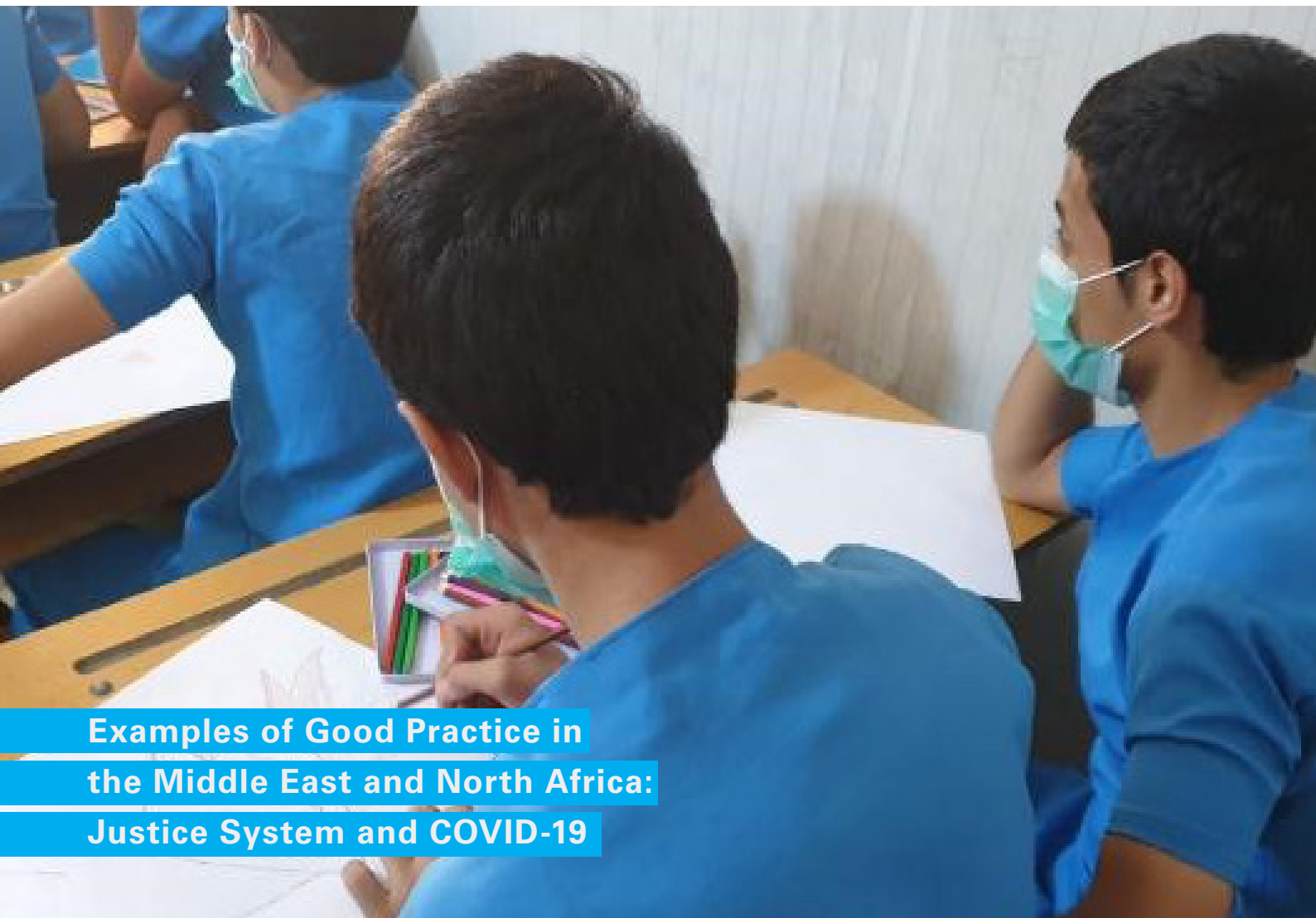


Release of Children Deprived of Liberty in Iraq in Response to COVID-19

Increasing the use of alternatives to detention



Examples of Good Practice in
the Middle East and North Africa:
Justice System and COVID-19

1. Context

Iraq's juvenile justice system is characterized by over-reliance on custodial measures for children in conflict with the law. In Iraqi law, alternatives to detention and restorative justice measures are not mentioned explicitly.

Release on probation is the only alternative measure available to reformatories and courts as a means to release children to their parents or caregivers, with a condition of maintaining good behaviour for a determined period. In practice, despite the absence of clear legislative norms, justice authorities have used informal mediation, mostly at the level of the police, to divert children from criminal proceedings.

UNICEF Iraq has been working with the Government of Iraq and civil society actors to address gaps in legislation, procedures, services and practices with the goal of increasing availability and utilization of alternatives to deprivation of liberty, and ensuring protection of children serving custodial sentences.

Lockdown imposed in response to Coronavirus Disease 2019 (COVID-19) in Iraq resulted in an initial backlog of pending cases in courts and serious overcrowding in some juvenile detention facilities. During these challenging times, UNICEF continued its long-standing engagement with the Ministry of Justice, High Judicial Council and its implementing partner non-governmental organizations (NGOs)¹ in order to find solutions for children in conflict with the law.

2. Government decisions and practices enabling release of children deprived of liberty and increased use of alternatives to detention

Releasing children deprived of liberty

As one of the measures to combat the spread of COVID-19 in the country, in March 2020 the Government of Iraq imposed a total lockdown for an initial period of two weeks, which was subject to several further extensions. Courts were not operating during this period, resulting in prolonged pre-trial detention of children, among other delays. Courts resumed operation during the week of 19 April, albeit with a reduced capacity.

UNICEF's advocacy and technical assistance have been critical in supporting government agencies to define and gradually broaden the criteria for the release of children. As part of child rights advocacy in the context of the pandemic, UNICEF started engaging with relevant government authorities advocating for the release of children from places of deprivation of liberty.

To complement other advocacy and technical support efforts, the Inter-Agency 'Technical Note: COVID-19 and Children Deprived of their Liberty'² and the Statement from the UNICEF Executive Director³ were shared with the Ministry of Justice counterparts, who used these materials in their advocacy meeting with the President of Iraq.

As a result, at the beginning of April, the President addressed the Prime Minister with a formal letter urging him to consider dropping charges and applying special amnesties for children in detention.

The first wave of release at the beginning of April included only 50 children. The initial criteria applied to children in pre-trial detention

concerning cases relating to non-violent- or non-terrorism-related crimes. UNICEF's continued advocacy and collaboration with the Ministry of Justice has led to modification of criteria and a progressive increase in numbers of children released, with release orders gradually applied to convicted children as well.

During the third week of April, additional children were released, including 53 boys in Mosul and 25 boys in the Kurdistan Region of Iraq, bringing the total number released to 128. In Kurdistan Region of Iraq, children in both pre- and post-trial detention were released.

UNICEF's further suggestion to expand the criteria and include 200 children in post-trial detention who have served one third of their sentences (excluding those convicted for serious crimes and for terrorism-related offences), was accepted by the government. The Reformatories Directorate, assisted by UNICEF child protection staff, compiled a list of children that meet these criteria and their traceable details. The Presidential amnesty order is currently awaited.

Since the end of May 2020, UNICEF and the Ministry of Justice have further advocated for the release of an additional 400 convicted children who have served at least one year of their sentence. If approved, the release of these children will be subject to a Presidential amnesty, resulting in a permanent release from detention.

Release managed by the police, either by dropping cases due to insufficient evidence or as a result of police-led mediation, is also permanent and unconditional.

Conditional release (probation with conditions of good behaviour applicable to a specific timeframe) was used to release some convicted children. Upon meeting the conditions and terms

of probation orders successfully, the children's release process is complete, and the release then becomes permanent.

Children who do not meet currently established criteria for release remain in places of deprivation of liberty. It is not clear whether relevant government decisions establishing release criteria and processes are subject to appeal by children and their legal representatives.

Encouraging use of alternatives to detention

While no formal directives have been given to stop or limit the detention of children, informally the police and the High Judicial Council have been advised by the Office of the President to limit arrests and incarcerations of children during the COVID-19 pandemic.

Anecdotal evidence available to UNICEF suggests that a reduction has been observed in the number of children being arrested by the police or entering detention facilities.

3. UNICEF engagement in the release of children

An interagency cooperation process was put in place to support the release of children from places of deprivation of liberty. The juvenile police worked with the courts, social workers, case workers and the Personality Studies Office under the juvenile courts in the process of releasing the children. The process was set up with slight differences for children at different stages of criminal proceedings (see Table 1).

4. Post-release reintegration and follow-up processes

Post-release follow-up is handled by social workers employed by reformatories – six per facility. As part of a response supported by UNICEF, a social worker accompanies the released child to the family's home, ensures reintegration and oversees further follow-up. The case management process leading up to release and reintegration usually takes place under a restricted time frame given current restrictions.

Table 1

Children under investigation or suspected of committing a crime but not yet charged	Children who have already been charged but not yet tried	Children who have been convicted and are serving custodial sentences
<p>If the child is detained at the juvenile police station, the process is led by the juvenile police. The family is contacted and invited to the police station in the presence of a lawyer who acts as a witness. The child is handed over to the family members who certify that they have received the child. No social worker is present.</p> <p>In governorates that have reformatories, arrested children are placed there. In such cases, release follows a similar process; it is handled by the police and the Reformatories Department.</p>	<p>For these two categories of children, release requires a judicial process. The judge issues a release order, which is then transmitted to the reformatory where the child is placed.</p> <p>The entire process is followed and often facilitated by lawyers provided by UNICEF through its implementing partners. Social workers from the Reformatories Department work with the juvenile police to trace and/or contact the families of the children to be released.</p> <p>Tracing is done remotely by phone, followed by support to establish family links and facilitate reunification. The juvenile police, in collaboration with the social worker, arrange the child's transfer home in case the family is unable to arrange for travel.</p> <p>Inter-governorate travel restrictions in place due to COVID-19 present a challenge to reunification of children who need to travel to another governorate for family reintegration. In such cases, the children are kept in temporary alternative care arrangements until travel becomes possible.</p>	

Reintegration and follow up steps are also supported by fifteen social workers of UNICEF's NGO partner. Availability of reintegration support for released children and their families is critical during the course of the pandemic, in the context of associated social and economic hardships. Effective reintegration and follow-up is especially important since release and reunification are often executed rapidly and do not allow for release preparation and reintegration planning, despite having an interdisciplinary cooperation process in place. A special approach is taken by UNICEF and its implementing partners to design support services, at first remotely and with a gradual transition to face-to-face support when possible. Reintegration and follow-up services include vocational skills training, remedial education, psychosocial support, referral to other services and support with employment opportunities. UNICEF, in collaboration with the Child Protection Sub-Cluster, has been working to ensure the provision of case management services and adaptation of referral pathways to maintain functionality during the period of lockdown.

Partners are also working to find solutions for a small number of children for whom immediate family reunification is not possible, where families cannot be traced or travel to remote governorates is restricted. As family-based care options for such situations are limited in Iraq, there is a risk that these children will be placed in institutional care (state homes). To prevent such an unintended re-institutionalization of children, UNICEF is collaborating with NGO partners, government counterparts and the Child Protection Sub-Cluster to put interim care arrangements in place.

5. Impact on children

As of 4 August 2020, a total of 465 children (including 55 girls) have been released since the

start of the COVID-19 pandemic. While this is clearly a step in the right direction, a significant number of children remain in detention, with more than 2,000 (including more than 200 girls) in pre- and post-trial detention. In addition to the immediate impact on released children, the ongoing process of increasing use of alternatives to detention and putting modalities in place to execute release decisions has potential to generate a longer-lasting positive impact on justice for children practices in Iraq.

The context of the pandemic created an enabling environment for government agency cooperation that led to the release of children from detention, while UNICEF's persistent engagement and advocacy allowed for a progressive broadening of the release criteria. It is believed that the current response may also serve as a catalyst for enhancing child-friendly solutions and engaging the government on strengthening the child justice system in line with international standards. While alternatives to detention, especially at early stages of criminal proceedings, are not explicitly provided for in legislation, the release and reintegration options identified may pave a path towards more systematic use of alternatives through discretionary powers of judges and police, while legislative changes are awaited.

Close cooperation between the justice and social welfare sectors has proven to be an important enabler and it is hoped this will remain and accelerate in the future. It is also believed that interagency collaboration and preparedness will show long-term improvement as a result of ongoing advocacy by UNICEF towards the establishment of referral pathways between the reformatories, Ministry of Health and Child Protection service providers, and for creating a standby pool of social workers that can be deployed to the reformatories to support child protection services.



Justice Gate Organization, Iraq. © Abdulla Kamel



Justice Gate Organization, Iraq. © Abdulla Kamel

6. Lessons Learned

In Iraq, as in many other contexts, the COVID-19 pandemic has posed considerable challenges for the operation of government institutions and child protection services. However, it has also provided UNICEF, the government and civil society counterparts with new opportunities to explore different approaches to working with children, including some of the most vulnerable.

Experience in Iraq has demonstrated three key lessons:

1. Situations of hardship provide an opportunity for a renewed look into the state of the most vulnerable children. The COVID-19 pandemic has demonstrated to government, UNICEF and partners that children are equally at risk in the face of the virus, and exclusion of vulnerable groups from key services is not the right way forward. Attention has been focused on the most vulnerable children, including those in

places of deprivation of liberty and especially those accused of particularly serious crimes. This has offered UNICEF additional opportunities to engage with the government and advocate for a child-rights-compliant response that is inclusive of all children.

2. Family-type alternative care options are critical to ensure children benefit fully from release orders, especially if they cannot be reunited immediately with their families for whatever reason. Preparation of children for release and setting up or preparing a range of alternative care options should start as early as possible. This is critical to ensure that children whose families cannot be traced, or who cannot travel to remote parts of the country to be reunified with families, still benefit from release. It is critical to prevent placement of released children in another type of institutional care.

3. The importance of reintegration and follow-up arrangements cannot be overestimated, and the availability of a

range of methods to deliver these services is critical. In addition to remote child and family support services and follow-up via phone, more investment is needed in community-based options to facilitate easier reach and continuous support. More investment is also needed in strengthening the social services workforce at different stages of criminal proceedings, since the role of well-trained social workers is critical in delivering child friendly justice services.

4. The COVID-19 situation has demonstrated the need for alternatives to detention at various points of criminal proceedings – as a way to ensure that deprivation of liberty is used as a measure of last resort and for the shortest possible period of time. Government's increased openness for considering these options is believed to serve as an enabler for enshrining alternatives to deprivation of liberty in the new Child Rights Act during the ongoing revision process.

The COVID-19 pandemic has highlighted the plight of certain categories of children in conflict with the law across the Middle East and North Africa region, including in Iraq. Children in military detention, those detained in the context of national security concerns, and foreign children in detention due to their alleged association with armed groups remain least able to access measures made available to other children. Continued attention is required to ensure their rights are upheld and they benefit from child-friendly justice systems and processes. In the current context, this means benefitting from alternatives to detention whenever possible, and having their rights realized in places of deprivation of liberty. With COVID-19, a positive change was observed in Iraq, with the government having included some Iraqi children who are in pre-trial detention on suspicion of terrorism offences in the second wave of releases from Telkaif Detention facility in Mosul, Ninewa Governorate. This may open the door to successful advocacy for the rights of these children in the future.

Endnotes

- 1 UNICEF's implementing partners have access to all but one of the detention facilities in Iraq. The facility in Baghdad where children accused of Islamic State of Iraq and the Levant (ISIL) affiliation are held remains inaccessible to UNICEF and partners.
- 2 Alliance for Child Protection in Humanitarian Action and United Nations Children's Fund, *Technical Note: COVID-19 and children deprived of their liberty*, ACPHA and UNICEF, 2020, <https://alliancecpa.org/en/child-protection-online-library/technical-note-covid-19-and-children-deprived-their-liberty>, accessed 7 October 2020.
- 3 Statement by UNICEF Executive Director Henrietta Fore, *Children in detention are at heightened risk of contracting COVID-19 and should be released*, <https://www.unicef.org/press-releases/children-detention-are-heightened-risk-contracting-covid-19-and-should-be-released>, accessed 7 October 2020.

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