



المركز العربي لتطوير حكم القانون والنزاهة

Arab Center for the Development of the Rule of Law and Integrity – ACRLI

Guide on legal representation of children in protection proceedings according to the CRC's principles

Overview of the laws in Lebanon and Tunisia

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Preamble

- As per the Children's Rights Convention (CRC) that was passed on 20 November 1989 as adopted by the General Assembly of the United Nations in Unanimity, Children must benefit from assistance and protection. Therefore, States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction (Art. 2-1).
- States parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike (Art. 42).
- In order to improve the management of the juvenile judiciary, it is essential that all relevant professionals receive appropriate training on the content and meaning of the provisions of the Convention on the Rights of the Child in general, and in particular those that are directly relevant to their daily work. Such training should be systematically and continuously organized, and not limited to the definition of national and international legal provisions, including, inter alia, social and other causes of child conflict with the law, psychological and other aspects of child development, with particular attention to girls, children of minorities or indigenous peoples, and measures available to deal with children in conflict with the law, in particular alternative measures to judicial proceedings.
- Consideration should also be given to the possible use of new technologies such as video "court appearances", while noting the risks of others, such as DNA profiling. There should be a constant reappraisal of what works.

Objectives of the Guide

- Provide a reference tool for lawyers working with children in conflict with the law, within systematic procedures compliant with the international norms, national laws, and best practices.
- Achieve a complete coordination between those who are involved with children in conflict with law, especially lawyers and social workers.
- Provide a referential guide for best practices, according to some national examples.

Used methodology & Beneficiaries

- **Methodology:** The Children rights shall be exposed as provided for in the CRC and its optional protocols, in addition to the Children Rights committee's comments, that explain the convention, in addition to other international laws relating to the topic, compared laws especially those of the Republic of Lebanon and Tunisia.
- **Beneficiaries:**
 1. Practicing lawyers working with children or juveniles in conflict with the law;
 2. Social services providers especially in their mutual cooperation and work where applicable, to stress on the importance of the best interest of the Child.
 3. Additional beneficiaries are also targeted including juveniles and CCL to raise their awareness on their right of legal protection and representation, right to be assisted by a lawyer and access to justice.

Introduction

- The Convention on the Rights of the Child (adopted on 20 Nov. 1989) is the most widely ratified international convention, confirming the commitment of the international community and governments around the world to the well-being and protection of the child. Almost 140 countries in the world are parties to it, except the United States, which has signed it without ratification thereof.
- The convention includes 54 articles and three optional protocols, and it clarifies the human rights that children should enjoy anywhere and without any discrimination.
- Governments of countries that have ratified the Convention are required to report to, and appear before, the United Nations Committee on the Rights of the Child periodically to be examined on their progress with regards to the advancement of the implementation of the Convention and the status of child rights in their country.
- Three additional optional protocols have been adopted in 2000 and 2011, which are: (a) Optional Protocol on the Involvement of Children in Armed Conflict; (b) Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; and (c) Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.
- the minimum age and 18 years old who is alleged to have breached the penal law, or waWe shall expose the provisions relating to the protection of the child in conflict with the law, i.e. any person between s a indicted or convicted with such counts, in addition to (1) the role of the lawyer in representing and protecting such child and (2) the importance of the cooperation between the lawyer and the social services providers.

Note

The term: Children in contact with the law: Is used to refer to those children under the age of 18 who:

- 1- have allegedly breached the penal law or have been accused or convicted as such;
- 2- are in a situation that requires a judicial interference for their care, fostering or protection, especially cases of Children of detained parents

Therefore, said term shall refer to:

- A- Children in conflict with the penal laws
- B- Victims or witnesses to penal law infractions

Part 1: General rules about Juveniles in conflict with the law

1.1 Concept of a Child:

A child is anyone who has not yet completed 18 years of age, or if he has not reached the maturity age before that by national legislation (Art. 1 of the CRC).

- **Compared law:**

Lebanon: Referred to as "Juvenile": is anyone who is not 18 years old yet. (art. 1 of law No. 422/2002)

Tunisia: Anyone who has not yet reached 18 Years of age (Art. 3 of the Code of the protection of the Child 2005).

1.2 Concept of the Child in conflict with the law:

- As per the CRC, it is a child who is alleged as, accused of, or recognized as having infringed the penal law.
- It must be noted that in its General comment No. 24 (2019) on children's rights in the child justice system, the Committee on the Rights of the Child stipulates that there should be a minimum age under which, no child can be considered to be in conflict with the law. Most commonly it is 14 years of age.
- Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making.
- Lebanon: 7 years and below, Tunisia 13 years and below.

1.3 International Legal framework regarding “CCL”

The international legal framework refers to international texts relevant to the rights of the child in conflict with the law which, in addition to the Universal Declaration of Human Rights (1948), international and regional conventions, as well as general comments of the UN human rights conventions, in particular the Committee on the Rights of the Child, as well as the Guiding Principles and model rules.

Main International conventions:

- The Geneva Conventions of 1949 and their Additional Protocols (Children’s use in armed conflicts)
- International Covenant on Economic, Social and Cultural Rights (16 December 1966)
- International Covenant on Civil and Political Rights (16 December 1966)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984)
- [Convention on the Rights of the Child](#) (20 Nov 1989)
- [Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict](#) (25 May 2000)
- [Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#)(25 May 2000)
- Optional Protocol to the Convention on the Rights of the Child on a communications procedure (14 April 2014)
- Rome Statute of the International Criminal Court (17 July 1998)
- Worst Forms of Child Labour Convention, No. 182 (19 November 2000)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (15 November 2000)

General Comments of the Committee on the rights of Children:

- General comment No. 2 (2002): The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child.
- General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child.
- General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin.
- General comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment.
- General comment No. 10 (2007): Children's Rights in Juvenile Justice.
- General comment No. 12 (2009): The right of the child to be heard.
- General comment No. 13 (2011): The right of the child to freedom from all forms of violence.
- General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration.
- General Comment No. 21 (2017) on Children in Street Situations.
- General comment No. 24 (2019) on children's rights in the child justice system. (most recent)

Part 2: Role of the lawyer in the representation and defense of the “CCL”

- Legal assistance is an essential element of any fair, humane and efficient criminal justice system based on the rule of law. The term “legal aid” includes advice, assistance and legal representation of persons detained or arrested, imprisoned, suspected or accused of crimes, and of victims and witnesses in the interest of criminal justice proceedings.
- Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided to persons through alternative dispute resolution mechanisms and restorative justice procedures.
- Lawyers are at the forefront of legal aid providers. Principles and guidelines also suggest that States involve a wide range of stakeholders as legal aid providers in the form of non-governmental organizations, benevolent and charitable organizations, religious organizations and professional and academic organizations. Priority should be given to the provision of legal assistance to children, said assistance should be accessible, age-appropriate, interdisciplinary, effective and responsive to the specific legal and social needs of children.
- Article 15.1 of the “Beijing Rules” stipulates: “Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country”.
- In summary, In addition to the right of everyone to protect, establish and defend their rights at all stages of criminal proceedings, there are special procedures for children in conflict with the law that the lawyer should be aware of, and dealing with children requires specialized skills derived from international and national principles.

2.1 Overview of the General Role

Based on the general rules on the role of lawyers, the following principles must be set:

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Qualifications and Training: Governments and professional associations of lawyers and educational institutions shall ensure that lawyers are provided with appropriate education and training, sensitizing them to the moral ideals and duties of lawyers and to the human rights and fundamental freedoms recognized by national and international law.
3. Obligations and duties: lawyers should: (A) provide legal advice to clients regarding their rights and obligations, the judicial system; (B) assist clients in all possible legal ways; (C) represent clients before courts; (D) safeguard the clients' best interests, especially when they are CCLs.
4. Role of Governments: (A) ensure the provision of sufficient funding and other resources for legal services to the children, poor and needy or disadvantaged persons; (B) Governments and professional associations of lawyers shall promote programs to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms.

2.2 Role of Lawyers in procedures relating to CCL

CRC stipulates that a CCL must have adequate assistance, not necessarily legal. However some member states have considered that a legal assistance via a lawyer is what is needed.

A- Importance of the lawyer's role:

According to the committee on the rights of Children:

- Art. 14 (3) (d) of the International Covenant on Civil and Political Rights, the right to legal representation is a minimum guarantee in the criminal justice system for all persons, and this should equally apply to children.
- The Committee recommends that States provide effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative or other public authorities. Child justice systems should not permit children to waive legal representation unless the decision to waive is made voluntarily and under impartial judicial supervision.
- If CCL are subject to judicial system that does not result in convictions, criminal records or deprivation of liberty, "other appropriate assistance can be acceptable.
- Adequate time and facilities for the preparation of the defence. (art. 14 (3) (b) of the aforementioned text).
- CRC (art. 40 (2) (b) (vii) the confidentiality of communications between the child and his or her legal representative or other assistant is to be guaranteed.

B- Necessary qualifications for the CCL's Lawyer :

- Continuous and systematic training of professionals in the child justice system;
- Existing expertise in litigation and basic human rights;
- Knowledge of International legal texts (conventions, protocols, comments etc..)
- Knowledge of CCL judicial case law and procedures, including:
 1. Criminal Investigation with a CCL
 2. Role and intervention of the Social service provider
 3. In-depth knowledge of sanctions adapted for CCL and to attempt to secure the minimum sanction as per national law for the CCL
- Well informed about the physical, psychological, mental and social development of children and adolescents, as well as about the special needs of the most marginalized children.
- Aware of new technologies such as video "court appearances".

Compared law:

Lebanon: art. 2 of the civil procedure law: International conventions have supremacy in enforceability over local laws.

Tunisia: art. 20 of constitution: Treaties approved by the House of Representatives and ratified are higher than laws and lower than the Constitution.

Is a lawyer's attendance compulsory?

- States must ensure that a CCL receives the adequate assistance, whether legal and / or social.
- The police, prosecutors and judges are responsible for ensuring that legal assistance is available to persons who are brought before them and who cannot afford to hire a lawyer and / or who belong to vulnerable groups. (Principle 3 of UN principles and guidelines on access to legal aid).

Compared law:

Lebanon: art. 42 of law 422: A lawyer must be present with the juvenile at the penal court and other courts. If his parents do not appoint a lawyer, the court can appoint one or request that the Bar Assoc. appoints one. If the situation of a defendant does not allow him to afford a lawyer, he can request "legal aid". (art. 425 of civil procedure code).

Tunisia: The duty of the Attorney-General to employ a lawyer if the child has not previously assigned a lawyer to defend him if the acts attributed to the child are of serious danger

European case law:

Panovits v. Cyprus; (17Y/O Child had confessed a crime prior to seeing a lawyer, The ECtHR found that, in view of his age, the applicant could not have been considered to be aware of his right to legal representation before making any statement.

In *Bouamar v. Belgium*, the ECtHR found a violation of Article 5 (4) because: the hearings for the determination of the applicant's detention took place in the absence of his lawyers.

Start & End of Lawyer's role

- As early as possible when the CCL is taken to Justice. States should ensure effective legal aid ASAP.

An Attorney's role includes:

1. Providing advice and guidance to the CCL and his parents; Meeting with them.
2. Knowing the details of the case, and the CCL's social background.
3. Ensure that the CCL is not ill-treated or detained against the law.
4. Prepare the case adequately (facts, counts, legal grounds, same court's case law (same panel if possible)).

During the Investigation /Interrogation:

1. Attend the sessions
2. Submit the adequate legal motions for the best interest of the CCL

During the Trial:

1. Attend all hearings
2. Submit the adequate motions, defenses, and requests to direct the court to non-deprivation of freedom.
3. Make sure all legal periods are duly met
4. Request the minimum sanction possible by law.

During and after the issuance of the judgment:

1. Tries to get the lightest sanction possible; or to reduce the sanction with a softer one
2. Makes sure of the detainment condition of the CCL

C- Guaranties of a fair trial for the CCL: (1)

Art. 40/1 & 2 of the CRC: Guaranties to ensure fair treatment and fair trial of the CCL.

- Training of professionals: Juvenile court's clerks, judges; Public Prosecutors; Police Officers; Social service workers.

Most of the guaranties are stipulated for in art. 14 of the International Covenant on Civil and Political Rights and the Guideline No. 10 regarding best practices for children:

A) Ensure the right of the child to have a lawyer.

(B) Enable detained, children to contact their parents or guardians immediately.

(C) Prohibiting any questioning of the child in the absence of his or her legal counsel.

(D) Ensure that the child is able to consult freely and confidentially with his or her parents and / or guardians or legal representatives;

(E) Provide information on legal rights in a manner commensurate with the child's age and maturity and using a language that the child can understand.

(F) Encourage the avoidance of referral to the formal criminal justice system, as appropriate;

(G) Promote the use of alternative measures and sanctions for deprivation of liberty, as appropriate.

(H) Develop measures to ensure that judicial and administrative proceedings are conducted in a timely manner and in a manner that allows children to express themselves directly or through an appropriate Taking into account the age and maturity of the child may also require amendments to judicial and administrative procedures and practices.

The Guarantees of Art. 40 of the CRC are the minimum acceptable. States must try to provide better ones.

- **Additional Guaranties (2)**

1. Presumed Innocent until proven Guilty. The Public prosecutor has the burden of proof.
2. Non-discrimination: Safeguards against discrimination are needed from the earliest contact with the criminal justice system and throughout the trial, and discrimination against any group of children requires active redress. (gender-sensitive; sexual abuse treatment;
3. Adequate understanding by CCL: Legal aid providers and social service workers must coordinate to explain to the CCL the situation.

The CRC's art. 40 (Child friendly text): 40. Children who break the law

Children accused of breaking the law have the right to legal help and fair treatment. There should be lots of solutions to help these children become good members of their communities. Prison should only be the last choice

4. Giving Importance to the CCL's best interest: CRC art. 3 In all actions concerning children ... the best interests of the child shall be a primary consideration. Protection of the CCL's interests should ensure that he is not subjected to a criminal environment that might increase his criminal activities.

In this respect: The concept of best interests of the Child is defined in the most adequate measures for the well-being of the Child. (Art. 37 (c))

Compared law:

The principle that the best interests of the child is a primary consideration is enshrined in many national laws, for example, article 47 of the **Tunisian** Constitution; and Art. 2 of the **Lebanese** Law No. 422/2002.

Additional Guaranties (3)

5. Right of the CCL to be listened to: CRC considers this right one of the utmost important. It must be observed during the whole judicial procedure. His right of remaining silent should also be respected.

Compared law:

Lebanon: The juvenile judge shall take the decision to extend the period of the non-liberty measure after hearing the juvenile, the person responsible or recognized, and the social representative. (art. 12 of law 422/2002)

Tunisia: Judgment by children's judge or children's court after hearing the child (art. 95 of the law)

6. Non-retroactivity of Juvenile's judicial: CRC (2) (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

7. Right of being protected against all types of violence: Whether physical, mental or sexual.

8. Protecting the CCL's private life: especially in the case of sexual abuse.

Compared law:

Lebanon: It is prohibited to publish the picture of the event and to publish the facts of the investigation and trial or its summary in books, newspapers, cinema, and any other media. The final verdict may be published provided that the defendant's name, nickname and surname are only initials. (art. 48 of the same law)

Tunisia: Art. 6 protects the private life of the child, and art. 12 stipulates for a treatment of the CCL that protects his/her honor and character.

Additional Guaranties (4)

8. Right of effective contribution in the proceedings: Proceedings should be conducted in an atmosphere of understanding to allow children to fully participate. Comment 24.
9. To be immediately informed of accusations and procedures to be taken: A Child-friendly language should be used. Immediately means as soon as possible, i.e. when the Public Prosecutor starts investigating.
10. Decide the action without delay and with the presence of parents: Especially when the CCL is detained.

Compared law:

Lebanon: When the juvenile is brought before the Public Prosecution or the judicial police in the offense for investigation, the person responsible for the investigation shall immediately inform his family, guardians or officials. (art. 37 same law)

Tunisia: Parents of the CCL have the following rights: a) Attend before the Police when the under 15 y/o CCL is interrogated; b) Notified by the investigating judge of the procedures; c) interfere in the procedures .

11. No coercive measures to make the CCL avow the crime.

Compared law:

Lebanon: The Juvenile who breaches the law shall be treated fairly and humanely. (Art. 2 of same law)

Tunisia: Article 2 of the Child Protection Code provides for the protection of the child from all forms of violence, harm, or physical, moral or sexual abuse.

12. Right of Appeal.
13. Right to an interpreter

C- Special provisions for the CCL (1)

The reaction to an offence should always be proportionate not only to the circumstances and the gravity of the offence, but also to the personal circumstances (age, lesser culpability, circumstances and needs, including, if appropriate, the mental health needs of the child), as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the principles of child justice spelled out in article 40 (1) of the Convention.

- Protection of the CCL from any kind of harm.
- Prevention of the capital punishment.
- Prevention of life sentence without parole.

Compared law:

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

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

Tunisia: Child offenders shall not be sentenced to death and imprisonment for the rest of their life: "If the punishment is death or imprisonment for the rest of the life, that penalty shall be compensated by a term of imprisonment of ten years. Supplementary penalties shall not be applied... (prohibition of residence, denial of exercise of rights etc.) as well as the rules of recidivism "(article 43 of the Penal Code).

C- Special provisions for the CCL (2)

Treatment and conditions:

- Every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits.
- The Committee on the rights of children has set in its General comment No. 24 (2019) the following principles for CCL's deprivation of liberty:
 1. Incommunicado detention is not permitted for under 18 y/o
 2. Children should be provided with a physical environment and accommodation, special attention for privacy, associate with peers, activities;
 3. Every child has the right to education
 4. Every child has the right to be examined by a physician
 5. The staff of the facility should promote and facilitate frequent contact by the child with the wider community, incl. Family.
 6. Restraint or force can be used only when the child poses an imminent threat of injury to himself or herself or others, not for securing compliance.
 7. Any disciplinary measure is to be consistent with upholding the inherent dignity of the child and the fundamental objectives of institutional care.
 8. Solitary confinement should not be used for a child.
 9. Every child should have the right to make requests or complaints, without censorship as to the substance
 10. Independent and qualified inspectors should be empowered to conduct inspections on a regular basis .
 11. States parties should ensure that there are no incentives to deprive children of their liberty.

C- Special provisions for the CCL (3)

Compared law:

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

Tunisia: A child may be punished, subject to the provisions of the Code, if it is determined that such reform requires it. In this regard, penalty should be decided at specialized institution (the Correctional Center) and when it is not possible, at a ward dedicated to children (article 99 of the Child Protection Code).

A Muslim child who is admitted to an educational welfare and reform institution or placed in a place of suspension shall have the right to health, physical and moral protection, and shall have the right to social and educational care.

Case law Tunisia: After a 16-year-old child was sentenced to six months' imprisonment for acts such as assault and violence, he was imprisoned while he was to be housed in a correctional facility instead of the prison facility. As a result, the child, after being released from prison, had neurological disorders and mental illness after being assaulted inside the prison.

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

The court ruled that the public prosecutor of the state's litigation dept. at the Ministry of Justice has to pay the plaintiff reparation for his physical and moral harm.

Administrative Court / First Instance judgment / 24 May 2017.

Part 3: Importance of the coordination between the CCL's lawyer and the social worker

General Comment 24 year 2019 on children's rights in the child justice system

106. A comprehensive child justice system requires the establishment of specialized units within the police, the judiciary, the court system and the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

108. Specialized services such as probation, counselling or supervision should be established together with specialized facilities, for example day treatment centres and, where necessary, small-scale facilities for residential care and treatment of children referred by the child justice system. Effective inter-agency coordination of the activities of all these specialized units, services and facilities should be continuously promoted.

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



Lebanon

UPEL: L'Union pour la Protection de l'Enfance au Liban

The Union for the Protection of Juveniles in Lebanon was founded on the 12th of February, 1936 by Presidents Alfred Naccache and Sami El-Solh, Professor Philippe Bianquis and Father André le Genissel. (Ministry of Interior receipt N.15). It was recognized of Public Utility by Decree N.9/EB dated 17-10-1939, confirmed by Decree N.169 dated 15-4-1978. It has six offices in the Palaces of Justice of the six governorates and a Reformatory for Juveniles in Fanar.

In each office, there are many social counselors who study the files of the juveniles:

- 1- Exposed to danger (ill-treatment, homelessness, carelessness, sexual or physical abuse, moral violence;
- 2- Appearing in courts for violation of laws (robbery, murder attempt, pick pocketing, beating, harming;

UPEL provides social welfare burdens in the juvenile courts in Lebanon.

It also operates a 90-person capacity center of a to accommodate CCLs. Ages 12 to 18.

Social work in the UPEL includes prevention, protection, reform and rehabilitation.

UPEL would work with the CCL to aid him to rehabilitates it, develops its personality, regains self-confidence and helps it reintegrate into society.

Education and training: school enrollment or vocational courses including: carpentry, blacksmithing, electricity, hotel, sewing, computer programming etc ...

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



Lebanon In practice: (1)

Arrested juveniles take different courses in Lebanon as stipulated by Law No. 422, which the legislators were keen to call the law for protection of juveniles, whether offenders or at risk. However, these courses are subject to infringements and violations and some of them require limiting their use, amendments and new procedures.

To the police station...

- The procedures for prosecuting a juvenile offender begin with taking him to the police station in handcuffs. This is contrary to the Convention on the Rights of the Child.
- Juveniles are subjected upon arrest to beatings and ill-treatment sometimes, on the street or at the police station, according to President of Juveniles and Child Rights Committee at the Beirut Bar Association;
- Syrian juveniles are treated as the weakest link, starting with how they are treated on the street by some security personnel and all the way to the treatment of other detainees in prison (Discrimination of nationality)
- The law prohibits conducting investigations with juveniles at the police station without the presence of a social worker to protect juveniles from possible abuse or intimidation. The law provides a maximum deadline of six hours for the worker to arrive. However, while waiting for the social worker, juveniles are sent to the detention cell along with adults detained for various offenses, despite the law prohibiting this practice
- Moreover, sometimes social workers do not arrive within the prescribed deadlines, due to understaffing. In such cases, the person responsible for the investigation might not fulfill the imposed conditions and may proceed with the initial investigation with the detained juvenile alone (as Article 47 of the Code of Criminal Procedure states that each detainee has the right to contact a family member and to the presence of a lawyer of his choice)



Lebanon In practice: (2)

The initial investigation at the police station ends by contacting the Prosecutor General “...prosecution procedures [of the juvenile] and his interrogation and trial are subject to some special rules”

To the Palace of Justice...

- The detained juvenile is transferred from the police station, if the Attorney General so decides, to a Palace of Justice, where he is placed under pre-trial detention;
- The law has set the period of custody to 48 hours, with possibility of extending it by another 48 hours if required by a decision to expand the investigation, during which the juvenile is also detained along with adults in a cell that is usually crowded with detainees on various charges. However, violations take a far more dangerous turn when the period of detention exceeds those set by the law.
- Before the investigating judge: According to the law, any juvenile has the right to appoint a lawyer. If his parents are not able to do that, the judge can appoint an «available» lawyer, without taking into account the specialization requirement. To limit this practice, the two committees in the Beirut Bar Association, Juveniles and Legal Aid, seek to secure specialized lawyers, a list of whose names are sent to judges.

During all this process juveniles are subject to procedures carried out by non-specialized persons.

- The investigation phase is concluded with referral of the case to the juvenile court judge. In specific cases, the ordinary judiciary examines the case, especially in the event of a juvenile participating with a non-juvenile in a crime, where similar cases take a lot of time to decide. The latter case raises several problems, most importantly the issue of confidentiality which is a flagrant violation...



Lebanon In practice: (3)

«The juvenile needs special help to rehabilitate him so he can fulfill his role in the society... In any case, the interests of the juvenile must be taken into account to protect him from delinquency...»

To the prison...

- In the Juveniles building in the Roumieh prison, detainees are divided between those who have been sentenced to prison and those who are awaiting a decision.
- With the rising number of detainees, especially in the year 2016, sometimes up to 15 juveniles are detained in one cell in poor humanitarian conditions. Especially with the increasing number of Syrian detainees.
- In the juvenile prison, established procedures do not separate those accused of using drugs from those accused of trafficking, for example, or those arrested on charges of theft from those on charges of murder or attempted murder, which runs contrary to the principle of taking into account the interests of each and every juvenile so as to protect him from delinquency.
- **According to the law, the detainees are subject to** a rehabilitation process under the supervision of specialized teams. But this care provided by the law is limited in time and ends daily by 2 p.m. Following the rules of the Roumieh prison (obligation to vacate the building at precisely two in the afternoon) . After that time, the responsibility of following up on the situation of the prisoners falls with the security forces. After 2 p.m. there are rumors that the juveniles stay with adults without supervision, where some rape cases are alleged to have occurred . The Juvenile protection dept. at the Bar Assoc. mentions such cases, but the official version is not clear about their occurrence .



Lebanon In practice: (4)

Law no.138/2019 “Replacing some penalties with the free social work sanction”

Said new law was passed on 9 July 2019 and it stipulates for free social service penalties applied *in lieu* of imprisonment for minor crimes.

- One of the beneficiaries of said free social service, are juveniles subject to law No. 422/2002.
- Accordingly, a specialized judge is appointed to look into the cases where Free Social service penalty is to substitute imprisonment.
- When applying the free social service penalty, the duration is 8 hours per day, and the 9-month imprisonment year is withhold.

Part 3: Importance of the coordination between the CCL's lawyer and the social worker (1)

A- Scope of the cooperation: Legal air providers, (lawyers) and Social Service workers, should both be aware, and cooperate in the following, in the best interest of the CCL.

1- Attending with the CCL: Lawyers/social Service worker shall be present immediately after the arrest of the child at the police station, for several reasons:

- i) Juvenile/child shall be aware of his rights;
- ii) Ensure that interrogation takes place in conditions that respect the procedures and the rights of the child;
- iii) To secure an alternative to detention for the child: The alternative to detention in the police station is usually linked to the possibility of finding the child's family, which is rarely done by the police immediately and therefore in the absence of support, the child will be automatically detained

Compared law:

Lebanon: When the CCL is brought before the police or the Public Prosecutor, the social worker must be informed immediately, who must attend within 6 hours.

The presence of the social worker is not enough, he must proceed with a social study and to report his findings to the party handling the investigation (art. 34 of law 422/2002).

If a juvenile's social file has not been established under the preceding procedures, the juvenile court shall obtain, prior to the judgment, a social investigation by the authorized social representative or by the court commissioned by the social workers. Said report shall include background of the CCL's financial and social status, his scholar, professional entourage, his intelligence and medical condition and criminal record with the right procedure for his rehabilitation.

Part 3: Importance of the coordination between the CCL's lawyer and the social worker (2)

Tunisia: The Social Judge shall collect through social research all instructions on the material and literary status of the family, the personality and precedents of the child, attendance at the school and his biography, and the circumstances of his upbringing and education. This report contains the opinion and competence of the competent experts and their practical suggestions that would help the contracting court to make the necessary decisions and the appropriate means (article 87 of the Child Protection Code).

Best Practices:

In Lebanon, the organization "Terre des Hommes" recruits and trains independent lawyers (among young lawyers) and social workers in an effort to fill the gaps in the legal and social protection of children in conflict with the law. Lawyers and social workers are contacted as soon as the child is arrested, helps police write social reports, search for the child's parents, prevent pre-trial detention and advocate alternative penalties whenever possible.

Due to the efforts of "Terre des Hommes" organizations:

- Approximately three quarters of children supported by lawyers and / or social workers are not deprived of their liberty.
- Government partners generally see the appointment of social workers as cheaper than detaining children.

Part 3: Importance of the coordination between the CCL's lawyer and the social worker (3)

2. Preparation of the case by the lawyer: It is imperative that the Social Service Worker meets with the lawyer, to:

- i) advise him about the report on the background of the CCL;
- ii) Coordinate the most suitable alternative sanctions;

Each time during the procedure, when the lawyer finds necessity that a CCL is in need of a social intervention, he must inform: 1- His parents, 2- The SSW; 3- The Court (or investigating authorities).

B. Interferences without resorting to judicial procedures:

Both providers (lawyers and SSW) must attempt to emphasize that the authorities explore the possibilities of avoiding a court process or conviction, through diversion and other measures. (General Comment (24) 2019).

C. Alternative sanctions:

Measures that does not deprive liberty such as censored freedom, are a measure provided for in comparative law such as Lebanese and Tunisian law (called "guarded freedom")

Compared Law:

Lebanon: "Put the juvenile under the control of the social representative or the authority designated for this purpose under the supervision of the judge" (art. 10 of law 422 /2002).

Tunisia: If one of the measures is to be taken or a penalty is to be imposed, the child may also be authorized to be placed under a system of guarded freedom until he reaches the age of twenty (article 101 of the Child Protection Code).

D- General Overview of special cases (1)

1- Child soldiers/ recruited

- Some States parties of the Convention on the rights of the child have adopted a punitive approach with no or limited consideration of children's rights, resulting in lasting consequences for the development of the child and having a negative impact on the opportunities for social reintegration, which in turn may have serious consequences for the broader society. Often, these children are arrested, detained, prosecuted and put on trial for their actions in conflict areas and, to a lesser extent, also in their countries of origin or return.
- Children who had been recruited in violation of applicable international law by armed forces and armed groups and were accused of having committed crimes during armed conflicts should be treated primarily as victims of violations of international law. And shall be subject to non-judicial measures as alternatives to prosecution and detention that were focused on reintegration.
- Detention of a child soldier shall be in conformity with international standards, including the provisions of article 37 of the Convention on the Rights of the Child, taking into account efforts to search for family members or prevent children from participating in rehabilitation programs;
- Should refrain from charging and prosecuting them for expressions of opinion or for mere association with a non-State armed group, including those designated as terrorist groups
- If, in exceptional cases, children under the age of 15 are directly involved in hostilities and are in the hands of the adversary, they will continue to benefit from special protection;
- Child, in the event of their arrest, detention or detention in connection with armed conflict, shall be placed in separate detention centers from those for adults;
- Prohibition of imposing the death penalty for a crime related to armed conflict committed by a person who is under 18 years of age

D- General Overview of special cases (2)

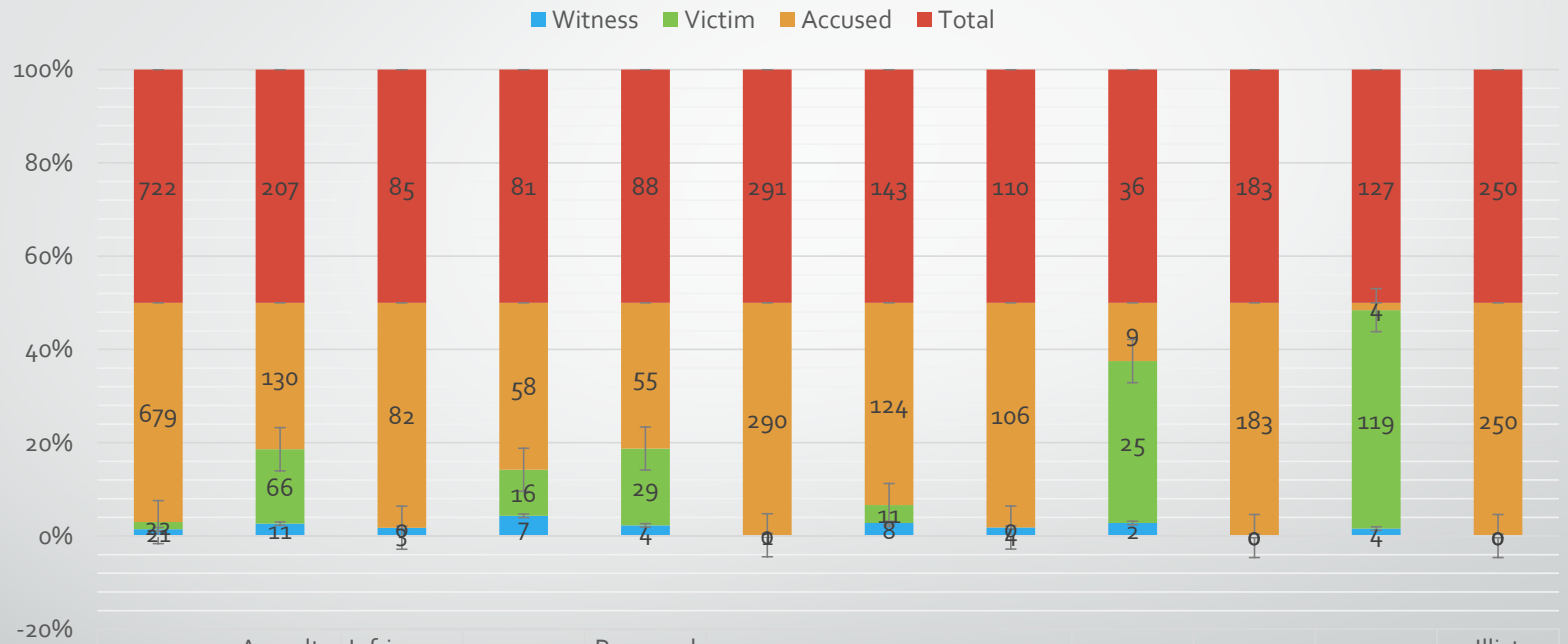
2- Unaccompanied or separated child:

- States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State in compliance with the Convention and other international obligations.
- An asylum-seeking child should be represented by an adult who is familiar with the child's background and who is competent and able to represent his or her best interests. The unaccompanied or separated child should also, in all cases, **be given access, free of charge, to a qualified legal representative**, including where the application for refugee status is processed under the normal procedures for adults. (CCR- GENERAL COMMENT NO. 6 – 2005)
- Unaccompanied or separated children shall be protected pursuant to other relevant child protection mechanisms such as those provided under youth welfare legislation
- Prohibition of deprivation of liberty of unaccompanied or separated child.

Where national law is inconsistent with the provisions set out above, i.e. when national law provides for the deprivation of unaccompanied child's liberty, legal counsel shall raise this matter or at least ensure that the child receives protection in detention.

Recent Statistics of the Juvenile Court - Lebanese Juvenile Department- MoJ

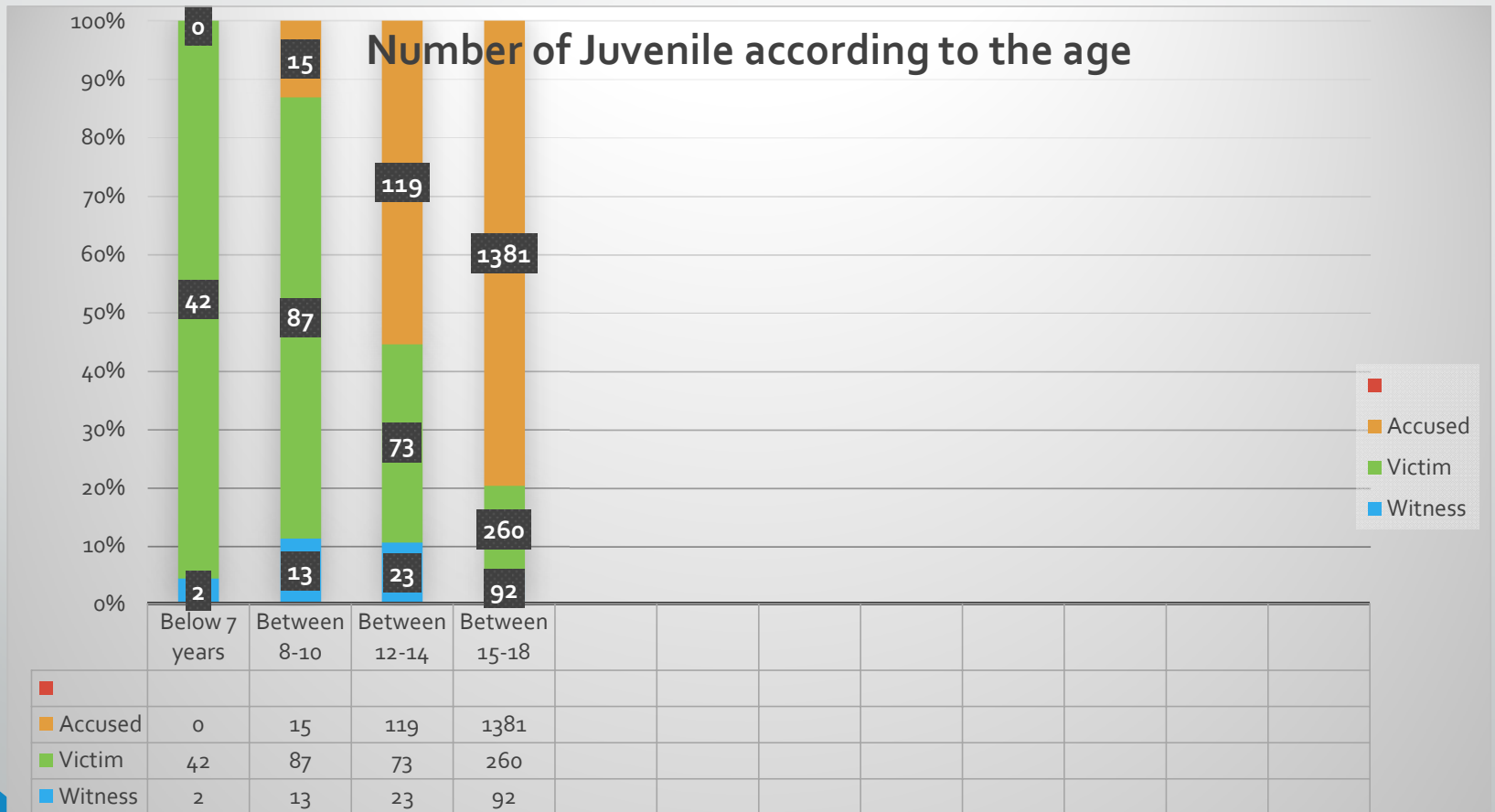
1- Number of convicted Juvenile – year 2017



	Theft	Assault and Battery	Infringement of property	Weapons	Rape and sexual offense	Drugs	Fight	Escape	Kidnapping	Illicit residency	Domestic Violence	Illicit boarder crossing
Total	722	207	85	81	88	291	143	110	36	183	127	250
Accused	679	130	82	58	55	290	124	106	9	183	4	250
Victim	22	66	0	16	29	0	11	0	25	0	119	0
Witness	21	11	3	7	4	1	8	4	2	0	4	0

Recent Statistics of the Juvenile Court - Lebanese Juvenile Department-MoJ

2- Number of convicted Juvenile from 1/1/2017 to 31/12/2017



Recent Statistics of the Juvenile Court - Lebanese Juvenile Department-MoJ

3- Distribution of crimes according to the manner of execution

