



## **Project for the Provision of Legal Training Components for Legal Institutions of Iraq**

**Training Session on “Juvenile Justice”**

**Erbil, 29-31 January, 2011**

**Explanatory Paper**

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**Arab Center for the Development of the Rule of Law and Integrity**

## **1. Introduction:**

This training session has for objective to train trainers within the framework of the project on the “Provision of Legal Training Components for Iraqi Legal Institutions and Judges”, which execution is assumed by the Arab Center for the Development of the Role of Law and Integrity in cooperation with the UNDP Office in Iraq, such in line with the efforts made towards supporting the development process in Iraq through promoting the capacities of the legal institutions in Iraq as well as the capacities of Iraqi judges in the domains of human rights and fair trial in accordance with the prevailing international standards. This session focuses on the fair legal practices and texts, which ensure the respect of litigants’ rights and guarantee equality among them, for the purpose of bringing to light the vision of an integrated strategy for updating the criminal justice system in compliance with the international and regional principles and standards and in proportion to the requirements and priorities of the Iraqi judicial system in view of the numerous changes and security challenges facing the State and the citizens.

In the process of preparing an explanatory paper on juvenile justice in Iraq, it seems necessary to present an overview of this subject and a brief historic description of the international laws and standards and the procedure code, particularly those related to juvenile justice.

The duty of child protection, in addition to being based on religious, ethical and social values that are well established and deep rooted in every community, and regulated by many texts in the national laws and within the regional and international mechanisms, is first and foremost a human duty. Childhood is one of the main intervals of a person’s life journey, which will leave lasting imprints on one’s personality. It will either lead him to become a social individual, who observes the standards of his cultural system and conforms to his community, or plant in him the seeds of disharmony and imbalance, which will result in creating an unstable and complicated personality that is torn apart by the currents of disease and deviation. Thus, the international community has always tended, in its quest to promote human rights, to address special attention to the subject of childhood, since the first issuance of Geneva Declaration of the Rights of the Child in 1924, which was confirmed in the declaration issued in 1959 and until the adoption of an agreement concerning these rights in 1990 as a measure for implementing the new social defense policy that is not built on the protection of society from man, rather the protection of man to achieve the protection of society, thus leading to integration between the security of the individual and the security of his community.<sup>1</sup>

## **2. Content of the training session**

### **1. Concept of Juvenile Criminal Justice:**

The concept of juvenile criminal justice should particularly be sufficiently extensive to include all phases of public authority communication with the juveniles, where justice should prevail

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<sup>1</sup> Khaled Suleiman and Sawsan Barakeh, “Light on the Phenomenon of Child Labor: A Critical Approach”, Alam Al-Fikr, Volume 35, National Council for Culture, Arts and Letters, 2002, p. 125

during the phase of evidence collection within the framework of violation of penal laws as attributed to the juvenile, the phases of legal investigation and disposal of charge and the phases of trial, appeal and execution of judgments, to attain the intended objective represented in the rehabilitation and reform of the juvenile and the prevention of evil acts by the juvenile against the community in the future.<sup>2</sup>

This extensive and integral concept of juvenile justice is based on recognizing that a child or a juvenile is a vulnerable human being with limited perceptions and experiences and lacking the ability to tell the difference between right and wrong and make the right decision and that they deserve the proper protection and care that would compensate for their vulnerable being, their inability to anticipate the consequences of their action and their incapacity to do the right thing – that they do not deserve to be neglected, violated or subjected to suffering or danger and that when a crime is attributed to a juvenile, this juvenile is usually the victim of his environment and social circumstances rather than the criminal.

## **2. Violations in Juvenile Justice:**

In spite of the international efforts made towards supporting juvenile justice, however, the truth of the matter at the international level remains that the number of crimes committed against children is on the rise and that several challenges still exist in the domain of child protection, as confirmed by the UNICEF 2008 report on the situation of children worldwide<sup>3</sup> when it indicated that:

- The number of children detained by the legal systems worldwide at any time exceeds one million children, taking into account that this number might be much less than the right estimate given the difficulties in obtaining data on the detained children who have not been reported, for the data is not only collected in an inconsistent manner but most of the time does not include the children awaiting trial, the young children detained with their families or the children detained temporarily by the police.
- Approximately 59% of the detained children in 44 countries are awaiting a verdict.
- The vast majority of the children in detention have not committed serious crimes. Many of them are accused of crimes related to the social aspect, such as running from home, violating restrictions on children going out, skipping school without permission or drinking alcohol. Children are also detained in the context of immigration, with regard to matters related to mental health or for their own protection. Children who are crime victims or crime witnesses often fall victim again to the legal systems that are not equipped to take into account the rights and needs of the children.
- Five countries have enforced the death penalty on children since January 2005.

These difficulties represent serious challenges to the legal and judicial systems in various countries around the world, and the situation becomes even worse when met with other challenges such as the daily increase in children mortality rates in various countries of the

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<sup>2</sup> Judge Al-Bishri Al-Shorbagy, Assistant to the Minister of Justice, Director of Legal Protection of Children, Juvenile Criminal Justice, worksheet presented at the Convention of Juvenile Criminal Justice in Yemen, March 2008, p. 3

<sup>3</sup> For further information, refer to the entire text of the UNICEF report at [http://www.unicef.org/arabic/media/24327\\_49368.html](http://www.unicef.org/arabic/media/24327_49368.html)

world, the evident discrimination against women and young girls and the consequent drop in girls' education level<sup>4</sup>, child labor<sup>5</sup>, the sexual exploitation of children for trading purposes<sup>6</sup>, the crimes committed against children in during times of war and that led to the death of more than two million children during the last two decades in addition to the disability of six million others, and finally, the continuous prevalence of poverty and the inequality among the population of large parts of the world<sup>7</sup>.

### **3. Criminal Protection of Children:**

Criminal protection indicates the methods approved by the criminal legislator for the protection of children's rights. The methods can be divided into two:

#### **First: Protection of Children as Victims in a Crime**

This type of protection entails the adoption of specific texts and provisions to punish acts that cause harm to children or expose their life, physical safety or ethics to danger, or to impose severer punishments on some of the crimes provided for under the Public Law (Penal Code) or its complementary laws when the victim is a child. These texts protect children as victims in a crime. Even if protection, in this context, is often characterized by its substantive nature, some laws also adopt certain procedural rules for the protection of children who fall victim of certain crimes such as rape and disgrace. Furthermore, some laws provide specific procedures for the protection of children who are witnesses to some crimes of special nature.<sup>8</sup>

The criminal protection of the rights of the child as a victim in a crime is one of the aspects of legal protection – in its broad sense – that the various laws have sought to provide to the children for a long time. The modern movement aims, whether within the scope of national legislations or at the international level, at promoting this protection through expanding its circle and increasing its effectiveness, seeing that a child is weak in mind and body and cannot defend himself or his rights, which makes him susceptible more than others to be the victim of many crimes. Thereupon, the government is committed to providing protection to children.<sup>9</sup>

#### **Second: Protection of Children Committing a Crime and Vulnerable to Delinquency**

These methods include the criminal treatment of children who commit a crime (delinquent children) or who are vulnerable to delinquency. Criminal protection should be available to children not only in their capacity as victims in a crime but also when they commit a crime or find themselves in a situation that exposes their social adaptation to danger and might lead them toward delinquency.<sup>10</sup> A great part of jurisprudence has described this form of criminal

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<sup>4</sup> Statistics indicate that 130 million children are totally deprived from their right to education, 60% of whom are girls, in addition to a great number of children who left school at an early age, before attaining a proper level of education.

<sup>5</sup> Statistics indicate that around 250 million children between the ages of 5 and 14 work. Among these children, 50 to 60 million children between the ages of 5 and 11 carry out hazardous work.

<sup>6</sup> The aforementioned UNICEF report confirmed that this phenomenon existed in various regions of the world, where millions of children – a large percentage of whom are girls between the ages of 10 and 12 – were forced to engage in prostitution. This phenomenon became even more dangerous after being linked to organized crime in the last two decades and being assumed by major criminal organizations throughout the world, using the internet to spread pornographic works that promoted child exploitation.

<sup>7</sup> The number of children living below the poverty line is estimated at around six hundred million children worldwide.

<sup>8</sup> Professor Dr. Sherif Sayyed Kamel, "Criminal Protection of Children", Second Edition, 2006, p. 8

<sup>9</sup> Professor Dr. Mohammad Al-Said Al-Daqaq, "Legal Protection of Children within the Framework of the Legislator of the United Nations Convention on the Rights of the Child", 1996 Edition, p. 82

<sup>10</sup> Dr. Hoda Kashkoush, "Principle of Penology – Penal Treatment", Cairo, 1990 Edition

protection of children (or juveniles) as entailing the protection of the child from himself, naturally, in addition to ensuring the protection of society from the increasing expansion in the size, types and danger of juvenile delinquency. It is noteworthy that the juvenile criminal is often the victim of external circumstances and factors related to bad parenting or the influence of his professional environment or his community or the victim of a sickness, and is consequently placed in the same category of children or juveniles who are exposed to danger (or vulnerable to delinquency) and in need to be guaranteed protection by society. This is where society – particularly the rehabilitation, social care and reintegration centers – has to play its role in providing care to these children and lending them a helping hand to stay clear of all types of danger.<sup>11</sup>

#### **4. Alternatives to the Traditional Legal System in the Domain of Juvenile Justice:**

The modern approaches adopted in the provision of justice to juvenile offenders favor taking social and educational procedures beyond the traditional legal system, which aim at establishing and executing measures to deal with them according to alternative social programs or services, and call for their protection at the social level. This includes juvenile restorative justice against criminal justice, and reconciliatory justice. These trends also comprise expanding and activating the educational measures rather than imposing the traditional punishments.

These social interventions or diversion generally mean: to divert children from the traditional criminal justice system through alternative procedures and programs and community service.

(First) Restorative Justice: This approach focuses on making the child offender responsible for repairing the damage from the crime and giving him a chance to display his positive abilities and characteristics and deal with the feelings of guilt in a constructive manner, while allowing others to play a role in resolving the conflict, including the victim, his parents and extended family members, the schools and his peers.<sup>12</sup> In other words, restorative justice is an approach to dealing with the crime while recognizing the victim, the offender himself and the community within which the crime has been committed. Restorative justice originally aims at repairing the damage from the crime, indemnifying the community and the victim and reintegrating the offender into the community. In order to have a restorative effect, the community, the victim and the offender should all play active roles in this type of justice.<sup>13</sup>

There is no doubt that restorative justice or reparative justice is the preeminent approach to be adopted when dealing with juveniles and the most perceptive to achieving juvenile rehabilitation and social reintegration, helping the juvenile delinquents take on a constructive role in their communities and keeping them away from further engaging in delinquency or criminal behavior under the weight of the traditional punishments and the conventional procedure policy.

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<sup>11</sup> Ibid, p. 11

<sup>12</sup> Refer to: Juvenile Criminal Justice System UNICEF, Facilitator Training Manual, Introduction 16, 17

<sup>13</sup> Ibid, p. 11

(Second) Reconciliatory Justice: This type of justice constitutes one of the aspects of juvenile restorative justice, under which the criminal action is suspended or the file is closed following reconciliation with the juvenile's guardian who vows to provide the juvenile with the proper care and take on his upbringing and education. More often than not, in order to be successful, the educational and social interventions should be carried out with the consent and approval of the juvenile as well as the approval and participation of his guardian to ensure the execution of these measures or interventions. The measure of referring to the guardian in minor crimes represents one of the aspects of this type of justice, which will contribute to the juvenile's return to his natural environment, as well as some of the aspects of probation.

(Third) Educational Measures: The modern policy on dealing with juveniles entails the importance of expanding the educational measures and reducing punishments and the importance of activating these measures to achieve their objective of juvenile reformation and rehabilitation. This concept is established in Articles 37 and 40 of the Convention on the Rights of the Child, which address the importance of protecting the children within the framework of a comprehensive policy for juvenile justice through establishing a wide variety of measures for ensuring dealing with children in a manner that favors their well-being and equally corresponds to both their circumstances and crime. These measures should include providing care, guidance, supervision, consultation, probation, custody, educational programs, professional training and other institutional care alternatives. Although these measures are subject to the issuance of court order, the objective resides in increasing and activating these measures to the detriment of the traditional punishments that distort the reputation and conduct of the juvenile delinquent rather than rehabilitate him.

##### **5. Overview of the Major International and Regional Conventions and Texts on Human Rights and Child Protection:**

A child requires the minimum sufficient level of care for the natural development of his personality. Thus, several international and regional conventions and texts requiring countries to take all the necessary measures to provide legal protection to children were issued, particularly the 1924 Geneva Declaration of the Rights of the Child requiring member States to provide full legal protection to children worldwide. Then, in 1959, the UN General Assembly adopted the Declaration of the Rights of the Child including ten binding principles and highlighting the importance of granting the child all the rights contained therein and without exception. Furthermore, the international community adopted the Convention on the Rights of the Child in 1989 for the purpose of helping the member States to fully prepare their children to live a decent life and give them a proper upbringing based on values and ideals. The international mechanisms related to the protection of juvenile rights are divided into two groups: the first is of general nature and applies to everyone, that is, in general, it is related to human rights, but at the same time, it entails rules on the importance of providing the child with adequate protection. The second addresses the rights of the child. Naturally, these texts – both types – have an obvious effect over national laws. The following is a list of the major international conventions and declarations on the rights of juveniles:

### **First: Child Protection in General International Conventions**

1. Universal Declaration of Human Rights in 1948  
<http://www1.umn.edu/humanrts/arab/b001.html>
2. International Covenant on Economic, Social and Cultural Rights in 1966  
<http://www1.umn.edu/humanrts/arab/b002.html>
3. International Covenant on Civil and Political Rights in 1966  
<http://www1.umn.edu/humanrts/arab/b002.html>
4. Declaration on the Protection of Women and Children in Emergency and Armed Conflict in 1974  
<http://www1.umn.edu/humanrts/arab/b024.html>
5. UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children in 2000  
<http://www1.umn.edu/humanrts/arab/P1orgCRIME.html>

### **Second: International Texts on the Rights of the Child**

6. Declaration of the Rights of the Child in 1924 and 1959  
<http://www1.umn.edu/humanrts/arab/b025.html>
7. Covenant on the Rights of the Child in 1989  
<http://www1.umn.edu/humanrts/arab/b026.html>
8. UN Standard Minimum Rules for the Administration of Juvenile Justice in 1985 (The Beijing Rules)  
<http://www2.ohchr.org/english/law/pdf/beijingrules.pdf>
9. UN Guidelines for the Prevention of Juvenile Delinquency in 1990 (The Riyadh Guidelines)  
[http://www.child-abuse.com/childhouse/childrens\\_rights/dci\\_del8.html](http://www.child-abuse.com/childhouse/childrens_rights/dci_del8.html)
10. UN Rules for the Protection of Juveniles Deprived of their Liberty in 1990  
<http://www1.umn.edu/humanrts/arab/b037.html>

### **Third: Regional Texts on Child Protection**

1. Arab Model Law on Juvenile Justice<sup>14</sup>
2. Arab Charter on the Rights of the Child in 1984
3. Covenant on the Rights of the Child in Islam  
<http://www1.umn.edu/humanrts/arab/CCHI.html>

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<sup>14</sup> Professor Dr. Mahmoud Sherif Basyouni and Judge Khaled Muhieddine Ahmad, "International and Regional Documents on Criminal Justice", Part 1, Second Edition, p. 211

### **3. Juvenile Justice in Iraq**

It is a known fact that Iraq is among the first countries that have issued laws concerning juveniles since more than four decades and that these laws have undergone many modifications through the years. The Iraqi judicial system plays a major role in the protection of juveniles, whether they are the victims, the accused or the delinquents. However, most of the international standards cannot be applied due to the lack of laws that allow the implementation of these mechanisms at the national level. Hence, this training program is very important since it highlights the importance of implementing these mechanisms, seeing that the children of Iraq are the most influenced, among the categories of the Iraqi society, by the conflicts and wars that have lingered for such a long time and by the consequent deprivation and suffering. International surveys indicate that more than 23% of the population of Iraq live below the poverty line and earn a daily income of USD 2.2, a fact that causes malnutrition among children and women. On the subject of education, reports confirm that 9 out of 10 children below the age of 15 do not go to school on a regular basis, and percentages of enrollment do not exceed 87% for boys and 82% for girls, due to the lack of security, in addition to the negative attitude towards the education of girls. Furthermore, the wars and economic repercussions witnessed since the beginning of the previous decade have led to the destruction of institutions and systems providing juvenile care and financial, social and legal protection to children in most parts of the country, in addition to the loss of tens of thousands of parents and care providers during the war, causing the children to be more liable to harassment, exploitation and abuse as well as to be used by the armed groups as scouts and checkpoint spies and for transporting explosives and equipment, planting improvised explosive devices and executing suicide attacks.

### **4. Reasons and importance of the training session**

The protection of children's rights – considering that they are the weakest category of society – is an integrated process, in which the systems of legal legislation, legal protection, social education and economic development unite. However, in view of the bitter reality in Iraq during the seven past years, it was necessary to make greater effort to monitor and address all aspects affecting the best interest of the juvenile. In this sense, this training program was designed – after identifying the needs and requirements of Iraq – to strengthen the knowledge of the judges undergoing training regarding the principles of juvenile criminal justice. Several other objectives were intended from holding the Beirut meeting on the 27<sup>th</sup> of September, and these objectives can be briefly stated as follows:

1. Reinforce trainee capacities in the field of juvenile criminal protection through shedding light on the major violations and how to address them;
2. Increase the awareness of the judges undergoing training toward the following aspects:
  - a. The importance of the international and regional mechanisms concerning juvenile affairs and how to implement these mechanisms at the national level;



- b. The importance of focusing on the aspects of juvenile restorative justice beyond traditional procedures of prosecution and conventional punishments and expanding the adoption of educational measures beyond punishments;
  - c. Updating the juvenile law to include the appropriate substantive and procedural rules in line with the international standards;
  - d. Permitting the imprisonment of juveniles under investigation only as a last resort and for the shortest period possible, allowing their detention in closed institutions only as a last resort, prohibiting cruel, inhumane and degrading punishments upon condemning juveniles and ensuring the rights of juveniles to legal, judicial and psychological assistance;
  - e. The importance of establishing juvenile courts and a judicial institution called the juvenile police unit, which are adequately qualified socially and psychologically to observe the juveniles and follow up their affairs. This unit should be specialized and fully dedicated to carry out its tasks and responsibilities;
  - f. The necessity to enforce sanctions in institutions for juveniles only and separate juveniles from adults.
3. Provide training on the protection of juvenile victims and witnesses in criminal proceedings;
  4. Shed light on the role of the civil society institutions in protecting and preserving the rights of juveniles.

## **5. Program and methodology of the training session (training strategy)**

### **1) Training Content:**

Training shall be carried out according to the training manual prepared in advance by UNICEF, in terms of pre and post evaluation, the division of the subjects covered by the training and the use of the training modules. Coordination shall be established with the experts and trainers for the use of the scientific materials attached to the training manual according to the order in which they appear.

### **2) Training Strategy:**

The training program is divided into two sections: the first is theoretical and addresses the subject from the legal and social aspects while taking into account the international and regional standards and their activation at the national level. The second is practical and includes practical training modules that aim at increasing the information, ability and competence of the trainers in the field of juvenile justice and developing their human and professional skills in this area, as well as benefiting from them by preparing them train their colleagues in the legal domain on the same subject.

- **Theoretical Aspect:**

The first and second days will be dedicated for addressing the theoretical aspect. Each day will include five interventions, following each of which an extensive discussion will be held between the trainees and the experts. The duration of each intervention will be twenty minutes per

speaker, who shall have to use as much practical examples as possible while relating/referring to relevant international and regional standards.

The approach adopted in the interventions should involve dialogue and open debate instead of lecturing in order to maintain the dynamics of the sessions and continuous communication with the trainees. This approach is usually a strong incentive for trainees to engage in the dialogue and consequently shed light on the Iraqi laws and regulations.

*Day One:*

- a. Juvenile criminal protection: concept and reform;
- b. Minimum standards of juvenile rights during evidence collection, investigation, arrest/pre-trial detention;
- c. Minimum standards of juvenile rights during trial and in sanction enforcement facilities;
- d. Alternatives to the traditional legal system in juvenile justice;
- e. Successful international or regional experiences in the domain of protection/justice of juveniles.

*Day Two:*

- a. Protection of the rights of juveniles;
- b. International and regional protection of juveniles;
- c. Legislative protection of juveniles in Iraq;
- d. Iraqi mechanisms for the protection of juveniles;
- e. The role of various national institutions in the protection of juveniles (judicial system, civil society institutions, media, legislative authority, educational establishments and religious institutions).

• **Practical Aspect:**

The third day will be dedicated to practical training on juvenile justice. The trainers/experts will use seminars and workgroups to achieve dynamic interaction between the participants aiming at raising the largest amount of different views to be discussed in light of the international and regional standards in the field of juvenile justice. The trainees will be divided into workgroups, each including a maximum number of five judges, each of whom will be provided with a training scenario and a set of questions. Each group will be asked to answer the questions in light of the current Iraqi laws and legislations compared to the international standards on the rights of juveniles. The groups will be encouraged to present their views on how to activate the role of these standards and provide better protection to the children of Iraq. The work will be divided as follows:

First session (one hour and a half): a training module on the protection of the rights of juvenile victims in criminal procedures;

Second session (two hours): a training module on the alternatives to the traditional legal system on juvenile justice;

Third session (one hour and a half): a training module on the role of the judicial system in juvenile protection;

## Closing session

- **Assessment of Trainees**

According to the UNICEF training manual, the closing session will be dedicated for post-assessment intended to measure the trainees' profit from the information and practical training. The assessment method put forth in the module attached to the training manual shall be adopted. The results of this assessment will help in selecting the prominent trainees who will receive special training of a higher level and who will consequently train other judges in the field of juvenile justice.

In terms of the training methodology used in each phase, this program will adopt the international methodology used in training on the protection of juvenile rights, where international and regional documents will be presented and a thorough research will be conducted on how to train judges to play their role in implementing and activating the principles and standards during criminal proceedings. In addition to the theoretical aspect, every phase of the training session will have a practical aspect, through which specific texts will be selected from the Iraqi criminal laws and analyzed, particularly with regard to the guarantees contained in these texts and that ensure the international principles on human rights and fair trial. To that end, the participants will be divided into workgroups to discuss and analyze these texts and present suggestions to update same.

Furthermore, this workshop will adopt a methodology based on the participation of the trainees through their skills and knowledge, as well as their professional status.

The trainer shall, in cooperation with the training coordination team, provide the following items:

- 1) The agenda of the workshop;
- 2) The headlines of the trainer's presentations;
- 3) The worksheets that contain the questions of the workgroups for discussion;
- 4) Copies of the covenants and other relevant documents (most of which are in Arabic and found on the internet);
- 5) A list of sources and useful internet links;
- 6) Documents evaluated by the trainer and provided to the participants.