MAPPING AND ASSESSMENT OF THE CHILD JUSTICE SYSTEM IN KURDISTAN REGION OF IRAQ

November 2022
This report was produced for UNICEF in Iraq in November 2022 by Child Frontiers (Ursina Weidkuhn, Joshua Dankoff, and Alexander Krueger in collaboration with the Stars Orbit team in the Kurdistan Region of Iraq). The opinions and statements expressed here do not necessarily represent those of UNICEF nor its donor – The KfW Development Bank.

Child Frontiers Ltd

Suite A 15/F I Hillier Commercial Building
65-67 Bonham Strand East
Sheung Wan, Hong Kong
TABLE OF CONTENT

ACRONYMS ................................................................................................................................. 4

1. INTRODUCTION .......................................................................................................................... 6

2. METHODOLOGY ......................................................................................................................... 7
   2.1 RESEARCH ETHICS ............................................................................................................. 9
   2.2 RESEARCH METHODS ...................................................................................................... 9
   2.3 RESEARCH TEAM ............................................................................................................. 10
   2.4 RESEARCH SITES ............................................................................................................. 10
   2.5 SAMPLING ....................................................................................................................... 10
   2.6 SAMPLE SIZE ................................................................................................................ 11
   2.7 TRAINING ....................................................................................................................... 11
   2.8 DATA ANALYSIS ............................................................................................................ 11
   2.9 LIMITATIONS AND CHALLENGES ............................................................................. 12

3. FINDINGS ................................................................................................................................. 13
   3.1 KURDISTAN REGION OF IRAQ ....................................................................................... 13
   3.2 LEGAL AND POLICY FRAMEWORK ............................................................................. 14
      3.2.1 INTERNATIONAL TREATIES ............................................................................... 14
      3.2.2 NATIONAL LEGAL FRAMEWORK ...................................................................... 14
   3.3 CUSTOMARY JUSTICE SYSTEM .................................................................................... 16
      3.3.1 PERCEPTION AND SATISFACTION ..................................................................... 16
      3.3.2 USE OF CUSTOMARY JUSTICE SYSTEM ......................................................... 17
      3.3.3 CUSTOMARY AND FORMAL JUSTICE INTERACTION ...................................... 18
   3.4 CHILD JUSTICE SYSTEM ELEMENTS .......................................................................... 19
      3.4.1 PERCEPTION OF FORMAL JUSTICE SYSTEM .................................................. 19
      3.4.2 CHILDREN IN CONFLICT WITH THE LAW ...................................................... 19
      3.4.3 PREVENTION ...................................................................................................... 19
      3.4.4 SEPARATE AND SPECIALIZED CHILD JUSTICE SYSTEM ................................. 21
      3.4.5 AGE ISSUES ....................................................................................................... 21
      3.4.6 DIVERSION ......................................................................................................... 22
      3.4.7 ARREST AND PRE-TRIAL DETENTION .............................................................. 24
      3.4.8 PROCEEDINGS .................................................................................................... 27
      3.4.9 SENTENCING ...................................................................................................... 29
   3.5 CHILDREN ASSOCIATED WITH ARMED FORCES AND GROUPS (CAAFAG) .......... 32
   3.6 CHILDREN INVOLVED IN DRUG-RELATED CRIMES .................................................. 33
   3.7 CHILD VICTIMS AND WITNESSES OF CRIME .......................................................... 33
   3.8 CHILDREN OF INCARCERATED PARENTS ...................................................................... 36
   3.9 CHILD JUSTICE SYSTEM ELEMENTS .......................................................................... 36
      3.9.1 DATA MANAGEMENT SYSTEMS ......................................................................... 36
      3.9.2 RESOURCES ....................................................................................................... 36
      3.9.3 COORDINATION ............................................................................................... 39

4. RECOMMENDATIONS AND ACTION PLAN .............................................................................. 40
   4.1 MACRO-LEVEL RECOMMENDATION ON CONTINUED REFORM PROCESS ........... 40
   4.2 PLAN OF ACTION ......................................................................................................... 40
   4.3 COMPILED LIST OF PROPOSED LEGISLATIVE CHANGES ...................................... 47

5. REFERENCES ............................................................................................................................ 52

6. ANNEX 1: DIVERSION ROADMAP .......................................................................................... 55

7. ANNEX 2: GUIDANCE ON CHILD-FRIENDLY COURTS ......................................................... 68
LIST OF FIGURES

FIGURE 1 - FOCUS GROUP DISCUSSION FREQUENCY OF PROBLEMS IDENTIFIED FOR GIRLS (ALL RESPONDENTS) ........................................................................................................................................20

FIGURE 2 - FOCUS GROUP DISCUSSION FREQUENCY OF PROBLEMS IDENTIFIED FOR BOYS (ALL RESPONDENTS) ........................................................................................................................................21

FIGURE 3 - SOURCE REFORMATORIES IN SULAYMANIYAH, DUHOK, AND ERBIL, AUGUST 2022 .......................................................................................................................26

FIGURE 4 SOURCE: FACEBOOK, ACCESSED 11 AUGUST 2022 ........................................................................................................................................28

FIGURE 5 – SOURCE REFORMATORY, 2022, ERBIL ........................................................................................................................................31

FIGURE 6 - SOURCE DCVWF 2022 ........................................................................................................................................34

FIGURE 7 – SOURCE: JUVENILE POLICE, 2022, ERBIL ........................................................................................................................................37

FIGURE 8 – SOURCE MOSA, 2022, ERBIL ........................................................................................................................................37

ACRONYMS

CAAFAG  Children associated with armed forces or armed groups
CC  Criminal Code
CPC  Criminal Procedural Code
CRC  Convention on the Rights of the Child
GBV  Gender-based Violence
ILO  International Labour Organization
ISIL  Islamic State in Iraq and the Levant
ISIS  Islamic State in Iraq and Syria
J4C  Justice for Children
JWL  Juvenile Welfare Law
KRG  Kurdistan Regional Government
KRI  Kurdistan Region of Iraq
MoI  Ministry of Interior
MoLSA  Ministry of Labour and Social Affairs
MoJ  Ministry of Justice
OHCHR  Office of the United Nations High Commissioner for Human Rights
P  Paragraph
SoP  Standard Operating Procedures
UN  United Nations
UNAMI  United Nations Assistance Mission for Iraq
VAC  Violence against Children
### CONCEPTS AND DEFINITIONS

<table>
<thead>
<tr>
<th>Alternatives to deprivation of liberty</th>
<th>Community-based responses to juvenile delinquency including alternatives to pre-trial detention and alternatives to liberty depriving sanctions.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child in contact with the law</td>
<td>A child in contact with the law is a child who comes in contact with the justice system for whatever reason, including children in conflict with the law, child victims or witnesses of crime and children in civil law and administrative proceedings.</td>
</tr>
<tr>
<td>Child in conflict with the law</td>
<td>A child in conflict with the law is a child alleged as, accused of, or recognized as having infringed the penal law after attaining the age of criminal responsibility. Children below the minimum age of criminal or administrative responsibility who act against the law may also come in contact with the justice system. However, they will not be held criminally responsible.</td>
</tr>
<tr>
<td>Child associated with armed force or armed group</td>
<td>A child associated with an armed force or armed group refers to any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.</td>
</tr>
<tr>
<td>Child victim of crime</td>
<td>A child victim is a person below 18 years of age who has suffered harm (including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights) through acts or omissions that are in violation of criminal law.</td>
</tr>
<tr>
<td>Child witness of crime</td>
<td>A child witness is a person below 18 years of age who witnessed a crime.</td>
</tr>
<tr>
<td>Child Justice System</td>
<td>The child justice system concerns children who come into contact with the justice system, both as victims/witnesses of crime, and when accused of a crime.</td>
</tr>
<tr>
<td>Child Justice Professionals</td>
<td>Professionals working in child justice, including police officers, prosecutors, judges, lawyers, psycho-social professionals, ideally specially appointed for this purpose and specially trained.</td>
</tr>
<tr>
<td>Customary Justice System</td>
<td>This refers to the whole range of traditional, customary, religious and informal justice mechanisms that deal with disputes at community level.</td>
</tr>
<tr>
<td>Deprivation of liberty</td>
<td>Deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority. This includes police arrest; pre-trial detention; imprisonment (as sanction); and placements in (closed) institutions.</td>
</tr>
<tr>
<td>Diversion</td>
<td>The term refers to measures for referring children away from the judicial system, usually to programmes or activities, at any time prior to or during the relevant proceedings. Diversion options may include restorative options (see below). Diversion as defined here is to be distinguished from alternatives to pre-and post-trial deprivation of liberty.</td>
</tr>
<tr>
<td>Informal justice</td>
<td>The term refers to customary, tribal, indigenous or other (informal) justice systems that may operate parallel to or on the margins of the formal justice system.</td>
</tr>
<tr>
<td>Restorative justice</td>
<td>Any process in which the victim, the offender and/or any other individual or community member affected by a crime actively participates together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party. Examples of restorative processes include mediation, conferencing, conciliation and sentencing circles.</td>
</tr>
<tr>
<td>Status offences</td>
<td>Behaviour such as school absence, running away, begging or trespassing which are criminalized for children but not considered crimes if committed by adults.</td>
</tr>
</tbody>
</table>

1. Art 40/1 CRC.
5. See https://www.unicef.org/eca/definitions
7. Committee on the Rights of the Child, General Comment No 24 p8 and 15.
8. Committee on the Rights of the Child, General Comment No 24 p102.
10. Committee on the Rights of the Child, General Comment No 24 p12.
1. INTRODUCTION

Iraq is experiencing ongoing humanitarian crises including armed conflict, though the Kurdish Region has experienced relative stability compared to other regions. In this context, the Kurdistan Regional Government, supported by UNICEF Iraq, is using this opportunity to systematically assess and map the child justice system. The child justice system concerns children who come into contact with the justice system, inclusive of children accused of crime (sometimes referred to as the juvenile justice system) as well as child victims and witnesses of crime.

The Government of the KRI is committed to promoting, protecting and fulfilling the rights of children including those in contact with the law as victims, witnesses, accused or offenders. At the national level, Iraq ratified the UNCRC in 1994, making it one of the first countries in the sub-region to accede to the Convention of the Right of the Child (CRC). The Government, with the support of UNICEF, is currently developing a new Child Act. Although different levels of services and capacities are available across governorates, years of crisis and insecurity have eroded their ability to adequately and holistically support children and families.

Even before it acceded to the CRC, Iraq already had a fairly developed juvenile justice system, which has been administered under the Juvenile Welfare Law No. 76 of 1983. While this law has some positive aspects, it has many gaps considering that it predates the CRC. The law is not harmonised with CRC and does not adequately cover all aspects and continuum of justice for children (J4C) services, both prevention and response; and it has no provision and system for child victims and witnesses of crime, nor clear provisions for alternatives to detention.

KRI has a low age of criminal responsibility (age 11; though still higher than age 9 in federal Iraq). Its juvenile justice has many strengths, though it still relies on deprivation of liberty, with poor conditions in detention, and lack of a prevention continuum. There remain uneven responses and reintegration services available for children who are at risk of or have already been in conflict with the law, at all stages- pre-delinquency, delinquency, arrest, pre-trial detention, post-trial detention and post-release reintegration. Furthermore, the recent historical regional developments have exposed children to the justice system in new ways due to the impact of conflict, and children deemed linked to designated terrorist groups encounter both the security and justice system in a unique manner. Special safeguards that exist in legislation for children are insufficient especially for victims and witnesses of crime.

The challenges are compounded by limitations in human resource and institutional capacities of the child justice system, gaps in coordination, data collection, regulatory framework, procedures and processes that are in line with CRC and other international standards. The child justice system needs improvements to become child friendly and reflect international commitments.

With this understanding the Kurdistan Regional Government (KRG) initiated this assessment of the child justice system in the region to gather the necessary evidence in order to inform system reform efforts for the years to come.
2. METHODOLOGY

The research aimed to establish an understanding of how the child justice system in the Kurdish Region of Iraq is organised and how it functions, including understanding how it is used by communities as well as identifying key gaps and challenges. The research relied on a mixed method design relying on both quantitative and qualitative data. The analysis built upon existing quantitative secondary data and statistics, though primarily qualitative data allowed for a more in-depth appreciation of the functioning of and the perceptions of the child justice system.

This led the scope of the analysis to range from formal services, such as police, prosecutorial, and judicial practices; to endogenous community practices, often referred to as the ‘non-formal’ or ‘customary’ child justice mechanisms, and actors, such as religious leaders; to understanding the roles families play in responding to children who find themselves in conflict with the law or as victims or witnesses of crime.

The research team emphasized the contextual determinants influencing the shaping and performance of the justice system and queried policy makers, service providers, as well as communities, families and children’s perceptions, understanding and aspirations. This emphasis is essential in informing ever more appropriate approaches and systems fit for the purpose and context in which they are supposed to operate.

The mixed methods, along with multiple data sources provided a rigorous basis for comparison and contrast within the regional realities and among different respondents or stakeholders group. The triangulation of the data sets reveals trends and contextual variations across sites and or viewpoints. The findings constitute a solid evidence base to confidently inform the development of a strategic framework and an action plan.

Overall, two overarching lines of questioning shape the assessment. First is an assessment of the existing system and the degree of proximity to or distance from international standards and recognized practices. Second, the assessment will determine the extent of the gap (where existent) between the formal justice for children system and the community practices; in other words, querying the congruence between the existing formal justice system and socio-cultural-governance context and practice of KRI.

The research first considered the situational context, the system overview, management, and coordination, then focused on the legal/regulatory frameworks and practice concerning children in conflict with the law and then child victims and witnesses. Child Frontiers tailored its own tools building on international child justice standards.

The research was conducted under the broad direction of a multi-agency government Technical Committee in Erbil. This Committee was consulted at key junctures in the research process, provided input on key questions, methodology and responded to a draft of this report.
### Table 1: Research Questions

<table>
<thead>
<tr>
<th>Determinant</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Context: What is the context that influences the child justice system?</strong></td>
<td></td>
</tr>
<tr>
<td>1. Situation</td>
<td>Appreciating the influence of the socio-economic-cultural-historical situations and their evolution on the current and future status of the system; what is the space for change? This includes assessing the degree of acceptance of the need of change, the extent to which decision makers and gatekeepers endorse the need for and kind of change, and the ability in terms of resources and room to do things differently.</td>
</tr>
<tr>
<td>2. Legislation and policy</td>
<td>What benchmarks and paradigms does legislation set for the system, as well as the roles and responsibilities as set out in the existing regulatory and policy frameworks? To what extent does the policy framework incorporate child friendly elements, and provisions for diversion and or alternatives to detention? To what extent does it align with relevant regional (Arab League, Europe) and international (UNCRC) guidelines on child-friendly justice? What is level of alignment of the national/regional legal framework with international guidance?</td>
</tr>
<tr>
<td>3. Social norms and concepts</td>
<td>What is the understanding of conceptualization of responses to child wrongdoing / child maltreatment / child wellbeing / child protection / child justice, and the thresholds which determine action? What beliefs and principles inform decision-making; what types of processes and kind of support is provided to children and families, and the perception of their effectiveness? What are the perceptions of the most appropriate way responding to children accused of wrongdoing and supporting child victims of crime in different circumstances and settings?</td>
</tr>
<tr>
<td><strong>System Overview: How does the child justice system function and perform in KRI?</strong></td>
<td></td>
</tr>
<tr>
<td>4. Functioning of the justice system</td>
<td>What justice for children institutions operate in terms of their mandate, roles, programmes, budgets, processes and procedures, human resources, technical capacities?</td>
</tr>
<tr>
<td>5. Service availability</td>
<td>What kind of child justice services are offered to communities across KRI?</td>
</tr>
<tr>
<td>6. Demand / relationship to non-formal justice</td>
<td>What kind of demand is there in KRI for child justice services? What do children and family do when in conflict with the law? When a victim of crime? What kind of non-formal justice processes are available to children and families? How do these work? How legitimate are they? What brings a family or community to seek resolution of a conflict from the formal or non-formal system? In what circumstances do children and families make use of formal justice services? How legitimate do children and families see child formal justice services (police, prosecution, court)?</td>
</tr>
<tr>
<td><strong>System Management and Coordination: What kind of management and coordination systems exist?</strong></td>
<td></td>
</tr>
<tr>
<td>7. Management / Coordination</td>
<td>What platforms for coordination are in place at the state, district, and community levels? How do these platforms operate, and how effectively?</td>
</tr>
<tr>
<td>8. Data quality / data utilization</td>
<td>To what degree are cases resolved? What is the level of capability of services? How is data collected, managed, and utilized as evidence in policymaking?</td>
</tr>
<tr>
<td><strong>Children in Conflict with the Law: How does the child justice system prevent delinquency and respond to children accused of wrongdoing? To what extent are child justice services (police, prosecution, court, detention, probation) child-friendly in their practice?</strong></td>
<td></td>
</tr>
<tr>
<td>9. System Orientation</td>
<td>To what extent is the system oriented toward punishment, accountability, or restorative practices?</td>
</tr>
<tr>
<td>10. Police / Investigation and Adjudicatory Process</td>
<td>Are practices in line with international norms?</td>
</tr>
<tr>
<td>11. Children deprived of liberty</td>
<td>Are practices in line with international norms? What is the situation for children detained in the justice system because of alleged association with armed/designated terrorist groups?</td>
</tr>
</tbody>
</table>
The analysis aimed to identify the main bottlenecks in the demand, supply and quality determinants while ensuring that the context always informs the analysis. A participatory, consultative approach was adopted for the research to ensure that subnational and governorate counterparts were fully involved and had the opportunity to share their expertise and ideas through the stages of the process. This approach both helped to promote greater ownership of the process and ensured that the research was firmly grounded in the Kurdish context. This was especially relevant for the analysis of the data collected and the evidence produced, making sense of their implications and collectively identifying appropriate strategies.

2.1 Research ethics
The methodology of the mapping and Assessment of the Child Justice System in KRI was granted ethical clearance by the HML Institutional Review Board (IRB) on 19 April 2022. The project was passed by HML IRB Research Ethics Review ID#: 548IRAQ22. See www.hmlirb.com.

Many of the principles underlying this research derive from a framework of ethical requirements laid out by Emanuel, Wendler and Grady (2008). The specific contextual considerations emanating from each of the principles are listed below. Members of the research team referred to these principles throughout the study when ethical concerns or deliberations arose. These principles include:

- The research has social and scientific value.
- The research has scientific validity.
- The research has fair subject selection.
- The best interests of children are always a priority.
- The research involves independent review.
- The research relies on informed consent.
- The research respects all potential and enrolled participants.

This research was designed to comply with internationally recognized research standards. It adhered to ethical standards designed to support respondents to answer questions openly and honestly without fear of reprimand or reprisal.

2.2 Research methods
The study used both qualitative and quantitative methodologies. This mixed-methods approach allowed for comparison and triangulation of data to identify trends across populations as well as areas of divergence for further exploration. Tools were developed in English and translated into Arabic and Kurdish for use in the different governorates. Interviews and group discussions were recorded to assist with later transcription and translation of the discussions. All respondents provided their informed consent.

The research commenced with a literature review pertaining to child justice in KRI when available, as well as Iraq more broadly. Published by UN agencies, international and national NGOs and research groups, these documents included UN and NGO reports and websites, government
documents and legal frameworks, and policy and guidance documents.

The primary data collection methods included:

- **Key informant interviews:** Semi-structured interviews (SSI) were conducted with professionals across the system working on children’s cases to understand their views on system orientation, the quality of existing service provision, and barriers to accessing them. Similarly, interviews were carried out with customary leaders as well. (29 interviews with formal actors, 5 interviews with customary leaders).

- **Group interviews:** Group interviews were arranged with local authorities and front-line workers (5 interviews in total).

- **Focus group discussions (FGD):** FGDs were conducted with groups of 6-8 people, representing various demographic and socio-economic sections. Separate FGDs were organised for: boys aged 13-17, girls aged 13-17, men and women over 18 years of age to elicit different perspectives. (16 focus groups in total)

- **Direct observation:** The research team conducted direct observation through visits to most of the locations and structures where a child experiences the justice system including police stations, holding cells, pre-trial detention cells, reformatories, and court locations in three governorates.

### 2.3 Research team

The team consisted of:

- Three international principal investigators from Child Frontiers:
  - one lead for the overall research, who led the training research teams, and analysis;
  - one principal investigator who participated in management of the research teams; qualitative and quantitative data collection; and analysis and writing;
  - one additional investigator for data coding, analysis, and writing.

- Four national investigators:
  - one principal national investigator to oversee overall coordinator of the research teams, also responsible for quality assurance of final notes and translations;
  - two national researchers with competencies in justice for data collection
  - Eight local researchers:
    - four researchers per governorate working with the research team leader. They were responsible for the translation and adaptation of the research protocols and tools, collecting data, cleaning and processing data, and contributing to the analysis. The majority were recruited from within the respective governorates to ensure that appropriate language skills and knowledge of the local context were used.

**Oversight:** The research team worked under the broad supervision of a technical working group of interagency child justice professionals and leaders from within the KRI government, and UNICEF Iraq.

<table>
<thead>
<tr>
<th>Governorate</th>
<th>Site</th>
<th>Urban/Rural</th>
<th>Services available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Erbil</td>
<td>Erbil Centre</td>
<td>Urban</td>
<td>Yes</td>
</tr>
<tr>
<td>Dohuk</td>
<td>Dohuk Centre</td>
<td>Urban</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Sharya</td>
<td>Rural</td>
<td>Limited</td>
</tr>
<tr>
<td>Sulaimaniyah</td>
<td>Sulaimaniyah Centre</td>
<td>Urban</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Barzanja</td>
<td>Rural</td>
<td>Limited</td>
</tr>
</tbody>
</table>

### 2.4 Research sites

Data were collected across five sites in KRI: Erbil Centre, Dohuk Centre, Sharya, Sulaimaniyah Centre, and Barzanja. In each site, a combination of purposive sampling of professionals and officials will be selected along with randomized sampling for respondents from the community (adult male, female, girls and boys).

Evolving security situations also guided selection of the sites. Site locations were selected based on specific criteria that included availability of services; and ensuring a mix between rural and remote and urban and peri-urban sites.

### 2.5 Sampling

Interviews were conducted with (in alphabetic order): Bar Association/lawyers, Community police, DCVAW, Forensic doctor, General Prosecutor
Office, Human Rights Commission, Judicial Council, Juvenile police, Juvenile Judges, Judicial Training Institute, MoJ, MoLSA, MoI, Police Training Institute/College of Police in Erbil, Juvenile Social Reformatory staff, Technical Committee, Shura Council, Social workers; some context meetings with NGO’s; and interviews with Sheiks, a Mukthar, and an Imam. All these respondents were purposively sampled. Furthermore, randomized sampling determined the identification of community members focus group participants; convenience sampling was used in service locations.

Qualitative research methods were prioritised and a purposive selection of respondents was used. This means that while the results are not generalisable, the methodology enabled a high degree of consistency in findings among governorates.

In consideration of cost, time, and accessibility factors, the research focused on two research sites in each of the two governorates of Dohuk and Sulaymaniyah, as well as key informant interviews at the Erbil city level. The sites were purposefully selected based on criteria refined with the counterparts but including a differentiation between urban and rural settings. Purposive sampling was also used to identify respondents for the group discussions and interviews because respondents needed to be reached quickly and sampling for proportionality was not the main concern.

For practical reasons, the sampling for the group discussions had to be negotiated in real time between the local research team and local government officials. These officials were given target numbers of respondents in the various demographic categories, and they made their outreach based on their relationships with local people and their understanding of the community.

Data collection took place over a period of 20 days in the different governorates, with the researchers working in groups. The group discussions were conducted most often in local administration facilities. Interviews with professionals were mostly conducted in their offices, with some taking place by phone.

The national principal investigator and the research team leaders were responsible for ensuring that the data collection tools and recording formats were used in an effective and appropriate manner, supported remotely by the lead investigator and one principal investigator.

### 2.6 Sample size

In all, 131 people (67 male, 64 female) participated in the interviews or group discussions. Of these, 92 were adults and 39 were children. There were approximately equal participants from across the two governorates: above 50 people each from Dohuk and Sulaimaniyah, and above 10 people from Central Erbil.

<table>
<thead>
<tr>
<th>Governorate</th>
<th>Site</th>
<th>Urban/Rural</th>
<th>Services available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dohuk</td>
<td>Dohuk Centre</td>
<td>Urban</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Sharya</td>
<td>Rural</td>
<td>Limited</td>
</tr>
<tr>
<td>Sulaimaniyah</td>
<td>Sulaimaniyah Centre</td>
<td>Urban</td>
<td>Yes</td>
</tr>
<tr>
<td>Barzanja</td>
<td>Rural</td>
<td>Limited</td>
<td></td>
</tr>
</tbody>
</table>

### 2.7 Training

An in-person training with the research teams was conducted in Erbil over the course of two days. An international investigator led the training. The sessions focused on ethical standards and procedures, understanding the scope and depth of the research, the aim of the research, the tools and their application, data handling and reporting. Teams were asked to test the tools and processes between sessions, with group debriefs occurring during training the following day. Time was also dedicated in ensuring the correct translation of the tools into Arabic and Kurdish, and ensuring a common understanding across teams.

### 2.8 Data analysis

Following data collection, notes and transcripts from the interviews, group discussions, statistical data and other documents shared with the investigators were translated from Kurdish and Arabic into English using a third-party translation.
Translations were verified by the four national investigators, and then shared with the international principal investigators. A comprehensive cleaning and clarification process was undertaken to ensure clarity and accuracy of translations while maintaining the integrity of responses. In some instances, further clarification or follow-up investigation was undertaken. All transcripts were uploaded and coded in MAXQDA - a qualitative data analysis software that enables analysis to reveal trends and patterns across large data samples. Data were analysed primarily by the international investigators.

Analysis of the transcript data was undertaken in multiple ways. Most often, community member responses - the adolescent and caregiver groups - were analysed individually. When feasible, comparisons across governorates, between rural and urban communities, between age groups and genders, were explored to identify any notable differences relevant to share within the findings. Some of the data were quantified to create infographics to facilitate portrayal and reflection of the findings. In these instances, the unit of analysis is the number of groups or interviews mentioning a topic; alternatively, these reflect a prioritisation of issues by respondents.

Following initial analysis and drafting of the report, the team will hold a workshop at the end of October/early November 2022 with stakeholders in Erbil to review findings, collect feedback, and discuss recommendations for inclusion in the final draft.

### 2.9 Limitations and challenges

The study experienced a number of limitations and challenges in undertaking the research, starting with the continuation of the COVID-19 pandemic, which delayed travel for the international research team and impacted some meetings. The research was adapted to include protocols to limit risks, but that also limited the number of participants and how they were identified. Ultimately, a convenience sample was undertaken to identify participants.

Identification of interview respondents, particularly with local authorities and members of government, required support from governorate representatives, and collaboration across central and governorate levels was at times a challenge.

In light of ethical considerations, the research excluded interviews with children in contact with the law. While some brief interactions were allowed through the direct observation of sites, it was not possible to identify informants who had previous experience with the justice system. This resulted in missing the voice of children in contact with the law.

Data collection teams were trained in person and supported both in person and remotely. Even with this training, however, ultimately, some data collection challenges arose in collecting all the data from some groups across sites. The quality of their application varies.

Furthermore, the justice frontline workers survey was administered to the participants of the group interviews who were difficult to reach and access. The final response rate was insufficient for being used.
3. FINDINGS

3.1 Kurdistan Region of Iraq

The Kurdistan Region of the Republic of Iraq (KRI) is a constitutionally recognized semi-autonomous region in northern Iraq with a population of 5.1 million (2012). Its government (the KRG), based in Erbil, has the right, under the Iraqi constitution of 2005, to exercise legislative, executive, and judicial powers according to the constitution, except those deemed exclusive powers of the federal authorities.12

The democratically-elected Kurdistan Regional Government is broad-based, with representatives from all major parties. Following elections in September 2018 a new Kurdish Government was formed in July 2019. While tensions still exist between the parties, relationships are more stable than they have been in the past.

Disputed internal Kurdish–Iraqi boundaries have been a core concern for Arabs and Kurds, especially since US invasion and political restructuring in 2003.13 Kurds gained territory after the US-led invasion in 2003 to regain land they considered historically theirs.

The KRG is facing a multifaceted crisis compounding economic and humanitarian risks due to the Syrian civil war, which began in 2011, and the insurgency of the ISIS (Islamic State in Iraq and Syria) group, which began in June 2014. The violence and atrocities associated with both of these events caused tens of thousands of people to flee their homes, and many chose the relative safety of the KRI, as refugees from the Syrian conflict and as internally displaced persons (IDPs) from the ISIS crisis.14 The refugee and IDP crises have imposed substantial strains on social services, and additional resources are needed to address humanitarian issues. The crises have increased the stress on infrastructure, including water, waste management, electricity, and transport, and the stabilization cost is enormous.15 The crises have also negatively impacted children, including in their being recruited into armed groups and displacement.

These events have taken place in the context of a fiscal crisis, which caused a drop of about 90 percent in fiscal transfers from the central government in Baghdad starting in early 2014, and now in the context of the COVID-19 pandemic.16 The woeful state of KRG finances, low global oil prices, and expanding public sector liabilities have strained its ability to address the secondary effects of the pandemic. Long-running disputes over oil, revenue-sharing and other contentious issues have roiled the relationship between Erbil and Baghdad even in the midst of the pandemic. In managing the impact of these shocks, KRG is caught in a desperate challenge of supporting its population without the necessary resources.

Of 29 formal IDP camps in Iraq, 25 are in KRI or KRG controlled areas, hosting approximately 180,000 people in total. KRG reiterated in April 2021 that these camps shall remain open until durable solutions can be found. However, significant population movements continue to occur; between January 2020 and June 2021, approximately 42,000 IDPs had returned, mostly from Dohuk to Sinjar.17 In addition to IDPs, UNHCR lists 247,044 registered refugees in Iraq who have fled from the conflict in Syria, nearly all of whom are living in KRI. Of these about 100,000 are living in camp settings.18 There are also about 30,000

17. OCHA. 2021. Iraq Humanitarian Snapshot May 2021
Iraqi nationals ready to return from the camps in North Eastern Syria.19

Protests took place throughout 2020 across KRI due to unpaid salaries of civil servants, the demand for better public services and jobs, electricity outages, corruption and lockdown measures due to COVID-19. In response, security forces launched widespread arrests of dissidents across KRI, at times using tear gas, rubber bullets and live bullets during the demonstrations. Human rights groups continue to denounce alleged extra-judicial killings, arbitrary detentions, and curtailments on freedoms of speech and the press.

3.2 Legal and policy framework

3.2.1 International Treaties

The most relevant international treaties to which Iraq became a State Party that are of relevance in the context of this document include:

- UN Convention on the Rights of the Child, Accession date 15 July 1994;
- Convention on the Elimination of all forms of Discrimination against Women, Accession date 13 August 1986;
- Convention for the Protection of All Persons from Enforced Disappearance, Accession date 23 Nov 2010;
- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Accession date 7 July 2011
- ILO Minimum Age Convention, ratified in 1985, and ILO Worst Forms of Child Labour Convention, ratified 2001.20

3.2.2 National legal framework

The national legal framework makes prevention of juvenile delinquency a priority, in line with international standards. “Protecting youth from delinquency” appears as the very first aim listed in chapter 1 of the Juvenile Welfare Law No. 76 of 1983 which sets out the fundamental principles of the act. Building upon this, Art 6 of the same act provides that the Council of Juvenile Welfare adopts an annual policy on juvenile delinquency, and formulates recommendations on activities to reduce and prevent it; and Art 16-23 codifies a prevention mandate involving early detection and preventive measures that involve families, schools, the juvenile police and social services within schools. It has been observed by others that this preventive role is not implemented in practice due to lack of adequately trained and resourced professionals.21 During the research, however, some elements of such a role and emerging good practices could also be observed.

The Juvenile Welfare Law No. 76 of 1983 continues with a chapter on ‘vagrancy and deviant behaviour’ (Art 24-28) which lays the ground for arresting and imposing measures on children for vagrancy (including e.g. begging and homelessness) and ‘deviation of behaviour’ (e.g. working in brothel, gambling, drinking liquors, disobeying the legal guardian). Some of these behaviours amount to status offences,22 and should as such not be criminalized, from an international viewpoint, but be addressed by proper needs assessment leading to adequate protection responses, where required; whilst in parallel ensuring effective prosecution of adult perpetrators exploiting children, where applicable.23 It should be noted that findings from the KRI Child Protection System mapping suggest that the law provides inadequate protection for children at risk, and that the services are minimally present and not accessed.24

20. See also a nation-wide campaign by the Ministry of Labour and Social Affairs and the International Labour Organization of 2021 to tackle the worst forms of child labour in the country.
21. IBCR/UNICEF, 50; Terre des Hommes, Study of the formal and informal juvenile justice system in Iraq, 22.
22. Not e.g. prostitution which is also criminalized for adults.
For children in conflict with the law, the Juvenile Welfare Law No. 76 of 1983 focusses on early detection and rehabilitation/reintegration (‘adopting him socially in the community’, Art 1). The Act defines the minimum age of criminal responsibility (age 9, with KRI raising it to 11) and describes the process and possible responses to juvenile delinquency. Other child-specific norms are found in Act No 6 of 1987 which provides separate rules for children in pre-trial detention, and in Act No 32 of 1971 which provides separate rules for the rehabilitation of juveniles. This framework is complemented by distinct chapters on children in the Criminal Code (CC, 11 articles) and the Criminal Procedural Code (CPC, 10 articles), although various of these provisions are outdated since the enactment of the Juvenile Welfare Law No. 76 of 1983 (without having been deleted or aligned with the latter).

The Juvenile Welfare Law No 76 of 1983 as centrepiece of this framework was a respectable achievement at the time of its making, in particular because it focusses on ‘measures’ rather than on punitive sanctions as reactions to child offending (an approach that was ahead of its time). The law is still widely regarded as a good text, but it is also recognized that it is meanwhile somewhat superannuated. It predates the CRC and is still firmly rooted in the so-called welfare approach, which typically comes along – as confirmed in the case of Iraq/KRI- with a low minimum age of criminal responsibility, relatively wide discretionary powers for the decision makers, relatively weak legal fs for the child, and a relatively heavy reliance on placements. In Iraq/KRI this is combined with a relatively weak restriction of the imposition of detention in the law (arrest, pre- and post-trial), and with a limited choice of alternatives to (pre-and post-trial) detention. On top of this, the so called ‘reformatories’ look rather like prisons than like institutions working towards the effective reintegration of the child. The child-specific rules on pre-trial detention and rehabilitation which complement the Juvenile Welfare Law No. 76 of 1983 are also not up with latest developments at the international level.

Furthermore, general norms that are also relevant and applicable for children in conflict with the law are found in the non-child specific parts of the CC and CPC (applicable as far as specific provisions are lacking in the Juvenile Welfare Law), the Anti-Terrorism Law of 2005 (expired but prolonged again for KRI), the Drug Law of 2020 (not available in English), and probably the Prisoners and Detainees Reform Law No. 14 of 2018 (we did not receive it). With regard to these general norms, issues of concern include: a) the CC and CPC have never been harmonized with the Juvenile Welfare Law No. 76 of 1983, which potentially creates confusions. It seems however that attempts to harmonize legislation are currently underway, which is most commendable; b) the CC seems to need some reform to include new phenomena like cybercrime; c) the Anti-Terrorism law does not contain any reference to or special norms for children, and mere membership with an armed group is criminalized, in contrast to international standards; and in practice, the ‘ordinary’ child justice norms seem widely not applied in such cases, and the child justice system widely replaced by a security system, which is alarming.

With regard to children below the minimum age of criminal responsibility who become in conflict with the law, child victims and witnesses of crime and children at risk, the Juvenile Welfare Law remains rather vague or silent; whilst specific legislation that recently evolved for victims and witnesses of crime (like the Domestic Violence law and the Trafficking Law) are not child-specific texts, and relevant legal gaps still remain with regard to these children.

At the time of writing, a draft child (rights) law is being examined/revised by the KRI Shura Council. (A newer draft version seems to exist but was not available to the researchers, so references here are to the draft version from summer 2022). The draft law is a modern, rights-based draft that promotes individual rights of the child similar to the CRC. It covers a much wider scope of issues than the Juvenile Welfare Law No. 76 of 1983, but provides less details.

25. See Weidkuhn, Ursina (2009), for a description of the various models of juvenile justice, with further references.
26. This last group of children is not falling under the scope of this research. Important to note nevertheless that the JWL is not adequately addressing their needs.
27. Draft Child Rights Law for KRI as prepared by Coram International.
the idea of promoting child rights with a specific law on child rights is certainly commendable, the question may be raised whether the approach fits into the context of KRI, as a) it does not yet provide detailed rules for either children in conflict with the law nor for child victims and witnesses, while detailed rules seem required in the context of KRI where judges clearly indicated that ‘they have to apply the law’ and seem less familiar with the concept of interpreting the law; and where there is limited specialization combined with job rotation, implying that somewhat more guidance is needed; b) such an approach implies that the law needs to be complemented by other legal texts and guidance, which again comes along with the risk of lack of harmonization and potential confusion of what applies; and c) finally, the strong focus on individual rights with deviation from a communitarian approach where family and society play also important roles (as still found in the Juvenile Welfare Law No. 76 of 1983 to some degree) may be too distant from KRI society.

In sum, main concerns with regard to the legal framework include that the current framework is somewhat outdated, incomplete, insufficiently implemented and not harmonized within itself. The ongoing reform process, which is basically welcome and includes many positive aspects, might not yet be fully thought through, and not yet fully comprehensive.

3.3 Customary Justice System
The customary justice system includes one or both parties relying on negotiations between families to resolve a dispute, or approaching clan elders, Sheik or Imams to help mediate and negotiate (usually a monetary) solution. The data collected show a strong community preference to access community justice system over the formal justice system. Justice sector professionals conceptualize the child justice system in KRI as the formal services (with police, prosecutors, judges, etc). However, for the community, the traditional mechanisms are the front line of the child justice system and clan and religious leaders respond to issues involving children on a range of cases.

3.3.1 Perception and satisfaction
The customary justice system is generally seen as being more timely, more fair, and even more “child-friendly” than the formal justice system.

“The tribal system will be chosen because they are fairer than the formal system. The people do not trust the formal system, because they (formal system) take bribes. The formal system is strict system and that is why the people do not go there.”

The advantages of the informal system are: it can be flexible to deal with the case and the person can stop and it can be reversible at any time. Whereas, in the formal system it cannot do that, it is a system based on strict rules and regulations.

Families tend to avoid formal system due to the fact that they are costly and take a lot of time in resolving the conflict. Usually, the conflict is resolved through the families and the solution is the forgiveness of the offender to the victim. In case the conflict/problem was not resolved through tribal means, they proceed to the formal system.

This preference for the customary justice system is overwhelming demonstrated by almost all group discussions, yet it is not universal. One FGD with adolescent boys found that “five boys would approach the police “because they represented the law,” while the remaining three stated that people chose a religious clerk or clan elder because “they were related (i.e. close to) to the people and could resolve the problem.”

On the other side, the concern was expressed that community justice mechanisms could be not appropriate, operating outside international norms, and could also not be in the best interest of the child.
3. FINDINGS

3.3.2 Use of customary justice system

The customary justice system is approached generally only with the consent of both parties, including importantly, the victim’s family.

“Tribe leaders are asked for help to resolve the problem is resolved through clan customs in case it is approved by the affected child’s family.”

“If the both sides were on agreement to discuss, we are able to solve the problem. If we notice that there is one of the families does not want to listen and oppress the other, then we direct the problem to government services.”

For disputes within one clan, the case is more likely to go to the clan head for resolution. “Clan problem [are] resolved between clans.” By contrast, if the victim is from a tribe ‘without any power,’ they may prefer to forego the class system and go to the formal system. “If the victim was from a tribe that does not have power, he will go to the formal services because he would not be able to get his right by the informal services.”

Process: Two different customary leaders described how they hear cases. First, a Sheik described his process: “I will listen to the first party. I will listen to the second party. I will arrange a meeting for both sides together. I will provide a solution.”

Another customary leader provided more detail, highlighting the role of the family, trying to get at underlying issues in the family as to ‘why’ an act was committed, methods for hearing from a child, as well as finding a solution:

“First: I speak with the parents and inform them about the case.
Second: I understand from the parents why the child committed such act.
Third: I speak with the child and make him aware of the dangers of such act. Then threatening the child to make him afraid and not repeat the act.
Fourth: Reaching a suitable and satisfied decision for all sides.
Fifth: The solution is either paying amount of money or apologizing, it depends on the type of the case.”

As seen above, children in customary justice proceedings are usually heard from directly, and as one traditional leader said, “There is no presence of a lawyer.” Cases are discussed “on the phone, meetings at the child’s house, at the Sheik’s house, or at the mosque.”

Community Response to sexual abuse: when asked about the community response to a case of rape, community focus group participants suggest a system unable to respond adequately to a case of the rape of a child/adolescent, with the victim (assumed to be a girl) either being forced to marry the rapist, being killed, killing herself, or receiving money from the perpetrator. The perpetrator may also be killed.

“In rape cases the victim is forced to marry the rapist in accordance with the Iraqi law.”

“Money is paid to the victim’s family.”

---

34. Focus Group Women, Rural Duhok, June 2022.
35. Interview with religious leader, June 2022.
36. Focus Group Women Duhok Centre, June 2022.
37. Focus Group Men, Sulaymaniyah Center, June 2022.
38. Interview with religious leader, June 2022.
39. Interview with religious leader, June 2022.
40. Interview with religious leader, June 2022.
41. Interview with religious leader, June 2022.
42. Rape was raised by FGD participants but they were not asked to define it.
43. Focus Group Women Rural Duhok, June 2022.
44. Focus Group Women Rural Duhok, June 2022.
“Rape is a very big issue and the girl is sometimes killed.”

“Maybe in the rape case it leads to murder and such things.”

“Sometimes the girl kills herself because she can’t tell what happened to her family because of the social customs and traditions.”

“Even the problem was solved, the offender will leave the community and live in another community.”

“In many cases of rapes, the offender will be killed, without going to the tribes or the formal system.”

This last statement – that the community will resort to vigilante justice approaching neither the traditional or formal justice systems – indicates that both these systems are unprepared to respond appropriately to child victims of serious crimes.

**Gender:** While literature on traditional justice mechanisms expresses doubt about the gender equity of traditional justice mechanisms, respondents suggested that, “In case the crime offender is a girl, the problem will be resolved more rapid in order to protect the reputation of the girl and for not to defame the family.”

By its customary nature, the justice mechanisms mostly considered by communities do not produce data, or collect compile and report in any meaningful way. This means that it is not possible to have an objective sense of the number of the cases involving children that are treated by the customary system.

**Children affected by armed groups:** Interviews show that there is a large stigma concerning children affected by armed conflict (in this case, generally children formerly associated with ISIS), and that reintegration of these children in the community is a large challenge. The majority (purportedly 80%) of children affected by armed group were just affiliated with organization, not actual work with these groups.

Traditional leaders (Sheiks) expressed that children associated with armed groups are ‘very rare cases.’ One leader considered these youth ‘victims’, another considered these children as both being in conflict with the law (i.e. a perpetrator) and being a victim of a crime at the same time. Another religious leader stated that a young person’s “history should be forgotten and enable them to come back to the community. The dealing with these cases should be carefully in order not to make the child as problem for the community.”

Another stated that “There should be specialized reformatories to educate the children within the community. (Sulaymaniyah, SSI- Sheik) One Imam stated that one’s status of ‘victim of terrorism’ can yield certain government benefits.

### 3.3.3 Customary and Formal Justice Interaction

The community justice mechanism and formal mechanisms are minimally convergent with different aims and are based on different values. There is, however, an important overlap with chapter 5 CPC which codifies a ‘formal conciliation’ (see also below 3.4.6).

The research could not find evidence of any ‘official’ link between informal reconciliation and legal (re)conciliation. That said, the research indicates that there are some de-facto links: in some cases, the actors overlap with justice professionals sometimes being

---

45. Focus Group Women Rural Duhok, June 2022.
46. Focus Group Women Rural Duhok, June 2022.
47. Focus Group Women Rural Duhok, June 2022.
49. Focus Group Men Sulaymaniyah, June 2022.
51. Focus Group Men, Sulaymaniyah Center, June 2022.
52. Interview with religious leader, June 2022.
53. Interview with rural Imam: “we have survivors who considered victims of terrorism, in other cases I couldn’t realize what it would be like, the government decides.”
also community leaders and applying reconciliations in both roles; and sometimes, an agreement found by the social/tribal reconciliation is said to be brought to the judge who then may accept it and adapts the sentence accordingly. It was also reported that informal actors sometimes ask the formal actors to delay or dismiss a case.\textsuperscript{54} Further, the research found that all parties understood that the formal justice system still remained as a ‘last resort’ should the initial mediation with informal actors not lead to a resolution, and customary leaders recognize the limitations of their authority. “They did not ask for help unless the issue deteriorates, at that time they will go to the police.”\textsuperscript{55}

As one customary leader stated, “We listen very well to the both parties, and the biggest challenge when the subject needs legal services / formal and they don’t want to reconcile and where the solution is above our capacity.”\textsuperscript{56} This sentiment was shared by another Sheik: “If the both sides were on agreement to discuss, we are able to solve the problem. If we notice that there is one of the families does not want to listen and oppress the other, then we direct the problem to government services.”\textsuperscript{57}

\section*{3.4 Formal Justice Mechanism}

\subsection*{3.4.1 Perception of formal justice system}

While generally seen as a last resort (to be approached only after the community justice mechanism has failed), respondents expressed that the formal system can help prevent vigilante and honour killings: “Seeking the formal justice for save the child from killing and blood shedding.” And “The father will go to formal justice to save his son from the victim’s family.” “If it was not solved neither by formal, nor by the informal justice, then it will be solved by revenge and they will do the same injuries to the offender.”\textsuperscript{58}

Community members expressed concerns about bribery in the formal justice system, as well as political party intervention. [The case] will be solved through the tribes because the formal law is not just and there is a lot of bribery.”\textsuperscript{59}

Lawyers and jury member exaggerate the conflicts and do not facilitate direct solutions. In addition, there is always political party intervention in decision making regarding any conflict that is raised.\textsuperscript{50}

\subsection*{3.4.2 Children in Conflict with the Law}

In this section, the KRI legal system is assessed against the ‘Child Rights Model’ as described by international standards,\textsuperscript{61} with the CRC calling upon States Parties to seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the law; with laws that should, in particular, define a minimum age of criminal responsibility that is not too low, promote diversion, minimize imposition and duration of arrest and pre-trial detention, grant procedural rights, and establish a ‘sentencing’ system that minimizes imposition and duration of any form of deprivation of liberty and instead promotes alternatives to it, whilst aiming at the reintegration of the child (Art 37 and 40 CRC).

\subsection*{3.4.3 Prevention}

Youth in KRI face a lengthy list of risk factors, including security concerns, an ongoing financial crisis, few job prospects and youth without jobs, poverty, and drug use. Communities refer that drugs and electronic blackmailing are major problems for girls and boys (see Figure 1, and figure 2 in the following page).

\textsuperscript{54}. Juvenile justice system stakeholders workshop, Erbil, November 2022.
\textsuperscript{55}. Focus Group Men, Sulaymaniyah Centre, June 2022.
\textsuperscript{56}. (Interview with Sheikh/Imam, June 2022
\textsuperscript{57}. Interview with Sheikh, June 2022.
\textsuperscript{58}. Focus Group Women, Sulaymaniyah Centre, June 2022.
\textsuperscript{59}. Focus Group Women, Sulaymaniyah Centre, June 2022.
\textsuperscript{60}. Interview with Sheikh, June 2022.
\textsuperscript{61}. For a description of the model see Weidkuhn, 2009, 16-62.
Figure 1 - Focus group discussion frequency of problems identified for girls (all respondents)

Problems girls face (both as accused and victim)

However, while justice system stakeholders seem aware of the existing challenges, there remains little in depth understanding of the vulnerabilities, problems behind children becoming in conflict with the law and an analysis of causes.

Furthermore, some status offences are currently criminalized under the law (including begging, homelessness, gambling, drinking liquors, disobeying the legal guardian, Chapter 2 JWL), which pushes youth in need of assistance toward the justice system rather than providing services that address underlying needs.

In the face of these challenges that can point a young person toward activities that yield a justice system response, there is no robust prevention strategy to address these risks.
On the positive side Community police developed a series of child-friendly information brochures, visit schools and conduct awareness raising sessions; similar DCVWF, which in addition has TV channel in Erbil. However laudable, this cannot replace a broader and coherent prevention policy which aims at supporting communities, families, and children in expanding opportunities and finding support when they need it. Preventing children and young people from entering in conflict with the law cannot be left to specialized services only.

3.4.4 Separate and Specialized Child Justice System

In line with Art 40/3 CRC, there exist some specific high-level structures and capacities of a separate, specialized child justice system in KRI. This includes legislation aiming at prevention/early intervention and reformation/reintegration; and a separate Juvenile Police (operating in separate buildings), separate Juvenile Courts (operating in general court buildings) and separate institutions (‘reformatories’) for children, all of which with some dedicated staff members and some good practices. However, as outlined in more detail below, the law is not fully implemented and its aims are reached only to a limited degree. Juvenile Police and Juvenile Courts do not handle all cases of children in conflict with the law due to restricted geographical scope of Juvenile Police and restricted material jurisdiction of Juvenile Courts) and special investigators, prosecutors and lawyers are missing so far. For more information on system elements see chapter 3.8 below.

3.4.5 Age Issues

Art 40/3 CRC calls for the establishment of a minimum age of criminal responsibility, and other international guidance expands the age discussion to additional issues, as discussed below.
Art 3 JWL establishes a **minimum age of criminal responsibility** of 9 years (while Art 64 CC and Art 233 CPC still refer to the old limit of age 7). KRI raised this to age 11, which was a positive step, but insufficient from an international and regional perspective: The Committee on the Rights of the Child recommends a minimum age of at least 14 years, while the guidelines of the Arab League seem to support a minimum age of 13 years. Art 66 CC clarifies that it is the age of a juvenile at the time of the commission of an offence which is relevant.

If the age of a child is unclear, an **age assessment** must be conducted. In Iraq/KRI this topic is of paramount importance, as a very different ‘sanctioning’ system applies for children and adults (including capital punishment for adults). The legislation provides some guidance on how to assess the age of a person: Art 4 JWL holds that a) an official document is required (without specifying which documents qualify), and that b) if such a document is missing or seems ‘contradicting’, a medical age assessment shall be conducted (without specifying what methodology applies), based on a court order. In practice, such assessments are conducted by a committee of three doctors and it seems that internationally recognized methodologies are applied. There is contradictory evidence with regard to how often such assessments are ordered (some saying often, most saying rarely, which seems surprising with view to the high number of children lacking a birth certificate). It has furthermore been reported that obtaining the required official documents causes sometimes **lengthy delays**, and that investigations are started all over again if it becomes clear in the course of the investigation that a person is a child and not an adult, which again contributes to delays and burdens both the child and the justice system. Some solutions to this are offered by the Committee on the Rights of the Child which recommends a) to order medical examinations only as a last resort (as they are often inaccurate and can be traumatic); b) that authorities should “accept all documentation that can prove age, such as notification of birth, extracts from birth registries, baptismal or equivalent documents or school reports,” and to allow for interviews / testimony by parents, teachers or religious or community leaders who know the age of the child; and c) that, in the case of inconclusive evidence, the benefit of the doubt should apply.

Regarding the situation of a **child turning 18 during the judicial process** (without being accused of a new crime committed above 18), the legislation remains somewhat unclear on whether the child specific rules remain applicable (which should be the case, as children should always be dealt with the child justice system). When a child (allegedly) **commits an offence together with adults**, a separate trial for the child seems to be the rule and mandatory, which is commendable.

If a **child below age 11** committed a crime, the child can be released in the care of his/her parents under conditions and on bail (Art 47 JWL). Parents who don’t fulfil their responsibilities can be fined or be deprived of parental authority, and the child can be handed over to relative or send to an institution (Art 30-34 JWL). An interviewee held that the latter is rarely done, as ‘judges are aware that the family is the best environment for a child’. However, community-based intervention programs that address the child’s needs, as recommended by international standards, seem to be missing.

### 3.4.6 Diversion

Art 40/3 CRC calls for the promotion of diversion. The research indicated that there is no uniform understanding of the term ‘diversion’ amongst **participants**.

---

63. Committee on the Rights of the Child, General Comment No 24 p 22; Arab League Guidelines p 20.
64. A combination of physical examination, wrist x-ray and dental examination, conducted by a dentist, a radiologist and a forensic doctor, under the lead of the latter. Costs are covered by the State.
66. Cindy Banks, Interviews.
67. See Art 233/c CPC and Art 5 JWL; Committee on the Rights of the Child, General Comment No 24 p 96.
68. See Art 235 CPC and Art 53 JWL.
69. Committee on the Rights of the Child, General Comment No 24 p11.
various stakeholders in KRI. In the context of this document, the definition as provided by the Committee on the Rights of the Child is used, which defines diversion as “measures for referring children away from the judicial system, usually to programmes or activities, at any time prior to or during the relevant proceedings”.70 Restorative approaches (like referral to reconciliation, which play a key role in KRI), are regarded as a specific type, form or mode of application of diversion (diversion that specifically aims at restoration/reconciliation).

The Criminal Procedural Code of 1971 implicitly offers some room for ‘diversion’ in cases where the complainant withdraws the complaint and no public action is required (see e.g. Art 130 and Art 3 CPC). In addition, Chapter 5 CPC describes an explicit form of diversion: ‘Conciliation’ by the investigating judge or court, applicable in the cases as defined in the CCP. It can be initiated at all stages of the investigation and trial, leads to a suspension of the case, and, if the outcome is accepted, has the same effect as a verdict of not guilty. It is quite remarkable to find a whole chapter (it is not very long, but contains some key elements that need regulation) dedicated to this topic in a legal document of that time, when the concept of diversion and (the re-discovery of) the idea of restorative justice only started to emerge globally.

In practice, ‘settlement meetings’/mediations are conducted frequently, involving both formal actors (including police officers, social workers, judges, investigators) and informal actors (including village elders, clan leaders, sheiks, or imams).71 Regarding the formal justice system it has been reported that reconciliation is applied at the level of investigation in as much as 10%; 25-30%; 70% of all cases (variations between Governorates), in the following types of crimes: fighting/physical assault of less gravity (Art 412/413 CC), threat (Art 432 CC), domestic violence (as provided for in Domestic Violence law Art 5); and that conciliation by the judge is applied ‘on a daily basis’ in similar cases (‘fighting with minor injury / no weapon’, ‘use of bad language’) and minor theft.

While reconciliation seems overall strongly promoted and deeply rooted, it has also been observed that it does not always lead to sustainable results. Interviewees related this to the ‘high temper’ of Kurdish people; but it may also indicate that the measure is sometimes used in cases that are not suitable for reconciliation (e.g. when there is too much conflict or too strong imbalance of power between the parties), or not applied properly (e.g. when the underlying causes or needs not adequately addressed).72

There is no ‘official’ link between social/tribal reconciliation73 and legal conciliation, but sometimes, the agreement found by the social/tribal reconciliation is brought to the judge and the judge accepts it/adapts the sentence accordingly (see ‘Customary Justice System’ above). Also, one example labelled as ‘restorative justice’ was provided of an NGO (Harikar) in 2015 that hired staff that acted in what sounds like a diversion coordination role. Specifically, the staff member would:

“be in contact with the families, clan elders or tribe elders, and tried to resolve the pending cases before they reach the courts. For example, if a person steals a particular sum of money, the person appointed by the Harikar organization communicates with the related persons of the case or the complainant, attempts to resolve the problems peacefully and returns the money to the owner before reaching the courts.”74

When contrasting the regulations and practices as described above against the ‘modern’ concept of diversion, the following can be observed:

- Preconditions: The regulations don’t seem to explicitly require that ‘human rights and legal safeguards are fully respected’ (Art 40/3 CRC). At the international level, this condition has
been interpreted as requiring the following before referring a case to a diversion/reconciliation:

- There is compelling evidence that the child committed the alleged offence;
- The child freely and voluntarily admits responsibility (while such admission should not be used against him/her in any subsequent legal proceedings); and
- The child agrees to the diversion in written form after having been appropriately informed as to the form, content, duration and consequences of failure to comply with such diversionary measures.

- **Participation:** The regulations don’t explicitly require the participation of the child, as strongly promoted by Art 12 CRC.
- **Content:** Referral to “community-based programs” (other than referral to reconciliation) are not yet provided for in law and practice.
- **Gender Equity:** See observations shared under ‘Customary Justice System’ above.

### 3.4.7 Arrest and Pre-Trial Detention

One of the key concepts of the CRC is the call to minimize deprivation of liberty of children and, where unavoidable, to minimize its negative effects (Art 37 CRC). In detail for KRI:

#### a) Illegal and arbitrary detention

There are allegations of illegal and arbitrary detention of children partially performed by individuals and armed groups who have no such competences, and partially implemented in unknown places. Such would amount to highly unacceptable violations of both national (Art 19 Constitution) and international obligations (Art 37/b CRC).

#### b) Imposition and duration of police arrest

Art 48 JWL holds that a child who has been arrested must be surrendered to the Juvenile Police, where there is such a police. Art 123 CPC adds that an arrested person must be brought before the examining magistrate within 24 hours, which is in line with international standards. However, it seems that in practice, this delay is often disrespected, and that children are not always (or not timely) referred to the juvenile police, resulting in children being arrested at police stations together with adults for sometimes prolonged periods, which may amount to illegal detention by legal actors, conflicting with both national law and Art 37/b CRC.

#### c) Imposition of pre-trial detention

Both the JWL and the CPC contain rules about the imposition of pre-trial detention. The CPC codifies the ‘classical’ criteria for imposing pre-trial detention including risk of collusion and risk of escape (and lack of place of residence), while the JWL holds that pre-trial detention

- **a) may not** be ordered in the case of infractions;

- **b) may** be ordered in the case of misdemeanours and felonies for the purpose of examining him/her or when there is no guarantor (means release on bond or bail is not possible); and

- **c) must** be ordered for above 14 years old children (Art 237 CPC talks still about 10y old children) who are accused of having committed a felony that is punished with the death penalty.

These rules raise some questions and concerns: Firstly, it remains unclear whether the criteria of both legal regimes (CPC and Juvenile Welfare Law No 76 of 1983) are to be applied simultaneously – which would provide the highest protection for children – or whether only those of the Juvenile Welfare Act apply. Secondly, option c) above amounts to a form of ‘mandatory’ detention, which is against the principle of last resort (Art 37/b CRC). Thirdly, option b) above seems to allow to detain child ‘only’ for his/her need to be examined, which is not a valid ground for detention according to international standards.
Finally, lack of place of residence alone is also not a valid ground for detention.

**Alternatives** to pre-trial detention are limited to pledge and bail, which offers the judge very little choice to effectively apply the last resort principle. While the CPC allows for pledge without bail, the Juvenile Welfare Law No. 76 of 1983 seems to not provide this option, which is regrettable.\(^80\)

Regarding the imposing pre-trial detention in practice, it has been reported that pre-trial detention is rather the first than the last resort, but also that the numbers decreased in the last years, and that juveniles are released on bail in the majority of cases. See also figure 1 below.

**d) Duration of pre-trial detention**

With regard to duration of detention, child-specific rules are lacking. According to Art 109 CPC pre-trial orders are valid for maximum 15 days; extensions are possible in certain cases; the total period should not exceed one quarter of the maximum permissible sentence and not exceed 6 months; a prolongation beyond that requires permission of the Felony Court. From an international viewpoint, 6 months is an acceptable maximum duration, if (used as a last resort, see above c, and) reviewed regularly with a view to ending it earlier, but this period should not be exceeded.\(^81\)

Regarding practice, it has been reported that delayed procedures lead to prolonged pre-trial detention, sometimes exceeding the sentence, which would be illegitimate.\(^82\)

**e) Procedural Rights**

A child who is deprived of liberty should be granted the following procedural rights:\(^83\)

- The right to have parents immediately informed of the apprehension. This right seems to be granted only in a general way in the law (Art 240 CPC, right to information on every decision) and it has been observed that in practice, it is not systematically applied.\(^84\) (The right is explicitly introduced in Art 50 of the new draft law).
- The right of the child to first appearance before a judge within 24 hours is granted in Art 48 JWL read together with Art 123 CPC. However, it has been reported that sometimes, children don’t see a judge for months, which would be clearly illegal. The right to regular review of the detention order is granted in Art 109 CPC.
- The right to prompt access to legal assistance, today also referred to a ‘lawyer of the first hour’ (which requires that the State ensures that such assistance is provided, like a State assigned attorney coming in at the very first moment) is not granted in law and practice today (and missing in new draft law),\(^85\) apart from some initiatives like a UNICEF-supported project in Erbil reformatory that runs out of funding.

**f) Conditions in Pre-Trial Detention**

According to the law, pre-trial detention of children must be implemented in the so-called reformatories (for alleged violations of this rule see above).\(^86\) The majority of children detained at reformatories are pre-trial. As noted in Figure 1 below, at the time of data collection in August 2022, in Erbil 70 children were detained pre-trial while only 30 post-trial; in Duhok, 24 boys pre-trial and 6 post-trial, 2 girls post-trial (though not specified in reformatory records shared at time of the research, see below); in Sulaymaniyah, 48 children were detained pre-trial while 31 were detained post-trial. There are social workers

---

80. See Art 95 CPC and Art 47 JWL.
81. Committee on the Rights of the Child, General Comment No 24, p 90.
82. IBCR/UNICEF 2014, 25 and Interviews. See also concerns expressed by the Committee on the Rights of the Child, Concluding Observations (2015), 86.
83. See in particular Art 37/d CRC and Rule 10, 13 Beijing Rules.
84. Terre des Hommes, 45 (Iraq).
85. See Art 37/d CRC and Art 6/3 Directive (EU) 2016/800 for the ‘lawyer of the first hour’. In Iraq/KRI; mandatory legal representation is only ensured at the trial stage in the case of felonies, see Art 144 CPC. See also Art 45/b new draft law.
86. See Art 14 Pre-Trial Rules and Art 237 CPC.
(6 in the Erbil pre-trial section, as well as 7 social workers and a psychologist at the Dohuk reformatory), though there are more services available to the smaller post-trial population.

Despite the intention for reformatories to be supportive and rehabilitative, these structures look more like carceral institutions with limited programming and inadequate focus on reintegration. Overall, living conditions in reformatories are rather poor, and children in pre-trial detention seem to have very limited access to rehabilitation services. While separation of children from adults (Art 37(c) CRC) is granted by Art 237 CPC, such separation is a reality only for boys in reformatory/observation houses, but not for girls, and not for children detained in other places. Maintenance of family contacts (Art 37(c) CRC) are granted twice a week according to Art 10 Pre-Trial Rules. In practice, however, distance and lack of public transport make such visits difficult (less so in Erbil), and it has been reported that family contacts are not always granted by the authorities (which sometimes may be legitimated by the aims of the investigation in the pre-trial phase, but such limitations should be applied restrictively).

The disciplinary system allows to hold children in solitary confinement for up to seven days, and seems to allow removal of privileges such as loss of time for family visit, contrary to international standards. The use of torture is explicitly forbidden by Art 37 Constitution (and criminalized as a means to extract confession by Art 333 CC), but there are reports of torture being applied in practice, in particular to extract confessions; and sometimes complaints seem to be raised by children. The use of corporal punishment and violence is forbidden and criminalized for justice professionals (see Art 127 CPC and Art 332 CC), and it is forbidden in detention facilities, but is not mentioned in the child-specific texts, which is regrettable; furthermore, earlier assessments talk about corporal punishment sometimes being applied in reformatories and police stations.

---

87. See e.g. Committee on the Rights of the Child, Concluding Observations (2015) p 86; Observations.
89. IBCR/UNICEF, 29; Interviews.
90. See Art 13 Pre-Trial Rules; Cindy Banks, 83; Committee on the Rights of the Child, General Comment No 24 p95g.
91. See Terre des Hommes, 48 (Iraq) with further references; Committee on the Rights of the Child, Concluding Observations (2015), p 36; Cindy Banks, 55; UNAM/OHCHR Report August 2021 p 5; Interviews.
92. See Committee on the Rights of the Child, Concluding Observation (2015), p 38; Art 70 Iraqi Prison Service Law (7); Cindy Banks, 57; Terre des Hommes, 53.
Supervision/oversight of places of detention takes place by MoLSA who runs the reformatories, Juvenile Courts supervising the latter (Art 9 JWL), Prosecutors and the Human Rights Committee (the latter seemingly conducting regular visits, including unannounced visits, and following standardized protocols, which is commendable); children can raise complaints via these channels. However, it has been observed that these attempts at oversight are still insufficient.93 Some say that the only safe way for a child to complain would be a one-to one talk with an NGO staff member visiting the child; and a child-specific independent monitoring and complaint mechanism is still lacking.94

3.4.8 Proceedings

International and regional child justice standards hold that children in conflict with the law should be treated in a way that promotes their sense of dignity and worth, and that is adapted to their age and development; and that justice procedures should, in particular, be fair, promote the effective participation of the child, be reasonably speedy, and grant privacy.95 Some aspects of these rights are looked at below.

Evidence collection: It has been said that procedures are ‘confess-oriented,’ meaning that when there is a confession, no more evidence will be collected. This can be fatal in the case of children who may be easily influenced by others, and in the light of reports of coerced confessions.96

Restraint or force should be used only when the child poses an imminent threat of injury to himself or herself or others; only when all other means of control have been exhausted; never as routine, and the use of shackles should be fully avoided for children. In KRI, no child-specific rules exist so far on this topic (and the new draft is silent on this issue), and it was observed that shackles are used for children, apparently routinely ‘in the most serious cases, including drugs and terrorism’.

Search of persons and houses and taking of bodily samples: the legal provisions on these issues do not contain much reference to children (and the new draft is silent on this issue). The CPC holds, however, that physical examination and search of females must be conducted by females, which is commendable, and that juveniles are excused from giving fingerprints.97

Legal assistance: The accused person must be informed on the right to legal assistance before being questioned by the investigating judge, and legal assistance is ensured by law and practice at the court stage in certain cases.98 However a ‘lawyer of the first hour’ (state ensuring that legal assistance is provided at the very first contact of the child with the justice system) is not yet granted (and missing in new draft law).99 In addition it seems that in practice, legal assistance for children is not always efficient, due to lack of specialization, lack of timely appointment, lack of access to documents, and low financial incentives.100

Assistance by parents/guardian: Art 60 JWL holds that the child can be defended by his/her guardian, a relative, or a social worker. As far as this is meant to replace professional legal assistance, this would lower the standard set by the CPC, and be regrettable; as far as such defence is meant to come next to professional legal assistance, it should be clarified what happens if parent and lawyer do not speak with one voice. It is furthermore not clear what happens when a child who enters the justice system has no parent/guardian. Some say that a guardian is not automatically appointed in such a case, which would be undesirable, in particular when the child

93. Cindy Banks, 43.
94. See Art 9 JWL; Committee on the Rights of the Child, Concluding Observations (2015), p 11; Tahir (2017), 12; interviews.
95. See in particular Art 40 CRC; European Guidelines on Child-Friendly Justice; Draft Arab Guidelines on Child-Friendly Justice; AIMUF Guidelines on for children in contact with the Justice System; Draft Guidance on Child-Friendly Courts in KRI.
96. See previous chapter.
97. Committee on the Rights of the Child, General Comment No 24p 95/f.
98. Art 70, 80 and 242 CPC. See also Terre des Hommes 28 (Iraq).
99. The Constitution talks about felony or misdemeanor (Art 19), while the CPC talks about felonies only (Art. 144). For the right to be informed on the right to a lawyer before being interviewed see Art 123b CPC.
100. See above Footnote 83.
also lacks legal assistance.

**Information:** Legislation grants the child and parents/guardians the right to be informed and to “consult” the competent authorities on all matters relating to the case. It is not quite clear what is meant by the right “to consult”; and it has been reported that the right to information is not always implemented.\(^{102}\)

The **right to be heard** is not explicitly codified for children (but see draft law Art 72). Participation of the child in the investigation can be excluded in cases concerning “honour and public moral”, if the child is represented;\(^{103}\) a rule that was probably meant to protect the child, but potentially violates his/her right to participate. It could not be assessed if justice professionals use a child-friendly language, but it was reported that interpretation—a prerequisite to the right to be heard—is not always granted. With regard to the **right to be silent**, domestic law is fully in line with international standards.\(^{104}\) References to child-friendly procedures that would promote effective participation at the various stages of the process cannot be found so far, but judges don’t wear robes and partially hear children in the judge’s chamber, indicating some child-friendly practices. The **use of coercion to extract an admission** is explicitly prohibited\(^ {106}\) and an extra safeguard requires that if a statement includes a confession, the record should be produced by the judge (recording by judicial investigator insufficient).\(^ {106}\) However, it has been held that in practice, coercion is used to extract confessions\(^ {107}\) (which would constitute a grave violation of children’s rights) and concerns been raised that judges admit evidence obtained in this way.\(^ {108}\)

The right of the child to **privacy** is so far not explicitly codified (but see draft law Art 72). However, the law requires—in line with international standards—that hearings are conducted behind closed doors and that no information may be published that could lead to the identification of the child.\(^ {109}\) Furthermore, criminal records seem to not exist for children in KRI (with the exception of terrorism related cases), which is commendable. Practical challenges regarding privacy include the lack of space in police stations which hampers confidentiality of procedures, the practice of holding children sometimes in ordinary police stations (where they are less protected from public views than in Juvenile Police stations), the lack of separate waiting areas in courts, listing the names of parents on public screens in courts, and potentially the lack of understanding of the right to privacy.\(^ {110}\)

---

102. See Art 240 CPC, Terre des Hommes 45 (Iraq).
103. Art 50 JWL.
104. See Art 123 CPC.
105. See Art. 127 and 218 CPC.
106. Terre des Hommes, 46 (Iraq) holds that the safeguard is weak because “when the child or his/her lawyer invoke at the Court the conditions on how the conditions of confession were given, the judge will refer the child back to the investigator, i.e. the police, who could once again exert force to extract a confession.”
107. See previous chapter.
108. Terre des Hommes 46 (Iraq).
109. See Art 238 CPC and 58 JWL (closed doors) and Art 63 JWL (publication).
111. https://m.facebook.com/695833773831906/posts/pfbid037pE3CHhvUfFagOULj92rsxEWpEkCK1AzAtjRrWDzZcutE138BnxiReenR8Rgrwl?d=n

---

**Figure 4** Source: Facebook, accessed 11 August 2022

‘Shaming and blaming’ on social media - as it seems to have happened recently in KRI with the publication of this picture on Facebook\(^ {111}\) concerning an incident in a pharmacy with small children coming in conflict with the law—indicates a lack of understanding and respect of the protection of privacy of children.
The **urgency principle** is so far not explicitly codified (but see draft law Art 45), and in practice, procedures seem often delayed, which usually comes along with prolonged duration of detention. Possible reasons for delays include limited resources of police officers, social workers, judges, sometimes duplication of work when various police offices are involved, lack of early and efficient legal aid, difficulties in obtaining ID information or medical reports and in getting family cooperation, poor coordination, and transport/distance between police/court/reformatory.112

**Children below the minimum age of criminal responsibility** who are alleged of having infringed the penal law should be treated as fair and just as children at or above the minimum age. It is not clear how far this applies in KRI.

3.4.9 Sentencing

**Aim and Guiding Principles:** According to Art 1 JWL, sentencing should aim at the **rehabilitation** of the child. This is also mirrored in the sentencing provisions which talk about ‘measures’ rather than penalties. The legislation furthermore provides some sentencing guidance for judges. It requests, in particular, that the **circumstances of the child**113 as established by the Office of Personality Study114 must be considered. In the context of probation, reference is made to the **seriousness of the offence** and the **precedents** of the child.115 In addition, preconditions related to the **age** of the child and the **type of offence** as presented in the table below guide the sentencing process. It is assumed that on top of this, the ordinary sentencing principles also apply, unless in conflict with the above.116 An explicit reference to the **best interests of the child** is missing. Apart from that, the approach described above is widely in line with international standards.

**Sentencing System:** The JWL provides the following responses to juvenile delinquency: warning, release in the care of a parent/guardian/relative on bond and ‘under conditions’, probation, and referral to reformatory, applicable according to scheme presented in Table 2 below (the table must be read with some caution, as there may be translation errors in the English version of the relevant provisions).

While the focus on ‘measures’ instead of sanctions and the provision of alternatives are most welcome, several concerns remain. First, reformatories look in practice like prisons (see above).117 Secondly, the legislation does not effectively minimize imposition of deprivation of liberty (Art 37 CRC),118 as a) the imposition of liberty depriving measures is not restricted to the most serious crimes, b) the range of available alternatives (non-custodial options) is narrow, and c) the scope of application of available alternatives is very limited (see table), all of which indicates an orientation rather on the act than on the person who committed the act. Thirdly, the legislation also does not effectively minimize duration of deprivation of liberty (Art 37 CRC), as a) various provisions provide mandatory minimum terms for placements in reformatories, contradicting the principle of ‘shortest appropriate period of time’, b) provisional release is considered only on request (not automatically), and c) the maximum term of 15 years is rather high.

---

112. Cindy Banks, 50 and 60-61; IBCR/UNICEF, 28; Interviews.
113. See Art 62 JWL. In Art 90, this is subdivided to the child’s ‘social, heath and psychical state.’
114. Must be conducted in the case of felonies; in the case of misdemeanors if the child’s conditions or circumstances require so, Art 51 JWL.
115. Art 90 JWL.
116. E.g. mitigating and aggravating circumstances as listed in the CC.
117. Cindy Banks, 43, Observation.
118. Similar Rizgar, 25.
Table 2 - Indication of the scope of applicability of alternative sanctions/measures

<table>
<thead>
<tr>
<th>Infraction</th>
<th>Warning</th>
<th>Release in care of guardian/relative</th>
<th>Probation (6mt-3y)</th>
<th>Fine</th>
<th>Reformatory (provisional release on request after 2/3, 6-month, Art 84)</th>
</tr>
</thead>
<tbody>
<tr>
<td>X (Art 72)</td>
<td>X 6m-1y (Art 72)</td>
<td>(Art 74?)</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Misdemeanour</td>
<td>-</td>
<td>X 1-3y (Art 73)</td>
<td>X (Art 73)</td>
<td>X (Art 73)</td>
<td>X 6m-3y (Art 73)</td>
</tr>
<tr>
<td>Felony: temporary imprisonment</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>a) Boy (11-14)</td>
<td>-</td>
<td>-</td>
<td>X (Art 76)</td>
<td>X 6m-5y (Art 76)</td>
<td></td>
</tr>
<tr>
<td>b) Youth (15-18)</td>
<td>-</td>
<td>X (Art 77)</td>
<td>X 5-15y (Art 77)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Felony: live imprisonment, capital punishment</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>a) Boy (11-14)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>X 5y (Art 76)</td>
<td></td>
</tr>
<tr>
<td>b) Youth (15-18)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>X-15y (Art 77)</td>
<td></td>
</tr>
</tbody>
</table>

Sentencing practice: Regarding guiding principles, it was observed in earlier assessments that the system still heavily relies on a retributive approach,\(^{123}\) that the concept of rehabilitation has not been properly defined and explained to professionals,\(^{124}\) and that the reports of the Office of Personality Study were taken into consideration, but that their quality could improve.\(^{125}\) In the context of this research, judges made similar observations regarding these reports, adding that the quality is impacted by the lack of resources; whilst other interviewees criticized the quality of these reports clearly (‘a one pager with a standard sentence’). Judges furthermore indicated that criteria taken into account when deciding about measures include the general and personal circumstances of the child, and the best interests of the child, which is promising (although it was not explained how the best interests of the child are determined).

Regarding the use of the different measures, the available information is scarce, and shows a diverging picture over the years: In 2010, a report (KRI) referred to statistics showing ‘that most children who enter the juvenile justice system are given bail, released to their parents on bond, placed on behaviour monitoring or are fined;’\(^{126}\) a 2014 report (KRI) holds that judges ‘tend to rely heavily on detention penalties;’\(^{127}\) in 2015, the Committee on the Rights of the Child held that alternatives to detention are ‘very seldom used;’\(^{128}\) a report of 2017 (KRI) is observing that detention has been over-used;\(^{129}\) and a report of 2019 (Iraq) finds that alternatives to detention appear to be systematic for infractions and minor misdemeanours.\(^{130}\) In the context of this research, it was held that in the last two years, judges

---

119. Infraction: offence punishable by detention for a period of between 24 hours and 3 months or a fine not exceeding 30 dinars (Art 27 CC).
120. Misdemeanour: offence punishable by detention with hard labour or ordinary detention for a period of between 3 months and 5 years or a fine (Art 26 CC).
121. Felony: offence punishable by death, life imprisonment or 5 to 15 years imprisonment (Art 25 CC).
122. Age groups as defined in Art 3 Juvenile Welfare Act.
124. Cindy Banks, 43.
125. Cindy Banks, 48.
126. Cindy Banks, 50.
129. Tahir, 8.
have increasingly applied alternatives. This is supported by some data indicating that probation (which seems generally to be perceived as the most useful alternative, although implementation remains challenging due to lack of resources\textsuperscript{131}) has been ordered more than four times more often than referral to reformatories in one court; and by data showing that the overall population in reformatories in July 2022 was 35\% lower than in 2014.\textsuperscript{132} No updated, reliable findings can be made about duration of sentences/measures.\textsuperscript{133} It has been reported, however, that pre-trial detention is not always taken into account in the verdict. Such would be a cause for concern and against the law (Art 244 CPC).\textsuperscript{134}

Figure 5 – Source Reformatory, 2022, Erbil.

Total Population in Reformatories (pre/post trial); Youth 11 to below 18 years of age

In addition, it has been reported that reconciliation is used in a lot of cases, and that ‘after-judgment reconciliation’ is also applied. While the methodologies could not be assessed in detail, both approaches are welcome and promising.

Conditions in Detention and Release: The ‘Rules on the Rehabilitation of Juveniles’ of 1971 are far away from providing an up-to-date compilation of minimum standards for children deprived of liberty but contain short references to a reintegrative approach (like individual treatment plan and rehabilitation program). In practice, however, this is hardly applied. Although the conditions for post-trial detainees are somewhat better than for pre-trial detainees\textsuperscript{135} (e.g. providing for education), rehabilitation/reintegration is hampered due to lack of staff competence, guidance and training, poor facilities, lack of equipment and activities (for girls in particular), and lack of adequate preparation of release and aftercare.\textsuperscript{136} Promising practices include the provision of legal assistance in reformatories, and the establishment of exit units were juveniles are prepared for release. Regrettably, these practices recently are limited by a lack of funds.

\textsuperscript{131} IBCR/UNICEF, 25, referring to limited resources, personnel and cars, which seems to still apply.

\textsuperscript{132} IBCR/UNICEF, 29 and Data collection 2022.

\textsuperscript{133} Statistics of 2009 revealed that children are sentenced to detention for periods up to the maximum of 15 years; some saying ‘often to the maximum’ IBCR/UNICEF, 24; Cindy Banks, 69. For probation, it was reported in 2014 (KRI) that terms range mostly from four month to two years, IBCR/UNICEF, 31.

\textsuperscript{134} Juvenile justice system stakeholders workshop, Erbil, November 2022. However, others said that pre-trial detention is usually taken into consideration.

\textsuperscript{135} See also above for conditions in pre-trial detention.

\textsuperscript{136} IBCR/UNICEF, 25, Similar Cindy Banks, 43, Interviews.
3.5 Children associated with armed forces and groups (CAAFAG)
Iraq is subject to the monitoring and reporting agenda of the UN Secretary General on children and armed conflict. In Iraq including KRI, this is a very delicate issue with many political ramifications.

In 2017, terrorism was referred to as the most common offense that children were alleged for or accused of in Iraq, including KRI, with more than 500 children detained in KRI in this context. One detention facility reported that during the period of ISIS, 140 children associated with ISIS each serving 2-year sentences after having spent 4-5 months with Asayish (the Security/Intelligence agency). Interviews with system professionals provided important context on children detained:

“[These were] not combatants with ISIS, but their work was to deliver information, or they were entered into a training course by ISIS. . . Some have also been associated with militans in the period of ISIS, not to help them with weapons, but to give information as informants to ISIS operatives.”

These children are detained separated from other youth. But that is decided by the security forces. We do not deal with children associated with the armed forces [at] release.”

While the number of children detained for security related charges nationwide seems to have remained similarly high since, the number of this group of children detained in reformatories in KRI is said to have significantly decreased in the last years.

However, many challenges remain. Based on desk review and information gathered in the context of this review, it appears that the following risks and divergences with international law / promising practises are present in KRI with regard to this group of children:

- Specific prevention and response programs seem to be widely missing
- Recruitment of below 18 years old is prohibited, but not criminalized
- These children seem to be never treated as victims or witnesses of crimes only
- Mere membership with an ‘armed terrorism group’ is criminalized
- Investigations seem not to be conducted by the ordinary police structures, but rather from within the security apparatus
- Access to effective legal assistance seems limited
- There are allegations that deprivation of liberty is not always implemented in the places of detention designated for children (or only ‘after confession’); of illegal or arbitrary detention; of prolonged duration of deprivation of liberty; of ill-treatment and torture; of coerced confession; of excessive use of force and measures of restraint including use of leg-chains
- There is a risk of harsh ‘sentences’ as well as a risk of double trials (after having served sentence, children being denounced and arrested again)

137. Last report from 2020, see Secretary-General, Report on children and armed conflict (2020).
138. Tahir, 5 and 8.
139. Professional staff interview, June 2022
140. Professional staff interview, June 2022.
141. The Report of the UN Secretary General of 2018 speaks of at least 1,036 children in 2017, including 345 in KRI, in juvenile detention facilities on national security- related charges; the report of 2019 speaks of at least 902 children between the ages of 15 and 18 who remained in detention on national security-related charges in 2018, primarily ISIL-related; the report of 2020 speaks of about 984 children who were detained in 2019 on national security-related charges, including for their actual or alleged association with armed groups, primarily ISIL; the report of 2021 speaks about 1,114 children who remained in detention on national security-related charges, including for their actual or alleged association with armed groups, primarily ISIL; and the report of 2022 speaks of 1,267 children who remained in 2021 detention on national security-related charges, for up to five years, including for their actual or alleged association with armed groups, primarily Da’esh.
142. Peshmerga Service and Pension Law.
143. See Human Rights Watch, Flawed Justice: Accountability for ISIS crimes in Iraq, 3, without referring to a legal provision (probably referring to Art 2/3 Terrorism law, which is not that clear in the English version – but orally confirmed by an interviewee).
144. See Concluding Observations Committee against Torture (2022) p 18; UNAMI/OHCHR Report August 2021; Terre des Hommes, 29-30 and 57 (illegal arrest and detention), 31-32 (arbitrary arrest, enforced disappearances), 40 (illegal investigations and ill-treatment); 52 (duration of detention) with further references; Tahir (2017) 9; Interviews and observations.
145. Terre des Hommes, 98 (Iraq).
• Risk of being homeless, stigmatized and not reintegrated in society after release (see also above 3.3.2)
• Risk of being re-recruited as a consequence of the above.

From the above it appears that for children associated with armed forces and groups (as well as for children in drug related cases, including drug consumers, as discussed in section 3.6 below), the child justice system seems to be widely replaced by a security system, which is an issue of great concern. While it must be recognized that special security considerations apply in Iraq/KRI, it must also be recognized that these children still have rights, including for due process and for the child justice system being fully applied to them (meaning that the ordinary juvenile justice rules should apply; the ordinary juvenile professionals should deal with them; using the ordinary juvenile justice structures). An approach that deviates from this may result 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.”

Promoting effective reintegration becomes paramount here, though both public perception and justice system response to children affected by armed groups are barriers for reintegration.

3.6 Children involved in drug-related crimes
Children involved in drug related crimes – including drug consumers – face a similar situation as CAAFAG: the child justice system seems to be widely replaced by a security system, which is an issue of great concern. In addition, special prevention and response programs seem widely lacking for these children so far, which is worrying in the light of the numerous statements pointing at the increasing number of children involved in drug related crimes.

3.7 Child victims and witnesses of crime
Overall, some important legislative achievements were reached in the last decades, including the enactment of the domestic violence law, the trafficking law and the law on protection of witnesses. The establishment and staffing of the police Directorate Combatting Violence Against Women and Families (DCVWF) that works on both prevention and response (services including a hotline, shelter for women, a mobile team, a legal unit, a radio station in Erbil, an application that indicates the nearest patrol, and family reconciliation centres) is a promising direction. Similar applies for the Community police who developed a series of child-friendly information brochures and also visit schools and conduct awareness raising sessions. However, the impact of these entities was not measured in the context of this research.

DCVWF have 26 offices below the governorate level, 6 at the governorate level, and 1 general directorate, as of August 2022. Until 2019, the Directorate covered women only; since then, families (including men and children) are also included. It has been reported that overall, about 70% of all cases concern women still, and the majority of child cases concern early marriage, as an emerging trend. It was furthermore held that sometimes also women are the source of violence, and that early marriage also happens to boys. Most cases come in via the hotline, and children only represent a small proportion of the reported cases (only 52 boys under 18 and 295 girls). There is a risk of staff burnout for particularly exposed staff, such as those in the DCVWF mobile unit.

146. Committee on the Rights of the Child, General Comment no 24 p 99.
148. Act No. 8 on Domestic Violence 2011; Law No. 28 of 2012 on Trafficking in Persons; Law No 58 of 2017 on the Protection of Witnesses, Experts, Informants and Victims.
When evaluating the situation of child victims and witnesses of crime in KRI against international standards, the following is found:

**Prevention:**

During the research, a long list of risk factors was named, including but not limited to financial pressure on family fathers, high potential of aggression, begging, drugs, human trafficking, electronic extortion sometimes resulting in suicide, and the (re-)recruitment of children. However, there is a lack of specialized services that address these various risks and needs of children. Regarding the legal framework on VAC it was observed, on the positive side, that sexual violence against males is criminalized, and that homosexuality is not criminalized (but not accepted in communities). On the negative side it was observed that the recruitment of children for use in armed conflict and forms of cyber-violence are not yet criminalized.

**Detection and Reporting:**

Crimes against children are often under-reported, resulting in children remaining without protection, and exposed to the risk of further abuse, with possibly long-lasting effects on their health. In KRI, underreporting seems to be very significant, due to ever-present fear of social stigmatization (‘People would give up any right just to not become a victim of social stigma’), in particular regarding sexual violence, where disclosure can have very serious consequences, and including sexual abuse within the family. It is believed that girls are disproportionately affected by these crimes, but it was also held in interviews that regarding boys as victim of sexual violence, ‘social stigma is the worst’.

Other indicated reasons for underreporting include: children believing abuse is normal, children not knowing their rights, costs and slowness of formal system, and children not being able to report a case on their own, according to the law. In specific context such as refugees and IDP camps mistrust towards the police was also reported.

---

149. See in particular Art 39 CRC and UN Guidelines on Child Victims and Witnesses of Crime and related Model Law.
150. Criminal Code, Art 393.
152. These reasons were mentioned in interviews.
153. They would instead tend to go to their own family members and community based pathways or Women Community Centers with psychosocial support and referrals to healthcare, see UNFPA GBV Assessment 2016, 7.
On the positive side, the Domestic Violence Law provides the option (but not an obligation) to report for ‘workers in health, educators and official centres;’¹⁵⁴ a forensic doctor running a page on social media to raise awareness and inform children and families in a ‘safe’ way about abuse and its effects; the DCVWF appearing to be a sensitive reporting mechanism; and availability of a specific helpline for children.

**Protection and Support:**

If a case has been reported to the police, the child victim/witness should receive protection and (psycho-social, medical and legal) support during the justice process as required. For KRI, the following can be observed:

- **On the positive side,** the Law on Trafficking provides for a range of protection and support measures for victims of human trafficking (Art 3, Art 11); the Domestic Violence Law provides for protection orders (Art 4); forensic doctors are available; a Clinical Management of Rape protocol and GBV SoP’s are in place; and the DCVWF expanded its work from ‘females’ to ‘families’ including children.

- **However,** special services for child victims and witnesses of crime are still widely lacking, including safe places (for children, orphanages serve as shelter, and small children of mothers who are a victim of domestic violence sometimes remain with the mother in the adult shelter, boys up to age 6), tailored PSS and mental health service, legal support, but also practical guidance for justice professionals.

- **Available GBV services** were scaled down/out during Covid 19, while increasing incidents reported.¹⁵⁵ Furthermore, it is unclear the level to which GBV SoP’s are actually being used by justice professionals.

**Proceedings:**

Justice proceedings may easily add harm to child victims/witnesses and cause secondary victimization. In KRI, such risks can be observed as well (e.g., the risk of repetitive interviewing; delayed proceedings; privacy and confidentiality not being granted),¹⁵⁶ while the relevant legislation and practices do so far widely not yet protect children from such harm, including:

- Lack of uniform minimum standards and good practices on how to conduct investigation, interviews, medical examination and taking of bodily samples in adapted and sensitive ways
- Lack of requirement for (and availability of) specially trained interviewers;
- Lack of provision requiring minimizing and/or limit the number of interviews;
- Lack of provision that prohibits direct contact between victim/witness and accused/suspect at least in sensitive cases during justice proceedings
- Lack of provision allowing for video/audio recording of specialized investigative interviews and for admission of such recordings as evidence in court (to avoid re-interviewing); whilst a first step in this direction has been made with the use of a video conference in Sulaymaniyah Court in June 2022
- On the positive side, DCVWF with some (although insufficient number) female police officers; codification of principle of confidentiality in Art 2 Domestic Violence Law.

**Reparation and Recovery**

Child victims of crime should receive reparation from the offender or the State through the justice process, and states should take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim.¹⁵⁷ For KRI is has been observed that such recovery and reintegration services are widely missing to date. Further, the CPC provides for the possibility to demand compensation from the perpetrator for harm caused (Art 18), but the state does not provide such compensation if such cannot be received by the perpetrator.

---

¹⁵⁴. Domestic Violence Law, Art 2.
¹⁵⁶. See for the latter also UNFPA GBV Assessment, 28
¹⁵⁷. Art 39 CRC; UN Model Strategies p 21; Art 22 and 35-37 UN Guidelines on Child Victims and Witnesses; Art 29 UN Model Law on Child Victims and Witnesses.
Reintegration in families and communities is furthermore sometimes hampered by families/communities not accepting victims back, especially in cases of rape, when girls may be subject to forced marriage, or even killed due to honour.

3.8 Children of incarcerated parents

While technically outside the scope of this assessment, government leadership in KRI expressed concern about the issue of children living inside carceral institutions while incarcerated with their mothers, and therefore a few reflections on this topic from an international perspective are shared below.158

Prisons or shelters are obviously not a good environment for a child to grow up, and should as such be prevented, including by courts giving due consideration to the use of non-custodial sentence for the child’s primary carer. Any decision on this matter should be based on an individual assessment of the best interest of a child (Art 3 CRC). Factors to be taken into account and balanced against each other include psychological effects of separation, risk of the child being placed in an institution or abandoned and child being more vulnerable to neglect and abuses, effect of decision on the education, health and development of the child, the views of the child, and availability of suitable alternatives (ideally family or other alternative placement; institution as last resort). Some states determine a fixed age limit for a child to live with his/her incarcerated parent and/or allow this option only for shorter sentences,160 while international standards don’t set any such limits.

If it is found that it is in the best interests of the child to live with his/her incarcerated parent, the following should be ensured, according to international and regional standards.161 First, children should not be treated as prisoners and second, special services should be available for the child. These special measures include, in particular: (1) appropriate accommodation, (2) child specific health care services, including health screenings upon admission, ongoing monitoring by specialists, all necessary prenatal and postnatal care and treatment, (3) internal or external childcare facilities staffed by qualified persons where the children shall be placed when they are not in the care of their parent, (4) guarantees for the safety of the child, (5) granting the right to play and access to the outside world, (6) support for the imprisoned parent in the development of their parental competency, and (7) transition to life outside prison for the child to be undertaken with sensitivity. Promising practices for children of incarcerated parents include the establishment of mother-child units, child-friendly information brochures, and special visiting rooms for families.

3.9 Child Justice System Elements

3.9.1 Data management systems

While data collection efforts appear to take place manually at the police level, and records are kept at the courts, the data aggregation, sharing, and use seems to be insufficient. An interagency database that could support referrals does not exist. Data is not used for organizational planning purposes, to inform police prevention programs or juvenile court planning. Police data is primarily collected manually by officers, and then shared with the police station Directorate for data entry. The DCVWF has a statistics and planning unit that collects data including data disaggregated by age and gender. In courts as well, data seems to be collected partially manually, partially electronically; and not used for planning purposes.

3.9.2 Resources

Human resources

The child justice system in KRI is hampered in reaching its aims due to: a misalignment between expected services and available capacities and human resources (regarding all justice professionals), job rotation and potential burnout, lack of specialized investigators, prosecutors, and lawyers, as well as insufficient numbers and integration of social welfare

158. Some internal protocols/instructions seem to exist in KRI, but they were not received and analysed by the researchers; and in practice they seem not to be implemented properly. Juvenile justice system stakeholders’ workshop, Erbil, November 2022.


160. In Switzerland, this age limit is set at age 3, and the duration of stay usually limited to 2 years, Concept Mother Child Unit Hindelbank, 2021.

workforce into the child justice system.

**JUVENILE POLICE OFFICERS DISTRIBUTION**

<table>
<thead>
<tr>
<th>Location</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>ZAKHO (Dohuk)</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>RAPARIN (Sulaymaniya)</td>
<td>15</td>
<td>0</td>
</tr>
<tr>
<td>SORAN (Erbil)</td>
<td>11</td>
<td>2</td>
</tr>
<tr>
<td>GARMIAN (Sulaymaniya)</td>
<td>11</td>
<td>1</td>
</tr>
<tr>
<td>SULAYMANIYA JUVENTILE POLICE</td>
<td>50</td>
<td>40</td>
</tr>
<tr>
<td>DUHOK JUVENTILE POLICE</td>
<td>35</td>
<td>15</td>
</tr>
<tr>
<td>ERBIL JUVENTILE POLICE</td>
<td>34</td>
<td>6</td>
</tr>
</tbody>
</table>

**Figure 7 – Source: Juvenile Police, 2022, Erbil**

There is a relatively low number of female police officers. The number of Juvenile Police officers are shown below in Figure 5, which shows the small proportion of women in the force. There is currently no female juvenile judge, and the number of female lawyers is low, while the percentage of female forensic doctors is comparatively high (33-44%). One of the reformatories reported having only three female social workers for 150 inmates. There are reports from international sources that judges are frequently appointed “based on partisanship rather than merit or independence.”

Figure 6 shows the reformatory staffing levels, and the majority of staff being ‘force staff’ (rather than social or other) reflects the carceral system orientation.

**Personnel in Reformatories**

Staff Capacity and Training

Overall, while various training initiatives take place in the area of child justice, and some good individual expertise could be observed during interviews with professionals across the system, no group of justice professionals seems to be systematically trained, and job rotation seriously hampers any training efforts that occur. Most interviewees reported that all groups of juvenile justice professionals need more training. For juvenile police and juvenile judges, a range of training materials have recently been developed; however, it remains unclear the extent to which these materials have already been officially endorsed and rolled out. In addition, several tools of similar type were developed (as discussed below), which suggests a lack of coordination from supporting partners.

Juvenile Police seem to have received considerable amounts of training, but so far rather ad-hoc rather than systematic. One Juvenile Police leader reported that ‘knowledge is below 5%.’ DCVWF staff reported regular trainings, but also identified gaps in how to take minutes, how to interview, how to investigate, and on international norms. A more systematic approach is in sight with the Heartland Alliance “Guidelines for Police Officers dealing with Juveniles” and a training tool for both police and judiciary developed by UNICEF in close collaboration with MoJ, MoLSA and Ministry of Security with technical support from Tsamota. However, it seems unclear which tool applies or will be applicable, and how the different tools relate to and are harmonized with one another. This might lead to confusion and can potentially ‘add harm’ rather than promote a unified approach to juvenile policing.

Juvenile Judges also receive ad-hoc trainings, while there are again indications of a move toward a more durable training model: the above-mentioned training tool developed by UNICEF/Tsamota seems to have been adopted by the Judicial Training Institute, although it is not yet clear how and how far it can/shall be included in the training for judges. At the same time, it appears additional specialist training tools have been developed by Heartland Alliance, and it has been reported that yet another tool is currently being developed by judges and university professors (and another one has recently been rolled out in Federal Iraq by TdH). Again, it seems unclear which tool applies or will be applied in future, how the different tools relate to and are harmonized with one another, so that they won’t create any confusion but provide a holistic outcome. Additional concerns have been expressed some years ago by the Committee Against Torture about the reported lack of independence and impartiality of the KRI judiciary, as well as questionable judicial practices under the Anti-Terrorist Law.

Reformatory staff reported training fatigue, whilst still considering themselves as insufficiently trained. Risk of staff burnout was repetitively mentioned in interviews when prompted.

There is a Department of Social Work at Salahaddin University. The number of social workers in the child justice system is considered as much too low. An ‘Office of Personality Study’ is attached to each juvenile court, responsible for conducting personality studies (medical, psychological and social assessment of children). Diverging information was received on whether or not these social workers use a standardized form. Some SoPs for social workers are available, but it is unclear whether they are applied throughout the system. The quality of the office has been described by various actors as insufficient (‘rotten paper’, ‘root causes undetected’, ‘mental problems undetected’, ‘personality assessment became a “formality”, a one pager with a standard sentence’). It was reported that this office can conduct assessments only on Sundays, as only then police transports are available; and that these social workers do not participate in hearings. Both indicate serious deficiencies of such a service. Furthermore, an ‘Office of Behaviour Monitoring’ (probation service) is attached to each juvenile court. No specific SoPs and no systematic special trainings seem available so far.

Lawyers do not generally specialize in KRI, so there are not child justice-specialized lawyers. That
said, it has been reported that about 40-50 lawyers work in KRI on juvenile cases. The Bar Association offers various training inputs for their members, but no child-specific trainings. Such are offered from time to time at an ad-hoc basis by NGOs which leads to some ‘practical specialization’. The KRI Bar Association is working to establish a training institute and to design a Code of Conduct. While, according to the law, lawyers for juveniles only get automatically appointed at the court stage, UNICEF had supported some lawyers working in reformatory Erbil, and Save the Children supported some to work at the police station in Dohuk.

Forensic medicine services are available in all 3 Governorates, with a total of 9 forensic doctors. Forensic medicine requires postgraduate study and at least one doctor is specialized in sex offences. Forensic doctors received training by UNICEF on how to examine child, and a special room has been designated for examinations. Gaps include the lack of standardized guidance, and some shortcomings with regard to DNA and drug analyses.

Budgetary resources:

An analysis of the existing budget for the child justice system was not possible given the lack of available documentation. However, many interviewees pointed at insufficient budgetary resources of their service (including cars, office space, remuneration), and in person observations reveal that police offices and reformatories are not equally equipped.

3.9.3 Coordination

Formal Justice System: Formal Justice System coordination between actors seems not systemic, but to rely on individual relationships to manage cases. One interviewee stated that system coordination “does not work,” while various justice professionals pointed at poor coordination with some other formal justice services. Professionals working with detained youth report relationship-based coordination that “depends on the situation and the condition of the case.” Examples given include “coordination and communication with the Ministry of Health in Erbil or the Head of Health in Dohuk” when medical or psychiatric care is needed, as well as “cases of Asayesh [the Security Ministry] being notified in coordination with the law division.” Some mentioned they wished the cooperation with the Federal Government was better.

Community Perception of Coordination:

There was a mixed perception of state coordination efforts from community discussions. One religious leader reported that there was “continually coordination among stakeholders” A Sheikh and Mukhtar both expressed that there was some level of coordination and interaction/referral/alignment between formal and informal system but did not provide specific details. On the other hand, another religious leader stated that “the government and non-government organizations do not care about the community leaders solving the problem, they do not care about anyone but themselves. All services that are provided do not support the coordination between any NGO and the community leaders.”

Another traditional leader reported: “There is not any coordination [between formal and community justice actors], but we have tried many times to make coordination between us and the government and the government organizations.”

164. System professional interview, June 2022.
165. System professional interview, June 2022.
166. Interview with religious leader, June 2022.
167. Interviews with religious and community leaders, June 2022.
168. Interview with religious leader, June 2022.
169. Interview with religious leader, June 2022.
4. RECOMMENDATIONS AND PLAN OF ACTION

4.1 Macro-Level Recommendation on Continued Reform Process
The 2022 assessment of the child justice system in the Kurdistan Region of Iraq (KRI) has aimed to document the legislative and normative frameworks, as well as the practices of the child justice system at both the community and formal levels. The child justice system in KRI has many strengths, as well as some limitations. A key finding from the assessment is that the community-level customary justice system absorbs a substantial number of cases, and it carries a high level of community trust. The real question is about how best to see the child justice system in KRI as an integrated whole, including both community and government mechanisms.

In order to grapple with this question, the next step is for a small group of key agency decision-makers to convene on a regular basis to make important decisions about the direction the system should go, and to oversee child justice system reform. There is the need to make a strategic policy decision about where KRI wants to go to have a justice sector-wide approach to juvenile justice and issues of child victims and witnesses of crime. This means developing and articulating a coordinated vision, and according to the priorities that are identified, investing resources in the implementation of that vision.

This must be a multi-agency/stakeholder process, possibly building on the Juvenile Welfare Committee, with the support of the Ministry of Justice, the Judicial Council, the Ministry of Interior, and the Ministry of Labour and Social Affairs from an institutional side. Such a visioning working group should include both key government actors, traditional leaders, as well as international partners that work in the space.

One key outcome is to ensure that the child justice system in KRI builds upon the legitimacy, capacity, practice, and expertise at the community level. The logic of the customary justice system is fundamentally one of reconciliation, and system leaders must decide whether reconciliation should be further expanded to be an essential element of the entire system. For the moment, most of the actors supporting the juvenile justice system work in isolation, and only take on small elements of the child justice system. The objective should be to have one justice system for children and youth that combines both the government actors and community actors.

This strategic work requires a more systematic analysis of child justice data generated at service level (courts, police, reformatories, social services etc). The analysis should be done as a whole incorporating data from different sources and gather a well-rounded understanding of the situations facing children who come in contact with the justice system. Similarly, the possible reform process will have to include a rigorous aspect of data generation and review to inform adaptations and support ongoing decisions.

Once the strategic framing of the child justice system is decided, KRI can consider the more specific functions of the justice system, and the specific recommendations outlined in the below Plan of Action may need to be tailored/adapted at a later date.

4.2 Plan of Action
The Plan of Action below provides a framework for carrying out policy, practice, and capacity building changes in the coming years. The Plan of Action is intended to articulate a process and initial substantive steps to be undertaken in the area of child justice system reform beginning in 2023. The Plan of Action is organized with one overarching goal: Children who come in contact with the justice system either as accused or convicted, or as victims or witnesses of crime, encounter a well-functioning system that integrates customary and formal actors, and children have their rights protected at all stages and their needs are responded to in adequate ways.

In line with this goal, objectives and action steps fall into five areas of focus:

1. Prevention of delinquency, anti-social behavior, and crimes against children
2. Legislative and regulatory framework are strengthened, in line with international standards understood in context
3. Customary justice system strengthened, harmonized with the formal system, aligning with child rights
4. The child justice system is well-coordinated, and child justice services are strengthened
5. Child justice system boasts highly capacitated and specialized staff
6. The child justice system is child-friendly
7. Child Justice System is applied to all children

This is a document to be updated and used. While the first objective, which is strategic objective decision making.

Following the plan of action is a **compiled list of detailed proposed legislative changes** across a range of issue areas/sub-populations within the child justice system.

### KRI CHILD JUSTICE PLAN OF ACTION

<table>
<thead>
<tr>
<th>Objective</th>
<th>Key Actions</th>
<th>Indicators</th>
<th>Lead agency</th>
<th>Time-frame</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1: Prevention of delinquency, anti-social behavior, and crimes against children</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.1 Develop a comprehensive juvenile delinquency prevention plan that identifies risk factors and responds with an appropriate programmatic response, including for children below the minimum age of criminal responsibility and children ‘at risk.’ This action aligns with mandate of Juvenile Welfare Council as outlined in JWL Art 8.</td>
<td>Prevention policy and program developed</td>
<td>Juvenile Welfare Council</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.2 Decriminalize status offenses.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.3 Address electronic extortion and similar behaviour by developing programs for safe use of information technology for children, and parents/caregivers; investigators, social workers, judges capacitated to deal with cyber-crime (trainings, guidance).</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.4 Based on data and more in-depth analysis, develop programs that deal with drug use and proliferation, homelessness and begging and other identified risk factors.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.5 Increase the accessibility and dialogue of police, prosecutors and juvenile judges with youth and family awareness raising purposes (on juvenile delinquency and VAC).</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.6 Clarify mandate and powers of community police, link them with response services, and consider tasking them with ‘prevention patrols’ (visiting spots frequented by youth, to interact, prevent, build trust).</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

170. The term ‘status offense’ refers to behaviour such as school absence, running away, begging or trespassing which are criminalized for children but not considered crimes if committed by adults. Committee on the Rights of the Child, General Comment No 24 p12.
### Measures to prevent violence, abuse, and exploitation of children are developed and enhanced.

1.2.1. Support the child protection system development informing a child and family welfare (including protection) policy addressing root causes of abuse, exploitation and violence.

1.2.2. Contribute to/develop/increase programming to better meet the needs of youth at the community by providing safe places and local support (community) service availability.

1.2.3. Criminalize prevalent forms of violence on children that are not yet in the criminal code (see list of legislative changes below).

### Measures to prevent radicalization and recruitment into armed forces and militia.

1.3.1. In collaboration with social welfare, security sectors, with religious (and other) leaders, design special prevention strategy and program to address radicalization and recruitment, including offering positive alternatives for youth at risk of recruitment.

### Legislative and regulatory framework are strengthened, in line with international standards

2.1. Legislation and regulation concerning children in conflict with the law is in line with UNCRC, General Comment 24 and Model Law

2.1.1. Introduce and move toward passage of comprehensive legal reforms to strengthen the child justice system; see detailed proposed legislative changes after this action plan.

2.2. Legislation and regulation for Child Victims and Witnesses is in line with UN Guidelines, Model Law and best practices

2.2.1. See compiled list of proposed legislative changes after this action plan.

### Customary justice system strengthened, aligns with child rights and has appropriate links to formal system

3.1. Common ground is found in the customary justice system.

3.1.1. Conduct roundtables with government and customary justice actors where each side/system presents their practice and value system, to promote mutual understanding and respect, and enable comparison (peer learning).

3.1.2. Develop and conduct common training inputs on both traditional reconciliation and ‘modern’ understanding of mediation techniques.
### 3.2: Co-design for inclusive approach that links traditional approach with child rights

<table>
<thead>
<tr>
<th>3.2.1 Co-design the way forward towards a more inclusive approach that links tradition and child rights, by defining, together minimum standards/safeguards and practices (including aim of reconciliation, scope of application for each side, preconditions, content, roles and procedures, rights of child, effect of reconciliation in each system).</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>3.2.2 Define interaction between the formal and informal system, in particular: a) when and how to exchange which information; b) when to refer a case from one system to the other c) what effect has the outcome of one system on the other system d) data collection.</th>
</tr>
</thead>
</table>

### 3.3: Maximize the use of existing informal system expertise

<table>
<thead>
<tr>
<th>3.3.1 In the area of prevention e.g., introduction of school mediation where respected elders/religious leaders/mediators, possibly together with school social workers, train students in reconciliation techniques and ‘peace making’, so that the students become mediators themselves and can reconcile between students in cases of conflicts at school, like bullying. This could also contribute to some degree to the wider reconciliation needs of a society after war.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>3.3.2 Regarding isolated or traumatized children, reconciliation with family, community and society to overcome stigma and exclusion is a key factor on the way towards healing/recovery and reintegration. The existing expertise of respected community mediators can be (further) used to promote such reconciliation, recovery and reintegration.</th>
</tr>
</thead>
</table>

### 4: Formal child justice system is well-coordinated, and child justice services are strengthened

<table>
<thead>
<tr>
<th>4.1: Strengthen and define interagency coordination at national district and local levels.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>4.1.1 Pass regulations that create a KRI coordination body responsible for child justice.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>4.1.2 Regular roundtables: Child justice professionals (police, investigators, prosecutors, judges, social workers) meet regularly to discuss practical issues and improve cooperation/coordination.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>4.1.3 Capacity building events are designed as inter-agency events (police, investigators, prosecutors, judges, social workers, lawyers learning together and from one another).</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>4.1.4 Consider introduction of case conferences in law and practice (see the South African Example Diversion Roadmap).</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>4.1.5 Regular roundtables between relevant stakeholders from Federal Iraq and KRI to discuss emerging practical issues and improve cooperation/coordination.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>4.1.6 International community/supporting partners develop a common vision and action plan on child justice reform.</th>
</tr>
</thead>
</table>
### 4.2: Diversion is piloted and strengthened

<table>
<thead>
<tr>
<th>Paragraph</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2.1 Pilot / Law reform. Advocate for, adopt and implement legislative and practice reforms in line with the Diversion Roadmap (see annex). This will help to develop of a framework that defines diversion aim, preconditions, scope of application, content, minimum standards, roles, responsibilities and procedures, and effect of diversion.</td>
</tr>
<tr>
<td>4.2.2 Design and implement community-based programs that are feasible to implement and address urgent needs of children in KRI, likely using restoration as a specific form/option of diversion.</td>
</tr>
<tr>
<td>4.2.3 Identify suitable program providers and develop a system to ensure quality (e.g. accreditation system, selection system, monitoring and control system).</td>
</tr>
</tbody>
</table>

### 4.3 Policing is strengthened and focused on child-friendly services

<table>
<thead>
<tr>
<th>Paragraph</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.3.1 Consider reorganizing Juvenile Police to be upgraded to a department. Juvenile Police covering all cases of child offending in the whole governorate: Appoint a juvenile police liaison officer at each ordinary police station that is specially trained; and/or Juvenile Police branches in districts and subdistrict where feasible.</td>
</tr>
<tr>
<td>4.3.3 Appointment of specialized child investigators working exclusively on child cases and located in juvenile police stations.</td>
</tr>
<tr>
<td>4.3.4 Monitoring, data collection and advocacy concerning illegal and arbitrary detention, that an arrested child must be brought before the examining magistrate within 24 hours and that the period spent in pre-trial detention must be taken into account in the sentencing process.</td>
</tr>
<tr>
<td>4.3.5 Advocacy and development of internal procedures at police level ensure that children are immediately transferred to juvenile police; that parents are immediately informed on the arrest of their child; that age assessments are immediately conducted; that arrested child has immediately access to a social worker and lawyer.</td>
</tr>
<tr>
<td>4.3.6 Improve provision of basic needs for children in police stations (like food, cloths, family contact), safe and separate places for children in police arrest and during transport.</td>
</tr>
<tr>
<td>4.3.7 Introduce an independent and accessible control and complaint mechanism for children in police custody.</td>
</tr>
</tbody>
</table>

### 4.4 Forensic medicine service is strengthened

<table>
<thead>
<tr>
<th>Paragraph</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.4.1 Develop and ensure application of uniform minimum standards and methodologies by the development of written guidance for forensic doctors (under the lead of local forensic doctors). This should include: a) Age assessment; b) Physical examination of girls/boys; c) How to link CMR and forensic medicine d) Cooperation with police/judge.</td>
</tr>
<tr>
<td>4.4.2 Introduce the above in training curricula of forensic doctors and fill knowledge and resource gaps as indicated by forensic doctors, including on drug and DNA analyses.</td>
</tr>
</tbody>
</table>

---

171. See Art 19 of the Constitution and the binding international obligation of Art 37/b CRC
172. Obligations defined in Art 48 JWL and Art 123 CPC and the binding international obligation of Art 37/b CRC
173. Art 244 CPC.
### 4.5. Judiciary for children is strengthened

<table>
<thead>
<tr>
<th>Sub-point</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.5.1</td>
<td>Appoint Juvenile Judges ideally on the basis of interest, and for a certain minimum period (ideally 5y, minimum 2y).</td>
</tr>
<tr>
<td>4.5.2</td>
<td>Juvenile courts have full jurisdiction for all cases of child offending.</td>
</tr>
<tr>
<td>4.5.3</td>
<td>Introduction of specialized child prosecutors, appointed ideally on the basis of interest and for a certain minimum period.</td>
</tr>
</tbody>
</table>

**KRI Bar Association**

### 4.6. Legal representation for children is strengthened

<table>
<thead>
<tr>
<th>Sub-point</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.6.1</td>
<td>Bar association (potentially supported by others) organize a 24/7 duty service for children's lawyers, including providing lawyers at the point of arrest (to ensure 'lawyer of first hour'). Establish a pool lawyer for this purpose and train them in child matters.</td>
</tr>
</tbody>
</table>

### 4.7. Social Work functions are strengthened

<table>
<thead>
<tr>
<th>Sub-point</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.7.1</td>
<td>Adopt a quality improvement approach to harness the existing resources in social work affiliated to the courts and the reformatories. Through a multi-stakeholders’ analysis of the bottle necks, identify processes, procedures and adaptations necessary to social workers to fulfill their responsibilities with quality. Develop and ensure adaptations of standards, methodologies, and processes.</td>
</tr>
<tr>
<td>4.7.2</td>
<td>Fill resource gaps so that court social workers can assess children not only on Sundays but whenever required; can visit children at home and participate in hearings; and probation officers can properly follow up.</td>
</tr>
</tbody>
</table>

### 4.8. Reliable disaggregated data on children in conflict with the law and child victims and witnesses of crime are systematically collected, analyzed, and used.

<table>
<thead>
<tr>
<th>Sub-point</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.8.1</td>
<td>Data generation, treatment and use approaches are introduced at policy and service.</td>
</tr>
<tr>
<td>4.8.2</td>
<td>Child justice agencies regularly collect and centralize data at all key decision points.</td>
</tr>
<tr>
<td>4.8.3</td>
<td>Child justice agencies utilize data as basis for programming monitoring, evaluation and quality improvement of existing programs, and to inform further policy and practice changes.</td>
</tr>
</tbody>
</table>

**Annual statistical reports on child justice system available.**

**Demonstrated decision making informed by data**

### 4.9. Services for victims/witnesses

<table>
<thead>
<tr>
<th>Sub-point</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.9.1</td>
<td>Consult children to evaluate how safe access to victims/witness services (child-friendly information and advice; child-friendly reporting mechanisms; safe places; medical, psycho-social and legal support) could be ensured.</td>
</tr>
<tr>
<td>4.9.2</td>
<td>Informed by the above, create new / support existing services for child victims/witnesses. This may include capacitated hotline, platforms on social media, youth centers where children can gather, play, be creative etc, but also receive various types of advice and counselling (anonymously).</td>
</tr>
<tr>
<td>4.9.3</td>
<td>Together with community and religious leaders, work towards overcoming social stigma to enable children and families to access such services, see above.</td>
</tr>
<tr>
<td>4.9.4</td>
<td>Gender: Increase evidence base on gendered nature of child justice system. This could begin with complementing the ‘girl-lens’ with a ‘boy lens’ in all actions, resulting in an inclusive approach.</td>
</tr>
</tbody>
</table>

**MoJ with MoLSA**

**MoLSA and MoJ**
### 5: Child justice system boasts highly capacitated and specialized staff

<table>
<thead>
<tr>
<th>5.1: Increase specialization of all actors, including investigators, police, prosecution, judiciary, social workers, lawyers, in light of the strategic direction of the juvenile justice system.</th>
<th>5.1.1. Evaluate already available training tools and decide (as far as they overlap) which ones to be officially endorsed and applied, and/or harmonize/unify them.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5.1.2. Identify remaining gaps and together with relevant training institutes, develop training programs and guidance (possibly including online tools) for all justice professionals on how to conduct criminal procedures in fair, sensitive and effective ways. Tools to be concise, practice-orientated and developed together with practitioners of the relevant field.</td>
</tr>
<tr>
<td></td>
<td>5.1.3 Design and implement training on communication/interviewing children for all professionals who interview/interrogate/hear children.</td>
</tr>
<tr>
<td></td>
<td>5.1.4 Train a pool of DCVWF investigators on investigative interviewing of particular vulnerable victims and witnesses of crime.</td>
</tr>
<tr>
<td></td>
<td>5.1.5 Develop short checklists for police officers/lawyers/social workers/judges on immediate actions required in case of arrest/detention.</td>
</tr>
<tr>
<td></td>
<td>5.1.6. Consider Juvenile Judges, Prosecutors and other experts joining International Association of Youth and Family judges to participate in and contribute to webinars.</td>
</tr>
<tr>
<td></td>
<td>5.1.7. Interagency capacity building initiatives developed to promote mutual understanding, respect and cooperation.</td>
</tr>
<tr>
<td></td>
<td>5.1.8 Introduce self-care policies and programs for justice professionals.</td>
</tr>
</tbody>
</table>

### 6: Child justice system is made more child friendly

<table>
<thead>
<tr>
<th>6.1 Child friendly information materials are produced and child friendly spaces are piloted, adapted, and then scaled up at police stations and courtrooms.</th>
<th>6.1.1 Juvenile courts conduct child friendly self-assessment using new child friendly guidance tool (see annex).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6.1.2 Juvenile courts design a KRI-wide implementation plan based on self-assessment.</td>
</tr>
<tr>
<td></td>
<td>6.1.3 Child friendly information materials (brochures, videos); child friendly spaces (separate waiting area and interview room) put in place in all police and court settings, where not already available.</td>
</tr>
<tr>
<td></td>
<td>6.1.4 Consider in selected areas (possibly the DCVWF) adding special room with audio/video recording and video link to court room.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6.2 Conditions in places of detention are in line with international law.</th>
<th>6.2.1. Ensure separate places for girls in pre-trial detention.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6.2.2. Ensure (programs and staff) that reintegration starts at the day of entry with adequate needs assessment, individual treatment plan, timely preparation of release, and after-care.</td>
</tr>
<tr>
<td></td>
<td>6.2.3. Assess standards and conditions in places of detention in light of international standards and ensure effective complaint and independent monitoring mechanisms.</td>
</tr>
</tbody>
</table>
**6.3. Required resources to enable child-friendly procedures**

6.3.1 Through a sector wide approach consider child friendly procedures among the priorities in the allocation of funds in light of the critical services, staffing, capacities and means to perform the work (e.g. cars to transport children/enable social work visits, office space to enable privacy, sufficient number of staff at all levels to enable speedy and diligent proceedings, including adequate number of female justice professionals).

**6.4 Consider all-under-one-roof approaches**

6.4.1: Examine feasibility of an ‘all (or several) under one roof’ for children in conflict with the law: juvenile police, pre-trial detention, juvenile investigator, juvenile judges, social workers in the same building and separated from adult-services (or at least some, like social workers, child investigators and lawyers based at juvenile police station).

6.4.2: Examine feasibility of all (or several) under one roof for child victims/witnesses of crime: information and advice, safe reporting, protection and support, and sensitive interviewing combined (e.g. in DCVWF).

6.4.3. Collaborate with religious and customary leaders to raise awareness of and reduce stigma associated with justice system involvement.

**7: Child justice system is applied to all children, including Children Associated with Armed Forces and Armed Groups**

7.1 Child justice system is applied to all children in contact with the law, with no exception

7.1.1 Promote a government reflection informed by data, evidence and national and international obligation on the importance to apply the child justice system for all children in conflict with the law, including those in terrorism and drug related cases.

7.1.2 Agreement reached amongst the relevant stakeholders to adapt practices accordingly.

7.2. Treatment and reintegration of Children Associated with Armed Forces and Armed Groups (CAAFAG) bolstered.

7.2.1 Consult CAAFAG to evaluate what are their needs.

7.2.2 Informed by the above, design programs addressing these needs, aiming at providing for their physical and psychological recovery and social and economic reintegration; including addressing the possibly extreme violence and trauma suffered.

7.2.3 Community leaders, religious leaders, work towards overcoming stigma and promoting reintegration of CAAFAG in families and communities.

**4.3 Compiled List of Proposed Legislative Changes**

The below is a detailed list of proposed legislative changes in the following nine areas, with numbers 1 through 7 concerning children in conflict with the law: (1) prevention, (2) age-related concerns, (3) diversion, (4) arrest/pre-trial detention, (5) proceedings, (6) sentencing, (7) children associated with armed forces and groups (CAAFAG), (8) child victims and witnesses of crime, and (9) children of incarcerated parents.

1) **Prevention:**

a) Decriminalize status offences.

2) **Age issues:**

a) Raise the minimum age of criminal responsibility to a regionally/internationally acceptable level (Committee on the Rights of the child suggests 14; Arab League Guidelines suggests 13)
b) Explicitly codify the application of the ‘benefit of the rule of doubt’ in case the age cannot be established properly

c) Re-define methodology of age assessment:
   a) medical examinations as last resort, b) allow authorities to accept all documentation that can prove age, such as notification of birth, extracts from birth registries, baptismal or equivalent documents or school reports, and interviews / testimony by parents, teachers or religious or community leaders who know the age of the child

d) Legislation ensures that the child justice system remains applicable to children who turn 18 during the judicial process.

e) Ensure that children who come in conflict with the law below the minimum age of criminal responsibility are granted the same legal safeguards as children above this minimum age.

f) Harmonize child specific laws with CC, CPC and other relevant codes, to avoid any potential confusion.174

3) Diversion: Adopt and implement legislation in line with the roadmap towards diversion document (see annex). As noted in more detail in the annexed Diversion Roadmap, the legal provisions on diversion (be it a provisional framework for a pilot or in an ordinary law) should cover the following aspects, based on international standards175 and lessons learnt:

a) Definition and Aim of diversion

b) Preconditions, including:
   - There is compelling evidence that the child committed the alleged offence;
   - The child freely and voluntarily admits responsibility (while such admission should not be used against him/her in any subsequent legal proceedings); and

   - The child agrees to the diversion in written form after having been appropriately informed as to the form, content, duration and consequences of failure to comply with such diversionary measures

c) Scope of application

   - Define at what stage of the proceeding diversion is applicable (police, prosecutor, court, all).
   - Define which cases are eligible for diversion (should not be limited to petty cases, so as to render it an important instrument, but be considered “wherever appropriate and desirable,”176 and become ‘the preferred manner of dealing with children in the majority of cases’177. Again, this could be tested out in a pilot to inform a full legal reform.

d) Content,178 which could include:

   - ‘Non-intervention’ (no prosecution, no reaction), especially in cases where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner
   - Referral to “community-based programs” that seem adapted to the context and feasible, which could imply: community service; programs that create opportunities for young people (skills building, learning and training programs, job program, school order etc); counselling and other measures that promote healing and recovery (e.g. for drug addicts; trauma therapy); restorative measures that promote reconciliation with family and community, etc

174. For instance, harmonize Art 3 JWL with Art 64 CC and Art 233 CPC and KRI amendment re minimum age of criminal responsibility; harmonize Art 48 JWL with Art 237 CPC regarding minimum age for mandatory pre-trial detention (although this provision should rather be deleted, as against the last resort principle of Art 37 CRC).
175. See in particular Committee on the Rights of the Child, General Comment No 24, p 15-18.
176. Art 40(3)(b) CRC; Rule 11 BR.
177. Committee on the Rights of the Child, General Comment No 24 p 16.
178. See Rule 11 BR and commentary.
**e) Minimum standards:** Diversion measures should not include deprivation of liberty, may not be degrading, stigmatizing or exploitative, may not interfere with the child’s education or work, may not damage the child’s health, must be adapted to age and development of the child, shall be proportionate to the crime committed.

**f) Roles and responsibilities** of both state and non-state actors should be clarified. In KRI it would be crucial to define the role of the relevant non-state actors in the context of diversion, and to establishes linkages between formal and informal actors.

**g) Procedure** should be explained step by step.

**h) “Procedural rights”** should be ensured, including:

- Possibility of child to seek legal or other appropriate assistance relating to diversion
- Possibilities to have decisions / measures reviewed

**i) Consequences of Non-Compliance**

- E.g. hear the child and verify reasons; provide a second chance, or
- Case going back to ordinary judicial process

**j) Consequences of Compliance / Effect of diversion**

- Final closure of the case
- Diversion record should not lead to or be regarded as criminal record.

4) Arrest/Pre-trial detention

**a) Roles, procedures, delays and reasons for imposing arrest and pre-trial detention should be clearly defined in one Act**

**b) Explicit codification of the principle that arrest and pre-trial detention should be ordered as a last resort and for the shortest appropriate period**

**c) Elimination of the provision of Art 52 JWL which allows to order pre-trial detention of a child ‘for the purpose of examining him/her or where there is no guarantor’ (conducting a personality assessment should be regulated by a different regime, and be implemented whenever possible in a non-custodial form)**

**d) Elimination of the provision in Art 52 JWL wherein pre-trial detention must be ordered for children above age 14 who committed a felony that is punished with the death penalty; this provision as written is not in line with principle of ‘detention as a last resort’**.

**e) Introduction of a higher threshold for imposing pre-trial detention by providing stricter limitations, e.g.**

- Offence related limitation: pre-trial detention may only be imposed in case of felonies
- Age-related limitation: pre-trial detention may only be imposed for above 14 (13) years old

**f) Introduction of alternatives to pre-trial detention, with the law requiring that they must be considered mandatorily in each case, including release without bail in the care or supervision of a parent/appropriate adult; under the control of a probation officer; duty of child to regularly report to the police; placement in a family; electronic monitoring (if feasible and safe)**

**g) Definition of a child-specific maximum duration of pre-trial detention (shorter than for adults)**

**h) Explicit codification of the right of the child to have parents/caregivers immediately informed on his/her arrest**

**i) Provision for mandatory legal assistance from the first moment (‘lawyer of the first hour’, state ensuring that such assistance is provided immediately after arrest and participates already in the first interview/interrogation)**

**j) Provision that requires separation of children and adults at all moments, including during police arrest and transport**

**k) Introduction of pre-trial detention rules that**
50 Mapping and Assessment of the Child Justice System | Kurdistan Region of Iraq

reflect the relevant international principles (including Havana Rules, Mandela Rules) and outlaw solitary confinement.

5) Proceedings

a) Explicit codification, in child-specific legislation, prohibition of solitary confinement, torture, use of corporal punishment

b) Explicit codification of child-specific rules on the use of restraint or force, search of persons and houses, taking of bodily samples (including: use of shackles not allowed; use of hand-cuffs strictly regulated; house search only to be conducted in the presence of an adult household-member and not during night-time, unless there are very pressing reasons; search of person and taking of bodily sample by officer of same sex and in presence of an appropriate adult, unless the child wishes otherwise)

c) Codification of right to ‘lawyer of first hour’, see above, in child specific legislation, who must participate already in the very first interview/interrogation/hearing

d) Definition of role of parent/caregiver in judicial process in child specific legislation (psycho-social support at all moments), define grounds for not allowing them to participate in the process (including: parent/guardian co-accused, alleged perpetrator, not supportive towards child) and define procedures for alternative support in such cases (e.g. appointment of social worker; appropriate adult/relative who is a person of trust to the child)

e) Explicit codification, in child-specific legislation, of the right of child to be informed, to be heard, to be silent, to privacy (covering hearing behind closed doors; non-publication of information that could lead at the identification of the child; keeping files and records strictly confidential; restrictive approach re criminal records and press releases) and to a speedy process (e.g. “Cases where children are involved are to be treated as a priority and carried out without any unjustified delays”), consider adding some additional time-limits in the law, and ensure implementation by clearly defining the consequences of non-implementation, and effective control- and accountability mechanisms for justice professionals

f) Eliminate or restrict the possibility of excluding the child from participation (Art 50 JWL).

6) Sentencing

a) Explicit codification of the principle that liberty depriving measures (like reformatory) should be ordered as a last resort and for the shortest appropriate period

b) Explicit codification of some guidelines for ‘sentencing’ (including the overall aim of the rehabilitation/reintegration of the child, the best interests of the child, the principle of the least interfering measure as first resort, proportionality to the circumstances of the child and the offence, reconciliation efforts as mitigating factor).

c) Introduction of a higher threshold for imposing liberty depriving measures (as already exists in the reformatory), such as: Offence related limitation: such may only be imposed in case of felonies; Age-related limitation: such may only be imposed for above 14 (13) years old

d) Introduction of additional non-custodial measures. Local stakeholders should define which alternatives seem most promising and feasible (e.g. community work, skills building, learning and training programs, job opportunity programs, school order, counselling, trauma therapy, restorative measures including apology, mediation or family conferencing), foster placement

e) Widen scope of application for non-custodial measures to all forms of juvenile delinquency

f) Definition of a lower maximum duration for liberty depriving measures (like reformatory)

g) Codification that provisional release is examined automatically (not only on request) after having served ½ (not 2/3) of the sentence if it can be assumed that the child wont reoffend; and, if not granted, every 6 months automatically reviewed
h) Introduction of detention rules and standards that reflect the relevant international principles (including Havana Rules, Mandela Rules).

7) Children associated with armed forces and groups (CAAFAG)

(All of the above also applies to this group of children. In addition, Anti-Terrorism legislation and practice should reflect the Paris principles. This requires:

a) Criminalize recruitment of children below 18 years old into the armed forces.

b) Decriminalize mere membership with an ‘armed terrorism group’.

c) Codify the principle that these children should be considered primarily as victims of offences.

d) Insert a provision in the Anti-Terrorism legislation clarifying that the ordinary child justice rules and structures apply for all children in conflict with the law.

8) Child victims and witnesses of crime

a) Criminalize forms of cyber violence (e.g. sextortion, grooming)

b) Introduce a provision that allows children to report a case on their own behalf and to provide them with adequate assistance in such a case

c) Introduce provisions that protect the child victim/witness of crime from harm being added by the judicial procedure, including: provision that support must be provided to the child (including a social worker being appointed and accompanying the child throughout the process; legal assistance is provided; immediate medical assistance is provided); prohibition of direct contact between victim/witness and accused/suspect at least in sensitive cases during justice proceedings; legal requirement for specially trained interviewers; limit number of interviews; allow for video/audio recording of specialized investigative interviews and for admission of such recordings as evidence in court

d) Consider the establishment of a victim’s fund to provide compensation to child victims of crimes by the State if such cannot be received by the perpetrator.

9) Children of incarcerated parents

a) Explicit introduction of provision requiring courts to give due consideration to the use of non-custodial sentence for the child’s primary caregiver.

b) Explicit introduction of a provision requiring courts to assess and take into considerations the bests interest of the child when deciding about sentencing of the child’s primary caregiver.

c) Explicit codification of a provision requiring that if a child is incarcerated with a parent, the child should not be treated as prisoners.
5. REFERENCES

Literature / Reports

Cindy Banks (2010), Situational Assessment: Justice for Children in Kurdistan. MoLSA/UNICEF

Child Frontiers (2021), Mapping and Assessment of the Child Protection System in Kurdistan Region of Iraq


Norwegian Refugee Council (2019), Barriers from birth, undocumented children in Iraq sentenced to a life on the margins, available online


Rizgar Gerges Abdullah (2021), Legal Diversion and Alternative Measures to Liberty-Depriving Penalties In Cases Concerned with The Justice of Juveniles in Conflict with The Law, “Comparative study”, a research submitted to Heartland Alliance International as part of the project “Justice for Children and Young People”


UN Secretary-General (2021), Children and armed conflict, Report of the Secretary-General


UNODC, Handbook on Children recruited and exploited by terrorist and violent extremist groups: The role of the justice system, 2017

UNODC and International Association of Prosecutors, the Status and Role of Prosecutors (2014), quoted as Prosecutor Handbook


Terre des Hommes (Terre des Hommes) (2019), Study of the formal and informal juvenile justice system in Iraq

Weidkuhn, Ursina (2009), Child Rights and Juvenile Justice, Observations on the Swiss Juvenile Justice System in the light of international standards and compared to South Africa, Schulthess Verlag

Weidkuhn, Ursina (2003), Mediation in Juvenile Justice, Unpublished paper

Gender Based Violence:

UNFPA, A report on the GBV Assessment in Conflict Affected Governorates in Iraq, 2016 (quoted as UNFPA GBV Assessment 2016)

GBV Sub-Cluster Iraq, Standard Operating Procedures for prevention of and response to gender-based violence in Kurdistan Region of Iraq, 2017 (quoted as GBV SoP’s KRI)


National Standards (Codes, Laws, by-Laws)

Law No 76 of 1983 on Juvenile Welfare
5. REFERENCES

Rules for children in pre-trial detention, Act No 6 of 1987
Rules on the rehabilitation of juveniles, Act No 32 of 197
Criminal (Penal) Code No 111 of 1969 with some amendments of 2001 and 2015
Criminal Procedural Code No 23 of 1971 as amended on 14 March 2010
Anti-Terrorism Law No 13 of 2005 (expired and extended again)
Act No 8 from 2011 on Combating Domestic violence in KRI
Law No. 28 of 2012 on Trafficking in Persons
Prison Service Law No. 151 of 1969
Constitution of KRI of 2006
Draft Child Rights Law for the Kurdistan Region of Iraq as prepared by Professor Dame Carolyn Hamilton and Awaz Raoof, date unknown

International Standards/Instruments

General

UN Convention on the Rights of the Child (1989), quoted as CRC
Optional Protocol to the CRC on the involvement of children in armed conflict (2002)
UN Model Strategies and Practical Measures on Violence against Children (2014), quoted as UN Model Strategies
UN Model Strategies and Practical Measures on Violence against Children (2015): A checklist, quoted as checklist on the UN Model Strategies
UN Guidelines on Alternative Care (2009)
UN Committee on the Rights of the Child, General Comment No 12 (2009) on the right of the child to be heard
UN Committee on the Rights of the Child, General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration

UN Committee on the Rights of the Child, Concluding Observation Iraq (2015)
UN Committee against Torture, Concluding Observations Iraq (2015, 2022)
UN Committee on the Rights of the Child Day of General Discussion on Children of incarcerated parents (2011)
UN Security Council Resolution 2427 (2018)
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1984), quoted as Convention against Torture (not child-specific)

Children in Conflict with the Law

UN Standard Minimum Rules for the Administration of Juvenile Justice (1985), quoted as Beijing Rules
UN Rules for the Protection of Juveniles Deprived of their Liberty (1990), quoted as Havana Rules
UN Guidelines for the Prevention of Juvenile Delinquency (1990), quoted as Riyadh Guidelines
UN Committee on the Rights of the Child, General Comment No 24 (2019) on children’s rights in the child justice system
UN Standard Minimum Rules for the Treatment of Prisoners (2015), quoted as Mandela Rules (*not child-specific*)


**Child Victims and Witnesses of Crime**

UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005), quoted as UN Guidelines on Child Victims and Witnesses of Crime

UNODC/UNICEF Model Law and related commentary on Justice in Matters involving Child Victims and Witnesses of Crime (2009), quoted as Model Law on Child Victims and Witnesses of Crime


UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) (*not child-specific*)

**Regional Standards/Instruments**

Draft Arab Guide on Child-Friendly Justice’ as developed by the Arab League of Nations and Defence for Children International Palestine in 2019

Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (2010), quoted as CoE Guidelines


Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules

Recommendation CM/Rec(2018)15 of the Committee of Ministers to member States concerning children with imprisoned parents
6. ANNEX 1: DIVERSION ROADMAP

Diversion Roadmap

INTRODUCTION ......................................................................................................................................................56

PART 1: BASICS .......................................................................................................................................................56
  1. DEFINITION OF DIVERSION ...........................................................................................................................56
  2. AIMS OF DIVERSION .....................................................................................................................................57
  3. RISKS OF DIVERSION ....................................................................................................................................58

PART 2: DIVERSION IN KRI LAW AND PRACTICE TODAY .............................................................................................58
  1. DIVERSION IN KRI LEGISLATION TODAY ..........................................................................................................58
     A) WITHDRAWAL OF COMPLAINT ....................................................................................................................58
     B) CONCILIATION BY INVESTIGATING JUDGE/COURT ....................................................................................58
     C) DOMESTIC VIOLENCE LAW ..........................................................................................................................59
     D) NEW DRUG LAW ...........................................................................................................................................59
  2. DIVERSION IN KRI PRACTICE TODAY ................................................................................................................59

PART 3: DIVERSION IN KRI IN THE FUTURE .........................................................................................................60
  1. WITH LEGAL REFORM ......................................................................................................................................60
     A) TYPE OF LAW ................................................................................................................................................60
     B) FEASIBILITY ...................................................................................................................................................60
     C) ADVOCACY ....................................................................................................................................................60
     D) CONTENT OF LEGAL PROVISION ................................................................................................................60
     E) OTHER RELEVANT ISSUES ...........................................................................................................................62
  2. WITHOUT LEGAL REFORM ..............................................................................................................................62
     A) MAXIMIZE THE USE OF ALREADY EXISTING OPPORTUNITIES .................................................................62
     B) DIVERSION PILOT .........................................................................................................................................63

SUMMARY OVERVIEW ..........................................................................................................................................66

ANNEX: SOME COMPARATIVE EXAMPLES .........................................................................................................66
Introduction
In recent decades, policymakers in many child justice systems around the world have introduced new ways for dealing with children in conflict with the law that avoid resorting to judicial proceedings. Referred to as diversion and promoted by the international child justice framework, children are often referred to programmes or activities outside the formal court process.

In the Kurdistan Region of Iraq (KRI), the idea of handling cases outside of formal judicial procedures is deeply rooted. A considerable number of cases of wrongdoing are handled by religious, clan, and community leaders outside the formal court system, and the concept of extra-judicial reconciliation has been introduced into the legislation a long time ago. However, the term diversion as such does not yet appear in legal texts. The concept of diversion in the modern sense - which would include referral not only to reconciliation, but also to programs or other activities, and incorporate the principles of the Convention on the Rights of the Child - has so far not been introduced.

The purpose of this roadmap is to design possible ways forward on how the concept of diversion in this 'wider' and 'modern' sense could be introduced to KRI. This work is based on information collected during research conducted by Child Frontiers on the child justice system in KRI in 2022.

The document is organized as follows: A first part briefly presents the concept of diversion and some lessons learnt by others who introduced it. A second part looks at the status quo and describes how diversion is already found in legislation and practice of KRI today. Finally, a third part looks at two possible ways forward: one based on the hypothesis that a law reform is feasible in the near future, and a second one based on the hypothesis that such a law reform is not feasible. This is complemented by some opinions collected at a workshop conducted in KRI in November 2022, and by a few references to practices of other countries.

Part 1: Basics
1. Definition of Diversion

The research conducted on child justice in KRI indicated that there is no uniform understanding of the term ‘diversion’ amongst various stakeholders. For any future discussions on diversion, it is important to ensure that such are based on a common understanding of the term.

It is suggested that the KRI government and other stakeholders use the definition as provided by the Committee on the Rights of the Child, which defines diversion as ‘measures for referring children away from the judicial system, usually to programmes or activities, at any time prior to or during the relevant proceedings’.

In the context of this roadmap, the above definition is applied, together with the following considerations:

State/non-state reaction

While the Committee probably restricts the definition provided above to forms of state reaction to criminal behaviour that avoid formal prosecution or conviction and sanction, it also highlights the important role that customary, tribal, indigenous or other non-state justice systems play in many places, which “may provide opportunities for learning for the formal child justice system”; and therefore, suggests to recognize such justice systems.

Diversion with/without intervention

Some countries – e.g. Germany - distinguish furthermore explicitly between ‘diversion with intervention’ (e.g. referral to programs) and ‘diversion without intervention’ (dismissal of case with no further action involved).
Restoration and reconciliation

Restorative approaches (like (re)conciliation, mediation, and family conferencing), which play a key role in the context of KRI, are regarded as a specific type, form or mode of application of diversion (diversion that specifically aims at restoration/reconciliation).

Figure 1: Some types of diversion options

<table>
<thead>
<tr>
<th>Referral to ‘reconciliation’</th>
<th>Referral to ‘program’</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Apology</td>
<td>• Community service</td>
</tr>
<tr>
<td>• Some work in the benefit of victim</td>
<td>• Education/vocational training</td>
</tr>
<tr>
<td>• Compensation</td>
<td>• Program on anger management</td>
</tr>
<tr>
<td>• Victim-Offender Mediation</td>
<td>• Program on how to find/keep a job</td>
</tr>
<tr>
<td>• Family Conferencing</td>
<td>• Counselling / therapy</td>
</tr>
<tr>
<td>• Etc</td>
<td>• Similar programs can be used</td>
</tr>
<tr>
<td></td>
<td>• at prevention level</td>
</tr>
<tr>
<td></td>
<td>• at level of alternative sanctions</td>
</tr>
</tbody>
</table>

Limitations

In the context of this document, and in line with the Committee on the Rights of the Child, the following is not included in the definition of diversion but distinguished from it:

• Alternatives to pre-trial detention (like release on bail at pre-trial stage)
• ‘Alternative sanctions/measures’ (like fine as sanction/measure)
• Implementation modalities for sentences of imprisonment (like conditional release).

2. Aims of Diversion

The aim of diversion in the context of criminal justice and child justice is to avoid the negative effects of criminal procedures, including the stigma of conviction, sentence or criminal record, but also the possibly damaging consequences of arrest or detention in police cells or prisons. Other goals include the enabling of more rapid and flexible help, and easing the burden of overloaded justice systems. The approach has also proven to be cost-effective.183

Various studies indicate that diversion is effective. Below some examples:

Dünkel describes in 2010 a twofold effect of the strategy of expanding informal sanctions in Germany. Firstly, it has proved to be an effective means for limiting the Juvenile Courts’ workload. Secondly, the reconviction rates of first-time offenders who were diverted instead of being formally sanctioned were significantly lower; for repeat offenders, the re-offending rates were at least not higher than after

formal sanctions. Some years later, the author still reports that diversion has proven to be effective in preventing reoffending.

An analysis conducted in the US in 2012 which included 45 diversion evaluation studies reporting on 73 programs reports that "The results indicated that diversion is more effective in reducing recidivism than conventional judicial interventions."  

3. Risks of Diversion

Building on some ‘lessons learnt’ by other countries where diversion was introduced, the following risks should be taken into consideration and mitigated when working towards (further) introducing diversion in KRI:

<table>
<thead>
<tr>
<th>Risk</th>
<th>Mitigation measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where diversion is not provided for by law, justice professionals may not feel authorized to apply it, and as a result won’t apply it.</td>
<td>Introduce diversion in the law. If this is not feasible, and where piloting is planned, ensure that the pilot is based on a solid authorization by the relevant authority.</td>
</tr>
<tr>
<td>Where the concept of diversion, referral criteria and scope of application are not clearly defined, ‘wrong’ cases (e.g. child victims of crime, street children not in conflict with the law, or sentenced children) or unsuitable cases might be referred to diversion, resulting in misapplication.</td>
<td>Clearly define diversion, ‘beneficiaries’, referral criteria, scope of application. Ensure that all stakeholders are properly trained on the concept of diversion, including those who decide on referrals to diversion.</td>
</tr>
<tr>
<td>Where professionals tasked with applying diversion are not convinced of the approach, they might not refer cases, resulting in an apparent failure of diversion.</td>
<td>Work towards all relevant stakeholders understanding and supporting the concept of diversion.</td>
</tr>
<tr>
<td>Diverting children from judicial procedures means also diverting them away from well-installed procedural safeguards (e.g. right to silence, right to attorney), which may result in violations of child rights (procedural rights).</td>
<td>Ensure that legal standards are granted (Art 40/3 CRC) by providing for minimum standards for diversion.</td>
</tr>
<tr>
<td>Diversion practices sometimes lead to “public shaming” or interventions that are much more invasive than ordinary sanctions, resulting in violations of child rights (human rights and legal standards).</td>
<td>Ensure that human rights and legal standards are granted (Art 40/3 CRC) by providing for minimum standards for diversion.</td>
</tr>
<tr>
<td>Information discussed in diversion process or programming is later used in judicial processes if the diversion process does not succeed.</td>
<td>Specifically prohibit the use of information gathered in the context of diversion from use in future or related judicial processes.</td>
</tr>
</tbody>
</table>

Part 2: Diversion in KRI law and practice today

1. Diversion in KRI legislation today

The following pathways for or towards diversion could be identified in the current legislation:

a) Withdrawal of complaint

The Criminal Procedural Code implicitly offers some room for ‘diversion’ in cases where the complainant withdraws the complaint and no public action is required (see e.g. Art 130 and Art 3 Criminal Procedural Code/CPC). Various states used this kind of provision for introducing diversion/mediation in their practice (e.g. Egypt, Switzerland) before the diversion concept was explicitly introduced in the law.

b) Conciliation by Investigating Judge/Court

Chapter 5 Criminal Procedural Code of 1971

185. See Dünkel, Youth Justice in Germany, Oxford Handbooks Online, 2016.
describes an explicit form of diversion: ‘Conciliation’ by the investigating judge or court. It is quite remarkable to find a separate chapter dedicated to this topic in a legal document of that time, when the concept of diversion and (the re-discovery of) the idea of restorative justice only started to emerge internationally. Together with the information received during the research that these provisions are applied in practice on a daily basis, this provides a solid basis to build on in the future.

c) Domestic Violence Law

A new legal basis and structure to implement a form of an extrajudicial response to wrongdoing was introduced in the Domestic Violence Law of 2011, which holds in Art 5 that the court can refer parties to a reconciliation committee consisting of ‘experts and specialized individuals,’ provided such referral does not affect protection procedures. This provides a model that could be built upon when considering to introduce diversion more formally into the KRI child justice system, as it has been suggested by local experts during a workshop in November 2022.

d) New drug law

Art 37 of the 2020 drug law\(^{187}\) allows for “treatment instead of punishment” for drug addicted. This is rather a form of alternative sanction/measure than a form of diversion (as not coming along with an extrajudicial procedure), but it still deviates from the ‘traditional’ judicial response and offers a type of intervention – referral to a program instead of sentencing – that is typical for diversion processes. As such, one can build on this provision and experience collected based on it, and use it to promote and advocate for a diversification of diversion options which in KRI so far concentrate on non-intervention (see above a) and on restorative approaches (see above b).

2. Diversion in KRI practice today

In practice, it seems that ‘settlement meetings’ or mediations are conducted frequently in KRI, involving both:

- formal actors including police officers, social workers, judges or investigators, and
- informal actors including village elders, clan leaders, sheiks, or imams.\(^{188}\)

Up to now, there is no ‘official’ link between informal reconciliation and legal (re)conciliation. However, the research indicates that there are some de-facto links: in some cases, the actors overlap with justice professionals sometimes being also community leaders and applying reconciliations in both roles; and sometimes, an agreement found by the social/tribal reconciliation is said to be brought to the judge who then may accept it and adapt the sentence accordingly. Further, the research found that all parties understood that the formal justice system still remained as a ‘last resort’ should the initial mediation with informal actors not lead to a resolution.

In the course of the research, it has furthermore been reported:

- that formal mediations are used, in particular, by the more educated people, while less educated people would rather turn to informal actors (indicating that it is important to keep and promote both approaches). It has furthermore been suggested that people should be able to use both pathways, and if they are not happy with the outcome of one pathway, they may go to the other.
- that types of cases where reconciliation is used includes in particular: fighting/physical assault, theft, threat, domestic violence, car accidents. It is widely understood that very serious cases, such as murder, are not appropriate for reconciliation.
- that cases of rape are sometimes brought to non-formal actors for mediation, and that that the ‘solution’ proposed by clan and religious leaders is either to force the girl to marry the accused rapist, or to find a monetary amount to settle the issue.
- that at Juvenile Police stations, reconciliation is applied in 10-70% of all cases of juvenile offending.

\(^{187}\) Law on combatting drugs and psychotropic substances in KRI of 2020. An English translation could not be found.
\(^{188}\) Cindy Banks, 60 and 87, and interviews.
that reconciliation conducted by the investigator requires consent of the prosecutor.
• that lawyers also promote the use of reconciliation.
• that conciliation (chapter 5 CPC) is used by investigating judges / courts on a daily basis
• that reconciliation does not always lead to sustainable results (this might indicate deficiencies in choosing the cases for applying reconciliation or in methodology applied).
• that ‘Revenge by the victim is not necessary if you trust the justice system.’
• that ‘Reconciliation is the master of the judges, the supreme solution’ (indicating the weight given to the approach).
• that reconciliation is sometimes also used ‘after judgment’ (which indicates a good practice to build on).

Part 3: Diversion in KRI in the future
This section presents two possible ways forward: one based on the that legislative reform is feasible in the near future, and a second based on the hypothesis that such a law reform is not feasible.

1. With legal reform

a) Type of law

In the context of legal reform, diversion could be (further) introduced in various codes, including (but not limited to):

• A revised Juvenile Welfare Law
• A revised Criminal Procedural Code
• A new Child Rights Law (like the draft Bill)
• A future Juvenile Justice Code (replacing the Juvenile Welfare Law).

It is not strictly required that all details which need to be regulated for the introduction of diversion are regulated at the level of a law/code. However, at least the key pillars should be regulated at such level. In addition, the following reflections might speak in favor of having all relevant provisions on diversion collected in one legal document instead of being spread in e.g. a code and an implementation decree: a) it lowers the risk that provisions are overlooked or forgotten by those applying the law; b) harmonization of provisions is more easily ensured; c) waiting for secondary legislation (like an implementation decree) might delay or hamper the implementation process of the code.

b) Feasibility

Looking at the complex political situation in KRI and the backlog of legal reforms with many bills pending in parliament (including the Child Rights draft law which has been pending for several years already), it is questionable whether the time is ripe for a legal reform where diversion in a wider and ‘modern’ sense is introduced. In addition, the concept of diversion seems not yet very well understood and/or embraced by all stakeholders, apart from the well-established concept of (re)conciliation. It is suggested that local stakeholders, who are better able to assess the situation, discuss this question of whether or not such a law reform is feasible at this moment, and plan further from there.

For some suggestions on the way forward with legal reform, see below; for suggestions on the way forward without legal reform, see the next chapter.

c) Advocacy

Building on the above, it is suggested to start with a solid advocacy input where the concept of diversion and its advantages for both children and society at large are explained (including its cost-effectiveness and resulting low recidivism), leading to a better understanding and embracement of the concept, to path the way for a legal reform (be it now or later) where diversion could be successfully introduced.

d) Content of Legal Provision

Content-wise, legal provisions on diversion should cover the following aspects, based on international standards and lessons learnt:

189. See in particular Committee on the Rights of the Child, General Comment No 24, p 15-18.
• **Definition and Aim**

• **Preconditions**, including
  - There is compelling evidence that the child committed the alleged offence;
  - The child freely and voluntarily admits responsibility (while such admission should not be used against him/her in any subsequent legal proceedings); and
  - The child agrees to the diversion in written form after having been appropriately informed as to the form, content, duration and consequences of failure to comply with such diversionary measures

• **Scope of application**
  - Define at what stage of the proceeding diversion is applicable (police, prosecutor, court, all). In many countries, the preferred solution is prosecutor (and court) level
  - *The workshop conducted in November 2022 indicated an overall preference for an application at a very early stage, and at various stages (investigation/prosecution/court), reflecting current practices and experiences*
  - Define which cases are eligible for diversion (should not be limited to petty cases, so as to render it an important instrument, but be considered “wherever appropriate and desirable,” and become “the preferred manner of dealing with children in the majority of cases”)
  - *The workshop conducted in November 2022 indicated that there is no consensus yet on this matter. Some suggested to limit diversion/reconciliation to minor cases, while others preferred a very wide scope of application*

In Switzerland, the scope of application for mediation in juvenile justice as defined in the law is very wide (no type of crime is excluded. But similar to KRI Domestic Violence Act, the law requires that mediation does not hamper the imposition of protection measures where such are required). In South Africa, the scope of application for diversion as defined in the law is almost unlimited as well. In Germany, the application of diversion in practice is very wide: around 70% of all cases of juvenile offending are responded to by diversion (many of which are forms of non-intervention).

• **Content**, which could include:
  - ‘Non-intervention’ (no prosecution, no reaction), especially in cases where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner
  - Referral to “community-based programs” that seem adapted to the context and feasible, which could imply (final suggestions ideally identified by local stakeholders):
    - Community service;
    - Programs that create opportunities for young people (skills building, learning and training programs, job program, school order etc);
    - Counselling and other measures that promote healing and recovery (e.g. for drug addicts; trauma therapy);
    - Restorative measures that promote reconciliation with family and community
  - *A workshop conducted in November 2022 indicated a strong preference for restorative measures (reconciliation), reflecting current practice and experience*

The same programs could be used in the context of (prevention and) alternative sanctions/measures (as explicitly provided for e.g. in the Child Justice Act South Africa), thus it is suggested to adapt those provisions in parallel accordingly

---

190. Art 40(3)(b) CRC; Rule 11 BR.
191. Committee on the Rights of the Child, General Comment No 24 p 16.
193. See Rule 11 BR and commentary.
• **Minimum standards:** Diversion measures should not include deprivation of liberty, may not be degrading, stigmatizing or exploitative, may not interfere with the child’s education or work, may not damage the child’s health, must be adapted to age and development of the child, shall be proportionate to the crime committed.

• **Roles and responsibilities** should be clarified.
  - Experiences in other countries showed that power struggles may arise between judges and prosecutors when it comes to their roles in the diversion process. One way to address this is giving them shared powers.
  - In KRI it would be crucial, in addition, to define the role of the relevant non-state actors in the context of diversion, and to establishes linkages between formal and informal actors – e.g. by cooperation protocols, regular round-tables, common workshops and training inputs and similar.

• **Procedure**
  - Should be explained step by step, and illustrated with a chart for easy understanding.
  - A simple example is provided for under ‘Pilot Project’ below.

• **“Procedural rights”** should be ensured, including:
  - Possibility of child to seek legal or other appropriate assistance relating to diversion.
  - Possibilities to have decisions / measures reviewed.

• **Consequences of Non-Compliance**
  - E.g. hear the child and verify reasons; provide a second chance, or.
  - Case going back to ordinary judicial process.

• **Consequences of Compliance / Effect of diversion**
  - Final closure of the case.
  - Diversion record should not lead to or be regarded as criminal record.

• A workshop conducted in November 2022 indicated a consensus on the following: a) key decision maker on diversion/reconciliation is the (investigating) judge; b) an interdisciplinary reconciliation committee could be introduced, similar to Art 5 Domestic Violence Law. Participants felt inspired by the Egyptian Model of restorative conferencing (see Annex) and called for solutions that are in harmony with Kurdish society (see also the South African Model on ‘linking’ tradition and child rights, Annex).

  e) Other relevant issues

A legal reform as described above should be accompanied by training and guidance that must be timely prepared and provided to the relevant professionals; by the creation of minimum requirements or accreditation procedures for diversion providers; by a monitoring and evaluation mechanism; and by a costing process (see also below under ‘Pilot’).

2. **Without legal reform**

a) **Maximize the use of already existing opportunities**

Promote use of existing (formal) diversion options:

The current law already provides quite some scope for applying diversion, in particular (re)conciliation applied by judges, see above. It is suggested to further promote the use (and possibly quality) of the already available options by awareness raising and training inputs for the relevant justice professionals, including some training in “modern” mediation techniques. This could furthermore include interdisciplinary round tables and peer-conferences where promising practices are shared, discussed and promoted, lessons learnt collected, and minimum standards and safeguards designed. All of this would, in parallel, also contribute to the preparation of a diversion pilot and to a future law reform.

This should include some discussions and clarification on which role-players (police, prosecutors, judge) can apply which mechanisms (e.g. Art 130 and Art 3 CPC; Chapter 5; potential other provisions) precisely, and the drafting of some guidance on this to promote uniform practices that are in line with national and international standards.
Link formal and informal diversion/reconciliation:

While it is recognized that both formal and informal actors contribute to reconciliation (and diversion), there is no official link between the two. It is suggested to create such links between social/tribal and legal (re)conciliation, e.g., starting with a) common roundtables where each side presents their own practice to enable a comparison of practices and mutual learning, b) common training inputs on both traditional and ‘modern’ understanding and mediation techniques, c) followed by together defining common minimum standards, safeguards and cooperation protocols (building on practices already started, as described above). Next to linking the various actors, this can also further promote the use and the quality of diversion/reconciliation, and again prepare for a future pilot or law reform.

Broaden the use of reconciliation expertise: Prevention, reintegration, healing

The already available reconciliation expertise could be used not only as response to delinquency instead of punishment, but also in wider ways, including the following:

- In the area of prevention e.g., introduction of school mediation where respected elders/religious leaders/mediators, possibly together with school social workers, train students in reconciliation techniques and ‘peace making’, so that the students become mediators themselves and can reconcile between students in cases of conflicts at school, like bullying. This could also contribute to some degree to the wider reconciliation needs of a society after war.
- Such work could be complemented by wider prevention efforts, e.g., school social workers conducting workshops on burning topics such as suicide prevention; or police, prosecutors and judges providing inputs in schools on prevention and response to sexual abuse, etc. This goes beyond the scope of the present document.
- In the area of sentencing: reconciliation efforts already demonstrated by a young person when appearing in court can be used as mitigating factor when the judge is imposing a sentence/measure (a practice that is partially already applied but can be further promoted and standardized).
- In the area of execution of measures: where a young person has not yet demonstrated any reconciliation efforts when appearing in court, working towards such reconciliation could become a standard element of the reintegration process in the context of the implementation of the measure imposed by the judge (e.g., probation officer, or social worker in reformatory, encouraging the child to work towards an apology; conducting workshops on how to work towards/reach reconciliation; psychologists working on empathy building with children).
- Regarding isolated or traumatized children, reconciliation with family, community and society to overcome stigma and exclusion is a key factor on the way towards healing/recovery and reintegration. The existing expertise of respected community mediators can be used to promote such reconciliation, recovery and reintegration (widening of a practice that seems already partially applied).

Data collection

Introduce measures to ensure that both formal and informal reconciliation practices are recorded and somewhere compiled, as an overall instrument for analysis (of workload of professionals; types of crimes, cases, solutions found, lessons learnt) and planning for the future.

b) Diversion Pilot

In a next step - or in parallel to the above, and pending law reform - the initiation of a diversion pilot could be considered, to find out “what works” and what is required (infrastructure, skills etc) when diversion is going to be introduced in the law. Content-wise, this should add new elements to the already existing (restorative) options, and focus on programs or activities that are feasible and address some of the most urgent needs of children and youth in KRI today.

- The workshop conducted in November 2022 indicated a strong interest in the Egyptian pilot model (see Annex). It could be
considered to organize a study tour to Egypt to learn more about this model and evaluate whether / how it could be adapted to KRI. This could, in particular, help to understand the wider and modern concept of diversion/reconciliation.

Authorization

A key requirement for a pilot project is that it is based on a solid authorization. KRI Judges clearly highlighted that they have to strictly follow the law, thus in the absence of an ordinary legal basis, authorization and guidance for justice professionals that authorizes them to apply diversion must otherwise be ensured, e.g. by a decree of the relevant bodies (in KRI presumably the Judicial Council and possibly also the Office of the Prosecutor).

Regulations

Next to the authorization as described above, regulations enacted by the relevant authorities should – similar to a legal reform proposal, see above- define aim, scope of application, preconditions and content of diversion; roles and procedures; minimum standards; consequences of (non)-compliance; but also nomination procedures, training requirements for the professionals involved, minimum requirements for the services involved; and location, duration, monitoring and evaluation of the pilot project, and costing. Some details below:

Preconditions, Minimum Standards, Consequences of (non)-Compliance

The same programs could be used in the context of alternative sanctions/measures, thus a pilot where such programs were tested would also serve the way forward of alternatives sanctions / measures.

Roles and Procedures

Roles and procedures must be clearly defined and agreed upon by the relevant stakeholders. As held above, during the workshop conducted in November 2022 it was suggested to create a child-friendly, interdisciplinary reconciliation committee similar to Art 5 Domestic Violence Law. Below some suggestions how roles and procedures could look like in this context:

See above ‘Content of legal provisions’ for details on the preconditions, minimum standards, and consequences for non-compliance.

Scope of Application

The relevant stakeholders should together define at what stage of the process and in which cases diversion shall be applicable. It is recommended to build on today’s practice, and to consider extending the range of offences for which diversion is possible in the second half of the piloting phase, to maximize the information collected during the pilot.

Content

It is suggested that the list of diversion options includes warning and reconciliation (both already known in KRI system). Additionally, 1-3 programs/activities should be developed that are a) feasible and b) address some of the most urgent needs of children in KRI, as identified by local stakeholders. The research conducted suggests that an urgent issue is the creation of opportunities for young people (like education, vocational training, skills building, career counselling, job programs etc), and options that promote healing/recovery. Various stakeholders suggested the introduction of community work (which could also be implemented as a restorative form with community work in the benefit of the victim). Other options mentioned include drug counselling (implemented in parallel with implementation of new drug law), and mandatory school order.
• Police conducts a preliminary investigation, followed by a needs/risk assessment by a social worker. If a case seems eligible for diversion, the police sends the file within a defined number of days to the investigating judge.

• Investigating Judge decides within a defined number of days whether the case is eligible for diversion (within scope of application / compelling evidence / confession). If in the affirmative, the case is ready for diversion (by...)

• Investigating Judge ensures that the diversion option is proportional, adapted to the age and development of the child, not interfering with the child’s education/work/ health etc.

• Implementation must be completed within a certain number of days and be controlled (by...)

• Investigating judge decides, based on a report and within a defined number of days, whether the implementation was successful. If in the affirmative, he/she closes the case and informs the parties accordingly. If the measure was not properly implemented, because the child failed without excuse, and after a warning/second chance, the case goes back to the normal judicial procedure and the parties are informed accordingly.

• The interdisciplinary committee could possibly function similar to a ‘One-stop-round table’ or a case conference (similar to the South African Preliminary Inquiry, see Annex), where many of the steps described above are combined in one by all relevant stakeholders sitting together and discussing the way forward, instead of sending each other the file. Informal actors with reconciliation experience could form part of the committee.

Training

All nominated stakeholders from police, prosecution, court, social work, diversion provider must undergo appropriate training before the pilot starts. These trained persons could become trainers for their colleges at a later stage.

Guidelines

The nominated stakeholders should be guided by some framework in the pilot phase (see an example in the Annex). This document can be adapted and amended in the course of the pilot project and as such serve as preparatory work for a later law reform.

Diversion provider

Diversion programs and providers must be well assessed, selected and possibly accredited, to ensure a safe and good quality response.

The South African Child Justice Act of 2008 requires in S 56 the establishment of a system of accreditation of diversion programs and diversion providers (see Annex).

Duration

The duration of the pilot could be e.g. 1-2 years, with the option for prolongation, depending on the monitoring and evaluation outcomes.

Monitoring and Evaluation

The pilot could be accompanied, monitored and evaluated by a suitable University Department of KRI. All aspects mentioned in this section should be evaluated, and children should play a key role in this exercise.

Media campaign

A media campaign could keep all relevant stakeholders and children, families, communities and society at large informed about the pilot, its purpose and its outcome.

Budget

Ensure budget for the above.
Summary Overview

Annex: Some Comparative Examples

A) Pilot: Egypt

In Egypt, the Office of the Prosecutor, with the support of UNICEF, initiated a diversion pilot with a restorative justice approach (‘restorative conferencing’) at the prosecution level which combines ‘referral to restoration’ with ‘referral to program’ as illustrated in Figure 1 above. The pilot aims at providing assistance to the child; holding the child accountable; restore the harm caused; promote participation, reintegration and prevent reoffending, whilst granting legal safeguards.

UNICEF supported the development of guidelines and conducted trainings for professionals involved. An evaluation of the pilot demonstrated positive results, which was used for advocating for law reforms.

For more information on this pilot see the video (04:17 minutes) under: https://www.youtube.com/watch?v=WsZD0OVHMvM&authuser=0

For the content of the guidelines, see the extract below:

B) Linking Tradition and Child Rights: South Africa

The South African Child Justice Act links tradition and child rights by holding in Art 2 that the objective of the act is to “protect the rights of children” and “promote the spirit of Ubuntu.”

Ubuntu is an old philosophy that seeks unity and reconciliation rather than revenge and punishment. The South African Constitutional Court described Ubuntu as “a culture which places some emphasis on communality and on the interdependence of members of a community [that] recognizes a person’s status as a human being, entitled to unconditional respect, dignity, value and acceptance from the community to which he or she belongs. It also invokes a corresponding duty of that person to give the same respect, dignity, value and acceptance to all others in that community.”

---

194. S v Makwanyane 1999 (3) SA 391 (CC) p 224.
C) Diversion Legislation: South Africa

The Child Justice Act 75 of 2008 of South Africa (available online) contains a sophisticated chapter on diversion which can serve as model for other states. The chapter includes an exceptionally long list of diversion options (Section 53), including many restorative options, and provides for an almost unlimited scope of application (Section 52). It furthermore provides an interesting procedural innovation, the so-called preliminary inquiry (Section 43), which is an informal meeting under the lead of the preliminary magistrate that must take place within 48 hours after the arrest at which the child, parents, the social worker and the prosecutor participate (and potentially others, like diversion provider and lawyer). The aim of the meeting is to clarify whether the personality assessment has been conducted, whether a referral to the children's court (child protection) is required, whether detention is required, or whether diversion could be applied. If diversion is applicable, a diversion option is chosen and ordered.

For the content of the chapter on diversion, see below:
7. ANNEX 2: GUIDANCE ON CHILD-FRIENDLY COURTS

Guidance on “Child-Friendly Courts”

INTRODUCTION ......................................................................................................................................................69

PART 1: CHILD-FRIENDLY JUSTICE .......................................................................................................................69
1. GUIDELINES ......................................................................................................................................................69
2. DEFINITION ......................................................................................................................................................70
3. ELEMENTS OF CHILD-FRIENDLY JUSTICE/COURTS: ....................................................................................70
   A) SPECIALIZATION, IMPARTIALITY AND INDEPENDENCY .............................................................................70
   B) ACCESS TO JUSTICE .....................................................................................................................................70
   C) INFORMATION ................................................................................................................................................70
   D) ASSISTANCE ..................................................................................................................................................71
   E) PARTICIPATION ..............................................................................................................................................72
   F) PRIVACY .........................................................................................................................................................72
   G) DEPRIVATION OF LIBERTY ..........................................................................................................................72
   H) SPEEDY PROCEEDINGS ...............................................................................................................................73
   I) MEASURES OF RESTRAINT ..........................................................................................................................73
   J) DECISION-MAKING ........................................................................................................................................73
   K) ENVIRONMENT .............................................................................................................................................74

PART 2: CHILD-FRIENDLY COURT IN PRACTICE ..................................................................................................75
1. SELF-ASSESSMENT .........................................................................................................................................75
2. SOME COMPARATIVE PRACTICES ..................................................................................................................79
   A) FAMILY AND PROTECTION MATTERS ..........................................................................................................79
   B) JUVENILE JUSTICE .......................................................................................................................................79
   C) CHILD VICTIMS AND WITNESSES ................................................................................................................81

PART 3 CHILD-FRIENDLY INTERVIEWING/HEARING ..........................................................................................81
1. CHALLENGES ....................................................................................................................................................81
2. SOME COMMUNICATION RULES .....................................................................................................................82
3. TYPES OF QUESTIONS .....................................................................................................................................82
Introduction

The purpose of this document is to provide guidance for the design of ‘child-friendly courts’ in Kurdistan Region of Iraq (KRI), based on local, regional and international standards as well as practices and experiences. It contains reflections on, and direction to further enhance child-friendliness of the already existing Juvenile Courts in KRI, and elaborates the design of a potential ‘model court’.

The document is organized as follows: Part 1 briefly describes the framework that evolved around the term ‘child-friendly justice’ regionally and globally, and enumerates some key elements of the term. Part 2 offers a ‘Child Friendly Court Self-Assessment’ that can be used by local stakeholders to take stock of the current level of child-friendliness exhibited by the system, and serve a basis for further discussions and inspiration; a process that has been started during a workshop in Erbil early November 2022. Part 3 compiles a very short guidance on how to hear children in a ‘child-friendly’ way. This is complemented by references to practices and experiences of KRI and other countries.

These Guidelines’ primary focus is on the group of children that is dealt with by KRI Juvenile Courts (children in conflict with the law), but most considerations apply to all children in contact with the justice system; and, in analogy, also to other phases of justice proceedings than the court phase.

Part 1: Child-Friendly Justice

1. Guidelines

‘Child-friendly courts’ are an element of a ‘child-friendly justice’ system. But what do these terms refer to? They are relatively new, and do not yet appear in the Convention on the Rights of the Child or in the international framework that accompanies the Convention195 (although their idea is rooted therein).

The term ‘child-friendly justice’ first emerged at the regional level, starting with the Guidelines of the Committee of Ministers of the Council of Europe of 2010, and based on the recognition that “when faced with the justice system, children are thrown into an intimidating adult world which they cannot understand. Adapting justice to their needs is therefore necessary.”196 This was followed by Guidelines on child-friendly justice being developed in Africa, South America, and by the Arab League.197

In 2017, a first global instrument on child-friendly justice was prepared by the International Association of Youth and Family Judges and Magistrates (IAYFJM). Similar to the regional Guidelines, they aim at creating justice systems that guarantee the effective implementation of children’s rights, and at conveying a vision of how the justice system should interact with children.198

See Draft Arab Guide on Child-friendly Justice in Arabic
See European Guidelines in English under https://rm.coe.int/16804b2cf3
See Guidelines IAYFJM on Children in Contact with the Justice System in English and Arabic under: https://aimjf.info/guidelines/


198. See Guidelines for children in contact with the justice system, 6.
2. Definition

The European Guidelines and the IAYFJM Guidelines define the term ‘child-friendly justice’ as follows:

“Child-friendly justice” refers to justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is

- Accessible
- Age appropriate
- Speedy
- Diligent
- Adapted to and focused on the needs and rights of the child

Respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.”

In addition, the guidelines reiterate basic principles and rights as provided for in the ‘older’ international child justice framework, including e.g. the best interests of the child, or the right to non-discrimination; and to some key modalities for their implementation, including the need for well-trained, multi-disciplinary professionals, and for good cooperation between all role-players.

Some elements of child-friendly justice that are particularly relevant for the court stage are briefly discussed below.

3. Elements of Child-Friendly Justice/Courts:
   a) Specialization, Impartiality and Independency

Specialized child courts should be set up for cases concerning children, or at least specialized judges be appointed for handling such cases, and procedures be adapted (adapted language; atmosphere of understanding; removal of legal attire). Children should not be judged by Military courts or State security courts (this applies in analogy also for the pre-trial phase).

(Child) Judges should exercise their judicial function independently and impartially.

b) Access to Justice

All children must have access to (judicial or other) remedies. Some guidelines suggest that it should be possible for children to initiate proceedings in their own name (in addition to legal representatives, parents or guardians acting on their behalf). Others limit this to children who have sufficient understanding of their rights, but add that obstacles such as the cost of the proceedings or the lack of legal counsel should be removed.

   c) Information

Children and their parents are normally not familiar with procedural rights and court proceedings, and may be afraid to appear in court. This can be addressed by ensuring that children and caregivers are provided timely and age-appropriate information about their rights, existing support

---

199. Tsamota/UNICEF: Improve Knowledge and Skills of Juvenile Justice and Security Sector Staff on Gender Based Violence Prevention and Response and Child Friendly Justice Procedures and its Application for Children in Contact with the Law
200. IAYFJM Guideline 4.4.; Committee on the Rights of the Child, General Comment No 24, p 96, 107; European Guideline Chapter IV, p 125.
201. IAYFJM Guidelines 4.5.
203. European Guidelines Chapter IV, para 35. See also IAYFJM Guidelines 4.4.
and complaints mechanisms, the judicial process and possible outcomes at each stage of the process, and by all professionals involved. This enables children and caregivers to prepare themselves for the process, promotes effective participation, and can help reduce fear of the process.

In recent years, various States developed child information materials (see an example in Part 2 below) and trained justice professionals in how to interact with children in adapted ways (see some guidance in Part 3 below).

d) Assistance

Children should never be alone in a judicial process, but be accompanied and supported by adequate support persons. Parents/guardian and psycho-social professionals can provide psychological/emotional support, and lawyers provide legal support. Legal support should be granted at no costs at least for those who cannot afford such assistance. Translation and other communication assistance (e.g. sign language) must be provided as required.

- If parents/guardian are unable or unwilling to provide adequate support (e.g. if a parent is an alleged perpetrator where the child is a victim/witness; a parent is a co-perpetrator of the child; or a parent is imprisoned and therefore unavailable) and/or if there is a conflict of interest between child and parent/guardian, another appropriate adult (e.g. a social worker, or a family member the child trusts) should immediately be appointed.

- **Effective legal assistance** requires that such assistance:
  - Is automatically ensured from the first moment when the child comes into contact with the justice system (today in KRI, legal assistance is mandatory only at the court stage in cases of felony, Art 144 Criminal Procedural Code);\(^{204}\)
  - Is specialized in handling child cases and in communicating with children;
  - Is timely and fully informed on the case by the authorities;
  - Enables case preparation together with the child, and that the lawyer helps the child to understand his/her rights, the process, and any decisions taken.

Furthermore, the role of legal assistance in child cases should be defined, whilst ensuring that it represents the interests of the child and not the interests of parents, institutions or others.

---

204. The right to legal representation is granted in KRI, but the reflection here is that it should in addition also be ensured (appointed automatically) in all cases and at an early stage.
e) Participation

Children should be provided an opportunity to be heard in any proceeding affecting them because a) children have a right to be heard (Art 12 Convention on the Rights of the Child, CRC); b) studies have shown that children value being heard; and c) active participation may help children to better understand the process and decisions.205

In this context, the term participation (which is not mentioned in Art 12 CRC) “has evolved and is now widely used to describe ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes.”206

However, it must be noted that participation is not an obligation of the child, and the right to silence must be granted to children in conflict with the law.

The above implies that trials in absentia (as e.g. allowed by Art 50 Juvenile Welfare Law) are not the favored option; and that whenever possible, the child should be given the opportunity to be heard directly (instead of being heard via another person, like parents or a lawyer), to enable a real dialogue between child and judge.

Effective participation of the child can be promoted by, inter alia:

- Adequate information (see above)
- Support person (see above)
- Adapted language (see above and below)
- Adapted environment (see below)
- Hearings behind closed doors (see below)
- Attitude of judge and interviewing technique (see below).


206. Committee on the Rights of the Child, General Comment Nr 12 p 3.

207. See European Guidelines IV/2; Art. 40(2)(b)(vii) and Art 16 CRC; Committee on the Rights of the Child, General Comment No 24 p 66-71; Rule 8 and 21 Beijing Rules.

f) Privacy

Children have the right to have their privacy fully respected at all stages of the proceedings. Underlying this privacy is the idea that young persons are particularly susceptible to stigmatization, and the negative effects of being labelled shall be avoided in order not to hamper the child’s reintegration and continued positive development.207

This calls for:

- Hearings behind closed doors
- Files and records being kept strictly confidential
- Publications only with great restraint, and never leaving to the identification of the child
  - No use of pictures of child (also not from behind/distorted face)
  - No use of initials of child
  - No use of names of child or parents on court screens or similar
- Restrictive use of criminal records
- Separate waiting area for children in court
- Sensitized professionals.

g) Deprivation of Liberty

Any form of deprivation of liberty (police arrest; pre-trial detention; provisional measure during proceedings; imprisonment as sanction; placement in an institution as final imposed measure) should be used only as a measure of last resort and for the shortest appropriate period of time (Art 37 CRC).

This can be promoted by the following measures, in particular:

- Codification of the above-mentioned principles
- High legal threshold for imposing any form of deprivation of liberty (restricted to most serious cases committed by elder juveniles)
- Availability of diversion and effective alternatives to pre-and post-trial detention
- Generous rules on conditional sentences and early release
• Definition of child-specific maximum duration of pre-and post-trial detention
• See also measures under ‘Speedy Proceedings’ below.

h) Speedy Proceedings

Justice proceedings where children are involved should be completed without undue delay and as speedily as possible (unless this would be against the best interests of the child, and whilst still being diligent), for the following reasons: a) children have a different understanding of time than adults b) delays can put psychological pressure on children and affect their best interests; c) with regard to children in conflict with the law, quick responses to wrongdoing are vital to ensure effectiveness of the response.

Speedy proceedings can be promoted by, in particular:

• Diligent professionals
• Efficient working methods
• Good cooperation between the various justice professionals involved in a case
• Time-limits defined in the law
• Sufficient resources (like sufficient human resources, office space, means of transport etc. for police officers, investigators, prosecutors, judges, social workers and lawyers)
• Prioritization of cases involving children where special child courts are missing.

i) Measures of Restraint

Instruments of restraint should be used only when required and never as routine. Shackles should be fully avoided for children, and the use of handcuffs and other measures of restraint should be

• Guided by law
• Limited to cases where the child poses an imminent threat of injury to himself/herself or others
• Be a measure of last resort and for the shortest possible amount of time.

Inappropriate use of measures of restraint potentially conflicts, in particular, with the right to dignity and the right to be presumed innocent, and should be punished appropriately.208

j) Decision-Making

Best interests of the child

In all court decisions, the best interests of the child shall be a primary consideration (Art 3/1 CRC. See also the Juvenile Welfare Act which talks about ‘the interest’ of the child e.g. in Art 35 and 42). But how to determine the best interests of the child?

The Committee on the Rights of the Child provides detailed guidance on this in a General Comment, and highlights that the best interests of a child must be determined on a case-by-case basis, ideally by a multidisciplinary team, and requires

208. Committee on the Rights of the Child, General Comment No 24, p 95f. It may also conflict with the presumption of innocence and wrongly induce the inference that the accused is dangerous, see UNODC et al, Handbook on handcuffs and other instruments of restraint in court hearings. Practical guidelines and international standards (2021), 19, available online.

the participation of the child. In short, it suggests to determine the best interests of the child as follows:210

a) Determine which elements need to be looked at in a specific case, and what a certain decision would imply with regard to, e.g.:

- The child’s view
- The child’s identity
- Preservation of family environment, maintaining family contact
- Care, protection and safety of child
- Situation of vulnerability (e.g. minority, refugee, street child)
- The child’s right to health
- The child’s right to education

b) Weight and balance the (possibly conflicting)211 elements against each other.

---

210. See Committee on the Rights of the Child, General Comment No 14 p 47, 52, 80, 82.
211. E.g. preservation of family environment versus need to protect from violence by parents.
212. Committee on the Rights of the Child, General Comment No 14, p 28.
213. See for the possible exception Rule 16 see UN Minimum Rules of the Administration of Juvenile Justice (Beijing Rules).
A more recent development is the recognition that environment and setting have an impact on the right to be heard effectively. As the Committee on the Rights of the Child holds, “A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age.”215 Similar the reasoning of the European Court of Human Rights in T and V v UK216, where the court found the “formality and ritual of the Crown Court must at times have seemed incomprehensible and intimidating for a child of eleven,” which, in the end, led to the result that the defendant was denied a fair hearing.

Along this line of thinking, the European Guidelines on Child-friendly Justice hold that cases involving children should be dealt with in non-intimidating and child-sensitive settings217 where children can feel safe and more easily speak freely.

The Guidelines and the Committee on the Rights of the Child218 give some indications on how such an environment could look like, without describing it in detail and whilst leaving much to the States.

Based on this, a few practical considerations are listed in Part 2 below, complemented by some practices developed in other countries.

Finally, court environments should be accessible for children with physical impairments.

### Part 2: Child-Friendly Court in Practice

#### 1. Self-Assessment

Building on some of the elements of child-friendly justice described above, elements of a child-friendly court may imply the points raised below. It is suggested that KRI stakeholders, including child judges and other justice professionals, look again at the list below (a process that was started during a workshop in November 2022), adapt and complement it as required, assess how the elements look like in KRI today (some references to KRI are already included, but not in a comprehensive way), acknowledge existing good practices, and, in particular, discuss what innovation would seem feasible and desirable in KRI courts in the future.

#### Preparation of Child

*In a child-friendly court, the child is familiarized in advance with the process, the role-players involved, the possible outcomes and the (court) environment in a way that is understandable for the child.*

- Lebanon: Info-brochures and videos in child-friendly language have been prepared for children
- Such information can be shared with the child/legal representatives in advance (e.g. send a brochure together with the invitation), or the child can be prepared in court before the hearing takes place (e.g. by a video and/or meeting with court social worker in court).
- Practice in KRI/your court re preparation of child? Ideas for the future?

#### Preparation of Case

- A specialized lawyer is timely appointed, provided with the case file, and meets the child/family to prepare the case properly
- A specialized social worker meets child/family and prepares timely a reliable social inquiry
- The age of child is timely verified and, if required, assessed in a standardized manner
- A translator or other communication support is organized if required
- All justice professionals involved carefully prepare themselves
- Practice in KRI/your court re preparation of case? Ideas for the future?

215. Committee on the Rights of the Child, General Comment No 12, para 34.
216. ECtHR 16 December 1999, Appl. No. 24724/94; Appl. no. 24888/94, para 86 and 89.
217. See para IV 54ff and Explanatory Memorandum Guidelines.
218. In General Comment No 24.
Invitation / Summon

A child-friendly court invites the child together with support persons. It may send the child a separate invite, in an adapted language, and support the invited persons in finding their way to the court/hearing room.

- Switzerland: Some juvenile prosecution offices/courts send a separate invite to the child written in an adapted language, and the invite is complemented by simple directions.
- Practice in KRI/your court re invitation/summon? Ideas for the future?

Transport

If the child is transported by security forces, separation from adults during transport is ensured.

- Requires that the relevant security forces (e.g. KRI Juvenile Police) have a car dedicated for this purpose.
- Practice in KRI/your court re transport of child? Ideas for the future?

Court Building and Organization

- A child-friendly court is ideally a separate unit located in a separate building and handling all cases involving children.
- Alternatively, a separate unit is created in a separate ‘corner’ of a general court building. This ideally comes along with
  - A separate entrance
  - A separate reception that is well indicated, and that supports the child and his/her support persons to find the waiting area or hearing room.
- No names of child or parents are published (e.g. on screens, lists) in the court building
- How far is such granted in KRI/your court building? Ideas for the future?

Waiting Area

A child-friendly court provides for a separate waiting area for children that ensures separation from adults and protection from public view (currently not granted in KRI). New court constructions should budget for such a room. In existing buildings, such a waiting area can be established e.g. in an empty office, in the hearing room, in the office of the clerk if confidentiality of files can be granted, or be created with some construction work (e.g. establishment of some separation walls or shields in the court corridor; or by adding an annex to an existing building).

Ideally a child-friendly waiting area

- Grants separation of child from any other person who is not involved in the case
- Grants separation of victim from accused (be it children or adults)
- Grants access to a toilet nearby
- Provides child-friendly information (brochures, video on justice process etc)
- Provides clean drinking water
- Sound-proof area, well aerated, comfortable illumination, calming colours and atmosphere
• A plant or a drawing/picture are simple ways to make an environment more friendly
• Some illustrated books for children of various ages and some drawing material may be provided (while distracting games, toys etc are not recommended).
• What about waiting area in KRI/your court? Ideas for the future?

Use of cells in court:

Cells should not be used for children as waiting area, unless strictly required because the child poses an imminent threat of injury to others in a particular case (and not as routine for certain groups of children). In such cases, separation from adults must be granted, the waiting time must be minimized, a support person should stay with the child, and child-friendly conditions as described above should be adhered to as far as possible.

• Practice in KRI/your court re use of court cells? Ideas for the future?

**Support Persons / Room for meeting Support Person**

A child-friendly court provides some space where children and their support persons (parents, guardian, lawyer, social worker, interpreter etc) can meet (again) confidentially before and after a hearing for preparation and debrief.

• Any such space available in KRI/your court? Ideas for the future?

**Measures of restraint**

In a child-friendly court, measures of restraint during waiting or hearing are used only according to the law and when strictly required to protect the safety of the child or others during waiting or hearing (or to prevent escape during transport) – but never as routine. Leg chains are not used for children, armed security guards are avoided as far as possible.

• Practice in KRI/your court re measures of restraint during transport, waiting and hearing? Ideas for the future?

**Hearing Environment**

• **Basic features of a child friendly hearing environment:**
  • A plant, a drawing or a poster make a room more child-friendly at little costs
  • Sound-proof area, shielded from outside view, well aerated, comfortable illumination, calming colours and atmosphere
  • If new equipment: chose light and friendly colours and materials; furniture that allows for some flexibility in setting (e.g. transformation to a round table for reconciliation)
  • The degree of formality chosen may vary to some degree depending on the type and severity of the case
  • Where there is no separate child court building, the Chamber of the Judge is often a more child-friendly (less intimidating) environment than a formal (adult) court room, and therefore a recommended hearing environment
  • If use of **court room:**
    • No use of cage for children
• Court room should not be intimidatingly large in size
• Reserve a specific court room for hearing children.
• Practice in KRI/your court re hearing environment? Ideas for the future?

**Setting:**

• Hearings of children to be conducted behind doors
• Judge(s) sitting not too much elevated, if at all
• Judge(s) and child not sitting too far from one another, so they can see and hear each other well
• Child is sitting next to support persons (parent/caregiver/appropriate adult, social worker, lawyer)
• Disturbances and interruptions are avoided (e.g. mobiles off; don’t disturb sign; windows closed)
• No use of wigs and gowns (as already practiced in KRI).
• Practice in KRI/your court re setting? Ideas for the future?

**Judges:**

• Judges have received special training on how to communicate with and hear children
• Decision making is guided by national, regional and international standards and social inquiry
• Judges regularly meet other child justice professionals for general discussions, case reviews (whilst granting confidentiality)
• Judges are impartial and independent
• Situation in KRI/your court in this regard? Ideas for the future?

**Resources:**

Child-friendly courts and related services are equipped with the required human resources (number of judges, social workers, administrative staff etc), space (number of offices, waiting area, hearing rooms etc), and equipment (stationary, technical equipment, vehicles etc) to promote diligence and efficiency.

• Situation in KRI/your court in this regard? Ideas for the future?

**‘After care’**

There should be a possibility for a ‘debrief’ with the child after the hearing, to ensure the child and caregivers understood everything properly, and that the child feels all right. Can be ensured by the judge him/herself, the lawyer, the court social worker and the parents / guardian.

• Practice in KRI/your court re ‘after-care’? Ideas for the future?

**Other issues**

Any other elements/issues that should be looked at in the KRI context?
2. Some Comparative Practices

a) Family and Protection Matters

A recent comparative study of the International Association of Youth and Family Judges and Magistrates on Child Participation in Family and Protection Matters published in 2022 describes practices and shows court room pictures from 35 countries around the world. These examples can serve as a source of inspiration also for settings concerning other groups of children.

See https://chronicle.aimjf.info/index.php/files

b) Juvenile Justice

KRI

In KRI, the following child-friendly provisions/court practices are found, in particular:

• No use of cage for child hearings
• Children are heard behind closed doors
• Children are partially heard in the judge’s chambers
• Juvenile judges are wearing ordinary cloth
• Social work services are integrated in the Juvenile Court
• Legal assistance is mandatory at the court stage, and granted free of charge
• Punitive sanctions are not provided for children (only so called ‘measures’219)
• There is no criminal record for juvenile offenders.

In KRI, the following areas for improvement were identified during a workshop in November 2022, in particular:

• Preparation of child / child-friendly information material is missing so far
• Separate building, entrance or waiting area for children are missing so far
• No child-specific rules on the use of measures of restraint so far
• Speedy and diligent proceedings in which children are adequately supported and protected are hampered by insufficient resources and capacities (in particular: no ‘lawyer of first hour’, lack of social workers, juvenile police lacking car for transports, judges not trained in interviewing techniques, cooperation issues).

Lebanon

In Lebanon, child-friendly information materials have recently been developed:

• Brochures for different age groups (see some extracts below)
• Videos that prepare the child for a court hearing (can be shared in Arabic on request)

Furthermore, child-friendly waiting rooms and court rooms (integrated in ordinary court house) have recently been designed:

Kazakhstan

In Kazakhstan, Child Courts were established in fully separate buildings, with adapted waiting rooms:

219. It must be mentioned, though, that the measure of referral to a reformatory does de facto not much differ from a referral to prison.
Switzerland

The wide majority of children in conflict with the law is heard not in a formal court environment, but in a rather informal setting in the office of the (specialized) Child Magistrate which are often located in fully separate buildings. Setting similar to the one on the picture below:

‘One Stop Shops’

Various countries combine various services ‘under one roof’. This may exist of all/most relevant services under one roof, or some services under one roof:

- E.g. Germany: In some of the so called ‘Houses of Juvenile Law’, police, arrest cell, prosecutor, social worker, diversion provider and child judge work under one roof.
- E.g. Switzerland: The office of the Child Magistrates usually hosts its own social work service, and partially also specialized child investigators, child-friendly places of detention, and a special environment for hearing child victims and witnesses, with specially trained interviewers.
- E.g. KRI: Special social work services are attached to the Juvenile Courts.
- Other countries attach social workers, lawyers or prosecutors to the police.
- Victims/Witnesses: Similar approaches have evolved for child victims/witnesses of crime, combining services like child friendly reporting; provision of psycho-social support, legal support and medical support; special interview room with specialized interviewers under one roof.

Such approaches promote a holistic, multidisciplinary, cooperative, specialized approach, and speedy proceedings.

‘Case conferences’

In some countries, procedures were adapted in such a way as to allow for multi-disciplinary round tables / case conferences taking place at an early stage of the proceeding, where various stake-holders come together in order to collect information and take quick, coordinated and tailored decisions:

- In South Africa, a so called ‘Preliminary inquiry’ has been introduced, which requires that within 48 hours after the arrest of a child, an informal round table meeting takes place under the chair of the investigating judge, at the court or any other place, at which the child, parents, probation officer, investigating judge and prosecutor (and maybe diversion provider and lawyer) participate. The purpose of the meeting is the following, in particular: to consider the assessment report of the child; to decide whether diversion is possible; to determine on release or placement; to ensure that the views of all are heard.
- The Netherlands apply ‘Case-conferences’ in the pre-trial phase, where various stake-holders meet at the beginning of a criminal investigation at a police station, under the lead of the child prosecutor, in order to collect all relevant information related to deed and person of the accused and to decide on the way forward.220

220. See Se 43 Child Justice Act of South Africa. For NL, see Aanwijzing Strafzaken Jeudiggen.
This again promotes a multidisciplinary, cooperative, specialized approach, and speedy proceedings.

c) Child Victims and Witnesses

In recent years, many states have established special procedures and designed special interview environments at the investigation and court stage for victims and witnesses of crimes (not necessarily limited to child victims and witnesses, but for all vulnerable persons) which aim at

- Protecting (child) victims/witnesses from harm being added by the justice process
- Maximising the quality of information (evidence) obtained from (child) victims/witnesses.

This usually comes along with rules and environments that enable avoiding direct contact between victim/witness and alleged perpetrator; with rules that provide for video-recorded investigative interviews admitted as evidence in court (to avoid repetitive interviewing); that limit number and duration of interviews; that require that interviews are conducted by specially trained interviewers. Such approaches are sometimes combined with/ complemented by child-friendly reporting and support mechanisms (like safe places, hotlines, psycho-social, medical and legal support etc).

Below an example of such an interview environment from Uzbekistan. Left: Interview room with audio/video recording equipment which also serves as waiting room. Right: Side room from which the accused person can participate indirectly, either via veteran mirror or electronically.

Part 3 Child-Friendly Interviewing/Hearing

Below a very short overview of some key aspects of child-friendly hearing practices. For more information see the tools developed by Tsamota/UNICEF and Heartland Alliance.

1. Challenges

Children are able to provide valid and reliable information – but quality and quantity of the information given by children is greatly influenced by the way in which they are interviewed. Some of the challenges we may face when interviewing children include:

- A trauma might limit the capacities of a person to recall events clearly. If we react to this with pressure or repetitive interviewing, this can amount to a secondary victimization – and distort the person’s account
- A teenager in conflict with the law might be unwilling to talk and appear uncooperative, which may create frustration on the side of the interviewer, resulting in inadequate pressure towards the child
- Children can easily be influenced by the interviewer or by other persons present during the hearing (suggestive questions; suggestive behavior like frowning; insisting way of interviewing; child thinking he/she must say what adults want to hear, etc), resulting in distorted evidence
- Children are more easily distracted than adults, and they get tired more easily. If not taken into account, this may compromise the quality of the information provided by the child
- Children might easily be intimidated by the justice process, which might limit their capacity to provide information.

These challenges can be addressed by various measures (see above), including by specially trained interviewers applying specific techniques. Some very basic rules in this regard:

---

221. See also European Guidelines IV/2, 28, 49, 56, 57, 61, 64, 67, 75, and para 2.
2. Some Communication Rules

- **Start** with a warm up to establish a contact, and observe the communication capacities of the child
- **Attitude:** Be friendly, respectful, interested, open, unbiased, patient
- **Language:**
  - Use simple vocabulary and grammar, adapted to the capacities of the child
  - Avoid legal terms (I have to check whether you made a mistake)
  - Keep sentences short and clear (What happened?)
  - Only one thought per question (not: Was there a man, how did he look like?)
- **Concentration and Well-being:**
  - Avoid distractions and disruptions (e.g. phone on silent mode)
  - Adapt duration of hearings to the child’s pace and attention span
  - Watch out for signs of tiredness; distraction; discomfort
  - Build in breaks if needed
- **Closure:**
  - Check whether the child understood key elements like the final decision, e.g. by asking the child to explain in his/her own words what he/she understood
  - Close with a neutral topic.

3. Types of Questions

Ideally, a hearing starts with very open questions. Only afterwards, specific questions should be asked, as needed. Leading questions should be avoided at all times.

**Open Questions**

Open-ended questions enable multi-sentence replies (‘free narrative’). They allow to collect a lot of information, while minimizing the input from the interviewer, which keeps the risk of suggestibility very low.

*Example:*

Tell me what happened?

And then?

Tell me more about this.

**Closed Questions**

Closed-ended questions lead to short replies / one-word replies, like ‘yes’ or ‘no’. With such questions, the interviewer provides the child with the context or offers options, which implies a risk of suggestibility.

*Example:*

Which colour had the car? (specific)

What colour had the car: blue, red, white, or another colour? (choice)

Did you drive the car?

**Leading Questions**

Leading questions are questions that suggest the particular answer already. The risk of suggestibility is very high. Such questions must be avoided.

*Example:*

It was your grandpapa, right?

Was it a red car?

I assume you drove the car?