to the Convention on the Rights of the Child on May 23, 2018.

The Committee is also able to consider individual complaints alleging violations of the Convention on the Rights of the Child and its first two optional protocols (OPAC and OPSC) by States parties to the OPIC¹⁰⁵, as well as to carry out inquiries into allegations of grave or systematic violations of rights under the Convention and its two optional protocols.

Children's special and dependent status may create real difficulties for them in pursuing remedies for violations of their rights, → the Protocol will reinforce and complement national and regional mechanisms allowing children to submit complaints for violations of their rights.



- The objective of the communications procedures is → to reinforce and complement the national mechanisms and to further enhance the implementation of the Convention and, where applicable, the Optional Protocols thereto on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict (OPIC preamble). Thus reveals the importance of cooperation between lawyers and civil society in preparing complaints for violations of the rights of children in conflict with the law.
- No communication shall be received by the Committee if it concerns a State that is not a party to the present Protocol. (Article 1) The Committee shall have competence solely in respect of violations by the State party of any of the rights set forth in the Convention and/or the first two Optional Protocols thereto occurring after the entry into force of the present Protocol. (Article 20)

¹⁰⁵ [A/RES/66/138](#) was taken at plenary session N. 89 on 19 December 2011, without voting based on the Committee recommendation (A/66/457 para 20). The Protocol entered into force in April 2014.

- ➔ In fulfilling the functions conferred on it [...], the Committee shall be guided by the principle of the best interests of the child¹⁰⁶. It shall also have regard for the rights and views of the child, the views of the child being given due weight in accordance with the age and maturity of the child.(Article 2) It may decline to examine any communication that it considers not to be in the child's best interests. (Article 3)
- ➔ Communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in any of the following instruments to which that State is a party: The Convention; The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography; The Optional Protocol to the Convention on the involvement of children in armed conflict.(Article 5)

When is a complaint admissible?

The Committee shall consider a communication inadmissible when:

- The communication is anonymous;
- The communication is not in writing;
- The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention and/or the Optional Protocols thereto;
- The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
- The communication is manifestly ill-founded or not sufficiently substantiated;
- The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State party concerned, unless those facts continued after that date;
- The communication is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit. (Article 7)

¹⁰⁶ The best interests of the child should be a primary consideration to be respected in pursuing remedies for violations of the rights of the child, and that such remedies should take into account the need for child-sensitive procedures at all levels. (Preamble)



Importance of sufficient substantiation

It is important for the author of the claim to sufficiently substantiate the violations of the rights included in the Convention on the Rights of the Child and / or the Optional Protocols. In the light of all of the above and while being aware of the deteriorating human rights situation in Afghanistan, the Committee considers that the authors have failed to justify a personal risk of a serious violation of [alleged victim]'s rights upon return to Afghanistan. The Committee therefore considers that this part of the communication is also insufficiently substantiated and declares it inadmissible under article 7 (f) of the Optional Protocol. (Communication No. 7/2016 against Denmark. Subject matter: Deportation of family with child to Afghanistan, where they claim a risk of persecution based on their alleged conversion from Islam.)

It is important that civil society participates in the preparation of the communication and in the substantiation of the claim.

What are the procedures?

- ➔ The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the obligations set forth in the Convention and/or the Optional Protocols thereto. An agreement on a friendly settlement reached under the auspices of the Committee closes consideration of the communication under the present Protocol. (Article 9).
- ➔ The Committee shall consider communications received under the present Protocol as quickly as possible, in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned. [...] After examining a communication, the Committee shall, without delay, transmit its views on the communication, together with its recommendations, if any, to the parties concerned. (Article 10)
- ➔ The State party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee a written response, including information on any action taken and envisaged in the light of the views and recommendations of the Committee. The State party shall submit its response as soon as possible and within six months. (Article 11)
- ➔ If the Committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention or in the Optional Protocols thereto on the sale of children, child prostitution and child pornography or on the involvement of children in armed conflict, the Committee shall invite the State party to cooperate in the examination of the information and, to this end, to submit observations without delay with regard to the information concerned. (Article 13)

- ➔ The State party concerned shall, as soon as possible and within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee. After such proceedings have been completed with regard to an inquiry [...], the Committee may, after consultation with the State party concerned, decide to include a summary account of the results of the proceedings in its report [...] (Article 13) submitted every two years to the General Assembly (Article 16).



The communications procedure applies to other human rights convention committees such as the Human Rights Committee.

An example of **good practices**: In the **Philippines**, PREDA considered cases of children tortured in detention for OMCT to present individual complaints to Human Rights Committee or Committee against Torture. These elements were shared for follow-up with the Committee on the Rights of Child, when it examined the Philippines report in 2005.¹⁰⁷

3.2 Method of cooperation between lawyers and social services

According to the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, states must establish “mechanisms and procedures to ensure close cooperation and appropriate referral systems between legal aid providers and different professionals to obtain a comprehensive understanding of the child, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.”

Start of cooperation→ The presence of the lawyer and/or the social worker at the police station immediately upon arrest of the child is decisive for three reasons: (1) The child must know his/her rights, [...] (2) With a lawyer or social worker present, there is a better chance that questioning will take place in conditions that respect procedures and the rights of the child, and (3) In many cases, the alternative to detention at the police station depends on the possibility of finding the child’s family, which police officers cannot always do immediately. Without assistance in this matter, the child is often taken into custody by default.¹⁰⁸

¹⁰⁷ Protecting the rights of children in conflict with the law, UNICEF and others p. 105

¹⁰⁸ Protecting the rights of children in conflict with the law, UNICEF and others p. 41



Lebanese law

Reminder:

When bringing the juvenile before the Public Prosecution or the judicial police on count of offense for investigation, the investigating officer shall immediately contact the accredited social representative and invite him/her to attend the investigation.

The representative shall be present within six hours as of the time of his invitation. The investigation may not commence unless the representative is present under the pain of disciplinary prosecution.

If the representative is unable to attend for any reason, the Public Prosecution or the Juvenile Department at the Ministry of Justice shall appoint a social representative from one of the associations classified in this department to appear with the juvenile during the investigation. The presence of the social representative is not sufficient. The representative must undertake social research and submit its findings to the person carrying the investigation with the juvenile (article 34 of Law 422.)

The investigating judge, at the beginning of the investigation of the juvenile, shall follow the procedures set forth above (Article 35 of Law 422.)

Good practices¹⁰⁹:

In Lebanon¹¹⁰, to support gaps in legal and social protection for children in conflict with the law, Terre des Hommes appoints and trains independent lawyers (from among fresh graduates) and social workers. These lawyers and social workers are contacted upon the arrest of the child and support police officers in filing social reports, finding the child's parents, preventing pre-trial detention and advocating for alternative sanctions where possible.

Due to Terre des Hommes' efforts¹¹¹:

Approximately [the three quarters] of children who are supported by lawyers and/or social workers are not deprived of their liberty.

¹⁰⁹ Protecting the rights of children in conflict with the law, UNICEF and others p. 41, 42

¹¹⁰ Also in Romania, Mauritania and Guinea

¹¹¹ This initiative in Romania has led a group of lawyers to form their own NGO, "Jean Val jean" to protect the rights of children in conflict with the law. Protecting the rights of children in conflict with the law, UNICEF and others p. 42.

On the whole, government partners find that it is less costly to appoint social workers than to imprison children.

Necessary Conditions:

Neutral reputation: → Much of TDH's work is facilitated by the fact that it is well known and trusted by both governmental and non-governmental partners.

Legal Permission: → The law of some countries allows the lawyer to be present at the police station (such as the French law); in other countries, he or she may be present only after 24 hours of police detention. In still other countries, such authorization is granted only to social workers.¹¹²

3.3 Overview of special cases

These are precisely the situation of child soldiers and children deprived of their family environment, especially children on the move.

A. Child recruitment

International law prohibits the [military] recruitment of children; however, the age of recruitment varies from convention to another:

→ Convention on the Rights of the Child: States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities/ States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. (Art. 38 (2) and (3))

- **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**¹¹³: under 18 years of age¹¹⁴.

¹¹² Protecting the rights of children in conflict with the law, UNICEF and others p. 43, 44

¹¹³ Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 - Entry into force 12 February 2002

¹¹⁴ Distinction shall be made between armed forces and armed groups:

Armed forces:

- States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities. (Article 1)
- States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces. (Article 2)
- States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child,

- **Additional Protocol I to the Geneva Conventions on the Protection of Victims of International Armed Conflicts (1977) and Additional Protocol II to the Geneva Conventions on the Protection of Victims of Non-International Armed Conflicts (1977):** Under 15 years of age.
- **The International Criminal Court Statute (1998):** Under 15 years of age.
- **Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (No. 182) of 1999:** Under 18 years of age.

CASE LAW THE INTERNATIONAL CRIMINAL COURT

Thomas Lubanga Dyilo, Trial Chamber, March 14, 2012¹¹⁵

In all the circumstances, the Chamber is persuaded that the Statute [ICC Statute] in this regard is aimed at protecting vulnerable children, including when they lack information or alternatives. The manner in which a child was recruited, and whether it involved compulsion or was “voluntary”, are circumstances which may be taken into consideration by the Chamber at the sentencing or reparations phase, as appropriate. However, the consent of a child to his or her recruitment does not provide an accused with a valid defence.

[...] As with “conscripting” and “enlisting” children under the age of 15 into armed forces or groups, the prohibition against “using them to participate actively in hostilities” is generally intended to protect children from the risks that are associated with armed conflict, [...]

The prohibition against using children under the age of 15 to participate actively in hostilities is not dependent on the individuals concerned having been earlier conscripted or enlisted into the relevant armed force or group. [...] Therefore, consistently with Article 22(2) of the Statute, a child can be “used” for the purposes of the Statute without evidence being provided as regards his or her earlier “conscripting” or “enlistment” into the relevant armed force or group.

taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

Armed groups:

- Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
- States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices. (Article 4)

¹¹⁵ www.icc-cpi.int.

- ➔ The authorities of States parties face a number of challenges when dealing with these children. Some States parties have adopted a punitive approach with no or limited consideration of children's rights, resulting in lasting consequences for the development of the child and having a negative impact on the opportunities for social reintegration, which in turn may have serious consequences for the broader society. Often, these children are arrested, detained, prosecuted and put on trial for their actions in conflict areas and, to a lesser extent, also in their countries of origin or return.
- ➔ The Committee draws the attention of States parties to Security Council resolution 2427 (2018). In the resolution, the Council stressed the need to establish standard operating procedures for the rapid handover of children associated or allegedly associated with all non-State armed groups, including those who committed acts of terrorism, to relevant civilian child protection actors. The Council emphasized that children who had been recruited in violation of applicable international law by armed forces and armed groups and were accused of having committed crimes during armed conflicts should be treated primarily as victims of violations of international law. The Council also urged Member States to consider non-judicial measures as alternatives to prosecution and detention that were focused on reintegration, and called on them to apply due process for all children detained for association with armed forces and armed groups¹¹⁶.
- ➔ If, under certain circumstances, exceptional internment of a child soldier over the age of 15 years is unavoidable and in compliance with international human rights and humanitarian law, for example, where she or he poses a serious security threat, the conditions of such internment should be in conformity with international standards, including article 37 of the Convention and those pertaining to juvenile justice, and should not preclude any tracing efforts and priority participation in rehabilitation programmes.¹¹⁷
- ➔ If, in exceptional cases, [...], children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection (Article 77 of Additional Protocol I to the Geneva Conventions on the Protection of Victims of International Armed Conflicts)¹¹⁸
- ➔ If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units (Article 77 of Additional Protocol I to the Geneva Conventions on the Protection of Victims of International Armed Conflicts)

¹¹⁶ CRC General Comment No. 24, para 99 and 100

¹¹⁷ CRC General Comment No. 6, para 57

¹¹⁸ Children shall be provided with the care and aid they require, and in particular: [...] Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities. (Article 4 of Additional Protocol I to the Geneva Conventions on the Protection of Victims of International Armed Conflicts) <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolIII.aspx>

- ➔ The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed. (Article 77 of Additional Protocol I to the Geneva Conventions on the Protection of Victims of International Armed Conflicts)

B. Children deprived of their family environment especially children on the move

- ➔ There are varied and numerous reasons for a child being unaccompanied or separated, ranging from: 1) persecution of the child or the parents; to 2) international conflict and civil war; to 3) trafficking in various contexts and forms, including sale by parents; and the search for better economic opportunities.¹¹⁹
- ➔ Every child is covered by the “care” of someone. There are only three conditions for children: 1) emancipated, 2) in the care of primary or proxy caregivers, or 3) in the de facto care of the State. The definition of “caregivers”, referred to in article 19, paragraph 1, as “parent(s), legal guardian(s) or any other person who has the care of the child”, covers those with clear, recognized legal, professional-ethical and/or cultural responsibility for the safety, health, development and well-being of the child.



Care settings are places where children spend time under the supervision of their “permanent” primary caregiver (such as a parent or guardian) or a proxy or “temporary” caregiver (such as a teacher) and institutional personnel (governmental or nongovernmental) in the position of caregivers for example responsible adults in health-care, juvenile-justice and drop-in and residential-care settings.

- ➔ In the case of unaccompanied children, the State is the de facto caregiver. →Article 19 also applies to children without a primary or proxy caregiver or another person who is entrusted with the protection and well-being of the child such as, for instance, children in child-headed households, children in street situations, children of migrating parents or unaccompanied children outside their country of origin. The State party is obliged to take responsibility as the de facto caregiver or the one “who has the care of the child”, even if these children are not within the context of physical care settings such as foster homes, group homes or NGO facilities. The State party is under the obligation “to ensure the child such protection and care as is necessary for his or her well-being” (art. 3, para. 2) and to “ensure alternative care” to “a child temporarily or permanently deprived of his or her family environment” (art. 20). There are different ways to guarantee the rights of these children, preferably in family-like care arrangements, which must be

¹¹⁹ CRC General Comment, No. 6, para 2.

carefully examined with respect to the risk of these children being exposed to violence.¹²⁰

- Deprivation of freedom and treatment of children subject to deprivation of freedom.→ In application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with article 37 of the Convention and other international obligations.¹²¹



In the event the national law contradicts the provisions set out above, i.e. when the national law provides for the deprivation of unaccompanied child's liberty, the lawyer shall raise this matter or at least ensure that the child receives protection in detention.

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Juvenile Judge in Zahle, Decision No. 95/2013, dated 12/9/2013:

- 1- The clandestine entry of a minor into Lebanon: Misdemeanor Article 32 Foreigners in addition to the provisions of Law No. 422/2002 given that the matter is related to a minor.
- 2- Not to expel the minor from the country due to the dangerous security situation in Syria according to Article 3 of the Convention against Torture and Article 3 of the Convention on the Rights of the Child applicable in Lebanon which requires considering the best interests of the minor in the various judicial proceedings against him/her.
- 3- Placing the minor for a period of one year under release on probation and entrusting the juvenile delegate to follow up the execution of the judgment and to submit a social report to the court every three months on the behavioral, social, economic and health status of the minor.

States shall, in particular where government capacity is limited, accept and facilitate assistance offered by UNICEF, the World Health Organization (WHO), United Nations Joint Programme on HIV/AIDS (UNAIDS), UNHCR and other agencies (art. 22 (2)) within their respective mandates, as well as, where appropriate, other competent intergovernmental organizations or non-governmental organizations in order [to

¹²⁰ CRC General Comment, No.13, para 33, 34 and 35

¹²¹ CRC General Comment, No. 6, para. 61 and 63

secure an adequate standard of living for unaccompanied and separated children and] to meet the health and health-care needs of unaccompanied and separated children.¹²²

Other roles of civil society

1- Parallel reports

There is another role that the civil society can provide is the preparation of parallel reports to be submitted to the CRC. For example, in accordance with their cooperation protocol, UNICEF provided technical support to the Libyan Ministry of Social Affairs in the preparation of the official State and Civil Society report for parallel reporting on children's rights. In this context, workshops and meetings were held with representatives of ministries concerned with children's rights and representatives of the civil society from different regions of Libya.¹²³

2- Awareness- raising

Children who commit offences are often subjected to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of those children. This negative presentation or criminalization of children is often based on a misrepresentation and/or misunderstanding of the causes of crime, and regularly results in calls for tougher approaches (zero-tolerance and “three strikes” approaches, mandatory sentences, trial in adult courts and other primarily punitive measures). States parties should seek the active and positive involvement of Members of Parliament, non-governmental organizations and the media to promote and support education and other campaigns to ensure that all aspects of the Convention are upheld for children who are in the child justice system. It is crucial for children, in particular

¹²² CRC General Comment, No. 6, para. 45 and 49

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<https://unsmil.unmissions.org/ar/%D8%A7%D9%84%D9%8A%D9%88%D9%86%D8%B3%D9%8A%D9%81-%D8%AA%D8%AF%D8%B9%D9%85-%D8%A5%D8%B9%D8%AF%D8%A7%D8%AF-%D8%A7%D9%84%D8%AA%D9%82%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D8%B1%D8%B3%D9%85%D9%8A-%D9%84%D9%84%D8%AF%D9%88%D9%84%D8%A9-%D9%88-%D8%A7%D9%84%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D9%85%D9%88%D8%A7%D8%B2%D9%8A%D8%A9-%D9%84%D9%84%D9%85%D8%AC%D8%AA%D9%85%D8%B9-%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A-%D8%AD%D9%88%D9%84-%D8%AD%D9%82%D9%88%D9%82-%D8%A7%D9%84%D8%B7%D9%81%D9%84-%D9%81%D9%8A-%D9%84%D9%8A%D8%A8%D9%8A%D8%A7>

those who have experience with the child justice system, to be involved in these awareness-raising efforts.¹²⁴

¹²⁴ CRC General Comment No. 24, para. 111.

Annex 1

Article 37 of the Convention on the Rights of the Child:

States Parties shall ensure that:

- a. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- b. No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- c. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- d. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

Article 40 of the Convention on the Rights of the Child:

- 1) States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
- 2) To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - a. No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

- b. Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - i. To be presumed innocent until proven guilty according to law;
 - ii. To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - iii. To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - iv. Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - v. If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - vi. To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - vii. To have his or her privacy fully respected at all stages of the proceedings.
- 3) States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
 - a. The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - b. Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
- 4) A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

Annex 2 - States legal aid obligations to children in conflict with the law

States should take appropriate measures to establish child-friendly and child-sensitive legal aid systems, taking into account children's evolving capacities and the need to strike an appropriate balance between the best interests of the child and children's right to be heard in judicial proceedings including:

- a. Establishing, where possible, dedicated mechanisms to support specialized legal aid for children and support the integration of child-friendly legal aid into general and non-specialized mechanisms;
- b. Adopting legal aid legislation, policies and regulations that explicitly take into account the child's rights and special developmental needs, including the right to have legal or other appropriate assistance in the preparation and presentation of his or her defence; the right to be heard in all judicial proceedings affecting him or her; standard procedures for determining best interest; privacy and protection of personal data; and the right to be considered for diversion;
- c. Establishing child-friendly legal aid service standards and professional codes of conduct. Legal aid providers working with and for children should, where necessary, be subject to regular vetting to ensure their suitability for working with children;
- d. Promoting standard legal aid training programmes. Legal aid providers representing children should be trained in and be knowledgeable about children's rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding. All legal aid providers working with and for children should receive basic interdisciplinary training on the rights and needs of children of different age groups and on proceedings that are adapted to them; and training on psychological and other aspects of the development of children, with special attention to girls and children who are members of minority or indigenous groups, and on available measures for promoting the defence of children who are in conflict with the law;
- e. Establishing mechanisms and procedures to ensure close cooperation and appropriate referral systems between legal aid providers and different professionals to obtain a comprehensive understanding of the child, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.

To ensure the effective implementation of nationwide legal aid schemes, States should consider establishing a legal aid body or authority to provide, administer, coordinate and monitor legal aid services. Such a body should:

- a. Be free from undue political or judicial interference, be independent of the Government in decision-making related to legal aid and should not be subject to the direction or control or financial intimidation of any person or authority in the performance of its functions, regardless of its administrative structure
- b. Have the necessary powers to provide legal aid, including but not limited to the appointment of personnel; the designation of legal aid services to individuals; the setting of criteria and accreditation of legal aid providers, including training requirements; the oversight of legal aid providers and the establishment of independent bodies to handle complaints against them; and the assessment of legal aid needs nationwide; and the power to develop its own budget;
- c. Develop, in consultation with key justice sector stakeholders and civil society organizations, a long-term strategy guiding the evolution and sustainability of legal aid;
- d. Report periodically to the responsible authority.

(United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 11)

Annex 3- Relevant Websites¹²⁵

The Arab Center for the of the Rule of Law and Integrity (ACRLI)	http://arabruleoflaw.org
European Court of Human Rights	http://www.echr.coe.int
Office of the United Nations High Commissioner for Human Rights (OHCHR)	www.ohchr.org
The United Nations	www.un.org
UNICEF	www.unicef.org

¹²⁵ By alphabetical order