

**HEARTLAND  
ALLIANCE**  
INTERNATIONAL



## **Guidelines for Police Officers dealing with Juveniles**

For a better implementation of the Juvenile Welfare  
Act and the International Standards of Juvenile Rights

**2018**



## Table of Contents

<b>Preamble</b> .....	2
<b>Part One</b> .....	7
First: Responsibilities of Police Officers during the Stage of Detention.....	7
Second: Rights of Juveniles before the Court of Inquiry and the Juvenile Court.....	14
Third: Detention of the Juveniles in the Correctional Facilities .....	15
Fourth: The Most Important Rights of Juveniles in the Correctional Facilities .....	16
Fifth: Human Rights Standards and Juvenile Justice .....	17
Sixth: Guidelines for Police Officers in Accordance with Human Rights Standards.....	18
<b>Part Two: Annexes</b> .....	20
Annex One: Role of the Concerned Bodies (Formal or Informal) in Juvenile Justice .....	21
First: Ministry of Interior .....	21
Second: Roles of the Attorney General .....	23
Third: Role of Social Workers.....	23
Fourth: Role of Lawyers and Bar Associations .....	24
Fifth: Role of Parents (family).....	25
Sixth: Role of Independent Commission of Human Rights in the KRG .....	25
Annex Two: Legal Framework of Juvenile Justice .....	27
First: International Legal Framework for Juvenile Justice .....	27
Second: National Legal Framework .....	30
Annex Three: Juvenile Complaint Form.....	35



## **Preamble**

Heartland Alliance International (HAI), in coordination with the European Commission (EC), implements a project to reform in the services of judicial institutions in Iraq and the Kurdistan Region by supporting access to justice and improving the conditions of the detentions.

In this regard, HAI is developing the national legal assistance system so that it complies with the international standards and the national laws concerning juveniles who are in conflict with the law. HAI is also working to support access to justice for the vulnerable groups including children and juveniles who are in conflict with the law.

The term ‘juvenile in conflict with the law’ refers to any person who has completed eleventh year of age but has not completed eighteenth year of age, and who has come in contact with the justice system as a result of committing a crime or being suspected of committing a crime. This is the age of responsibility according to the Law of the Age of Criminal Responsibility No. 14 of 2001 in the Kurdistan Region. Yet, the age of juvenile in Iraq is from nine to eighteen according to the Article (3) of the Juvenile Welfare Act No. 76 of 1983. This entails the lack of criminal responsibility for acts committed by children under that age limit. In the Kurdistan Region, no criminal case will be brought against anyone who, at the time of committing the crime, has not completed eleventh year of age.

The official number of juvenile delinquents who have entered the juvenile justice system in Iraq during the years of 2014, 2015, 2016, and 2017 is approximately 2000 to 2400 juveniles. However, in the Kurdistan Region, the number is from 300 to 400.

This guidebook is designed to achieve a number of goals: In the first place, it is intended to develop legal education of the employees of the concerned entities of the Ministry of Interior, particularly juvenile police officers, on the international standards and the national laws related to juveniles in conflict with the law. Secondly, it is aimed at promoting access to justice without any mistreatment. Thirdly, it is developed to offer



legal support for juveniles and to ensure that they can communicate with their families, which in a way will facilitate their fate with the law.

This guidebook is the product of a number of consecutive meetings attended by the representatives of the Iraqi Ministry of Interior, the Ministry of Interior of the Kurdistan Region, the High Commission for Human Rights in Iraq, the Iraqi Bar Association, the Supreme Judicial Council, UNICEF, and the representatives of partner community organizations. It is prepared under the auspices of HAI and within the framework of the project “*Protecting the Future: Reform of the Juvenile Justice in Iraq*”, which is funded by the European Commission.

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The objectives of this program are:

- Making sure that juveniles are protected from mistreatment during interrogation and during pre-trial detention.
- Working with the particular committees of family, women, and children in the Iraqi and Kurdish parliaments in hope of amending the Juvenile Welfare Act and the enactment of a new Child Act.
- Offering legal aid and mental health services to juveniles in conflict with the law.
- During the period of this project, HAI and its partners from the national institutions work towards building capacities of judges, prosecutors, judicial officers, and social workers through implementing the following activities:
  - ◆ Conducting a qualitative and quantitative survey on juvenile justice.
  - ◆ Using the suggestions and the recommendations of the survey to propose policies, procedures and necessary guidelines for the implementation of alternative systems to punishment, and reducing the use of detention.
  - ◆ Capacity building for judges, prosecutors, social workers, and law enforcement officers.



- ◆ Proposing general policies and institutional measures to protect juveniles from neglect or mistreatment.
- ◆ Preparing and distributing a leaflet entitled “Know Your Rights”, which will be used to educate children and their families about their rights and duties when dealing with investigative and legislative authorities.
- ◆ Improving access to justice and quality of legal representation provided by civil society institutions and lawyers.

**Effects:**

During the 24-month implementation of the project, HAI and its partners will work towards achieving their goals through:

- Submitting a number of recommendations to the concerned authorities for the purpose of reform.
- Improving the capacity of judges, prosecutors, social workers, and law enforcement officers.
- Proposing general policies and institutional measures to protect juveniles from neglect or mistreatment through preparing evidence for judges and juvenile police officers and with the participation of a designated group of official partners.
- Helping a distinguished elite of legal experts and academics in the preparation of a special curriculum for juvenile justice that can be used in the teaching of judges and prosecutors in charge of monitoring juvenile cases.
- Preparing and distributing a leaflet entitled “Know Your Rights”, which is a guideline for children and their parents, and improving access to justice and the quality of legal representation provided by NGOs and designated lawyers.
- Providing technical assistance for review and reform in the new Child Act and supporting its implementation.
- Encouraging active participation of a large number of juvenile justice workers in the discussion of juveniles in general and the public interest in particular, the various mistreatments and their causes, and the possibility of the implementation of alternatives systems to punishment within the framework of the current laws.



- Encouraging the participation of the High Commission of Human Rights, the representatives of the Ministry of Interior, the Ministry of Justice, and the Institute of Justice Development to shed light on a large number of problems and challenges and to attempt to unite all the efforts in Iraq.
- Signing a memorandum of understanding between the bar associations of both Kurdistan and Iraq to encourage lawyers to protect the best interest of juveniles and to work in the best way possible.
- Involving the expert group, who are responsible for the preparation of a training program for trainers, in a training for judges and prosecutors so that they can learn about a wide range of problems and challenges, which will in turn be reflected in their curriculum.



This guideline consists of two main parts:

**Part One** consists of the responsibilities of police officers dealing with juveniles, the rights of juveniles at the stages of detention, investigation, trial, and detention at correctional (reformatory) facility according to the international standards and the national laws. It also contains some specific instructions for police officers dealing with juveniles.

**Part Two** consists of the annexes.

*Annex One:* Role of the Concerned Bodies (Formal or Informal) in Juvenile Justice

*Annex Two:* Legal Framework of Juvenile Justice

First: International legal framework for juvenile justice

Second: National legal framework

*Annex Three:* Complaint Form



## Part One

The responsibilities of police officers dealing with juveniles, the rights of juveniles according to the international standards and national laws.

### First: Responsibilities of Police Officers during the Stage of Detention

1. The detained juvenile shall be presumed innocent, and the treatment with the detained juvenile shall be according to the legal guarantees<sup>1</sup>.
2. Any juvenile who is arrested and/or charged must be informed of the reason of that arrest or charge. They also have the right to remain silent<sup>2</sup>.
3. There should be no infringement of the juvenile's sense of dignity and worth. No mistreatment of the juvenile must also occur during his/her arrest.

**The Principle:** The Police must treat juveniles in a way, which fosters their sense of dignity and self-respect, facilitates their re-integration into the society, and embodies their best interests. This principle is referred to in Article 1 of the Universal Declaration of Human Rights, Article 37 (c) of the Convention on the Rights of the Child, and Article 8 (a) of Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

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<sup>1</sup> See Article 14(2) of the International Covenant on Civil and Political Rights, which states, "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." See also Article 11 of the Universal Declaration of Human Rights, which states, "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense." In addition, Article 19(5) of the Iraqi Constitution states, "The accused is innocent until proven guilty in a fair legal trial. The accused may not be tried for the same crime for a second time after acquittal unless new evidence is produced." See also Article 3(17) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Guidelines) which states, "Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such." See also Article 40(2.b.i) of the Convention on the Rights of the Child which states children are "presumed innocent until proven guilty according to law."

<sup>2</sup> See Article 14(3.a) of the International Covenant on Civil and Political Rights, which states that the accused shall "be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him." See also Article 1 of the Universal Declaration of Human Rights, which states, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."



4. No juvenile shall be subjected to torture or to any other cruel treatment during investigation. No juvenile shall be forced to confess<sup>3</sup>.

**The Principle:** Any form of torture or mistreatment against any person is prohibited. This principle is referred to in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is also referred to in Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, and Article 37(a) of the Convention on the Rights of the Child. In addition, this principle is also referred to in Article 19(12b) and Article 37(1c) of the Iraqi Constitution of 2005. It is also referred to in Article 332 and Article 333 of the Iraqi Penal Code and Article 127 and Article 218 of the Code of Criminal Procedure.

#### 5. Initial Contact

Upon the apprehension of any juvenile, his or her parents or guardian shall be immediately notified of such apprehension. If such immediate notification was not made, the parents or the guardian shall be notified within the shortest possible time after apprehension<sup>4</sup>.

**The Principle:** The parents or the guardian have the right to participate in the judicial proceedings. The juvenile has the right to immediately notify his/her parents or guardian

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<sup>3</sup> See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See Article 5 of the Universal Declaration of Human Rights, which states “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” See Article 7 of the International Covenant on Civil and Political Rights, which states “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” See also Article 37(a) of the Convention on the Rights of the Child, which states “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”

<sup>4</sup> See Article 15(2) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”-1985) which states, “The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.”



of the apprehension, the reason for the apprehension, and the place of his/her detention.

Thus, the police shall allow the parents or guardian to attend the interrogation sessions.

6. Informing the apprehended juvenile and his/her parents of the right to be represented by a legal advisor.<sup>5</sup>

**The Principle:** The right of defense is guaranteed to the juvenile at all stages of interrogation. And, upon the apprehension and at the preliminary investigation, the police must inform the juvenile and his/her parents of the right to appoint a lawyer at all stages of investigation and trial. This principle is referred to in Article 19(4) of the Iraqi Constitution, Article 37(d) of the Convention on the Rights of the Child, and Article 15(1) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”-1985).

7. Police officers who apprehend juveniles shall be specially trained to deal with juveniles<sup>6</sup>.

**The Principle:** The police and the security forces shall immediately refer the apprehended juvenile to the juvenile police, which is the concerned party capable of implementing the standards and criteria that help protect the rights of the apprehended juvenile. Such a

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<sup>5</sup> See Article 19(11) of the Iraqi Constitution of 2005, which states, “The court shall appoint a lawyer at the expense of the state for an accused of a felony or misdemeanor who does not have a defense lawyer.” See also Article 37(d) of the Convention on the Rights of the Child, which states “ Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.” See also Article 15(1) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”-1985) which states, “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.”

<sup>6</sup> See **Article 12(1)** of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”-1985) which states, “In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.”



principle is referred to in Article 84 of the Juvenile Welfare Act No. (76) for the year 1983 (amended)<sup>7</sup>.

8. Juvenile police shall immediately conduct preliminary investigation with the juvenile upon his/her apprehension.

**The Principle:**

- A) The arrest warrant shall be carried out by juvenile police.
- B) Police officers who deal with juveniles shall be specially and professionally trained so that they can prevent violating juvenile rights. This principle is referred to in Article 12(1) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”-1985) and Article 48 of the Juvenile Welfare Act No. (76) for the year 1983 (amended).

9. The apprehended juvenile shall see a specialist doctor to verify that he/she is not subjected to physical or psychological violence<sup>8</sup>.

**The Principle:** Police officers shall take the apprehended juvenile to see a specialist doctor who will then provide a report confirming the juvenile’s health condition. It is important that the report be kept in the investigation papers. It is also important to clarify the report’s impact on the juvenile’s criminal responsibility, which may be the result of police form to make him/her confess. This principle is referred to in Article 4 of the Juvenile Welfare Act No. (76) for the year 1983 (amended).

10. The apprehended juvenile shall be brought promptly before a juvenile judge in accordance with Article 48 of the Juvenile Welfare Act<sup>9</sup>.

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<sup>7</sup> See Article 84 of the Juvenile Welfare Act No. (76) for the year 1983 (amended) which states, “Upon the apprehension of the juvenile, he/she shall be handed over immediately to the juvenile police in the places where the juvenile police are present to take him to the investigating judge or juvenile court.”

<sup>8</sup> See **Article 13** of the Juvenile Welfare Act No. (76) for the year 1983 (amended) which states, “Except for the provisions of Section 1 of Article 12 of this law, an office of personality studies may be formed of part-time doctors of the Ministry of Health who are chosen by the Minister, some specialists from the Ministry of Education who are chosen by the Minister, and some specialists from a university. They shall all be employed by the order of the Minister of Justice.”



**The Principle:** The speed with which the police refer cases promptly facilitates the conduct of formal proceedings in juvenile cases, which must take place no later than 24 hours after the apprehension of the juvenile. This principle is referred to in Article 19(13) of the Iraqi Constitution and Article 9(3) of the International Covenant on Civil and Political Rights.

11. During investigation with juveniles, police officers shall not wear military uniform or carry guns visibly. This is to avoid any psychological effects on the juvenile in the future.

12. Juvenile police officers shall respect the legal status of the juvenile.

**The Principle:** The most important procedure that police officers shall take is to respect the best legal interest of the juvenile, to avoid the use of profanity or physical violence, or to detain him/her in a dangerous setting. Such actions will have a great impact on the juvenile and his/her outlook towards society and the government especially if he/she is acquitted. Actions such as beating of the juvenile by the police, the use of hoses to beat the different parts of his/her body, physical or psychological torture, sexual assault, detention in confined places or in places which lack the basic health services, or transfer of the juvenile in handcuffs to the correctional facilities or courts shall all be considered as mistreatment and violation of the juvenile's dignity. This principle is referred to in Article 14(2) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"-1985) and Article 37(c) of the Convention on the Rights of the Child.

13. Police officers shall respect the rights of the juvenile at all stages to avoid harm caused to him/her by undue publicity or by any form of labelling. They shall also not

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<sup>9</sup> See Article 19(13) of the Iraqi Constitution of 2005, which states "The preliminary investigative documents shall be submitted to the competent judge in a period not to exceed twenty-four hours from the time of the arrest of the accused, which may be extended only once and for the same period." See also Article 9(3) of the International Covenant on Civil and Political Rights, which states "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement."



publish any information that may lead to the identification of the juvenile, and shall keep juvenile records secret and allow no one, except for investigators, to see them.

**The Principle:** The importance of keeping the privacy of the juvenile by police officers comes from the fact that juveniles are by nature children and are sensitive to the descriptions attributed to them (delinquent, criminal). It is also important to protect the juvenile from the effects of the dissemination of information about the case in the media as they are still accused and no judgment is done against them. This principle is referred to in Articles 8, 1, and 2 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”-1985) and Article 63(1 and 2) of the Juvenile Welfare Act No. (76) for the year 1983 (amended).

14. Informing the juvenile in a simple language of the charge(s) against him/her and the circumstances which he/she shall be investigated in.

**The Principle:** The international standards emphasize the need for police officers and investigators to inform the juvenile in a simple language of the charge(s) against him/her and of the measures that the judge can take against him/her. This principle is referred to in Article 7 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”-1985) and Article 4(3.a) of the International Covenant on Civil and Political Rights, and Article 50 of the Juvenile Welfare Act No. (76) for the year 1983 (amended)<sup>10</sup>.

15. The police shall not apprehend any juvenile who is under 11 years of age. The age of a juvenile at the time of the commission of an offence should be the basis for establishing his/her liability

**The Principle:** Law enforcement and police officers shall not bring, apprehend, or investigate a juvenile who is under 9 years of age as there is no criminal responsibility for

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<sup>10</sup> See Article 50 of the Juvenile Welfare Act No. (76) for the year 1983 (amended) which states “Investigations may be conducted without the presence of the juvenile in cases that are related to morals and public morality on the condition that the investigation shall be attended by a person entitled to defend him. The Investigative Court shall also inform the juvenile of the actions taken against him/her.”



acts committed by children under that age. This principle is referred<sup>11</sup> to in Article 47(1) of the Juvenile Welfare Act No. (76) for the year 1983 (amended)<sup>12</sup> and Article 64 and Article 74(1) of the Iraqi Penal Code No. 111 for the year 1969.

16. A juvenile shall not be apprehended at the detention centers of the Ministry of Interior.

**The Principle:** A juvenile shall not be apprehended if he/she commits an offense. Police stations shall only apprehend a juvenile, who is accused of a death penalty and who is over 14 years of age. In case of no juvenile observatory, a juvenile shall only be apprehended in a place where mixing with adult criminals is not possible. This principle is referred to in Article 52(1) of the Juvenile Welfare Act No. (76) for the year 1983 (amended) and Article 67 of the Iraqi Penal Code No. 111 for the year 1969.<sup>13</sup>

17. Police stations shall separate the apprehended juvenile from the apprehended adults to avoid receiving criminal behavior from adult detainees and for juveniles not to be subjected to violations.

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<sup>11</sup> See Article 64 of the Iraqi Penal Code No. 111 for the year 1969, which states “Criminal proceedings cannot be brought against any person who is under 7 years of age at the time of committing an offence.” See also Article 74(1) of the Iraqi Penal Code No. 111 for the year 1969, which states “The age of a juvenile at the time of the commission of an offence should be the basis for establishing his/her liability.”

<sup>12</sup> See Article 47(1) of the Juvenile Welfare Act No. (76) for the year 1983 (amended) which states “No criminal case shall be brought against a person who, at the time of committing the crime, has not reached nine years of age.”

<sup>13</sup> See Article 67 of the Iraqi Penal Code No. 111 for the year 1969, which states “If a juvenile commits an infraction, he should be cautioned in court rather than punished in accordance with the law or he should be handed over to one of his parents, legal guardians or foster parents with a warning to the latter to insure the juvenile’s good behavior or he should be fined whatever the penalty prescribed by law for an infraction may be.” And, if the juvenile commits a misdemeanor, there are some measures in Article 68 which states “If a child commits a misdemeanor, he should, instead of being punished in accordance with the law, be handed over to one of those people mentioned in Article 67, if he undertakes in writing to insure the child’s good behavior. The period for this should not be less than 6 months and should not exceed 3 years from the date of the ruling. He may also be confined in a reform school for a period of not less than 6 months and not exceeding 3 years or he may be fined whatever the penalty prescribed by law may be.”



## **Second: Rights of Juveniles before the Investigative Court and the Juvenile Court**

1. The investigative judges and the Juvenile Court shall ensure that the juvenile is not subjected to torture by the police officers, who are responsible for the apprehension and investigation of the juvenile.

**The Principle:** Investigative judges and the Juvenile Court shall ensure that no pressure or coercion is exerted on the juvenile to make him/her to confess or reveal an information that may be used against him/her. They shall also ensure to ask the juvenile if he/she has been subjected to any form of physical or psychological pressure or torture during arrest, transfer to a police station, investigation, or apprehension at a police station until appearance before the investigative Court. This principle is referred to in Articles 127 and 218 of the Code of Criminal Procedure and Article 40(2.b) of the Convention on the Rights of the Child.

2. A juvenile has the right to request to see a specialist doctor who may examine any allegations that the police officers have forced the juvenile to confess, as this shall put them in legal responsibility.

**The Principle:** The investigative judge or the Juvenile Court may refer the juvenile to a doctor or a medical body to examine his/her physical condition or the effects of criminal liability resulting from forcing the juvenile to confess by the police. This principle is referred to in Article 13(2) of the Juvenile Welfare Act No. (76) for the year 1983 (amended).

3. Police officers shall not present a juvenile in handcuffs before the investigative judge or Juvenile Court.

**The Principle:** Bringing a juvenile in handcuffs before a judge or placing him/her in a cell in court is considered a violation against the dignity of the juvenile as he/she is accused, not found guilty. Any action that may harm a juvenile physically is prohibited, as this will have a deep impact on him/her and his/her viewpoint towards law enforcement agencies. This principle is referred to in Article 10(3) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”-1985).



4. Police officers shall enforce the judge's decision to release the juvenile immediately by handing him/her to his/her parents or guardian. If this is not possible, the investigative judge shall make an appropriate decision.

**The Principle:** All the police stations and law enforcement agencies shall complete the procedures for the immediate release of a juvenile upon the issuance of the judge's decision. Release papers may not be delayed for any reason. This principle is referred to in Articles 10(2) and 10(1) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"-1985).

### **Third: Detention of the Juveniles in the Correctional Facilities**

1. The police officers at the correctional facilities shall ensure that juveniles who have attempted to escape are protected from beatings and torture, as the purpose of detaining juveniles is to provide vocational training and rehabilitation in addition to care and protection.

**The Principle:** The aim of vocational training and rehabilitating juveniles in correctional facilities is to provide them with care, protection, education and professional skills in order to help them to play constructive and productive social roles in society. This principle is referred to in Article 10(2, 3, 4) of the Juvenile Welfare Act No. (76) for the year 1983 (amended).

2. The police at the correctional facilities shall take appropriate measures to resolve any riot between juveniles within the facility and to protect juveniles from harming themselves.
3. The police at the correctional facilities shall treat families of the juveniles with respect when they visit the facility.
4. The police at the correctional facilities shall allow lawyers to visit their juvenile clients.



#### **Fourth: The Most Important Rights of Juveniles in the Correctional Facilities**

##### **1. Concerning female and male juveniles**

- a. The right to separate them from adults.
- b. The right to contact the outside world.
- c. The right to access health, psychological, and medical services.
- d. The right to have enough amount of quality food.
- e. The right to have decent bed and clothes.
- f. The right to ventilation, to access sunlight, light, and exercises.
- g. The right to study and going to school.
- h. The right to benefit from training and rehabilitation programs.
- i. The right to be protected against any mistreatment, the right to file a legal complaint.
- j. The right to be protected against discrimination in treatment, and to receive services on the basis of sex, language, religion, color, origin or political belief.

##### **2. The most important rights of female juvenile at the correctional facilities**

In addition to the above-mentioned rights, female juveniles have the following special rights.

- a. Female juveniles shall be detained in places separate from male juveniles.
- b. Only female officers shall search female juveniles.
- c. Necessary measures shall be taken to protect them from violence and sexual harassment.

##### **3. The rights of juveniles with special needs**

The rights of juveniles with special needs are referred in Article 26 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”- 1985), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules), and Article 10 of the Juvenile Welfare Act No. (76) for the year 1983 (amended).



### **Fifth: Human Rights Standards and Juvenile Justice<sup>14</sup>**

Children shall benefit from all the human rights guarantees available to adults. In addition, the following rules apply to children.

- Children shall be treated in a way that enhances their sense of dignity and worth, facilitates their integration into society, embodies their best interests and takes into consideration the needs of a person in that age.
- Children shall not be subjected to torture, or mistreatment, or cruel, inhuman or degrading treatment or punishment, physical punishment or life imprisonment without the opportunity to be released.
- Detention or imprisonment of children is a severe measure, and should only be used as a last resort. Detention shall be as short as possible.
- Children shall be separated from adult detainees.
- Children detainees shall receive visits and messages from family members.
- A minimum age shall be set for a child to bear criminal responsibility.
- There shall be no non-judicial procedures and alternatives for the care of children at the correctional facilities.
- The privacy of the child shall be respected, and their record shall be kept in a safe and secret place.
- The means of restricting the movement of the body and use of force with children shall be prohibited. Such means shall only be used in exceptional cases, and shall be used only when all other measures of control fail, and shall be used only for the shortest possible period.
- No weapon shall be carried at the juvenile welfare institutions.
- The dignity of the child shall be respected, and sense of justice, self-respect, and respect for human rights shall all be cultivated within the child.
- Special training shall be implemented for the staff who deal with juveniles, and such staff shall be individuals suited for that purpose.
- Inspectors shall conduct periodic and unannounced visits to juvenile facilities.

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<sup>14</sup> United Nations High Commissioner for Human Rights / International Human Rights Standards for Law Enforcement.



- Parents shall be informed of any arrest, detention, transfer, illness, injury or death of their child.

### **Sixth: Guidelines for Police Officers in Accordance with Human Rights Standards**

- Police officers shall participate in special trainings on treatment and care of juvenile delinquent, and on how to treat and care for them in a decent and human manner.
- Police officers shall participate in child educational programs to help prevent juveniles from committing crimes and to prevent them from being victimized.
- Police officers shall get to know the children and their families in the area where they are performing their duties.
- Police officers shall pay attention to places that put juveniles at risk of committing crimes, or places that put juveniles in contact with adults.
- Police officers shall check to see if children are seen outside of their school during school hours, and they shall inform parents and school administrators of this issue.
- Police officers shall immediately investigate any evidence that children are being neglected or abused at home or at police centers.
- Police officers shall arrange regular meetings with social workers, professionals, and doctors to discuss children's issues that are related to the work of police officers dealing with juveniles.
- Police officers shall inform the officials and the human rights organizations of any information that indicates the incapacity of any police officer to deal with juveniles.
- Police officers shall encourage the use of a variety of arrangements as alternatives to juvenile care at the correctional facilities, including care, guidance, supervision, counseling, observation, foster care, educational and professional training programs and other appropriate measures.
- Police officers shall keep and protect data on juvenile detainees in a safe place: data on identity, reasons of their apprehension, date of transfer, date of release, details of notifications to their parents, physical and mental problems, data on the staff caring for them, or any other necessary and important data.



- Police officers shall help a juvenile to file a direct complaint to the director of the facility, or the judicial authorities, or human rights organizations.
- Police officers shall assist in the development and implementation of community programs to prevent juveniles from committing crimes.
- Police officers shall periodically review policies related to dealing with juvenile delinquents, in consultation with social services, medical staff, judicial authorities and representatives of civil society organizations.
- Police officers shall arrange certain procedures to accelerate the bringing of juvenile detainees to appear before particular courts.
- Police officers shall ensure the continuity of coordination and cooperation with juvenile justice agencies, and the bodies concerned with the protection of children and concerned medical and social bodies.
- Police officers shall issue clear orders regarding confidentiality with the juvenile records.
- Police officers shall perform close supervision of the staff who deal with juveniles and investigation of any cases of abuse, mistreatment or exploitation of juveniles.



## **Part Two: Annexes**



## **Annex One: Role of the Concerned Bodies (Formal or Informal) in Juvenile Justice**

### **First: Ministry of Interior**

1. After its approval by the Minister of Interior, this guidebook shall be adopted as a working guide for all employees of the Ministry of Interior who deal with juveniles in all judicial stages. This guidebook shall be considered as a curriculum taught at the police academies.
2. With regard to the Kurdistan Region, the guidebook shall be adopted by the Minister of Interior of the Kurdistan Region. The Minister shall issue the instructions he deems suitable for the implementation of the guidebook in accordance with the measures and the structure used by the juvenile police in the Kurdistan Region.
3. The Minister of Interior shall issue instructions to all employees regarding the role of each entity of the Ministry to ensure juvenile justice.
4. The Ministry shall adopt a working training plan for all its employees to raise their awareness about the rights of juveniles, how to prevent any violations affecting juvenile rights, and to achieve the best interests of children / juveniles.
5. The Ministry shall work on the implementation of the guidebook to include programs, workshops, conferences, services and printing the guidebook and distribute it to all employees and concerned government bodies.
6. The Ministry shall review the structure of the juvenile police and raise it to the level of directorate, and directly link it to the Ministry's Agency for Police Affairs. All departments of juvenile police in the cities shall be technically linked to this directorate.
7. The Ministry may consider the formation of high committee from the ministry to select competent people and certificate holders to be at the heart of the administration of juvenile police.
8. The Ministry will issue instructions that in each police station there should be juvenile police officers who carry out arrest warrants, bring the juvenile to the police station, investigate him/her and bring him/her before the judge. This is all to ensure the protection of juvenile rights.



9. The Ministry shall issue instructions that juvenile police officers shall wear a special uniform that is different from the military uniform. Juvenile police officers will also put a special badge on their uniform to show that they are juvenile police, which is to consider the negative effects that might have on juveniles.
10. The Ministry shall establish a mechanism between the Juvenile Police and the Directorate of Forensic Medicine at the Ministry of Health to facilitate the prompt issuance of medical reports to resolve the cases and decide the fate of the juvenile as soon as possible.
11. The Ministry shall establish the World Children's Day, 20 November, as a National Day of Juvenile Justice, during which the Ministry shall organize national public events to spread awareness of the protection of juveniles from delinquency.
12. The Ministry shall work towards publishing the guidebook itself and through the media. It may organize media campaigns and TV shows to introduce and show the significance of the guidebook by the police in protecting the rights of the juveniles.
13. The police shall apply the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations in dealing with juveniles.
14. The complaints shall be sent to the online department of complaints of the Ministry's website so that follow-up procedures against any police abuses are carried out.
15. The Ministry shall activate the Social Research Unit within the Directorate of Juvenile Police to study and analyze juvenile crimes and their causes and to raise necessary reports.
16. The Ministry shall form a committee to establish a joint work mechanism between the Juvenile Police, the community police, and the Directorate of Women and Child Protection to protect the rights of juveniles.
17. The Ministry shall assert the compliance of the instructions issued by the Minister of Interior regarding the similarity of names, especially with regard to juveniles, in accordance with Article 93 of the Code of Criminal Procedure No. 23 of 1971 and its amendments.
18. The Ministry of Interior shall cooperate with the Ministry of Education and the Ministry of Higher Education to organize awareness campaigns with regard to limiting the risk of juvenile delinquency.



### **Second: Roles of the Public Prosecutors**

Police officers shall cooperate with the public prosecutors so that he/she can accomplish his/her duties in protecting the rights of juveniles and to understand the role of the public prosecutor, who may be held accountable if he/she does not comply with legal standards in dealing with juveniles.

1. The public prosecutor has an important role in ensuring that investigating authorities respect the rights and guarantees of the juvenile and that juveniles are not subjected to abuse and torture during all stages of the trial. The public prosecutor shall challenge the decisions and procedures that were issued or occurred during the investigation or the trial and that they were not implemented according to the law. The public prosecutor has also an important role in the supervision of the correctional facilities and in receiving complaints from juveniles and their families, and to follow-up the complaints.
2. The public prosecutor shall increase the monitoring of the performance of juvenile police.
3. The public prosecutor shall follow up the proceedings of juveniles cases before judges.
4. The public prosecutor shall intensify the monitoring of the condition of juvenile detainees to ensure respect for the law.

### **Third: Role of Social Workers**

Police officers shall cooperate with social workers to help them accomplish their duties in protecting the rights of juveniles and to understand the nature of their work in dealing with juveniles.

1. Social workers have an important role in the process of juvenile justice as they assess the health, mental and psychological state of juveniles. They also prepare a report containing specific recommendations for the investigative Court and Juvenile Court. The report and recommendations will help choose the most appropriate measures for the juvenile.
2. In all cases, except for cases where there is no secondary offense, before the respective body makes a final decision prior to the judgement, a proper examination of the environment and circumstances in which the juvenile lives in or the



circumstances in which the offense is committed shall be conducted so that the respective body makes a proper and foresight court ruling.

3. Social inquiry reports (reports before the court ruling) are an indispensable tool of aid in most legal and family cases, school life, educational experiences, and so forth. To that end, some judicial authorities use special social bodies or staff from the court or administrative body for that purpose. It is possible that other employees such as conduct monitors will do that work. Thus, the rule requires the provision of appropriate social services by establishing reliable social investigation reports.

#### **Fourth: Role of Lawyers and Bar Associations**

1. The juvenile has the right to be represented during the course of the proceedings by his or her legal agent or to request the court to appoint a lawyer to defend him/her (Beijing Rules, Article 15(1)).
2. The presence of a lawyer at the stages of investigation and trial is one of the most important guarantees of a fair trial. Juvenile trials are considered invalid if a lawyer is not present.
3. The lawyer has the right to contact his client, the right to be alone with him/her, and to hear from him/her the facts of the case. The lawyer has also the right to discuss with his client the procedures that will be undertaken in the framework of defense.
4. The lawyer shall have the right to have access to all the documents of the case before and after accepting to be client's lawyer (Article 27 of the Iraqi Law No. 173 of 1965).
5. The lawyer has the duty to do his/her best in defending the rights of his/her client.
6. The Juvenile Court may accept the defense of the juvenile by a guardian or a relative or a representative of the social institutions without the need of a written of power of attorney. This is subject to the provisions of Article 144 of the Code of Criminal Procedure, Article 60 of the Juvenile Welfare Act.
7. The lawyer assigned to the defense shall attend the pleadings and defend the defendant or appoint another lawyer in his/her place to carry out all defense procedures. Article 144 of the Code of Criminal Procedure.



**Fifth: Role of Parents (family)**

1. Parents may be subject to financial penalties or imprisonment if they neglect their child or juvenile, leading to homelessness or deviation of conduct, or if such negligence results in the commission of a misdemeanor or a felony.
2. If a child under 9 years of age commits a crime, the court may decide to hand him/her over to his/her parents to carry out the recommendations of the court to maintain his/her good conduct under a pledge accompanied by a financial guarantee of no less than two years and no more than five years.
3. The juvenile court may rule to deprive parents of the custody of a child or a juvenile if they are sentenced to a crime that is harmful to public morals. However, before ruling such a decision, the personal examination office shall be requested to carry out the social research and the medical and psychological examination of the child or juvenile to determine the effect of depriving the parents of the custody.
4. The juvenile guardian shall cooperate with the probation officer to implement the monitoring decision to the benefit of the juvenile and to inform the officer of any change in the juvenile's behavior.
5. If the parents or the guardian fail to perform their duties or cause obstruction of the monitoring, the juvenile court may decide to be fine them.

**Sixth: Role of the Iraqi High Commissioner for Human Rights<sup>15</sup>**

1. The High Commission for Human Rights shall work with the Ministry of Interior to train all the staff of the Ministry on juvenile rights and criminal justice.
2. The Commission shall attempt, in cooperation with the Ministry of Interior, to publish the guidebook on juvenile justice at all the establishments of the government.
3. The Commission shall establish joint workshops, seminars and conferences with the Ministry of Interior to introduce their roles in protecting and reforming juvenile justice.

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<sup>15</sup> Independent Commission of Human Rights in the KRG



4. In cooperation with the Ministry of Interior and the Ministry of Labor and Social Affairs, the Commission shall strengthen its role to follow up and evaluate the government establishments in implementing the requirements of the guidebook.
5. The Commission shall monitor all violations that occur at the law enforcement establishments of the Ministry of Interior in dealing with juvenile issues. The Commission shall thus set a joint plan for the Ministry to follow up and reduce these violations.
6. The Commission and the Ministry of Interior shall work towards establishing a national team for juvenile justice from all government establishments to promote the protection of juvenile rights.
7. The Commission shall work towards reactivating those complaints that are related to the violation of juvenile rights by the police.
8. The Commission shall activate the monitoring mechanisms to implement the requirements of the guidebook by all police officers of the Ministry of Interior.



## **Annex Two: Legal Framework of Juvenile Justice**

This section of the guidebook aims at reminding the employees working in the field of juvenile police of the most important texts of international conventions and charters for juveniles and children, and the need to raise their educational background as Iraq is one of those countries that have signed and ratified these conventions. However, the condition is that these international agreements and conventions shall not be in conflict with national laws, as they contain model rules that represent the minimum rights to be respected by the country. Moreover, these conventions and agreements are a source for Iraqi legislators when drafting laws on children and juveniles.

### **First: International Legal Framework for Juvenile Justice**

#### *1. International Covenant on Civil and Political Rights (1966)*

The most important points related to juveniles are the following.

- Article 6(5), which states, “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women”.
- Article 10(2b), which states, “Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication”.
- Article 10(3), which states, “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status”.
- Article 14(4), which states, “In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation”.

#### *2. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”).*



The most important points related to juveniles are the following.

- Article 7, which states, “Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings”.

3. *Convention on the Rights of the Child (1989<sup>16</sup>)*

In particular Article 37, which states,

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

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<sup>16</sup> Iraq ratified The Convention on the Rights of the Child on June 6, 1994.



4. *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines-1990)*

The most important points are the following.

- Article 54, which states, “No child or young person should be subjected to harsh or degrading correction or punishment measures at, in schools or in any other institutions.”
- Article 58, which states, “Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system”.

5. *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Principles, 1990)*

The most important points are the following.

- Article 17, which states, “Juveniles who are detained under arrest or awaiting trial (“untried”) are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles”.
- Article 18(a), which states, “Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications”.

6. *Guidelines on Justice Matters involving Child Victims and Witnesses of Crime issued in 2004 by the UN*



- Article 10, which states, “Child victims and witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity”.
- Article 11, which states, “Every child should be treated as an individual with his or her individual needs, wishes and feelings”.
- Article 12, which states, “Interference in the child’s private life should be limited to the minimum needed at the same time as high standards of evidence collection are maintained in order to ensure fair and equitable outcomes of the justice process”.
- Article 13, which states, “In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner”.

7. *GENERAL COMMENT No. 10 (2007) Children’s rights in juvenile justice*

It is essential for the quality of the administration of juvenile justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of CRC in general, particularly those directly relevant to their daily practice. This training should be organized in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions. It should include information on, inter alia, the social and other causes of juvenile delinquency, psychological and other aspects of the development of children, with special attention to girls and children belonging to minorities or indigenous peoples.

**Second: National Legal Framework**

In this section, the most important principles that are dealt with in some national legislations concerning juvenile delinquents are highlighted. This is for the purpose of reminding police officers working in the field of juvenile justice of these principles and the need to take them into account when dealing with juvenile delinquents.



1. Iraq's Constitution of 2005

The most important points that are related to juveniles are the following.

- Article 19(5), which states, “The accused is innocent until proven guilty in a fair legal trial. The accused may not be tried for the same crime for a second time after acquittal unless new evidence is produced”.
- Article 30(1), which states, “The State shall guarantee to the individual and the family - especially children and women – social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing”.
- Article 37(1 c), which states, “All forms of psychological and physical torture and inhumane treatment are prohibited. Any confession made under force, threat, or torture shall not be relied on, and the victim shall have the right to seek compensation for material and moral damages incurred in accordance with the law”.

2. Juvenile Welfare Act No. 76 of 1983

- Article 23, which states,
  - First: The juvenile police shall look for lost child, runaway child, and neglected child. They shall also look for juveniles who are susceptible to delinquency in places such as cafes, bars, discos and cinemas late at night.
  - Second: The juvenile police shall return the child or juvenile to their families once they are found in places that subject them to delinquency.
- Article 24, which states,
  - First: A child or a juvenile is considered homeless if:
    - a) He/she was found begging in public places, or he/she faked injury or disability or resorted to cheating as a means of winning the public sympathy for begging.
    - b) He/she worked as a shoe polisher or sold cigarettes or any other work that might subject him/her to delinquency, and he/she was under 15 years of age.



- c) He/she did not have a certain place of residence or used public places for residence.
  - d) He/she did not have a legitimate means to make a living, and he/she has no guardian.
  - e) He/she left home or the place where he/she was placed in without a legitimate excuse.
  - Second: A child or a juvenile is considered homeless if he/she practices any profession or work outside of family.
- Article 25, which states,
- A child or a juvenile is considered delinquent if:
    - First: He/she worked in places of prostitution, gambling, or bars.
    - Second: He/she mingled with the homeless or those who are known for their misconduct.
    - Third: He/she rebels against the guardian or family.
- Article 26, which states,
- If a child or a juvenile is found in the cases described in Articles 24 and 25 of this law, he/she shall be referred by the investigative judge to the Juvenile Court which then issues its final decision after receiving the report of the personal study, as follows:
    - First:
      - a) Delivering a child or a juvenile to the guardian to carry out the recommendations of the court in light of the report of the personal study to ensure the well-being and good behavior. And, this is implemented according to an appropriate financial commitment.
      - b) In case of having no parent or guardian, or in case of breaching paragraph (a) above, a child or a juvenile is delivered to a good close relative at his/her request to carry out the recommendations of the court in light of the report of the personal study to ensure the well-being and good behavior. And, this is implemented according to an appropriate financial commitment.



- c) The court may decide to follow up on the implementation of the commitment provided for in paragraphs (a) and (b) through conduct observation.
  - Second: If the guardian or the close relative breached the terms of delivering back the child or the juvenile, the court may decide the following:
    - a) The signee of the financial commitment shall pay in full or part the amount in the contract.
    - b) The court shall place the child or the juvenile in government foster house provided in the Social Welfare Act or any other house designated for that purpose.
  - Third: If the court could not deliver the child or the juvenile in accordance with the provisions of paragraph (1) of this article, the provisions of sub-paragraph (b) of paragraph (2) shall be implemented.
  - Fourth: If the child or the juvenile is suffering from intellectual or developmental disabilities, the Juvenile Court shall decide to send him/her to a health or social establishment designed for such disabilities.
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- According to Article 3(2), the Juvenile Welfare Act No. 76 of 1983 considers nine years of age as the age of legal responsibility. In the Kurdistan Region, the Parliament issued Law No. 14 of 2001, which amended the age of criminal responsibility to eleven years of age.
  - Juveniles shall not be placed with adults or in detention places for adults. This is according to Article 52(3).
  - Juveniles shall be protected from delinquency through early detection of juvenile delinquency in accordance with Article 16 of the Juvenile Welfare Act.
  - Article 48 considers juvenile police as (specialized police). The most important duties of juvenile police are the following:
    - Preparing the apprehended juvenile before the investigative court.



- Receiving, immediately and without delay, the apprehended juvenile from other security forces.

3. Iraqi Penal Code No. 111 of 1969 and its amendments

Articles 66 and 79 of this law contain many provisions that are related to juveniles and are related to the Juvenile Welfare Act No. 76 of 1983.

4. The Code of Criminal Procedure No. 23 of 1971 and its amendments

Articles 242 and 233 of Chapter II (Juveniles) of this law deal with provisions that are related to juveniles.



**Annex Three: Juvenile Complaint Form**