

The 2006 Palestinian Juvenile Protection Law A Quest for Further Reform

Dr. Mutaz M. Qafisheh*

December 2016

Introduction

The State of Palestine became party to the International Convention on the Rights of the Child of 20 November 1989 (CRC)¹ on 2 April 2014.² Less than two years later, on 4 February 2016, President Mahmoud Abbas enacted Decree-Law No. 4 Concerning Juvenile Protection (hereinafter "Juvenile Protection Law" or "the Law"),³ which set forth the rights of children in conflict with the law and reformed the entire child justice system.⁴ The Law incorporated the international standards relating to children as enshrined in the CRC and other soft law rules. The question remains: would the legal texts, as manifested by the accession to the Convention and by the aforesaid Law, be materialized at the institutional and practical levels?

The number of children in conflict with the law is on the rise.⁵ While the number of children who broke the law in the West Bank was 637 in 2005,⁶ it increased into 2,457 in 2014.⁷ Yet no concrete effort has been undertaken to systematically resolve the issue of such children, despite the progress made at the global level and in certain states in the Middle East,⁸ and the significant developments of the Palestinian legal system since the establishment of the Palestinian Authority in 1994.⁹ Jordan amended its Juvenile Rehabilitation Law of 1954,¹⁰ which has been applicable in the West Bank until early 2016, just one year after its withdrawal from that Palestinian territory during the war with Israel in 1967.¹¹ Children in Palestine had to wait over 60 years until the new Juvenile Protection Law to be adopted in 2016. The foregoing shows, from the outset, the necessity of

* Dean and Associate Professor of Public International Law, Hebron University College of Law & Political Science, Palestine. Dr. Qafisheh holds PhD in International Law from the Graduate Institute of International and Development Studies in Geneva. He is a PhD Supervisor at University of Exeter School of Law, UK; Member of the International Law Association's ICC Complementarity Committee, London. He is a former Human Rights Officer at the United Nations in Geneva, Beirut, and Ramallah; Regional Director for the Middle East and North Africa of Penal Reform International, Amman; and Legal Advisor to the Palestinian Parliament. He published six books and over 30 refereed articles in Oxford, Cambridge, The Hague, London, Oslo and elsewhere. All translations are done by the writer. Any mistake is mine. Email: mmqafisheh@gmail.com or mutazq@hebron.edu.

¹ 1577 *United Nations Treaty Series* (UNTS) 3, entered into force 2 September 1990.

² Spokesperson for the UN High Commissioner for Human Rights, *Press Briefing Notes on Palestine* (Geneva, 2 May 2014).

³ Palestine Gazette, No. 118, 28 February 2016, p. 7.

⁴ The Law came into force, in accordance with its Article 68, on 29 March 2016.

⁵ This study relates to juvenile justice in the Palestinian Authority-controlled territory. It does not cover the violations of children's rights by Israel. Nor does it discuss Palestinian children in East Jerusalem. See Defense for Children International, *Palestinian Child Prisoners* (Ramallah, 2008); and Rinad Abdallah, *Rights of Jerusalem Children* (Ramallah 2010).

⁶ These numbers are mainly taken from Ministry of Social Affairs in 2010.

⁷ Defense for Children International, *Juvenile Police in Palestine between Practice and International Standards* (Ramallah 2015), p. 61.

⁸ Taher Buomidra & Netham Assaf, eds., *Arab Experience on Juvenile Justice* (Amman 2007); Zeinab Aouin, *Juvenile Justice: Comparative Study* (Amman 2009).

⁹ There are, however, some initiatives to work on juvenile justice by UN agencies, NGOs, universities and the Palestinian Authority. But none of these initiatives has been comprehensive. See Suheil Hasanein, *Juvenile Justice in the West Bank and the Gaza Strip* (Birzeit 2003); Abdelkarim Shami, "The Criminal Juvenile Justice in Palestine", in Buomidra & Assaf, *supra* note 8, pp. 52-73.

¹⁰ Jordanian Official Gazette, No. 1182, 16 May 1954, p. 396. See *infra* note 16.

¹¹ Jordanian Ministry of Social Development, *Juvenile Law No. 24 of 1968 and its Amendments until 2007* (Amman 2008). See Mohammad Tarawneh, "Jordanian Experience on Juvenile Justice", in Buomidra & Assaf, *supra* note 8, pp. 31-37; Christine Fadoul, "Juvenile Justice Reform Project in Jordan: Achievements and Challenges", in *ibid*, pp. 38-51.

reforming the Palestinian juvenile justice system in light of international human rights standards and global developments.¹²

This study has been written after an extensive field research and a series of meetings and interviews that took place in the West Bank for over five years (2011 to 2016). In addition, it builds on the author's experience in supervising a Juvenile Justice Clinic at the College of Law and Political Science of Hebron University which was applied in collaboration with Washington & Lee (W&L) University Law School, USA, in 2013-2015. The Clinic included an academic course on juvenile justice for Hebron and W&L students conducted jointly by two Palestinian and American law professors, study visits to child detention centers and police stations, handling a number of child cases (pro-bono advices and representation), hosting several workshops, public awareness campaigns, and organizing joint Palestinian-American moot trials.¹³ The author and a team of his students interviewed police officers, prison administrators, prosecutors, judges, probation officers, and representatives of the Ministry of Social Development. The author visited the social rehabilitation institution allocated for male juveniles in the city of Ramallah, the girls juvenile care institution in Bethlehem, the central prison in the city of Tulkarm, and a police station and juvenile detention center in Hebron. In some of these locations, the author and students met children accused to be in conflict with law. They similarly interviewed a number of international and Palestinian non-governmental organizations (NGOs), lawyers, and UN agencies.

The purpose of this paper is to clarify the legal basis and practical situation relating to children in conflict with law in Palestine with a view to provide a pathway for potential reform, particularly in light of Palestine's obligation pursuant to its recent accession to the CRC. It starts by describing the legal basis that governs the juvenile justice in Palestine. It then explores the formal policy at the level of the Palestinian Ministry of Social Development, its personnel and child care institutions. The study finally analyses the formal juridical cycle: the police, prosecutors, and courts.

I. Legislative Framework for Juvenile Justice

1. The 2016 Juvenile Protection Law: Context

The current law in Palestine, due to the different political regimes that ruled the country since 1917, is mixed of various legal schools. While the Ottoman legislation was based on Islamic Law and Continental Law, law that was adopted by Britain in Palestine until May 1948, came as a reflection of the Common Law. The West Bank and Gaza were once again subjected to the continental-like legal system from 1948 and 1967 when the West Bank was annexed by Jordan; while Egypt administrated the Gaza and retained the British-enacted legislation and issued certain legislation. After its occupation of the West Bank and Gaza in June 1967, Israel did not extend its law to the

¹² For recent developments in nine Arab countries, see Defense for Children International, *Juvenile Police in Palestine...*, *supra* note 7, pp. 18-25.

¹³ Mutaz Qafisheh, "Modern Legal Education in Palestine: The Clinical Programs of Hebron University", in Mutaz Qafisheh & Stephen Rosenbaum, *Experimental Legal Education in a Globalized World: The Middle East & Beyond* (Newcastle 2016), pp. 198-235.

occupied territory.¹⁴ It ruled the territory largely by the pre-1967 law, proclaiming a series of military orders that amended or replaced existing legislation, mainly in the field of security. The Palestinian Authority, upon its establishment in 1994, retained the previous law, including juvenile justice, and simultaneously started a process of unifying the legislation of the West Bank with that of Gaza.¹⁵

Before the adoption of the Juvenile Protection Law in 2016, juvenile justice in Palestine had been regulated by two key instruments. In the West Bank, the applicable legislation was the Jordanian Juvenile Rehabilitation Law No. 16 of 29 April 1954;¹⁶ while in Gaza the applicable law was a British-enacted legislation: Juvenile Offenders Ordinance No. 2 of 18 February 1937.¹⁷ As these two pieces of legislation are no longer applicable,¹⁸ we will confine the analysis here to the new 2016 Juvenile Protection Law. This Law is revised here, in addition to the CRC, in the light of three United Nations (UN) instruments: (1) the 1985 Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as "Beijing Rules";¹⁹ (2) the 1990 Guidelines for the Prevention of Juvenile Delinquency, or "Riyadh Guidelines";²⁰ and (3) the 1990 Rules for the Protection of Juveniles Deprived of their Liberty.²¹ Although international standards are UN recommendations, or "soft law", some of their content is of customary nature, for instance the prohibition of torture.²² They could as such be extended to Palestine as a state, particularly since juvenile justice is primarily under the Palestinian Authority's proper.²³

Since 1999, there have been several attempts to develop a new juvenile justice law to meet the needs of the Palestinian society. The process has been led by civil society organizations,²⁴ UNICEF and the UN Office of the High Commissioner for Human Rights.²⁵ It was thought to include juvenile justice within the Child Law, as the case of other Arab countries such as Egypt and

¹⁴ David Reifen, "The Implications of Laws and Procedures in the Juvenile Court in Israel", 3 *British Journal of Criminology* 130 (1963); Leslie Sebba, "Legalism versus Welfarism in Israeli's Juvenile Justice System", 16 *Israel Law Review* 461 (1981).

¹⁵ Mutaz Qafisheh, "Legislative Drafting in Transitional States: The Case of Palestine", 2 *International Journal for Legislative Drafting and Law Reform* (2014) 7, 26.

¹⁶ Jordan abolished the 1954 Law within 9 months (on 25 March 1968) after the occupation of the West Bank by Israel in June 1967; the Law remained applicable in the West Bank, but not in Jordan. Jordan has amended the 1968 Law a number of times. Jordan is in the process to further reforming its juvenile justice system. See Christine Fadoul, "Draft Law on Reformatory Juvenile Justice System in Jordan: Achievements and Challenges", in Buomidra & Assaf, *supra* note 8, pp. 38-44.

¹⁷ Palestine Gazette, No. 667, Supplement 1, 18 February 1937, p. 187. As a background, see W. Fox, "Sentencing the Juvenile Offender", 5 *Western Law Review* 109 (1966); D. Hodges, "Juvenile Offenders", 13 *British Journal of Criminology* 191 (1973). Before this legislation, juvenile justice in Palestine, as in the rest of the Ottoman Empire, was regulated in accordance with the Ottoman Penal Code of 12 July 1858—Aref Ramadan, ed., *Completion of Laws: Ottoman Laws Valid in Arab States Detached from the Ottoman Government* (Beirut: Science Press, 1928), Vol. I, p. 2. Article 40 of this Code, which was amended on 4 June 1911 (*ibid.*), fixed the age of criminal responsibility at 13 years. It provided that no death sentence may be imposed on persons under 18. The article made a distinction between children between 13 and 15 years of age and those above 15 and under 18, providing reduced sentences for each category. It further recognized a number of alternatives to imprisonment, such as signing a commitment by child's parents, fining or rehabilitation. In certain aspects, these provisions had been more progressive than some rules that had been enacted in Palestine in subsequent periods.

¹⁸ Article 65 of the Juvenile Protection Law of 2016.

¹⁹ General Assembly Resolution 40/33, 29 November 1985.

²⁰ General Assembly Resolution 45/112, 14 December 1990.

²¹ General Assembly Resolution 45/11, 14 December 1990.

²² F. Sloan, "The Binding Force of a 'Recommendation' of the General Assembly of the United Nations", *British Year Book of International Law* 24 (1948); Yuen-il Liang, "The General Assembly and the Progressive Development and Codification of International Law", 42 *American Journal of International Law* 66 (1948).

²³ Palestine was recognized by the UN as a state in 2012. See Mutaz Qafisheh, *Palestine Membership in the United Nations: Legal and Practical Implications* (Newcastle 2013).

²⁴ E.g. Defence for Children International, Independent Commission for Human Rights, and Al-Haq.

²⁵ The present writer took part in this process through his previous capacity as Human Rights Officer at the UN Office of the High Commissioner for Human Rights in Ramallah, 2001-2003.

Tunisia.²⁶ However, the drafting yielded the adoption of the Palestinian Child Law No. 7 of 15 August 2004,²⁷ which excluded children in conflict with the law to have a separate law on that theme. The process of developing a new juvenile law continued and produced a draft in 2006. The draft was far from being consistent with international standards. This led to the slow process in revising the draft. In June 2007, Hamas took over Gaza and Palestine was broken up into two parts: the West Bank led by Fatah, and Gaza by Hamas. Since then, the Palestinian Parliament has not been functioning. And no law has been passed.

In 2010, efforts to have new Palestinian juvenile law were revived. The Ministry of Social Development in Ramallah formed a National Steering Committee to work on a comprehensive policy to reform juvenile justice. The Steering Committee was divided into two task-forces, one charged with developing a national plan on juvenile justice reform and the other was mandated to draft a juvenile justice law. As prospects for the Parliament to reconvene in the near future were minimal, it was envisaged that the new law would be submitted to the Palestinian President to enact it as Decree-Law, using the President legislative power vested in him in the absence of the Parliament under Article 43 of the 2003 Amended Palestinian Basic Law.²⁸ At last this idea has been materialized by the adoption of the 2016 Juvenile Protection Law.

This Law can be considered as a breakthrough in the field of human rights, in general, and the child rights and juvenile justice, in particular. It embodied the most advanced provisions relating to juvenile justice, often exceeding those rules of the CRC. We will here analyze the main positive points of the Law. We will, however, highlight some provisions that have been identified to be a subject of concern.

2. Positive Aspects of the 2016 Juvenile Law

The Juvenile Protection Law incorporated the entire provisions of CRC relating to children in conflict with the law. It placed "the best interest of the child" as a primary consideration for dealing with juveniles.²⁹ The Law prohibited subjecting children who breach the law to "torture or other cruel, inhuman or degrading treatment or punishment".³⁰ It confirmed the non-applicability of death penalty against children and removed the possibility of life imprisonment against them regardless of the gravity of the offence that the child might have committed.³¹ The Law stipulated that that detained children should be separated from adults;³² and that the child "shall have the right to maintain contact with his family through correspondence and visits".³³ It also provided basis for deciding the child-related cases promptly;³⁴ the child's right to benefit from free legal assistance;³⁵

²⁶ The Egyptians Child Law No. 12 of 1996 (comprehensively amended in 2008), in Buomidra & Assaf, *supra* note 8, p. 655; Tunisia Law No. 92 of 1995 on Child Protection, in *ibid.*, p. 534.

²⁷ Palestine Gazette, No. 52, 18 January 2005, p. 13.

²⁸ Palestine Gazette, Special Edition, 19 March 2003, p. 5.

²⁹ Article 3 of CRC; Article 2 of the Law.

³⁰ Article 37(a) of CRC; Article 7(1) of the Law.

³¹ Article 37(a) of CRC; Article 7(2) of the Law (ban of capital punishment), and Article 46(1) (removing the possibility of imprisonment of the child and rather referring him to a care institution for 9 years if he commits an offence punishable by death, or for 7 years if he commits a crime whose punishment is life imprisonment).

³² Article 37(c) of CRC; Article 21(1) of the Law.

³³ Article 37(c) of CRC; Article 4 of the Law. The latter article added that the child has the right, while under disciplinary measure that deprives him of liberty, to have periodical vacations to visit his family "unless the court decides otherwise based on the child's best interest".

³⁴ Article 37(d) of CRC; Article 8 of the Law.

and his "right to challenge the legality of the deprivation of liberty before a court".³⁶ Through such provisions, Palestine has not only adhered to Article 37 of the CRC in its legislation, but it also embraced more favored rights than those elaborated by the Convention.

The Law laid down the foundation for a comprehensive specialized juvenile system for children who come in contact with official institutions, separate from that of adults. It established specialized police, prosecution, courts, procedures, and disciplinary measures.³⁷ A special unit at the Ministry of Social Development relating to "juveniles or children at risk of delinquency" is set up.³⁸ The Ministry is assigned with the power to establish a "Social Defense Office" to be embedded within the juvenile court to assist judges with socio-psychological information about children.³⁹ Clearly, the Law regards child's offences as social, rather than criminal, problem.

A notable development in the Juvenile Law stems from its incorporation of a whole range of disposition alternatives to custody;⁴⁰ which is no longer applicable.⁴¹ Alternatives might be decided based on the circumstances of the child on case-by-case basis. These dispositions include: warning the child not to reoffend;⁴² signing the child, one of his parents or guardian a financial commitment that guarantees to bring the child to investigations or court hearings;⁴³ transferring the child to an alternative family if the parents are unable to take care of the child or if they are the reason of his delinquency;⁴⁴ referral to a vocational training institution;⁴⁵ obliging the child to do certain things, such as attending counseling sessions, banning him from accessing specific locations that endanger the youth,⁴⁶ placing the child under judicial examination,⁴⁷ subjecting him to social probation by child protection officers,⁴⁸ diverting him to any social care institution,⁴⁹ or to a hospital.⁵⁰ Other dispositions include release-on-bail in the pre-trial phase,⁵¹ post-trial conditional release after

³⁵ Article 37(d) of CRC; Article 10 of the Law. The latter article made it mandatory to have a lawyer for the child accused of committing felony or misdemeanor. In cases where the child has no lawyer, "the prosecution or the court, as the case might be, shall appoint a lawyer on its own expense".

³⁶ Article 37(d) of CRC; Articles 33 and 34 of the Law.

³⁷ See section III below.

³⁸ Article 64.

³⁹ Article 28.

⁴⁰ Article 36.

⁴¹ Article 20(1).

⁴² Article 37.

⁴³ Article 20(2-3). See P. Voelcker, "Juvenile Courts: The Parents' Point of View", 1 *British Journal of Criminology* 154 (1961); Jeremy Prichard, "Parents of Young Offenders: Remodelling Restorative Justice", 26 *University of Tasmania Law Review* 101 (2007).

⁴⁴ Article 38. The referral in this case is carried out in accordance with the 2004 Child Law. Article 32 of this law reads as: "A child deprived of his natural family temporarily or permanently has the right to ... a foster (alternative) family to look after him". In 1963, regulations were enacted to organize the alternative family system. The system includes the Ministry of Social Development's supervision over the alternative families, family's characteristics, and allocation of financial compensation for this family payable by the juvenile's family or by the Ministry (Substitute Families Regulations No. 70, 1963; Jordanian Official Gazette, No. 1704, 15 August 1963, p. 1053). In 2012, the alternative family system was included in Article 19(2/a(1)), of the Amended Child Law; it stated that the decision to allocate an alternative family should be held by a judge upon the request of a social protection officer.

⁴⁵ Article 39. The Ministry of Labor established certain institutions to provide vocational training for adolescents. The Ministry of Social Development may refer children in conflict with the law to such training facilities. This is consistent with a number of provisions of the Law that provides the possibility of referring children to an institution that can rehabilitate children. Cf. H. Parker, "The Juvenile Employment Service", 57 *International Labour Review* 15 (1948).

⁴⁶ Article 40.

⁴⁷ Article 41.

⁴⁸ Article 42. See details on the child protection officers in section II.2 below.

⁴⁹ Article 43. See details on the care institutions in section II.3 below.

⁵⁰ Article 44.

⁵¹ Article 20(3).

spending one-third of the term in a child care institution,⁵² and "public community service".⁵³ These alternatives aim to divert minors from the state system, particularly the deprivation of liberty.⁵⁴ They, in turn, conform to the advanced modern referral mechanisms embraced by the most developed legal and social systems of the world.⁵⁵

Mediation has been elaborated in the Law as a means to resolve cases of juveniles. Article 23 opens the possibility for mediation over misdemeanor and contraventions before initiating a criminal file. Once mediation succeeds, the criminal proceedings would be closed. Successful mediation leads to the case's end. This option can be offered by the prosecutor or be requested by the child, his lawyer or guardian. Based on mediation, an agreement can be reached. In it, the child should commit to any obligation under the guarantee of his guardian; including reparation of damages, refraining from accessing certain locations, or to undergo a medical treatment. The agreement is monitored by a probation officer and the police, under the supervision of prosecution. If the agreement's fails, the criminal proceedings may reopen.⁵⁶

The foregoing formulation of "mediation" in such a flexible language may pave the way for Palestine to design a system of restorative justice by a regulation or instructions that complement

⁵² Article 51. Children may benefit from conditional release regardless of the crime's gravity. This option is not conditional to the good conduct of the child deprived of liberty, but it is understood by implication. Once the child is conditionally released, he would be referred to judicial control with the supervision of the child protection officer. It is not possible to bring the child back to complete his term in the care institution if the release has not achieved its objective, but he might be subjected to other disciplinary measures. However, the possibility of exercising the conditional release after passing one third of the deprivation of liberty's term means that the child might not be released before passing less than three years if he gets a 9-year term under Article 46(1.A). This is a step backward; Article 14(2) of the 1954 Law allows releasing the child after one year of "imprisonment".

⁵³ This service was inserted as a proviso at the end of Article 46(2): "in case of committing misdemeanor... the court may ... decide that the juvenile undertakes a public community service according to applicable laws". This is a positive development that did exist in previous laws in Palestine. It goes in line with best practices applied in developed countries. See, e.g., L. Walgrave & H. Geudens, "Restorative Proportionality of Community Service for Juveniles", 4 *European Journal of Crime, Criminal and Law and Criminal Justice* 361 (1996). Community service, as an alternative to incarceration, has never been tested in Palestine. It could be applied, however, by its incorporation to regulations or instructions. It should be flexibly worded to allow courts to select various public locations for juveniles to spend time doing work for the community. The Minister may select a number of locations for such service. The service should not be designed to be a punishment but rather to help the child to develop a sense of responsibility towards the community. The service should meet a number of conditions, including not being humiliating, dangerous, tiring, affecting the health or education of the child. It should also be in line with the local and international labor standards. Such service, which should take in consideration the child's age and abilities, might be required for a couple of hours per week. It could include watering plants in certain public gardens, clean part of classrooms, working in a public library, helping certain disabled people to cross the street or to ride the bus, or working with certain associations in administrative jobs such as photocopying or distributing publications. According to Articles 93-99 of the Palestinian Labor Law No. 7 of 30 April 2000 (Palestine Gazette, No. 39, 25 November 2001, p. 7), children should not work when they are under 15 years of age, should not be employed in dangerous jobs, or work overnight or in remote areas. See International Labor Organization, Convention No. 182 on the Worst Forms of Child Labor (1999), and Convention No. 138 on the Minimum Age for the Admission to Employment or Work (1973). The community service in the Lebanese law offers a model for the Palestinian legislator. See Articles 5(5) and Article 11 of the Lebanese Law relative to Juveniles in Conflict with the Law or those at Risk No. 422, 2 June 2002 (Buomidra & Assaf, *supra* note 8, p. 607).

⁵⁴ Article 40(4) of the CRC stated: "A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence".

⁵⁵ V. Kumar, "The Treatment of Juvenile Offenders in England", 6 *Criminal Law Quarterly* 488 (1964), pp. 491-507; Larry Wilson, "Diversion: The Impact of Juvenile Justice", 18 *Canadian Journal of Criminology and Corrections* 161 (1976); Mark Berlin & Herbert Allard, "Diversion of Children from the Juvenile Courts", 3 *Canadian Journal of Family Law* 439 (1980); Gary Reker, James Cote, & Edward Peacock, "Juvenile Diversion: Conceptual Issues and Program Effectiveness", 22 *Canadian Journal of Criminology* 36 (1980).

⁵⁶ Article 16 of the 2001 Criminal Procedures Law states: "Settlements may be reached on contraventions and which are punishable only by a fine. The competent police officer is held ... to propose a settlement to the accused in the contravention or to his attorney and to establish same in the minutes. The proposal for a settlement in a misdemeanor shall be made by the Public Prosecution".

the Juvenile Law.⁵⁷ The key point of restoration is that the crime is personal matter between the offender the victim, not against the state.⁵⁸ Offences can then be resolved by bringing together the victim, the offender, their social networks, and judicial bodies.⁵⁹ It could apply for certain offences, not all.⁶⁰ Restorative agreements contain reasonable obligations with a view to reintegrate offenders in the society.⁶¹ Restorative justice is a relatively recent alternative in the world; it systematically worked in countries such as Australia,⁶² Britain,⁶³ Canada,⁶⁴ New Zealand,⁶⁵ and the United States.⁶⁶ It exists in certain African countries as well.⁶⁷ Yet the seeds of this form of justice principles find roots in the Middle East and Islamic traditions;⁶⁸ where informal justice is widely practiced to resolve criminal conducts.⁶⁹ This justice is even more utilized in Palestine due to the absence of state system under the occupation for half a century.⁷⁰ For example in 2014, out of the 2,457 of juvenile cases received by police in the West Bank, 491 were resolved by conciliation.⁷¹ Much more conflicts were resolved before reaching the police.⁷²

Other child-friendly provisions can be found in new the Juvenile Law. The Law rose the age of criminal responsibility to 12 years of age⁷³ (it was 9 in previously).⁷⁴ It preserves the child's privacy

⁵⁷ Bernd-Dieter Meier, "Restorative Justice: A New Paradigm in Criminal Law", 6 *European Journal of Crime, Criminal Law and Criminal Justice* 125 (1998); Rick Sarre, "Restorative Justice: Translating the Theory into Practice", 1 *University of Notre Dame Australia Law Review* 11 (1999); Jim Consedine, "The Third Millennium: Restorative Justice or More Crime and Prisons", 11 *Sri Lanka Journal of International Law* 1 (1999); John Braithwaite, "Restorative Justice and Social Justice", 63 *Saskatchewan Law Review* 185 (2000); Kent Roach, "Changing Punishment at the Turn of the Century: Restorative Justice on the Rise", 42 *Canadian Journal of Criminology* 249 (2000); Samuel Damren, "Restorative Justice: Prison and the Native Sense of Justice", 47 *Journal of Legal Pluralism and Unofficial Law* 83 (2002); Donald Schmid, "Restorative Justice: A New Paradigm for Criminal Justice Policy", 34 *Victoria University of Wellington Law Review* 91 (2003); George Mousourakis, "Understanding and Implementing Restorative Justice", 11 *Tilburg Foreign Law Review* 626 (2004); Katherine Doolin, "But What Does It Mean? Seeking Definitional Clarity in Restorative Justice", 71 *Journal of Criminal Law* 427 (2007); Barbara Hudson, "Institutionalisation of Restorative Justice: Justice and the Ethics of Discourse", 2007 *Acta Juridica* 56 (2007); Shawn Fields, "Private Crimes and Public Forgiveness: Towards a Refined Restorative Justice Amnesty Regime", 5 *International Journal of Civil Society Law* 7 (2007); Frank Hill, "Restorative Justice: Sketching a New Legal Discourse", 4 *International Journal of Punishment and Sentencing* 51 (2008).

⁵⁸ Terre des homes-Lausanne, *Thematic Policy on Juvenile Justice* (Lausanne 2010); Terre des homes-Lausanne, *Lima Declaration of Restorative Juvenile Justice*, 7 November 2009.

⁵⁹ Adam Crawford, "Situating Restorative Youth Justice in Crime Control and Prevention", 2007 *Acta Juridica* 1 (2007); Robert Mackay, "Restorative Justice and Children's Hearings: A Proposal", 11 *European Journal of Crime, Criminal Law and Criminal Justice* 1 (2003).

⁶⁰ UN Office for Drugs and Crime, *Handbook on Restorative Justice Programmes* (New York 2006).

⁶¹ *Basic principles on the use of restorative justice programmes in criminal matters*; UN Doc. E/2000/INF/2/Add.2 at 35 (2000).

⁶² Sharon Hayes & Hennessey Hayes, "Developing Ethical Identities in Young Offenders through Restorative Justice Practice in Australia", 8 *Queensland University of Teaching Law and Justice Journal* 380 (2008).

⁶³ Georgios Antonopoulos & John Winterdyk, "The British 1998 Crime and Disorder Act: A Restorative Response to Youth Offending", 11 *European Journal of Crime, Criminal Law and Criminal Justice* 386 (2003).

⁶⁴ Bruce Archibald & Jennifer Llewellyn, "The Challenges of Institutionalizing Comprehensive Restorative Justice: Theory and Practice in Nova Scotia", 29 *Dalhousie Law Journal* 297 (2006).

⁶⁵ Hannah Goodyer, "Rethinking Justice in New Zealand: A Critical Assessment of Restorative Justice", 9 *Canterbury Law Review* 179 (2003).

⁶⁶ Joanne Katz & Gene Bonham, Jr., "Restorative Justice in Canada and the United States: A Comparative Analysis", 6 *Journal of the Institute of Justice and International Studies* 187 (2006).

⁶⁷ Boyane Tshehla, "Restorative Justice Bug Bites the South African Criminal Justice System", 17 *South African Journal of Criminal Justice* 1 (2004); Bruce Baker, "He Must Buy What He Stole and Then We Forgive: Restorative Justice in Rwanda and Sierra Leone", 2007 *Acta Juridica* 171 (2007).

⁶⁸ Mutaz Qafisheh, "Restorative Justice in Islamic Penal Law: A Contribution to the Global System", 7 *International Journal of Criminal Justice Sciences* 487 (2012).

⁶⁹ Mutaz Qafisheh, *Restorative Justice in Palestine and in the Middle East* (presentation delivered at a workshop organized by Terre des hommes-Lausanne in Bethlehem, Palestine, 5 April 2016).

⁷⁰ Nadera Shalhoub & Mustafa Abdelbaqi, *Tribal Justice and Its Effect on Formal Justice in Palestine* (Birzeit 2003).

⁷¹ Defense for Children International, *Juvenile Police in Palestine...*, supra note 7, p. 61.

⁷² Lisa Traki et al, *Informal Justice System and the Rule of Law and Dispute Settlement in Palestine: The National Report on the Results of the Field Research* (Birzeit 2006).

⁷³ Article 5.

by making all juvenile trials confidential,⁷⁵ and it criminalizes any person who reveals information that affects the child's honor.⁷⁶ Financial penalties against minors are non-applicable, nor the possibility of filing civil claims before juvenile courts.⁷⁷ All juvenile cases are exempted from court fees.⁷⁸ The conviction of a child would not be recorded.⁷⁹ The Law reduced the applicability of the statute of limitation to the half regarding any case involving children.⁸⁰ The child, while deprived of liberty, has the right to complete his primary and secondary education.⁸¹ A separate system is established to enforce juvenile cases with the supervision of the court, prosecution, and child protection officers over the disciplinary measures that affect convicted children.⁸²

3. Concerns

Notwithstanding these remarkable developments in the Juvenile Protection Law, three major issues remain a matter of concern: the absence of executive legislation, vague provisions, and the allocation of human, logistical and financial resources.⁸³

The Law has been adopted without its enforcement secondary legislation (regulations, instructions, and orders). Article 66 empowered the Council of Ministers to enact such executive regulations and delegated the Minister of Social Development to adopt instructions and orders that give effect to the Law. However, past experience shows that, without fixing specific date for enacting executive legislation, laws might face standstill.⁸⁴ The Law ought to have been enacted along with its regulations and the necessary instructions to apply many of its non-self-executing provisions. Police officers, prosecutors, judges, and child protection officers would not know how to execute certain stipulations without having specific procedures in place.

⁷⁴ Article 2 of the 1954 Juvenile Law; and Article 94 of the 1960 Penal Code as amended by Article 2 of Law No. 39 of 25 November 1963 (Jordanian Official Gazette, No. 1727, 16 December 1963, p. 1683). The Jordanian Penal Code No. 16 of 10 April 1960 is still applicable in the West Bank (Jordanian Official Gazette, No. 1487, 1 May 1960, p. 374). See Kamel Said, *Interpretation of the Penal Code* (Amman 2009); Netham Majali, *Interpretation of the Penal Code: General Section* (Amman 2010). Criminal responsibility in Gaza was determined by Article 9 of the 1936 Criminal Ordinance: "A person under the age of nine years is not criminally responsible for any act or omission. A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission. On the origin of the 1936 Ordinance, see Norman Bentwich, "The New Criminal Code for Palestine", 20 *Journal of Comparative Legislation and International Law* 71 (1938). Fixing the age of criminal responsibility at 9 years has been unified between the West Bank and Gaza after the adoption of Child Law of 2004 (Article 67). The age was at last fixed at 12 by Article 24 of the Decree-Law No. 19 of 7 December 2012 Concerning the Amendment of the Palestinian Child Law No. 7 of 2004 (Palestine Gazette, No. 101, 20 August 2013, p. 6).

⁷⁵ Article 9.

⁷⁶ Article 59. Article 11(1) prohibits the reference in any scientific or professional diplomas that such documents were obtained from juvenile care institution.

⁷⁷ Article 63. This is of course without prejudice to the possibility of filing civil claims before other courts according to the general civil obligations, including contracts and torts.

⁷⁸ Article 14.

⁷⁹ Article 11(2).

⁸⁰ Article 12.

⁸¹ Article 13.

⁸² Articles 47-55.

⁸³ Such concerns were expressed, for instance, at a workshop on the Juvenile Protection Law organized by the Independent Commission for Human Rights (Hebron, 28 April 2016). The workshop was attended by a juvenile judge, prosecutors, lawyers, academics, social protection offices, representatives of a number of international and local NGOs, ministries of health and education.⁸⁴ One study revealed that, from 1994 until 2002, out of 60 laws that were adopted by the Palestinian Authority, only 7 regulations were adopted. Maen Idies, *Executive Regulations for the Laws* (Ramallah 2002), p. 26. Even when enacted, regulations were often postponed to longer periods than those required by corresponding laws. Instances include Handicapped Law of 9 August 1999 (regulations passed on 12 April 2004); Traffic Law of 17 September 2000 (regulations adopted on 13 September 2005); and Arbitration Law of 5 April 2000 (regulations enacted on 12 April 2004). Qafisheh, "Legislative Drafting in Transitional States...", *supra* note 15, p. 32.

Here are some examples. How a convicted child might enjoy "periodical and limited vacation",⁸⁵ and for how long, without an executive legislation? The Law requires that child cases to be decided promptly;⁸⁶ yet how long "promptly" might take? Although the basis of legal assistance was set forth in Article 10; the application of assistance's modality remains imprecise. Article 13 on the child's right to education needs executive order to give effect to the juveniles held in social care institutions to complete their schooling. Similarly, how the child protection officers would be able to prepare reports to the prosecution and to courts without having fixed procedures on such report's format, length, content, and timing? What are the mechanisms to enforce the measure of warning for the child to refrain from reoffending,⁸⁷ to refer the child to an alternative family,⁸⁸ and to conduct judicial examination?⁸⁹ The delay in enacting executive legislation may not block the implementation of the Law entirely, but it is expected to create confusion and different procedures in dealing with children from one place of the country to another and from one judge or prosecutor to the next; that might, in turn, infringe the respect of the principles of fairness and equality.⁹⁰

The second problem stems from the vague language of a number of the Law's provisions. Whereas it prohibits torture and ill-treatment, Article 7 does not introduce penalties against torturers. Nowhere in Palestinian law can one find explicit penalty against torture perpetrators,⁹¹ notwithstanding its prohibition in the Basic Law and Palestine's accession, on 2 April 2014,⁹² to the International Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment of 10 December 1984.⁹³ Such a vague ban might create impunity for those who torture or mistreat children. It further stipulated that the arrested child should undergo medical check,⁹⁴ without saying what would happen if such a measure is not conducted.⁹⁵

Moreover, the Law stipulated that "the juvenile's guardian and lawyer shall be notified of every procedure and decision that the child should be notified of";⁹⁶ but there is no answer on who should notify such persons and what the consequences in case of non-notification. Article 28 authorized the Ministry of Social Development to create "Social Defense Office that incorporates socio-psychological specialists alongside child protection officers"; but it did not oblige the Ministry to establish such an office and did not mention the type and number of sociologists or psychologists who may be employed. Lastly, Article 60 did not specify a timetable for creating specialized juvenile courts. It rather opened the possibility of assigning judges to juvenile matters.⁹⁷ That means that children will continue to be brought "temporarily" before ordinary judges until such an indefinite time on which separate courts would commence. Such vague stipulations pose the risk of

⁸⁵ Article 4.

⁸⁶ Article 8.

⁸⁷ Article 37. This concern was expressed in a presentation by the Hebron Chief Prosecutor Ashraf Misheal, Commission for Human Rights workshop, *supra* note 83.

⁸⁸ Article 38.

⁸⁹ Article 41.

⁹⁰ That might run counter to Article 40, paragraph 2(a.iv) of the CRC.

⁹¹ Mutaz Qafisheh, "Human Rights Gaps in the Palestinian Criminal System: A United Nations Role?", 16 *International Journal of Human Rights* 358 (2012), pp. 361-363. In fact, the prohibition of torture in the Juvenile Protection Law is not new. The 2004 Palestinian Child Law provided in its Article 68 that "[n]o child shall be subjected to physical or moral torture...". Yet the main problem, namely the absence of penalty against torture perpetrators, persists.

⁹² Spokesperson for the UN High Commissioner for Human Rights, *supra* note 2.

⁹³ 1465 UNTS 85; entry into force 26 June 1987.

⁹⁴ Article 22.

⁹⁵ Similar provision can be found in Article 32 of the Law.

⁹⁶ Article 29(1).

⁹⁷ Article 60.

turning the Law into a superfluous document, if no measures are expeditiously undertaken in this respect.

Apparently, the Law has been adopted without allocating the necessary financial, logistical, human, institutional resources or infrastructure. One district chief prosecutor, for example, explained that he assigned two prosecutors to handle juvenile cases from the already inadequate number of existing prosecutors who are barely able to deal with other cases.⁹⁸ The same applies to judges whose number is not enough even to face the already overwhelming caseload.⁹⁹ Assigning judges to juvenile cases from existing judges without appointing new ones to exclusively oversee juvenile cases puts extra burden on courts, lawyers, children and their families.¹⁰⁰

The Law, likewise, established a series of obligations on child protection officers (below), including accompanying juveniles at police stations, prosecution's investigation, court hearings, preparing reports on the child's family, health, education, psychology, and monitoring him while staying at the social or medical institutions. Ms. Lubna Anani, Head of the Ministry of Social Development's office in the south of the West Bank, complained that "in Yatta [a city with over 170,000 inhabitants] alone, there are over 500 cases of various social issues and there is only one employee. How that person may work on dozens of juvenile cases with the due care specified in the law on the top of hundreds of cases that she deals with? It is just impossible!"¹⁰¹ Juvenile care institutions need to be founded to absorb the growing number of children in conflict with the law. Currently, there is only one juvenile institution in the West Bank (Dar Al-Amal in Ramallah). Without opening at least two additional institutions, one in the north and another in the south of the West Bank, it remains hard to imagine how the Law would be properly applied (see below).

Lastly, the Law lacks preventive measures for juvenile delinquency. Such measures should be formulated as set out through minimum standards in the Riyadh Guidelines. The measures need to be included at the levels of formal procedures, social settings, families, education, and practical and academic research.¹⁰² The Law also does not include clear arrangements for juveniles' re-integration in their communities.¹⁰³

II. Governmental Administration of Juvenile Justice

1. Ministry of Social Development

⁹⁸ Misheal, *supra* note 87.

⁹⁹ In this connection, Juvenile Judge Mr. Mohammad Ajlouni said: "In average I oversee 25 felonies per day. After that, I am asked to hear juvenile cases. How can I understand the state of the juvenile and child's best interest afterwards?!" (Commission for Human Rights workshop, *supra* note 83).

¹⁰⁰ One lawyer from the International Legal Foundation, a New York based criminal defense NGO with field offices in Palestine, explained that in Hebron district, as a case in point, there are 4 magistrate courts (in Hebron city, Halhul city/north, Yatta city/south, and Dura city/west). There is only one judge assigned to juvenile cases. If this judge has a case of one child at each of these four courts, the lawyer might wait for the entire day for one hearing only until the judge has the turn to come to the court in which the lawyer (and the child) will be waiting. The judge might not have the time to come to that particular court and that means the hearing will be postponed. Advocate Imad Salaymeh; Commission for Human Rights workshop, *supra* note 83.

¹⁰¹ Commission for Human Rights workshop, *supra* note 83.

¹⁰² Cf. Eleanor Glueck, "Predicting Juvenile Delinquency", 2 *British Journal of Delinquency* 275 (1952); H. English, "Prevention of Juvenile Crime", 4 *British Journal of Criminology* 68 (1964); Defense for Children International, *Kids Behind Bars—A study on Children in Conflict with the Law: Towards Investing in Prevention, Stopping Incarceration and Meeting International Standards* (Amsterdam 2003).

¹⁰³ Najah Hilo & Amneh Abuein, "The Integration and Rehabilitation of Juveniles in the Palestinian Society", in Buomidra & Assaf, *supra* note 8, pp. 74-125.

The Palestinian juvenile justice is primarily assigned to the "Ministry of Social Development".¹⁰⁴ This implies that the issue of child delinquency is a matter of social concern rather than an issue of security and punishment.¹⁰⁵ There are, however, some limited responsibilities on juvenile aspects to the Ministry of Justice and Ministry of Interior, as part of their general mandate.¹⁰⁶ While the former is in charge of the technical drafting of legislation, the latter directs the police, manages detention centers and prisons. Besides, the High Judicial Council plays a role with regard to juveniles as it is responsible for courts. The focus in this section is on the Ministry of Social Development and its policies to reform the juvenile justice system.¹⁰⁷

The mandate of the Ministry of Social Development over juveniles has been explicitly provided in the 2016 Juvenile Protection Law.¹⁰⁸ The Minister is vested with the power to, *inter alia*, enact instructions and orders to execute the Law.¹⁰⁹ Even when certain powers are given to the police, prosecutors or courts, the Ministry would retain a central role.¹¹⁰ This role can be concluded from the Ministry's responsibility over child protection officers, as its staff, and its management and supervision of juvenile social rehabilitation or medical treatment institutions, as we will see shortly.

The Ministry runs the affairs of juvenile justice through its Child Protection Unit,¹¹¹ which acts as the central administration for child protection officers and manages the juvenile institutions. It coordinates with the police, prosecution, courts and prisons, relevant ministries and civil society organizations.¹¹² The Unit took its roots from the Jordanian juvenile system that was applicable in the West Bank between 1948 until 1967. While the Unit has been significantly developed in Jordan after the enactment of the Juvenile Justice Law in 1968,¹¹³ it remained intact under Israeli occupation. Due to the lack of resources and technical capacity, the Unit has been unable to improve its services when Palestinians took control over juvenile justice in 1994. With the adoption of the 2016 Law, it is hoped that the Unit will be strengthened, logistically and by appointing more qualified staff, to carry out its functions.

The Ministry has additional role to play. As mentioned above, the Law gave the Ministry to

¹⁰⁴ The name of the Ministry was previously "Ministry of Social Affairs". It was changed on 15 March 2016 into "Ministry of Social Development" by Council of Ministers' Decision No. 94 of 2016. By this change, the name of the Ministry in Palestine has become similar to that of Jordan. However, the Juvenile Protection Law of 2016 still uses the older name as it was drafted a few years ago. We prefer to use the new name ("Ministry of Social Development") in this study.

¹⁰⁵ This is unlike the case in certain countries in the Middle East, such as Egypt, where the juvenile justice system is scattered amongst four ministries: Ministry of Interior, Ministry of Justice, Ministry of Social Solidarity, and Ministry of Population and Family. See Terre des hommes-Lausanne, *Assessment of Juvenile Justice System in Egypt*, August 2010, pp. 34-37. See also Bishri Shorbaji, "Juvenile Justice in Egypt and its Reform Prospects", in Buomidra & Assaf, *supra* note 8, pp. 126-141; Hani Hilal, "Juvenile Justice Situation in Egypt", in *ibid.*, pp. 142-159.

¹⁰⁶ Jessie Clarey, "Juvenile Crime: Its Causes and Treatment", 12 *Police Journal* 286 (1939); Victor Szyrnski, "Sociatric Psychotherapy in Juvenile Delinquency", 6 *Canadian Journal of Corrections* 74 (1964); P. Stephenson, "Myths about Juvenile Delinquency", 15 *Canadian Journal of Criminology and Corrections* 83 (1973); T. Campbell, "Punishment in Juvenile Justice", 4 *British Journal of Law and Society* 77 (1977).

¹⁰⁷ Although under the Ministry of Social Development's mandate, the juvenile care institutions and the role of child protection officers is addressed in two separate sections below for the sake of clarity.

¹⁰⁸ A similar role was given to the Ministry in the 1954 Jordanian Juvenile Law, e.g. Articles 23-25.

¹⁰⁹ Article 66. In the same article, the power to enact regulations was given to the Council of Ministers, as indicated above. Even when the Council adopts regulations, normally the Ministry prepares the technical aspects of the draft.

¹¹⁰ Article 17.

¹¹¹ Article 64.

¹¹² Ministry of Social Affairs, *Procedures of the Social Defense Department* (Ramallah 2010).

¹¹³ The present writer worked in 2009 and 2010 with the Jordanian Social Defense Department of the Ministry of Social Affairs through his former position as the Regional Director of Penal Reform International for the Middle East and North Africa based in Amman, Jordan.

establish a "Social Defense Department" attached to each juvenile court that incorporates socio-psychological specialists along with child protection offices in order to assist the court in its findings with regard to children brought before it.¹¹⁴

We will elaborate on the role of child protection officers and social care institutions as the most significant features of the Ministry's mandate in relation to juvenile justice.

2. Child Protection Officers

The "Child Protection Officer" is the new name that the 2016 Juvenile Protection Law adopted for the Ministry of Social Development's personnel in charge of dealing with juvenile justice issues. Previous names were "probation officers", and sometimes called "social supervisors". Child protection officers are assigned with a role to perform across all stages of the juvenile justice chain: arrest and detention by the police, investigation and indictment by prosecutors, trial by courts, rehabilitation in social institutions, and aftercare programs.¹¹⁵ Probation could also mean placing the juvenile under the supervision of a child protection officer instead of incarceration.¹¹⁶

The Law attached a great deal of significance to probation, as an alternative to incarceration.¹¹⁷ The court might order placing the child under the supervision of a child protection officer for a term ranges from one to five years. The order can stop anytime during this period upon the prosecution's request, the child protection officer, or the juvenile himself or his guardian; and after reviewing the child protection officer's report on the progress that has been achieved. If the child fails to follow the probation's term, the court might consider other dispositions, including deprivation of liberty. If the juvenile commits another offence during the probation period, the probation would come into an end and the child might be retried on the original offence, besides the new one. The Ministry of Social Development, by administrative decisions and capacity building programs, should give a greater attention to the probation as a referral disposition by strengthening the system and its staff.¹¹⁸

Child protection officers work under the direction of the Child Protection Unit, headed by the supervisor at the headquarters of the Ministry of Social Development in the city of Ramallah.¹¹⁹ Such officers work at the district level under the daily administrative management of the head of Social Directorate of the Ministry of Social Development within each district. As in other countries, the work of these social officers, as they are not supposed to be technically juvenile lawyers, is quite informal.¹²⁰ They assist courts and law enforcement officials in determining the personal and social context of the child who violates the law on case-by-case basis.¹²¹

¹¹⁴ Article 28.

¹¹⁵ Kenneth Wollan, "Treatment of Juvenile Delinquents", 14 *Police Journal* 305 (1941); Andre Dunant, *Juveniles in Conflict with the Law: The Social Worker at All Stages of the Procedure* (Geneva 2002).

¹¹⁶ Article 17.

¹¹⁷ Article 42.

¹¹⁸ The Amended Palestinian Child Law of 2012 touched upon probation by "placing the child under social control in his natural environment" (Article 19, paragraph 2.b(1)). But this provision is far from establishing probation as a system. Cf. Jennifer Babe & Rui Fernandes, "Juvenile Probation in Metropolitan Toronto: An Empirical Study", 2 *Canadian Journal of Family Law* 161 (1979).

¹¹⁹ Article 64 of the 2016 Juvenile Protection Law.

¹²⁰ N. Adler, "The Work of Juvenile Courts", 7 *Journal of Comparative Legislation and International Law* 217 (1925), pp. 223-224.

¹²¹ Jacob Isaacs, "The Lawyer in the Juvenile Court", 10 *Criminal Law Quarterly* 222 (1968); Greg Johnston, "The Function of Counsel in Juvenile Court", 7 *Osgoode Hall Law Journal* 199 (1970); Roy St. George Stubbs, "The Role of the Lawyer in Juvenile Court", 6 *Manitoba Law Journal* 65 (1975); Inez Dootjes, Patricia Erickson, & Richard Fox, "Defence Counsel in Juvenile Court: A Variety of Roles", 14 *Canadian Journal of Criminology and Corrections* 132 (1972).

The role of child protection officers starts upon the arrest of the child by the police.¹²² Once detained and transferred to prosecution, the child officer should continue to monitor the juvenile's case in each interrogation session.¹²³ At the court hearings, the judge obtains a report from a child officer on the juvenile's personal and social status.¹²⁴ The report of the child officer, provided in practice upon formal request from the court,¹²⁵ might comprise "general information about the child, his environment, performance in school and his health".¹²⁶ The Ministry has designed a form to be filled out by child protection officers and be used before courts.¹²⁷

Child protection officers in practice provide the required information after interviewing the juvenile and his family. To complete the report, some officers visit the child at home, police station, and in detention.¹²⁸ Despite the efforts that some child officers take in its preparation, judges often ignore such a report and include it in the file merely as part of a routine procedure.¹²⁹ Most judges do not even bother reading the officer's report. Unfortunately, Article 30 of the 2016 Juvenile Protection Law (on court sessions) uses a language that may imply that the courts only "listen" to, but not under an obligation to build its findings based on the report of the child protection officer. However, the report might have significant weight in the judgment in case of no objection to its content by the parties or the juvenile judge.¹³⁰

Once the court makes a disciplinary measure, particularly if the measure is to place the child in a care institution, the role of child officer will not end. In this connection, Article 48(1) of the Law stated that: "The child protection officer shall supervise the execution of the dispositions set forth in this Law. He shall monitor the convicted child and present recommendations to the juvenile and to those in charge of his education. The officer shall prepare periodical reports to the court and prosecution every three months on the child's situation". The court, based on such reports, might modify or end the measure.¹³¹ In practice, however, a few child officers do visit care institutions or detention centers, mainly on their own personal initiative.¹³² The child protection officers have also the power to bring a child prior to the completion of his disciplinary measure to the court to request an extension to that measure.¹³³ The officers, at the same time, have the right to request the court to release the juvenile after spending one-third of his term at the social care institution.¹³⁴

¹²² Article 18(2).

¹²³ Article 20.

¹²⁴ Article 30(3 and 6).

¹²⁵ Letter dated 3 March 2010 from a judge in one West Bank magistrate court to one probation officer requesting information about the social and economic situation of one child in conflict with the law facing a trial on 20 April 2010 (in file with the writer).

¹²⁶ Article 11(4) of the 1954 Law (this language does not exist in the 2016 Law, which might be considered a step backward, unless it is detailed by a regulation or instructions). George Awad & Clive Chamberlain, "The Process of Psychiatric Work with the Juvenile Courts", 1 *Canadian Journal of Family Law* 363 (1978).

¹²⁷ A copy of this form in Arabic was handed to the writer by Ms. Khadra Hour, Probation Officer and Director of Social Care, Social Directorate, Yatta city, Hebron district, 18 August 2010, Hebron.

¹²⁸ Meeting with Ms. Khadra Hour, *ibid*.

¹²⁹ This is not surprising as courts in other countries often disregard the work of probation officers or social workers. This problem has been characterized as follows: "Psychiatrists have a right to complain that courts do not pay enough attention to their evaluation of the accused. Psychiatric testimony is sometimes ignored by the courts, and sometimes it is opposed by other psychiatric testimony so that the testimony of both sides is nullified". Jonas Robitscher, "The Psychiatrist and the Juvenile Court", 52 *Women Lawyer Journal* 147 (1966).

¹³⁰ Article 25(3).

¹³¹ Article 48(2).

¹³² Second meeting with Ms. Khadra Al-Hour, 25 August 2010, Hebron.

¹³³ Article 52.

¹³⁴ Article 51.

As noted above, child protection officers are overwhelmed with daily work and have no time to work on all cases of children in conflict with the law.¹³⁵ With about 10 to 30 juvenile cases a month in each district, coupled with the lack of transportation to police stations, courts or rehabilitation institutions, "it is next to impossible for probation officers to perform well in studying all cases of juveniles. The time of the probation officer is barely enough to prepare the report to the court".¹³⁶

Under such circumstances, child protection officers perform on *ad hoc* basis. Sometimes they respond to phone calls from police stations having cases of children in conflict with the law. It is difficult to respond positively when there are a number of police stations in the district in which the child officer functions. In other instances, child officers coordinate between the family and prosecutor. Such officers cannot attend all juvenile hearings, but rather observe selected court sessions.

In order to advance their efficiency, it is estimated that each district needs minimum three child protection officers. At least one officer should work on full-time basis on juvenile justice issues. Now as the juvenile court can no longer be convened without the presence of the child protection officer (Article 25(2) of the Law); hiring more officers cannot be avoided. The Ministry should make transportation available for the officers to visit children at home, school, police stations, detentions, courts and social care institutions. The work of these officers does not lack legal basis, but it rather requires executive orders and appointing adequate number of qualified staff.¹³⁷

3. Juvenile Care Institutions

Juvenile care institutions, known among the public in Palestine as "reformatories", are facilities whereby juveniles spend pre-trial detention, terms involving deprivation of liberty, or as a treatment or preventive measure.¹³⁸ A general stipulation can be found in Article 19, paragraph 2(b.3), of the 2012 Palestinian Amended Child Law that offers basis for the referral of children to a number of social, educational or health institutions, public or private. The Ministry of Social Development manages a number of institutions that provides social care.¹³⁹

Article 43 of the 2016 Juvenile Protection Law provides basis for the referral of juveniles to social care institutions, besides the institutions in which children would be punished or deprived of liberty. This article is not rigid in terms of the type of the institution in which juveniles may be held. It could be "one of the social care houses affiliated with or recognized by the Ministry [of Social Development]" that the court decides to place the juvenile in. Nothing in the law prevents the Ministry from designating selected associations to host children in conflict with law to stay with other children who have social or economic needs, such as orphanages. Experience in different countries proves that the services, rehabilitation and educational programs of such charities are

¹³⁵ Cf. Herschel Prins, "Psychiatric Services and the Magistrates' and Juvenile Courts: An Analysis of the Views of Probation Officers and Magistrates", 15 *British Journal of Criminology* 315 (1975).

¹³⁶ Meeting with Ms. Khadra Hour, *supra* note 127. See the testimony of Ms. Anani, *supra* note 101.

¹³⁷ Note made by a child officer at the Commission for Human Rights workshop, *supra* note 83.

¹³⁸ Cf. Jack Stitt, "Correction Facilities for the Juvenile Offender: a Comparison of Ontario and the U.K.", 2 *Osgoode Hall Law Journal* 356 (1963); John MacDonald, "Juvenile Training Schools and Juvenile Justice Policy in British Columbia", 20 *Canadian Journal of Criminology* 418 (1978).

¹³⁹ Amer Junaidi, *The Most Significant Stipulations of the Law-Degree Concerning Juvenile Protection* (Defense Children International, Hebron University Law School, 23 March 2016).

often more efficient than official bodies.¹⁴⁰ In such institutions, many of which do exist in Palestine,¹⁴¹ children can stay all days and nights of the week inside the institution where they study, sleep and play. Children can go off to spend weekends with their families. In parallel, juveniles who breach the law might need to follow special treatment programs in such institutions.

The first juvenile reformatory in the West Bank, "Dar Al-Amal" (in Arabic means "House of Hope") was established in 1954 in Ramallah.¹⁴² What is surprising is that this care institution is still the only boys' institution in the entire West Bank since that time. The second institution is designed for minor females, the "Girls Care House" in Bethlehem. In Gaza, there is Dar Al-Rabi for boys. In the remaining districts, children who have troubles with the law end up in police detention centers or in prisons, as no social care institutions are available therein. This state poses serious concerns on the equality principle with regard to the treatment of children in different areas.

As Dar Al-Amal is located in the center of the West Bank, it could not logistically absorb children from other districts for three reasons. One is that Dar Al-Amal, which can host maximum forty children, cannot accommodate the growing number of juveniles as its space, facilities, and employees are not prepared for that. Secondly, moving children from other districts to Ramallah is difficult, if not impossible, due to Israeli military checkpoints between districts that do not allow Palestinian police to transfer prisoners or detainees freely. The third reason is that detainees, who form the majority amongst juveniles, need to attend court hearings from time to time and it is not possible to bring them from Ramallah to courts in the north or the south for every hearing. The police alternatively keep children in jails. Hence, the key solution for resolving children incarceration is to open care institutions in other districts.

Dar Al-Amal was established shortly after the enactment of the 1954 Law and functioned until 1967. Under the occupation, it was closed as Israel kept Palestinian prisoners, including children, in its prisons. The institution was re-opened after the creation of the Palestinian Authority in 1994, hosting children aged from 12 to 17 years. Most of them come from Ramallah and Jerusalem areas. The House's staff members are public employees working under the supervision of the Ministry of Social Development and distributed for day and night shifts. Technical staff comprises a manager, deputy, social workers, vocational trainers and teachers, psychologists and supporting staff. Children in the House cannot leave or attend school. Professional training programs are poor. Yet the situation in the House is much better than detention centers or prisons by every standard.¹⁴³

The Girls Care House in Bethlehem, established in 1958 in the context of the 1954 Juvenile Rehabilitation Law, has the mandate to host girls who might come in conflict with the law. It is the only girls' institution designed for this purpose in Palestine.¹⁴⁴ The House was previously called Juvenile Girls Reform Center and was exclusively in charge of hosting females in conflict with the law. Its name changed upon the creation of the Palestinian Authority and it started to host minor

¹⁴⁰ Cf. Jack Foster, "Juvenile Court Referrals to Voluntary Agencies", 12 *Canadian Journal of Corrections* 129 (1970); Katherine Chiste, "Faith-Based Organizations and the Pursuit of Restorative Justice", 32 *Manitoba Law Journal* 27 (2008).

¹⁴¹ Independent Commission for Human Rights, *Crackdown on Charitable Associations During the State of Emergency* (Special Report No. 55, Ramallah, 2007).

¹⁴² Based on Article 4 of the 1954 Jordanian Juvenile Law.

¹⁴³ Cf. J. Kraus, "A Comparison of Corrective Effects of Probation and Detention on Male Juvenile Offenders", 14 *British Journal of Criminology* 49 (1974); Michele Liroy, "Open Residences: An Alternative to Closed Correctional Institutions for Hard-Core Juvenile Delinquents", 20 *Canadian Journal of Criminology* 409 (1978).

¹⁴⁴ This institution used to host girls from both the West Bank and Gaza Strip before the closure of the Strip by Israel in 2000 upon the breakout of the *intifada*. Now all inmate girls are from the West Bank.

females who might need protection other than those who violate the law, such as threatened girls of attacks on "honor" grounds or those who suffer from domestic violence. The number of delinquent girls in Palestine is low.¹⁴⁵ Most female cases are resolvable through conciliation within families. The House is an open facility. Girls can attend school. A number of educational and training programs exist: hairdressing, computer and swing.

The Girls House's employees work as teachers, social workers and psychologists, all officials of the Ministry of Social Development. The House is well-equipped, including with computers and internet, furnished and organized. It has the capacity to host up to 22 girls. Statistics of previous years range between 26 girls to 49. The House conditions are much better than the state of Dar Al- Amal, but its staff members lack to the experience in dealing with females in conflict with the law.

As part of its attempt to reform the juvenile system, the Ministry of Social Development looks towards rehabilitation institutions. It has for long plans to open two additional institutions for boys, one in Nablus for the north of the West Bank and one in Hebron for the south. But such proposals have not been materialized yet.

III. The Judicial Administration of Juvenile Justice

1. Juvenile Police

Children have specialized police units under the 2016 Juvenile Protection Law. Article 15 states that: "The gathering of information with regard to juvenile cases or children under the risk of delinquency is carried out by a specialized police in each district.... Specialized child police would be designated by a decision of the Minister of Interior. It shall comprise female officers". This article legalized the *de facto* existence of specialized police over the past few years. A form of specialized juvenile police was set up by a decision of the Police Commissioner in 2009 in four cities and was extended to the rest of the West Bank in 2011.¹⁴⁶ In 2014, juvenile police was merged with the "Family Protection and Juvenile Police Unit".¹⁴⁷ The adoption of the new Juvenile Law turned the presence of juvenile police into a *de jure* existence.

As in other countries, it is "the police officer who has first contact with the majority of delinquent boys".¹⁴⁸ Such contact starts with the arrest, continues during the investigation period, and lasts throughout detention awaiting trial.¹⁴⁹ Both arrest and pre-trial detention are dealt with in Palestine in accordance with the Criminal Procedures Law No. 3 of 12 May 2001.¹⁵⁰ The 2016 Juvenile Law refers to the Criminal Procedures Law with regard to the arrest and detention in an identical way to that of adults. There are, however, a few exceptions by which children are treated differently.

¹⁴⁵ No statistics are available regarding girls in conflict with the law in Palestine. Cf. Mary Riege, "Parental Affection and Juvenile Delinquency in Girls", 12 *British Journal of Criminology* 55 (1972); Nancy Dowd, "Boys, Masculinities and Juvenile Justice", 8 *Journal of Korean Law* 115 (2009).

¹⁴⁶ Defense for Children International, *Juvenile Police in Palestine*..., *supra* note 7, p. 36.

¹⁴⁷ *Ibid.*, p. 37.

¹⁴⁸ Masaharu Yanagimoto, "The Juvenile Delinquent in Japan", 13 *British Journal of Criminology* 170 (1973), p. 170.

¹⁴⁹ William Kerr, "How the Police Can Prevent Juvenile Crime", 10 *Police Journal* 306 (1937); Ralph S. Boot, "Police Interest in Juvenile Delinquency", 6 *Canadian Journal of Corrections* 50 (1964); Joseph Simpson, "The Police and Juvenile Delinquency", 8 *British Journal of Criminology* 119 (1968).

¹⁵⁰ Palestine Gazette No. 38, 5 September 2001, p. 94.

Juvenile Law requires that minors to be separated from adults while in detention,¹⁵¹ at court rooms while awaiting trials, and during the transportation to attend court hearings or from one detention to another, or after concluding court sessions.¹⁵² The Law also underlined the obligation of to provide children, upon arrest, with socio-psychological support. In this connection, Article 18 prescribed that "if the child is arrested by the police in cases of flagrante offence, the child should be immediately transferred to the juvenile police". This police should then "notify the child's guardian and the child protection officer". The juvenile police may retain the child maximum for 24 hours before transferring him to the prosecution.

The Criminal Procedures Law deals with arrest in ten articles.¹⁵³ It stipulates that "no person may be arrested or imprisoned except by order of the competent authority as designated by law. He must be treated in a manner that will preserve his dignity and may not be physically or morally harmed" (Article 29). It further regulates the arrest in cases of flagrant offence, arrest warrant, resisting arrest, and attempt to escape, etc.

It would be useful to develop specific procedures for the arrest of children. To this effect, a regulation by the Council of Ministers or instructions by the Minister of Interior regarding juvenile police may incorporate procedures on the treatment of children. These procedures need to comprise, *inter alia*, the arrest of children in non-violent means by special police without uniforms and with the presence of a social worker or a psychologist, use civilian cars, prohibit arrest at night or weekends, and make the arrest subject to judicial decision with minimal exceptions. In August 2014, a manual for the police interaction with children which incorporates most of these procedures was developed.¹⁵⁴ Ideally, and with a view to remove any overlapping, the juvenile police should have been placed under the Ministry of Social Development, as the Ministry of Interior is accustomed to deal with security, rather than social, matters.

Children in pre-trial detention are held at police facilities. In certain areas, including one Hebron police station and Dar Al-Amal, children stay in detention facilities designated for juveniles.¹⁵⁵ In the north of the West Bank, children are detained in ordinary prisons,¹⁵⁶ with some reports of mixing children with adults.¹⁵⁷ The Law generally bans child's detention. When it is exceptionally exercised, "the prosecution shall order the juvenile's detention to be in a care institution".¹⁵⁸ However, the Law added that "where care institutions are missing, children shall be held in a place designated for juveniles".¹⁵⁹ In practice, holding children in detentions is virtually the rule and juveniles will continue to be detained until care institutions see light.¹⁶⁰ Until the opening of the care institutions, children should not be left to face their destiny. Better places can be found, for instance by renting locations on temporary basis. The current child detention centers are generally poor.¹⁶¹

¹⁵¹ Article 23(1).

¹⁵² Article 21(3).

¹⁵³ Articles 29 to 38.

¹⁵⁴ Defense for Children International, *Juvenile Police in Palestine...*, *supra* note 7, pp. 38-39.

¹⁵⁵ *Ibid.*, pp. 49 and 51.

¹⁵⁶ *Ibid.*, pp. 39-51.

¹⁵⁷ *Ibid.*, p. 45: "In Nablus children are detained with adults in the same rooms".

¹⁵⁸ Article 20(1).

¹⁵⁹ Article 20(4).

¹⁶⁰ Cf. J. Walker & A. Glasner, "The Process of Juvenile Detention: The Training School Act, the Child Welfare Act", 3 *Osgoode Hall Law Journal* 343 (1965).

¹⁶¹ Defense for Children International, *Incarceration Places for Children in Conflict with the Law in the West Bank between International Standards and Practice* (Ramallah 2013).

The specialized juvenile police needs institutionalization by sitting up legal basis, for example by introducing provisions on specialized police in regulations or instructions based on the 2016 Law. Coordination between the Ministry of Social Development and the police might be arrived at by an agreement to be reached between the two sides. Police should receive on-going training on computerized case-management systems and be exposed to models of good practices from other countries.¹⁶² Jordan set up in 2008 juvenile police offices in a number of stations in the capital Amman,¹⁶³ so this experience might benefit the promising Palestinian juvenile police.

2. Juvenile Prosecution

As a general rule, the Palestinian law makes no distinction between children and adults regarding investigation and questioning by the prosecution.¹⁶⁴ In both cases, the applicable legislation is the Criminal Procedures Law of 2001. Reference to the function of the prosecution based on the Criminal Procedures Law was made explicit in the 2016 Juvenile Protection Law.¹⁶⁵ Prosecutors operate under the direction of the Attorney General to investigate and indict suspected offenders.¹⁶⁶ The Law obliges prosecutors to investigate the crime upon its commission.¹⁶⁷ Questioning follows and is carried out to get as much detailed crime-related data as possible.¹⁶⁸

However, a notable development has been marked by President's signature of the Juvenile Protection Law that created, for the first time in the history of Palestine, a juvenile specialized prosecution.¹⁶⁹ Article 18 of the Law stated: "(1) In accordance with this law, there shall be assigned a prosecution in charge of juvenile and child at risk of delinquency in charge of all matters relating to juveniles. (2) This prosecution shall investigate based the Criminal Procedures Law, as long as such procedures do not contradict this law. The prosecutor shall instruct the child protection officer to carry out necessary tasks and social research to find the truth and to discover child's personality to advance the appropriate means to rehabilitate and protect him". The specialization of child prosecution in the new law was preceded by an interest from the side of the Attorney General Office to set up such specialized prosecution.¹⁷⁰ To pave the way for such specialization, there have been a number of training courses provided to prosecutors on juvenile justice issues.¹⁷¹

Specialized prosecution came in the context of creating specialized police and judiciary. Awaiting full specialization, one or more prosecutor has been already assigned to deal with juvenile justice matters.¹⁷² Specialized prosecution should be institutionalized. This can be achieved by having detailed procedural basis for juvenile prosecution, assign trained prosecutors to work exclusively on juvenile cases, adopt on-going training and capacity building programs on juvenile justice for

¹⁶² Simha Landau, "Juveniles and the Police - Who is Charged Immediately and who is Referred to the Juvenile Bureau", 21 *British Journal of Criminology* 27 (1981).

¹⁶³ Terre des hommes-Lausanne, *Assessment of the Juvenile Justice System in Jordan* (Amman 2010).

¹⁶⁴ Information in this section is mainly drawn from interviews by the writer with prosecutors, police officers and experts, including a meeting with Palestinian Attorney General.

¹⁶⁵ Article 20(1).

¹⁶⁶ Mahmoud Shahin, *Report on the Institution of the Palestinian Public Prosecution* (Ramallah 1999).

¹⁶⁷ The investigation process is addressed in Articles 55-63 of the Criminal Procedures Law.

¹⁶⁸ Questioning is dealt with in Articles 94-105.

¹⁶⁹ Meeting with Palestinian Attorney General, Dr. Ahmad Barak, in Ramallah on 12 May 2016.

¹⁷⁰ Ahmad Barak, "Critical Study of Juvenile Justice in the Initial Investigation Phase according to Juvenile Rehabilitation Law No. 15 of 1954 in the Light of Contemporary Criminal Policy", *Justice and Law Review*, No. 11 (Ramallah, April 2009), pp. 11-23.

¹⁷¹ Nader Said-Foqahha, *A Study of Juvenile Justice in the Occupied Palestinian Territory* (Ramallah 2010), p. 30.

¹⁷² Misheal, *supra* note 87.

prosecutors, develop simplified manual on the special need of children during the investigation and questioning stages, put in place a computerized case-management system, and create coordination mechanisms between prosecutors and other actors in the justice chain: police, judges, probation officers, detention facilities, and prisons.¹⁷³

The new Law added a few other tasks to the prosecution in relation to children cases. It instructed prosecutors to review the report of the child protection officer.¹⁷⁴ Prosecutors cannot interrogate a child in the absence of such an officer.¹⁷⁵ The Law also empowered prosecutors to offer mediation on child cases to end the cases if an agreement between the parties is reached, as discussed above. Other than these exceptions, the treatment of children before prosecution is similar to adults.

In the first 24 hours after referring the accused person to him or her, the prosecutor should undertake the questioning.¹⁷⁶ The prosecutor has the option to detain or release the child. It should be noted that, after the arrest by the police, the detained person should be transferred to prosecutor within 24 hours.¹⁷⁷ This means that the accused person, including children, might spend 48 hours between the police station and the prosecution before the legal determination whether to keep him in detention or release him.¹⁷⁸ All decisions to extend the pre-trial detention after the 48-hour periods, which might last up to six months, must be issued by the competent court.¹⁷⁹

There is a lack of coordination between prosecutors and police on juvenile cases. Police often report that prosecutors transfer children to specific prisons instead of indicating that children should be transferred to social institution or to a "place similar to persons of his case". Thus, police has no choice but to detain children. One chief prosecutor, on the other hand, reported that prosecutors never order the detention of children in prison.¹⁸⁰ As the Palestinian Attorney General pointed out, the detention and imprisonment of children will only end after setting up three modern juvenile care situations in the north, south, and central West Bank (besides Dar Al-Amal).¹⁸¹

3. Juvenile Courts

The first "Juvenile court" at the global level was opened at the end of the nineteenth century.¹⁸² Since then, such courts have become well-established institutions in many developed states, such as Japan, Britain and Canada. According to Adler, in the United States the first child court was operated in Chicago on 1 July 1899.¹⁸³ The basis for specialized juvenile judiciary rested in the 1954 Juvenile Rehabilitation Law. Yet Palestinian children had to wait for over six decades until a

¹⁷³ Cf. Gwynn Davis, Jacky Boucherat, & David Watson, "Pre-Court Decision-Making in Juvenile Justice", 29 *British Journal of Criminology* 219 (1989).

¹⁷⁴ Article 17.

¹⁷⁵ Article 19.

¹⁷⁶ Criminal Procedures Law, Article 105.

¹⁷⁷ *Ibid.*, Article 107.

¹⁷⁸ *Ibid.*, Article 108.

¹⁷⁹ *Ibid.*, Article 120.

¹⁸⁰ Misheal, *supra* note 87.

¹⁸¹ Meeting Attorney General, *supra* note 169.

¹⁸² Christian Herter, "Juvenile Courts Needed", 39 *Women Lawyers Journal* 5 (1953); Graham Parker "Some Historical Observations on the Juvenile Court", 9 *Criminal Law Quarterly* 467 (1967); Graham Parker, "The Juvenile Court Movement", 26 *University of Toronto Law Journal* 140 (1976); Jean Trepanier and Francoise Tulkens, "Juvenile Justice in Belgium and Canada at the Beginning of the Century: Two Models or One", 1 *The International Journal of Children's Rights* 189 (1993); Lawrence Wilson, "Jurisdiction of the Juvenile Court", 19 *Criminal Law Quarterly* 203 (1977).

¹⁸³ Adler, *supra* note 120, p. 218.

provision has been explicitly adopted in the 2016 Juvenile Protection Law (Article 24) towards the establishment of specialized juvenile courts with full-time judges dedicated to the issues of children in conflict with the law.¹⁸⁴ This is indeed a breakthrough.

What distinguish the juvenile court from other courts are the requirements that such a court should meet while dealing with children in conflict with the law. According to the 2016 Juvenile Protection Law, juvenile court's hearings should convene in different location and time than those of adult's sessions.¹⁸⁵ Such a court is obliged to obtain a report from a child protection officer.¹⁸⁶ Before the juvenile court, children should be separated from adults.¹⁸⁷ No one is allowed to attend juvenile court's sessions except the child protection officer, child's parents or guardian, court's staff and persons directly related to the case.¹⁸⁸ No one is allowed to release information on child's cases, subject to penalties.¹⁸⁹ Juvenile court should pursue certain procedures that differ from those of adults and impose lighter penalties,¹⁹⁰ including a series of non-custodial dispositions.¹⁹¹ The Law established a system for enforcing juvenile court decisions that ensures the suitability of each judgment for each child on case-by-case basis,¹⁹² including the option of ending the measure after its execution.¹⁹³ Courts overseeing children should decide on their cases promptly.¹⁹⁴

The current situation of children before courts is alarming. There is no separation between children and adults. Children are often handcuffed. Many children have no lawyer. They wait for long periods, up to one or two years, before receiving final trial, mostly in detention centers or prisons. Judges treat children as criminals, with disrespect, rather than taking their point of view as the main reason of having child courts. Courts are overcrowded. Children are victimized within the slow process.¹⁹⁵

The foregoing shows that there is an urgent need to create a specialized juvenile judiciary. There is awareness on the necessity of the juvenile courts in the Palestinian High Judicial Council,¹⁹⁶ as a result of civil society activities on this issue, including training and advocacy. Currently there are a number of trained judges on juvenile issues. What is needed now is to take a decision, as part of the administrative power assigned to the Judicial Council, to establish fully separate juvenile courts with separate buildings from the other courts, with exclusive mandate over children in conflict with law. At least one judge should be assigned as juvenile, full-time, judge in each district. Special education and training, on national and international juvenile justice law and procedure, should be

¹⁸⁴ Eileen Younghusband, "The Juvenile Court and the Child", 7 *British Journal Delinquency* 181 (1957); John MacDonald, "Juvenile Court Jurisdiction", 7 *Criminal Law Quarterly* 426 (1965).

¹⁸⁵ Article 27.

¹⁸⁶ Article 25(3). See above, section II.2.

¹⁸⁷ Article 21(3).

¹⁸⁸ Articles 8 and 30(1). Cf. Carol Van Nijnatten, "Behind Closed Doors: Juvenile Hearings in the Netherlands", 3 *International Journal of Law and the Family* 177 (1989).

¹⁸⁹ Articles 31 and 59.

¹⁹⁰ Article 24-35.

¹⁹¹ Articles 36-46.

¹⁹² Article 47.

¹⁹³ Article 51-55.

¹⁹⁴ Article 8.

¹⁹⁵ Dawoud Dirawi & Jihad Shomali, *Juvenile Judiciary between Practice and Legislation* (Ramallah 2004).

¹⁹⁶ The High Judicial Council is the central body that administrates regular courts of various levels in Palestine. Headed by Chief Justice, the Council is independent of the Executive and the Legislator. See Judicial Authority Law No. 1 of 14 May 2002 (Palestine Gazette No. 40, 18 May 2002, p. 9).

provided. Manuals and guidelines should be designed for judges' use.¹⁹⁷ The establishment of a juvenile court in March 2016 that embedded within the care institution (Dar Al-Amal) in Ramallah is a step forward.¹⁹⁸

Conclusion

In 2011, I published in an Oxford-based journal a study calling for comprehensive reform of the Palestinian juvenile justice system.¹⁹⁹ The study urged the authorities, while dealing with children in conflict with the law, to adhere to the Convention on the Rights of the Child, to respect the United Nations standards on juvenile justice, to adopt a modern legislation that has the foundations for specialized juvenile courts, prosecution, police, and set up a system for mediation/restorative justice and variety of alternatives to incarceration while dealing with children. Now in 2016, with the enactment of the Juvenile Protection Law, these recommendations have been realized in law. It is indeed a historical development to adopt such an advanced legislation that not only consists with international standards that have been for long neglected, but might be also comparable with many progressive juvenile laws in the world.

However, other recommended actions in the aforementioned study, which are related to policy, institutions, infrastructure, and the allocation of human and financial resources, are still awaiting materialization.²⁰⁰ The Juvenile Protection Law still needs executive regulations, ministerial instructions and orders for enforcement. The Ministry of Social Development needs to re-structure itself and appoint adequate qualified staff members to form Child Protection Unit, Social Defense Office, and child protection officers. Child care institutions should be opened. Trained judges, prosecutors and police officers should be designated to juvenile cases, with full organizational structures, and adequate logistical facilities that enable them to carry out the tremendous tasks assigned to them by the law. Without taking such measures, the impact of the Law in practice and on the future of children would remain limited. And, consequently, Palestine's commitments under the CRC remain questionable.

With the recent accession of the State of Palestine to the CRC, time has come to undertake a comprehensive modernization process. Such a process is no longer a matter of choice; it an obligation of the state towards its inhabitants and the international community as a whole. Palestine is obliged to report its reform actions to the UN Committee on Rights of the Child and it will be held accountable in case of non-action. The juvenile system, which has been long discussed with limited outcomes, lies in the heart of the required reform. The adoption of the Juvenile Protection Law is the binging for reforming the child justice system; it is not the end.

¹⁹⁷ Manuals can be prepared based on existing guides developed globally by actors such as UNICEF and United Nations Office on Drugs and Crime, taking into consideration the local law and practice.

¹⁹⁸ *Al-Hayat Al-Jadida*, No. 7309, 24 March 2016, p. 1.

¹⁹⁹ Mutaz Qafisheh, "Juvenile Justice System in Palestine: Current Situation and Reform Prospects", 25 *International Journal of Law, Policy and the Family* 365 (2011).

²⁰⁰ Meeting with Attorney General, *supra* note 169