



## INFORMATION NOTE

### Periodic report of **IRAQ** on its implementation of the CRC and its OPAC-OPSC.

#### 68° session of the United Nations Committee on the Rights of the Child

#### *Summary of Juvenile Justice related issues*

#### **Ratification of the Convention on the Rights of the Child by Iraq:**

Iraq ratified the Convention on the Rights of the Child on 15 June 1994 and both the Optional Protocols on 24 June 2008.

During this 68° session of the UN Committee on the Rights of the Child the Republic of Iraq was pleased to submit its combined second to fourth periodic reports on its implementation of the provisions of the Convention on the Rights of the Child and its initial reports under the Optional Protocols on Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography.

#### **Previous report presented in:**

The initial CRC report of Iraq was considered by the Committee at its 482<sup>nd</sup> to 484<sup>th</sup> meetings, held on 23-24 September 1998.

### 1.1 JUVENILE JUSTICE - KEY ISSUES

#### **I) Legislation and II) minimum age of criminal responsibility:**

- *The Juvenile Welfare Act No. 76 (1983)*

It is designed to curb juvenile delinquency by protecting juveniles and enabling them to adapt to the values and moral guidelines of society. This law applies to juvenile delinquents, youngsters and juveniles prone to delinquency and to their parents/guardians:

- (a) A youngster is a person under 9 years of age;
- (b) A juvenile is a person over 9 but under 18 years of age;
- (c) A juvenile is considered a preadolescent if he is over 9 but under 15 years of age;
- (d) A juvenile is considered an adolescent if he is over 15 but under 18 years of age;
- (e) A guardian shall be the father or mother, or any person into whose custody a youngster or juvenile is committed or who is entrusted with bringing up a youngster or juvenile by court order.

The draft of the new Juvenile Welfare Act would raise **the age of criminal responsibility of juveniles from 9 to 11 years** to bring it into line with international conventions. The bill has been scrutinized by the State Consultative Council and is currently before the General Secretariat of the Council of Ministers for study.



Articles 29 and 30 of the Juvenile Welfare Act No. 76 (1983) deal with the responsibility of parents/guardians towards children and prescribe penalties for any parent/guardian who, by neglecting to care for a youngster or juvenile or in any other way, induces the said youngster or juvenile to become a vagrant or delinquent or deliberately commit a misdemeanour or felony.

- *The Civil Code No. 40 (1951)*

It does not provide a definition of “child”. However, article 106 thereof states that the age of majority is 18 full years and article 97, paragraph 2, states that the age of discretion is 7 full years.

- *Article 3 of the Child Welfare Act No. 76 (1983)*

It applies the act to youngsters and juveniles and clarifies the meanings of youngster, juvenile, preadolescent and adolescent for the purpose of determining criminal responsibility (a youngster under the age of nine cannot be held criminally responsible).

- *Article 64 of the Penal Code No. 111 (1969)*

Criminal proceedings cannot be brought against any person who is under 7 years of age at the time the offence was committed. The new draft Juveniles Act raises the age of criminal responsibility of juveniles to 11.

It will be observed that Iraqi legislation does not use the term “child” but rather, “youngster”, “juvenile”, “preadolescent” and “adolescent”. This does not prejudice the validity of the legislation; it is, rather, an expression of legal precision. Note that the age of majority, defined in Iraqi legislation as 18, is consistent with the Convention.

- *Article 64 of the Penal Code No. 111 (1969):*

Criminal proceedings may not be brought against any person who is under seven years of age at the time the crime was committed.

- *Article 233 of the Code of Criminal Procedure No. 23 (1971)*

It stipulates:

- (a) No legal action shall be taken against a youngster under the age of seven;
- (b) The age of the juvenile at the time the crime was committed is the basis for appointing the proper court before which to try him;
- (c) If the juvenile reaches the age of 18 during the investigation, he shall be referred to the Misdemeanour Court or Felony Court. If he reaches the age of 18 after being referred to the Juvenile Court, that court shall continue to hear the case.

- *Article 47 of the Juvenile Welfare Act No. 76 (1983)*

It stipulates:

1. No legal action shall be brought against anyone who, at the time the crime was committed, was below the age of seven;
2. If a youngster commits an act punishable by law, the court shall rule to hand him over to his parent/guardian for implementation of the court recommendations to ensure his good conduct, pursuant to an undertaking accompanied by bail of not less than IQD 200 and not more than IQD 500, for a period of not less than two years and not more than five years.

- *Article 76, paragraph 2, of the Juvenile Welfare Act*



It stipulates that if a preadolescent commits a felony punishable by death, the Juvenile Court must commute the legally prescribed penalty to placement in a rehabilitation school for preadolescents for a period of not less than 6 and not more than 10 years.

### **III) Number of children and length of detention:**

#### **a) Access to data:**

the delegation reports the number of children in jail:

in 2012: 166 prisoners; 120; convicted

in 2013: 123 prisoners; 70 convicted

in 2014: 72 prisoners; 61 convicted

### **IV) Trial conditions:**

Judges could decide to hear the views of children during judicial proceedings affecting them.

### **V) Detention conditions:**

#### **a) In general (access to health, education, etc.):**

During the session the Committee said that children in conflict with the law are vulnerable to violence, including sexual violence and exploitation. Are measures taken to protect children in conflict with the law from such abuse and could they receive free legal aid? It has been raised deep concern about the death penalty being used against young people with an unknown birth date and who could potentially be a child. Moreover, on detention conditions, it has been noted that children imprisoned with their mothers sometimes live in desperate health conditions, and cases of leprosy have been reported. There is also a huge problem of overcrowding in prisons, according to what has been said by the Committee.

Response by the delegation: regarding juvenile justice, children and adolescents are kept in police facilities until their case is brought before a judge. Authorities attached a great deal of importance to making sure that no violence is perpetrated against minors. The Ministry of Human Rights monitors these detention facilities and their respect for human rights.

On health, the delegation denies the presence of leprosy in Iraq.

A Member was deeply concerned that children enrolled in armed groups have been arrested and imprisoned by Iraqi authorities and are therefore vulnerable to ill-treatments. Experts encouraged Iraq to ratify the Optional Protocol to the Convention against Torture which would allow the Subcommittee on the Prevention of Torture to visit detention facilities.

#### **b) Pre-trial detention:**

Pre-trial detention of juveniles had to be avoided or, at least, regulated, one Member of the Committee said, and should not exceed one day.

#### **c) Separation from adults:**

NO MENTION

It has only been said by Iraq's delegation that mothers in detention have the right to keep their children with them until minors reach the age of 3. Detention facilities, consequently, could have nurseries and privacy is granted for breastfeeding.

### **VI) Preventive measures:**

NO MENTION

### **VII) Alternative measures:**



NO MENTION

**VIII) Re-adaptation / reinsertion of children:**

*Article 1 of the Juvenile Welfare Act No.76 of 1983* provides that the purpose of the Act is “to eliminate juvenile delinquency through prevention and through the treatment and social rehabilitation of juvenile delinquents on the basis of ethical norms and values...”

One delegate during the session explained that once children are found in the street by the juvenile police, they are immediately referred to a judge and placed in a rehabilitation centre. There, children are tested, treated and provided with the necessary counselling. Each child has a file and is encouraged to seek education. Children of unknown parents are hosted in social institutions until they reach adulthood. They also receive the Iraqi nationality before the age of six so that they can attend schools. Care continues to be provided until the age of 18.

A Member of the Committee asked whether efforts have been made to reunite former child soldiers, even those in detention, with their families.

The Iraqi delegation affirms that programs of rehabilitation, of job-training, of education exist and that they are aimed to prevent that children return to be delinquents. Moreover, Iraq guarantees that children, once they left the correctional institutions, receive adequate and continuous psychological support. The Committee replies asking for detail about these institutions. For example, how many are they?

**IX) Training of professionals:**

During the session it has been said by delegates of Iraq that the Ministry of Human Rights conducted workshops and training for police personnel in order to prevent violence or abuse and that detention centres are observed in detail with the aim to avoid human rights violations there. The judiciary is, according to the words of the Iraqi delegation, an independent body and many programs are targeting judges to train them on children’s rights.

The Child Welfare Authority has organized training sessions in cooperation with the UNDP and the UNPF on gender and juvenile justice, as we can read in the Iraqi’s OPAC report.

**X) Role of the media:**

NO MENTION

**XI) Child participation and sensibilization:**

Iraq would consider acceding to the Third Optional Protocol on a communication procedure, but the country is still in a transitional phase and is still building its institutions and protection mechanisms for the rights of the child.

Moreover, a delegate explained in regard to this issue that even civil society organizations exist only since 2003. Many of these associations work on child issues and include children in their activities. Doing so, minors are encouraged to form and express their opinions.

**XII) On the subject:**

*Article 32-33-34 of the Juvenile Welfare Act No. 76 (1983):* about the revocation of the guardianship of the youngster or juvenile.

*Article 35-36 of the same Juvenile Welfare Act:* about the restriction of the guardianship of the youngster or juvenile.



Under *article 37*, the Juvenile Court may rule to replace the guardian or change, modify, or revoke a measure that it had previously ordered, if it is in the interests of society or of the youngster or juvenile concerned.

Under *article 38*, the measures arising from revocation of guardianship shall conclude when the youngster or juvenile reaches the age of 18.

*Capital punishment*: the judicial system in the Republic of Iraq permits the death penalty. However, there is a separate law governing crimes committed by and litigation against a child under the age of 18 when the crime is committed. The Juvenile Welfare Act No. 76 (1983, amended) does not permit life imprisonment or the death penalty. The problem is related to the age certificated of the child.

The delegation said, moreover, that international and civil society organizations regularly conduct visits of correctional institutions and that there has been no report on cases of torture or ill-treatment there.

*Age of volunteering for armed forces*: the minimum age for enlistment into the New Iraqi Army is 18 years of age; service in the New Iraqi Army will be voluntary. This includes the suspension of conscription in the new Iraqi army, which has not been in force since 9 April 2003.

*Children involved in actions of terrorism*: a Member of the Committee was concerned about children being de facto held on charges of terrorism due to lack of information about their age, and asked whether these children have access to legal counsel and the opportunity to challenge justice decisions against them.

Once again it has been asked what is being done to prevent the recruitment of children by non-State armed forces, including ISIL. Do these children have to face charges in court? Is anything being made for their rehabilitation?

Another Member raised the issue of children being accused of and convicted for terrorism acts under the US' presence in Iraq. Has the Government taken any measures to put an end to these convictions? Has the Government taken measures to verify the age of young soldiers and identify fake documents?

Response from the delegation: the recruitment of children continues only in areas controlled by the ISIL; cases of recruitment or abduction of children in refugee camps are isolated and rare. Laws in Iraq and Kurdistan are very clear and prohibit children exploitation in military affairs and corporal punishment. On the case of prosecutions carried out by the United States, cases have been transferred to the Iraqi Government after the Americans left. After having been transferred, juveniles benefitted from process and those found guilty are detained in juvenile detention facilities. Death penalty is not licit against any of these minors.

However, there has been a decrease in the number of juveniles accused of terrorist acts.

In case a soldier is suspected of being under age, controls and test are carried out to determine the real, actual age. ---> According to *Article 4 of the Juvenile Welfare Act*, which states the age of a juvenile shall be established by an official document.

As to children who had been traumatized by their involvement in armed conflict, programs have been implemented to measure their trauma and provide them with the necessary medical support.



*Children carrying weapons:* international law does not prohibit self-defense, a delegate said. There have been cases of children using weapons against attacks perpetrated by terrorists. These minors should not be considered as child soldiers, he said.

*Children involved in organized crime:* the delegation explained that particular attention is given to begging children exploited by gangs. Measures have been taken to combat organized crime.

A Member of the Committee refers to those cases of children detained in order to obtain information about parents supposed of being guilty and asks for details.

“While there is no Children’s Act in Iraq at present, there are numerous attempts to prepare a Children’s Bill and draft legislation on a children’s parliament, in order to come into line with the Convention on the Rights of the Child and the Protocols thereto, and to compile the various provisions relating to children in the national legislation. The Department of Juvenile Reform receives juveniles in correctional facilities in Baghdad and Nineveh province in accordance with the Juvenile Welfare Act, the regulations concerning detainees, convicted and displaced persons and human rights principles. In the first instance, detainees are received pursuant to a warrant issued by a juvenile court and placed in Baghdad Observation Centre, under Regulation No. 6 of 1987 on observation centres for detainees, where the Personality Assessment Bureau conducts a physical, mental and social study of their personality and behaviour in preparation for their trial. Subsequently, once a placement order has been issued by the juvenile court, convicted juveniles, to whom the Schools Regulation No. 2 of 1983 applies, enter a correctional facility (for adolescents, youths, young persons) where they are grouped by age and type of offence. Displaced boys and girls, to whom the Displaced Persons Regulation No. 32 of 1971 applies, are received pursuant to a placement order from a juvenile judge and placed in a designated refuge until they reach the age of 18 years, or employment opportunities are found for them, or they can be reintegrated in families. Moreover, there is an educational programme, in accordance with the regulation on correctional facilities and schools for literacy. The programme has a cultural dimension and aims to raise the social and religious awareness of juveniles with a view to reintegrating them into society. It also has a vocational dimension and encourages juveniles to train as tailors, blacksmiths, carpenters and electricians and to develop and use those skills after their release. In addition, there is a health-care programme for juveniles, as well as a follow-up and aftercare programme once they leave the Observation Centre. Juveniles may be placed in a correctional facility for various reasons but most are placed in such facilities on charges relating to the Terrorism Act. The Ministry of Labour and Social Affairs has indicated that during 2010, it placed 31 juveniles with new families; rehabilitated more than 200 juveniles; ensured the participation of more than 300 juveniles in a literacy programme; and trained 214 juveniles in vocational trades.”

*Source: Iraq’s national report on the implementation of the OPAC.*

## **1.2. GENERAL OBSTACLES:**

Presenting the reports the Head of the Iraqi delegation said that his country is facing serious challenges at all levels. First of all, terrorist groups have taken control of several areas in a hostile and barbaric manner, perpetrating war crimes and genocide, including disappearances and sexual slavery against children. The current situation has a direct impact on children, causing displacement and affecting their rights to access to education and health, making difficult the correct implementation of the Convention and all its provisions.

Despite of this, acknowledging that Iraq is facing tremendous challenges due to the well-known emergence of terrorist armed groups, the Committee believes that many issues impeding the



implementation are caused by laws and legislation that dated back long before the invasion of ISIL. Iraq, moreover, should not use the permanence of cultural beliefs as a justification.

**1.3. INTERAGENCY PANEL ON JUVENILE JUSTICE:** Did the Committee ask any questions in relation to technical advice and assistance in juvenile justice or if they mention the Panel in any way?

NO MENTION

## **2. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE:**

*(please use bullet points or give title to paragraphs in order to facilitate the reading)*

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## **3. DCI perspective/response***(Only if the country has a DCI-section):*

- info on what DCI sections do on these issues
- recommendations by DCI sections

*(to get this information, send the report to the National section and ask them if they have any information for this part).*

### **Sources:**

- United Nations Convention on the Rights of the Child.
- Iraq national report (CRC/C/IRQ/2-4; CRC/C/OPSC/IRQ/1; CRC/C/OPAC/IRQ/1) and alternatives reports coming from the civil society.
- Personal notes of the session attended.
- <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15503&LangID=E>

## **4. ANNEX:**

### **CRC members present:**

*Ms. Aseil Al-Shehail*

*Mr. Jorge Cardona*

*Mr. Peter Guran*

*Mr. Hatem Kotrane*

*Mr. Benyam Mezmur*



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DEFENSE DES ENFANTS INTERNATIONALE DEI  
DEFENCE FOR CHILDREN INTERNATIONAL DCI  
*the worldwide movement for children's rights*

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*Ms. Sara Oviedo*

*Ms. Maria Rita Parsi*

*Ms. Hiranthi Wijemanne - Chairperson*

*Ms. Renate Winter*

**Composition of country delegation:**

*Mr. Mohammed Mahdi Al-Bayati, Head of Iraqi Delegation, Minister of Human Rights.*

*Dr. Mohamed Saber Ismail, Permanent Representative of the Republic Iraq in Geneva.*

*Mr. Kamel Ameen, Director-General in the Ministry of Human Rights*

*Mr. Ma'hat Nuri Mulahuash, Legal adviser in the Ministry of Human Rights.*

*Mr. Abd Al-Hadi Abd Al-Redha, representative of the Ministry of Labour and Social Affairs.*

*Mrs. Taqreed Ismael, representative of the Ministry of Interior.*

*Dr. Nidhal Ibrahim, representative of the Ministry of Health.*

*Mr. Omar Al- Adhani, Permanent mission of the Republic of Iraq- Geneva.*

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