



Reaching out to a child in custody in Al Rabeea Centre in Gaza © Terre des hommes, 2014

Pulling You Out

A Report on Opportunities to Apply Alternatives to Post-Trial Detention in Palestine.

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Foreword

This publication was compiled with the aim of facilitating alternatives to detention and reducing the number of children in detention in Palestine.

Towards writing this report we met a child in Al Rabee, a closed facility aimed at rehabilitating children in conflict with the law in Gaza. He had been in pre-trial detention for three months, waiting to see a judge. His offense was that he had stolen a sachet of dry Arabic coffee from a grocery store.

The Palestinian National Authority and Palestinians at large are fully supportive that detention should be a measure of last resort, given the devastating effect of detention on youth. The number of children in conflict with the law (and specially those aged 15-18 years old) increases gradually every year. The official data in the Gaza Strip (although a lot of cases remain unreported) from 2012-2016 period shows a yearly average of 850-900 children arrested and kept in detention awaiting trial for months (3-10 months on average)¹. In the West Bank, according to figures from the Palestinian Police Force, PA security forces arrested 2445 children only during 2013. In this context there is a strong pressure from communities and families to ensure that children who contravene Palestinian law and are arrested by Palestinian police are treated in line with international standards.

There are two main instruments at our disposal to reduce the number of children in detention in Palestine. First, **diversion**, which implies that formal judicial proceedings are avoided. It takes place from the time of apprehension up till the final hearing disposition; and second, **alternatives to detention** (A2D), as decided by the judges. This Report focuses on alternatives to detention.

In 2016 the State of Palestine promulgated its first Juvenile Protection Law (JPL). There are 11 articles dealing explicitly with alternatives to detention (Articles 36 to 46). They create a clear distinction between children below and above 15 years old. From our analysis the alternatives foreseen in the JPL are starting to be known and applied but what is holding back judges is that there is a lack of human and technical resources to fully implement them. In addition, some provisions are unclear and judges lack detail or guidance about how to implement alternatives to detention.

International standards are explicit that the detention of children must be a measure of last resort and for the shortest appropriate period of time. Implicit in this obligation is the requirement to put in place a range of community-based sanctions or measures (often described as prevention, diversion and alternatives to detention) to ensure that children are prevented from offending, diverted away from the criminal justice system and ultimately can avoid detention. Also implicit in this obligation is a duty to ensure that children are treated with proportionality (with regard to the offence they committed and to their individual circumstances) and with regard to their age, their welfare and their ability to play a meaningful role in society.

In April 2014, the State of Palestine acceded to 15 international human rights treaties and protocols. The accessions are a significant step towards enhancing the promotion and protection of human rights in Palestine. It is notable that in a region with a high number of reservations to human rights treaties, Palestine acceded to these treaties without making any reservations.

A first of its kind in Palestine, this Report introduces and provides clarity on the Alternative to Detention (A2D) within the Palestinian national domestic law and applicable international regulations and standards. It makes a case for the importance of alternative measures to ensure that more and more children deprived of liberty, or who would otherwise be deprived of liberty, are

¹ Al Mezan Center for Human Rights. Fact Sheet. Juvenile Justice in the Gaza Strip 2012 to 2016.

offered non-custodial measures. It can be used as the basis for further policy documents, manuals and training programmes in this field under the umbrella of the Palestinian Juvenile Justice National Committee led by the Ministry of Social Development.

Acknowledgements

This Report would not have been possible without the technical and financial support of UNDP and UNICEF State of Palestine.

This Report also draws from experiences and various documents published by Terre des hommes Egypt and Terre des Hommes Afghanistan on Alternatives to Detention in those MENA countries. As planned in the project proposal “Justice for Children” supported by UNICEF and UNDP, Terre des hommes has found inspiration in a number of good practices published in *Alternatives to Detention for Juvenile Offenders*, *Manual of Good Practices in Europe*, by the International Juvenile Justice Observatory (IJJO) with financial support of the Criminal Justice Programme of the European Union, in *UNICEF’s Toolkit on Diversion and Alternatives to Detention*, in *UNODC’s Alternatives to Incarceration Handbook* or in the *Toolkit for Professionals: Implementing a European Model for Restorative Justice with Children and Young People*, Volume III of the European Research on Restorative Juvenile Justice accredited by the IJJO and the European Council for Juvenile Justice (ECJJ).

Methodology

This Report was initially drafted by a team of four Palestinian and international lawyers and field practitioners. It was reviewed by UNICEF (Palestine Country Office and MENA Regional Office). Then, it was translated into Arabic and received another round of comments and contributions from numerous colleagues in Palestine (Gaza and West Bank), the region and Headquarters.

Glossary of key terms

Access to Justice: the possibility of obtaining fair compensation promptly in case of violations of rights in accordance with national and international standards.

Adequate records on juvenile justice: minimum record keeping should include each child's name, date of birth, alleged crime or reason for detention, existing family members or guardians, place[s] of detention, the date and reason for transfer between institutions if happened, and court history.

Adjudication hearing: stage in court proceedings in which arguments, testimony, and evidence are presented to determine whether a child actually committed the alleged offence.

Aftercare: control, supervision, and care exercised over children after they are released from juvenile facilities. Aftercare may include probation, counselling, enrolment in a community programme, or other forms of treatment (refer to alternatives to detention). Aftercare services are designed to support children's return to their families and communities and to lessen the risk of recidivism (safe reintegration).

Alternatives to detention (A2D): refers to measures that may be imposed on children who are being formally processed through the criminal justice system, at both pre-trial and sentencing stages that do not involve deprivation of liberty. A2D are also referred to as "alternatives to deprivation of liberty" and "non-custodial measures". A2D can be applied from the time of apprehension until final disposition for children who have not been diverted away from judicial proceedings. The terms 'alternatives to imprisonment' (as opposed to 'alternatives to detention / deprivation of liberty') and 'non-custodial sentencing' (as opposed to 'non-custodial measures') apply specifically at the sentencing / final disposition stage.

Bail (Remand): a suspect who has been arrested or charged with an offence is released by the police or court on condition that they report back at a certain date and time. Sometimes the suspect has to keep to certain conditions, such as living in a particular place, or not going near witnesses. Sometimes the bail entails the form of financial payment.

Caution: official warning given to offenders who admit to their guilt.

Criminal responsibility: the age of criminal responsibility is when a child is held responsible for his/her own behaviour and can be found guilty in a court.

Criteria for pre-trial detention: basic conditions which must be met in order to justify the detention of children before their trial. Such criteria might include previous criminal records, risk of escape, lack of caregiver to reside with, risk of recidivism, etc.

Deprivation of Liberty: any form of temporary detention or imprisonment or the placement of a child in a public or private custodial setting, from which the child is not permitted to leave at will, by order of any judicial administrative or other public authority. This includes any form of residential placement including police lock-ups, borstal institutions, treatment centres, reform schools, education and re-education centres, remand homes, training centres, specific juvenile facilities, or adult correction facilities, including high-security institutions. Detention entails also the fact that the confinement is pending pre-trial release, court proceedings, or disposition.

Disposition: the decision reached concerning a child's case. Juvenile court case dispositions fall into the following categories: (i) Dismissal, an order of the court disposing of a case without conducting a trial of the issues; (ii) Placement: removing a child found to have committed an offence from the home and placing him or her elsewhere for a specified period of time, such as in a juvenile or other facility; (iii) Probation: placing a child found to have committed an offence under the supervision of the court. During probation, the child must maintain good behaviour, not commit another offence, and meet any other conditions the court may deem appropriate to impose. It may be ordered before the judge makes a final decision. Successful completion of the probation period

may result in a complete dismissal of the charges without any finding of involvement by the child in the offence; (iv) Other: a child found to have committed an offence may be given a disposition other than a commitment or probation, such as the A2D stated in the Palestinian Juvenile Protection Law, Art. 36.

Disposition hearing: hearing held after the adjudication hearing in which the judge determines the disposition of a child's case. Reports made by the probation officers/child protection counsellor and/or other professionals (health, police, etc.) are usually key for the disposition stage at the juvenile court.

Diversion: the conditional channelling of children in conflict with the law away from judicial proceedings towards a different way of resolving the issue that enables many - possibly most - to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record. Diversion can be instigated from the time of apprehension (before arrest) to any point up until the final disposition hearing (including after pre-trial detention). Key differences between diversion and A2D are that diversion requires the consent of the child and their parent or guardian and usually does not result in a criminal record, whereas alternatives to pre-trial detention can be imposed by the police or prosecutor regardless of consent; alternative sentences can be imposed by the court regardless of consent and generally result in a criminal record.

Arrest: the action of taking a child into police custody for the purpose of charging him or her with a delinquent act. Police have discretion to arrest and release a child. After arrest, the child can be released with a warning or the police may keep the child in custody and refer the matter to the juvenile courts for further processing. Under Palestinian law, 24 hours is the maximum time for the police to send the arrested minor to the deputy prosecutor. Interrogation shall be conducted within 24 hours from the date the accused is sent to the prosecutor. At a maximum, the arrested person should be brought before the conciliation judge within 48 hours.

Mediation: an alternative to a court proceeding in which a neutral person assists two or more people to resolve a conflict and reach a solution acceptable to all sides. Palestinian Juvenile Protection Law refers to mediation in Art. 23. It can be used in misdemeanours and violations. Mediation can be used spontaneously before initiating criminal action, as set forth in Art. 23.

Minimum Age of Criminal Responsibility: the age below which children are not considered having the capacity to infringe penal law. In Palestine, this age is set at 12 years old.

Police Warning or Cautioning: police cautioning is a form of 'first level' or unconditional diversion, and can prevent children who have committed either minor offences or no offence from spending time in detention facilities.

Probation: Probation is a non-custodial order placing the child under the supervision of a probation officer for a set period of time, subject to certain conditions. During probation, the child must maintain good behaviour, not commit another offence, and meet any other conditions set by the probation order. In Gaza, where a probation system is practiced, it can be ordered before proceeding to conviction, under certain conditions.

Recidivism: repetition of criminal behaviour. It can be same offence or any other one that is added to previous offences registered by the police/justice system.

Reintegration: Re-establishing of roots and a place in society for children who have been in conflict with the law so that they feel part of, and accepted by, the community. This involves a process of social, economic and political reintegration. Measures include a varied range: counselling, vocational training, community service, education resources, therapy groups, cultural and leisure activities, decision-making processes, etc.

Restorative Juvenile Justice: It refers to the treatment of children in conflict with the law, where the objective is to promote the reparation of the damage caused to the individual, affected parties and society. This objective requires the active and joint participation of the child offender, the victim and other individual members of the community to resolve problems resulting from the conflict.

There are several models of implementation of the approach of RJJ. This process leads to responses such as reparation, restitution and community service (CS). The objective is to meet the responsibilities as well as the individual and collective needs of the parties, to promote the rehabilitation of the child in conflict with the law and the reparation to the victim. The restorative approach is present at all stages of justice.

Status Offence: conduct sanctionable only where the person committing it is under the age of 18.

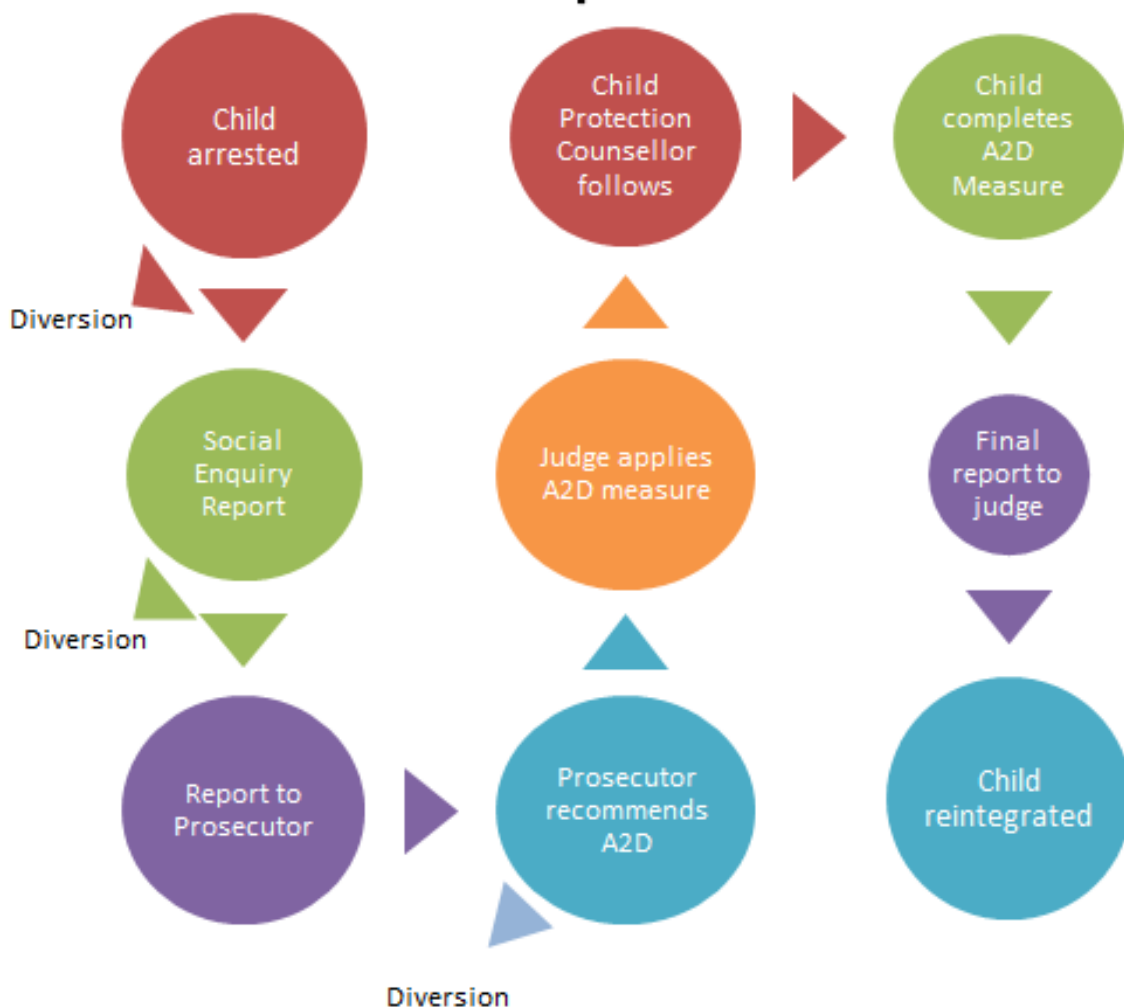
Introduction

This Report covers alternatives to deprivation of liberty, from the prosecution stage onwards, as stipulated in the Palestinian Juvenile Protection Law. It does not deal with diversion. While diversion may be considered an “alternative” insofar as it is used instead of full, formal criminal justice processes, it is different from the other measures listed below as it keeps a young person away from the formal criminal justice system altogether, rather than being a sanction imposed within the criminal justice system. Whereas diversion is a key aspect of any criminal justice system, and while its importance is emphasised in the relevant children’s rights standards, it is a separate issue to the issue of alternatives to detention.

Linguistically, alternative means “to substitute”, or substituting something with another in the sense of changing it. It can fundamentally alter the nature of the initial phase and requires a transformative process.

Alternative to detention (A2D) has some commonalities with restorative justice systems as opposed to punitive/retributive or welfare models. In cases where there is one or several victims or the community is harmed, A2D aims at reforming a child's life in all its different aspects and at repairing and conciliating the child in conflict with the law with himself/herself, the victim and the community.

A2D process



This Report draws from the Juvenile Protection Law (2016). As such it may be more relevant in areas of the West Bank where practitioners have started implementing the law. It may be useful however in the Gaza Strip where a different legal regime is in force but similar principles apply. The authorities in Gaza have indicated that failing the enactment of a new Juvenile Protection Law, Article 18 of the “Juvenile Offenders Ordinance” (1937)² can be applied to put alternatives to detention into practice. Article 18 allows for the child in conflict with the law to be discharged if he or she recognizes the harm he made. The child can also be placed under the supervision of a probation officer as per Art. 18(c) or a relative or other fit person as per Art. 18(d) of the Ordinance.

What are the Goals of this Report?

This Report was devised with the following intents:

1. **Remind** the target groups of the concepts and principles of juvenile justice related to the use of alternative measures in light of the relevant international conventions and Palestinian Law (Juvenile Protection Law).
2. **Highlight** the importance of A2D as a restorative approach and practice.
3. **Emphasise** children’s rights at every stage of the judicial proceedings, rehabilitation, reintegration and monitoring.
4. **Provide guidance** on different phases of children's case management benefitting from A2D.

In addition, the Report will provide answers to the following questions:

- ✓ Is the list of alternatives to detention exhaustive or non-exhaustive?
- ✓ Can children above the age of 15 benefit from A2D?
- ✓ Which alternative measures for which offences?
- ✓ Can verdicts regarding alternative measures be appealed?
- ✓ How should the Child Protection Counsellor act if a child violates a judgment imposing an alternative measure?
- ✓ What are the social and legal actions to be taken if the child does not adhere to the conditions of an alternative sentence?
- ✓ What power does the court have to end, modify or replace alternative measures?

² Ordinance No. 2 of 1937 (An Ordinance To Make Provision For Proceedings In Respect Of Juvenile Offenders And For The Care Of Young Persons In Need Of Protection).

Forming a Protective Circle around the Child in Conflict with the Law

This Report reviews workers and social observers directly involved. We also had to shed light on the role of other groups working within the juvenile system and whose role we deeply value, where they assist, both directly and indirectly, in the advancement of the juvenile justice system and support the trend towards adopting alternative measures to detention. These include:

Child Protection Counsellors: Child Protection Counsellors (known in Gaza as Probation Officers) are the most important frontline workers when it comes to children in conflict with the law, because they accompany the child during all the police and judicial stages and are the ones who have direct contact with the prosecutor and the judge regarding the possibility for the child to access any of the A2D in the law which have to be approved by the court. S/he is also in charge of the supervision of the A2D's implementation, behaviour and progress of the child to definitively be able to conclude his/her justice process.

Police officers and members of FJPU: The intervention of police officers from Family and Juvenile Protection Units is not required in all cases, according to the procedural provisions stated in the Palestinian Juvenile Protection Law. However, they play a crucial role.

Juvenile Prosecution: The Attorney General Office counts with a prominent role within the juvenile justice system. There is a specific Juvenile Department with plenty of relevant assigned interventions: they received arrested children from the police within 24 hours and have the power to decide on the suitability of starting a formal judicial procedure if the case requires so according to the law. Juvenile Prosecutors are in charge of the investigation of the case through the whole process, working closely with the child protection counsellor to precisely determine the causes of the case and analyse case-by-case what are the appropriate means to protect and rehabilitate the child in contact with the law, including the provision of a specialized lawyer if needed and the recommendation of applying A2D when the case is being judged at the courtroom.



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Lawyers and Legal Aid Network: Lawyers dealing with juveniles play an active role in helping the court to arrive at a sound ruling in cases in which the child is being represented. If it is proven that the act has been committed by the child and it is not possible to request the judiciary to acquit the child, the child's defence has to propose an appropriate measure and convince the court through oral arguments and written pleading briefs of the logical reasons that led him or her to propose the alternative measure and to support this request with documentation whenever possible.

Juvenile Judges: A2D are taken after a judicial process has been followed by a juvenile judge. They must ensure that all safeguards have been fulfilled within the process and the best interests of the child have been taken into account in the ruled measure (i.e. by establishing specific conditions, the time of the measure and the follow-up system to review the case if needed). The JPL includes an enforcing juvenile court decisions system that ensures the suitability of each judgement for each child on a case-by-case basis. The specialization of the judges is crucial to ensure the rights of the children in conflict and in contact with the law, as well as the availability of specific juvenile courts for cases involving minors. Both aspects are clearly foreseen in the JPL and are urgent to be met.

NGOs and Civil Society Organisations: There is no doubt that NGOs and civil society

organisations have an extremely important role to play in all aspects of A2D. They play a key role in providing support to the places where such measures are to be implemented. As the Tokyo Rules³ make clear, public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration. Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.⁴

Private Sector: The involvement of the private sector in a network of A2D providers broadens the possibilities for children in conflict with the law to actually get practical and future-focused opportunities and to also tackle some of the main triggering factors that drive children to offend: family difficulties/poor economic situation, lack of opportunities/discrimination, etc. There are many shops, cottage industries and small factories that can be involved in vocational training and rehabilitation efforts. This however does not mean that it should happen without supervision. To avoid child labour, other forms of exploitation and child abuse, judges are involved in selecting private sector compliers based on a list of accredited service providers. Child Protection Counsellors provide strict monitoring of service providers.

NGOs and civil society organisations can assist in marketing of the products made by children in difficult situations (without entering into details as to the fact that these children may be in conflict with the law). Particularly, in Bethlehem, there are some contractors involved within the provision of professional and specialized vocational trainings and workshops for youth. For instance, the Salesian School is offering an industry-oriented vocational training course. Other options identified are: hairdresser, IT, mobile and networks maintenance. It is worth noting that private vocational trainings offer a wider range of options and are better driven by an on-the-job training approach which increase the socio-occupational reintegration of the children and youth in conflict with the law (for example, they received a professional certificate that increases opportunities to find a long-term job).

³ See further in the Report the concrete coverage of the Tokyo Rules.

⁴ Tokyo Rules, rules 17.1 and 17.2

Chapter One

Understanding A2D

What are the main international guiding standards and principles for A2D?

STANDARDS

The State of Palestine has committed to abide by international standards. Several international standards and principles are set out in a number of key instruments. Chief among these is the Convention on the Rights of the Child (CRC), which contains both statements of general principles and rights applicable to all children, and rights which are specifically applicable to young people in conflict with the law. A central principle emerging from these standards is that deprivation of liberty should only be used as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured.

This means that the State of Palestine should have in place specific services to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention.

Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (and the continuation of) this deprivation of liberty within 24 hours. The Committee also recommends that the States parties ensure by strict legal provisions that the legality of a pre-trial detention is reviewed regularly, preferably every two weeks. In case a conditional release of the child, e.g. by applying alternative measures, is not possible, the child should be formally charged with the alleged offences and be brought before a court or other competent, independent and impartial authority or judicial body, not later than 30 days after his/her pretrial detention takes effect.⁵

A logical corollary to this principle is that the State has to put in place a range of alternative measures to be available to youth courts and other authorities in responding to offending behaviour by young people. This is also explicitly required by the CRC, in order to ensure that children are dealt with in a proportionate way which takes their needs and wellbeing into account.

At the international level, key standards and guidelines include:

- ★ Convention on the Rights of the Child (**CRC**).
- ★ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (**BEIJING RULES**).
- ★ United Nations Standard Minimum Rules for Non-Custodial Measures (**TOKYO RULES**).
- ★ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women (**BANGKOK RULES**).
- ★ **ECOSOC Resolution 2002/12** Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.

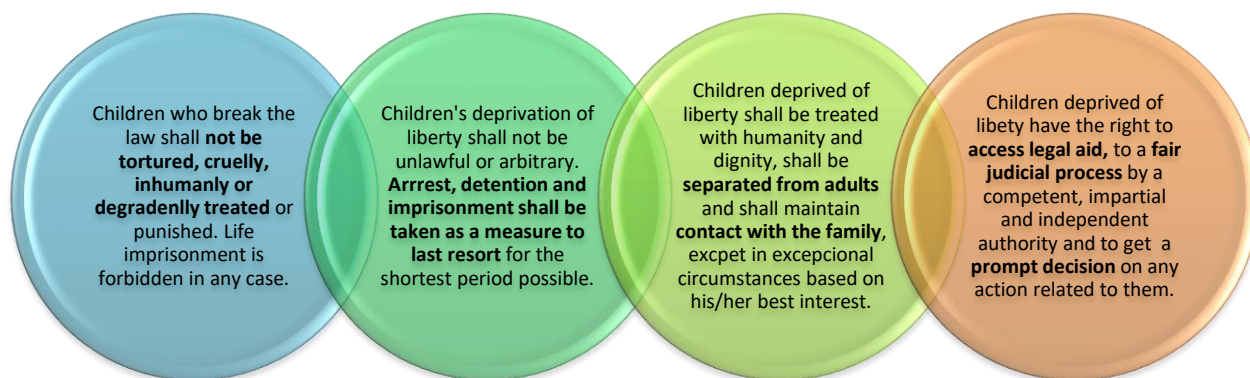
⁵ UNCRC GENERAL COMMENT No. 10 (2007), Children's rights in juvenile justice, see paragraphs 78-88

- ★ United Nations **Rules for the Protection of Juveniles Deprived of their Liberty**.
- ★ **Committee on the Rights of the Child's General Comment No. 10 (2007)** on children's rights in juvenile justice.

It is worth to note that the CRC, the Beijing Rules, the UN Rules for the Protection of Juveniles Deprived of their Liberty and the CRC General Comment No. 10 (2007) are child-specific instruments, whereas the Tokyo Rules, the Bangkok Rules and the ECOSOC Resolution 2002/12, are considered general related-instruments applicable also to the juvenile justice field.

One of the human rights treaties the State of Palestine has acceded to is the **Convention on the Rights of the Child (CRC)**, which is the most widely ratified human rights treaty in the world.

Article 37 of the **CRC** states:



Article 40(4) of the **CRC** is of particular significance, and mandatorily provides that States shall make available a variety of measures to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence, such as: (i) Counselling, Probation, Foster Care, (ii) Care, Guidance and Supervision Orders and (iii) Educational and Vocational Training Programmes and other alternatives to institutional care.

Therefore, the State of Palestine is required to ensure that a variety of alternative measures are available in practice. The Juvenile Protection Law foresees a number of measures that contribute to implement the ones provided for in Article 40(4) of the CRC.

The **Beijing Rules** also emphasise the importance of the use of alternatives, at various stages of the process. In addition to promoting their use to the maximum extent at the pre-trial stage, they also make clear their importance in the guidelines addressing dispositions following a finding of guilt. Rule 17 sets out the guiding principles which should be followed, including a recommendation that deprivation of personal liberty should not occur unless the child is convicted of a serious offence involving violence to another person, or unless offences are persistent, or there is no other appropriate response. Rule 18 also requires that a range of measures should be available to the competent authority, so that institutionalisation of a young person can be avoided to the greatest possible extent. This rule recommends that some of these measures may include: "care, guidance and supervision orders; probation; community service orders; financial penalties, compensation and restitution; intermediate treatment and other treatment orders; orders to participate in group counselling or other educational settings; other relevant orders." Again, it is significant that this list is non-exhaustive, and the commentary to this rule emphasises that separation of a child from the care of their parent should only be used as a measure of last resort.

The **Tokyo Rules** include a complete overview of alternative non-custodial measures, framing them within the observance of human rights and the requirements of criminal justice. The Rules included several alternatives to detention, namely: verbal sanctions, conditional discharge, economic sanctions, confiscation of funds, restitution to the victim, suspended sentence, judicial probation, a community service order, house arrest, furlough, work and/or education release,

parole, remission and pardon. Measure to be taken shall take into consideration both the nature and gravity, shall count with the offender's consent and shall be subject to review by an independent authority.

The **Bangkok Rules** state the priority to applying non-custodial measures to “juvenile female offenders” who have come into contact with the criminal justice system and place the basis of the alternatives to imprisonment on the Tokyo Rules, however bringing the essential consideration to gender specificities. Section III of the Bangkok Rules contains norms covering the application of non-custodial sanctions including on arrest and at the pre-trial, sentencing and post-sentencing stages of the criminal justice process. Rule 59 mentions that “non-custodial means of protection” and non-exhaustively refers to the placement in shelters managed by independent bodies, non-governmental organizations or other community services. Moreover, Rule 60 stands for the allocation and accordingly availability of resources to devise suitable alternatives for juvenile female women offenders in order to combine non-custodial measures with interventions (female-only services) to address the most common problems leading to females' contact with the criminal justice system: therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Finally, Rule 65 states that the gender-based vulnerability of juvenile female offenders shall be taken into account in decision-making.

ECOSOC Principles on Restorative Juvenile Justice (RJJ) focus on the importance of social harmony through the healing of victims, offenders and communities, by promoting the setting up and preference on the use of holistic restorative process and procedural safeguards guaranteeing fairness, respect and different needs for the victim and the offender. The Resolution advocates for the urgent need of establishing regular consultation between criminal justice authorities and administrators of the restorative justice programmes to develop a common understanding directed to explore ways in which restorative approaches are incorporated into criminal justice practices.

UN Rules for the Protection of Juveniles Deprived of their Liberty set forth a number of essential axioms to be taken into account when a child is given a custodial measure, stating that imprisonment should be used as a last resort and that juvenile justice systems should uphold the rights and safety and promote the physical and mental well-being of the children in conflict with law. These rules, which were approved in 1990, state that services and measures taken while a child is deprived of his/her liberty should be directed to reintegrate the him/her into society, family life, education or employment. This objective is precisely achieved in a better, more effective and holistic way when applying A2D.

Paragraphs 68-77 of the **Committee on the Rights of the Child's General Comment No. 10 (2007) on children's rights in juvenile justice** established the need to regulate and apply possibilities of alternatives to a court conviction, which will be presented to the child as a way to suspend the formal/juvenile law procedure that can be terminated if the alternative measure has been carried out in a satisfactory manner. The Committee reminds that there is a wide range of experience with the use and implementation of alternatives to detention measures that State parties should take into account and benefit from, adjusting them to their own culture and tradition.

PRINCIPLES

A2D are grounded in **5 main principles**, which Palestinian Juvenile Protection Law reflects through the wording and spirit of its provisions.

A concept grounded in child rights

A child who is in conflict with the law, similar to other children, is entitled to fundamental rights. The state and those dealing with him/her must, at all stages of procedures, take into account and safeguard all of these rights, and to believe that the care and rehabilitative services offered to

him/her are his/her entitlement. The protection of the **dignity of the child** is a key principle derived from child rights which is central to international standards, and which must be respected in implementing alternatives to detention. Article 37 of the CRC protects the children deprived from liberty against torture and other cruel, inhuman or degrading treatment, stipulates that they should be treated with humanity and respect for their dignity, and that they should not be held together with adults. The Committee on the Rights of the Child has expanded on this principle in its General Comment No. 10 on Children's Rights in Juvenile Justice, and stipulates that this principle requires that children be treated in a manner **consistent with their dignity and worth**, that reinforces their respect for the rights and freedoms of others, that takes into account their age and the desirability of promoting their reintegration, and that prohibits absolutely all forms of violence against children in conflict with the law.

The principle that detention should only be used as a **measure of last resort** is a central principle emerging from the international standards, and one which is of particular relevance when considering the use of alternative sanctions and measures. It will be discussed in more detail below. In brief, however, this principle is set out in Article 37(b) of the CRC, which states: "The arrest, detention or imprisonment of a child shall be in conformity of law and shall be used only as a measure of last resort and for the shortest appropriate period of time." This principle has emerged from a recognition that a sentence of detention has harmful effects on young people. This is one of the most fundamental principles underpinning a rights-compliant youth justice system.

The principle of the **best interests of the child** is also a central concept in rights-compliant, child-friendly juvenile justice systems. It is one of the four guiding principles of the CRC. The need to take into account the best interests of the child as a primary consideration is set out in Article 3 of the CRC. This is a principle of general application which applies in the context of juvenile justice as it does in other contexts, such as family law. In particular the Committee on the Rights of the Child has emphasised the importance of this principle in juvenile justice:

"Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety."⁶

Alternatives are non-custodial measures which should be used in accordance with the principle of minimum intervention. They are part of the movement towards depenalization and decriminalization.

Last but not least, the **principle of non-discrimination** enshrined as one of the four guiding principles of the CRC advocates for the enjoyment and fulfilment of the same right to all children, despite differences based on gender, age, race, sexual orientation, socio-economic factors and/or faith/religion. This principle applies directly to the juvenile justice scope of action. In particular, as stated by the Committee on the Rights of the Child:

"States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists). In this regard, training of all professionals involved in the administration of juvenile justice is important (see paragraph 97

⁶ Committee on the Rights of the Child's General Comment No. 10 (2007) on children's rights in juvenile justice at para. 10.

below), as well as the establishment of rules, regulations or protocols which enhance equal treatment of child offenders and provide redress, remedies and compensation.

Many children in conflict with the law are also victims of discrimination, e.g. when they try to get access to education or to the labour market. It is necessary that measures are taken to prevent such discrimination, inter alia, as by providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society, and to conduct public campaigns emphasizing their right to assume a constructive role in society⁷.

Duty of care

In discussion with potential organisations or individuals who are candidate to receive a child under an “alternative to detention” measure, it should be very clear that this implies a strong duty of care.

The child in conflict with the law is always in need of someone to trust and rely on and to feel that this person is caring for him/her, safeguarding his/her interests, and assisting and supporting him/her in getting back on track. Genuine care of children enveloped within a sound professional relationship assists the child in becoming an active member of his/her community.

A measure based on child participation

Child participation, also a guiding principle of the CRC, is a right as stipulated in Article 12 of the CRC. A child in conflict with the law has the right to express his or her views freely, in all matters affecting him or her. This principle also means that the child has the right to remain silent, and not testify against him or herself. His or her views will be given due weight in accordance with the age and maturity of the child. Moreover, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The child who is in conflict with the law must be dealt with by means of a participatory approach. This means that the child is a key partner responsible for rebuilding his/her future, taking his/her own decisions and assuming his/her own responsibility.

A measure focused on *personalized outcomes*

Alternatives to detention cannot be envisaged for groups of children. Each one of them must be approached, treated and considered individually. The individual nature of each case is very important. A child in conflict with the law is an individual case different from any other one. What is suitable for one may not be fit for the other. A one size fits all approach has been proven counter-productive.

Similarly, a measure which will be effective in one jurisdiction or geographic area may be less so within the context of a different legal framework and different social conditions in another area. There is a need therefore, for each area to carefully consider what will work in its own particular context and in the context of the overall legislative framework and system.

A Social Inquiry Report and a child’s individual development/care plan must be truly individual. The imposition of sanctions or measures should be guided by the child’s best interests, and limited both by the principle of individualisation (personal circumstances of the child) and by the principle of proportionality (gravity of the offence). The principle of proportionality places important limits on the sentencing authority’s powers to impose sentence on a young person accused of committing a

⁷ Committee on the Rights of the Child’s General Comment No. 10 (2007) on children’s rights in juvenile justice at para. 6.

crime. Article 40(4) of the CRC requires that such a variety of alternative measures are available in order “to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.” Therefore both, the child’s individual characteristics and needs, as well as the type and seriousness of the offence need to be weighed in the balance when imposing a sanction on a child. Both of these separate elements are essential in order to curb excesses in sentencing. In particular, it is important in ensuring that courts do not justify excessive interventions on the basis of either disproportionate welfarism, or disproportionate punitivism.⁸ As such it is important to provide a graduated framework when the child does not cope with the measure: there should be, for example : 1) a warning, 2) a second warning, 3) a small sanction, 4) a more serious sanction that could lead to a normal sentence.

A measure relying on community networks and meeting community needs

While the reintegration of the child is important, the restoration of community harmony is also necessary in order to accept this child and deal with him/her as a full participant in the community. The community has an important role to play in prevention, in mobilizing A2D networks and in monitoring alternatives to detention.

What are the benefits of A2D?

The benefits of A2D are first and foremost for the child, their family but also for the police, prosecutors, judges, rehabilitation centres, and society and the community as a whole. A2D can reduce the stigmatisation, violence, humiliation, and rupturing of social relationships that a child in conflict with the law can bring and is therefore also more likely to stop the child from re-offending⁹.

The benefits for **child offenders**:

- ✓ Can have a second chance to reassess their behaviour without serving a prison sentence
- ✓ Can begin to understand and make amends for the harm that they have caused to the victim and/or the community
- ✓ Can receive help if they need protection without being criminalised
- ✓ Can continue their education
- ✓ Can be prevented for suffering negative developmental impact associated with detention. Research shows that detention has very negative effects on the child including, but not limited to mental health issues, lack of education, poor nutrition, lack of physical and recreational activities, isolation and depression, increased contacts with other offenders, identification to crime.
- ✓ Are not separated from their family
- ✓ Are less likely to offend

The benefits for **victims**:

- ✓ They are involved in the process of redress and informed of the outcome by the police and prosecutors
- ✓ They may get a chance to explain to the child how they feel about the offence and hear the child’s reasons for committing the offence
- ✓ They can benefit from being merciful to the child and see them returned to the community

The benefits for **families**:

⁸ Committee on the Rights of the Child, General Comment No. 10, para. 71.

⁹ Top 10 Reasons to promote Diversion and Alternatives to Detention, UNICEF.

- ✓ Their child is not criminally stigmatized or labelled
- ✓ They can learn from the experience of the child
- ✓ Their child is not separated from his or her family

The benefits for the **police and prosecutors**:

- ✓ It reduces re-offending compared to imprisonment
- ✓ Their reputation is enhanced in the community, their professionalism, job satisfaction and morale of personnel working in the child justice sector is raised
- ✓ They can concentrate and allow resources on more serious cases, repeat or high-risk offenders

The benefits for **judges**:

- ✓ It reduces the number of children detained in rehabilitation centres and therefore helps them to deliver a better quality of service to the more serious child offenders in their care

The benefits for the **society and community**:

- ✓ The cost of detaining children is reduced
- ✓ There are less children criminally stigmatized or labelled
- ✓ The children who commit minor offences are not mixed with children who have committed serious offences and they are therefore less likely to re-offend
- ✓ Children are integrated and are given the opportunity to make reparations to their communities
- ✓ Children will be able to contribute to the local economy through public interest work/community work
- ✓ A2D contribute positively to improving national security by promoting inclusion rather than exclusion of marginalized children in society
- ✓ A2D contribute to social development, conflict resolution and peace-building efforts through the use of restorative justice approaches and place the need of victims more centrally in the process

Chapter Two

National Legislative Framework for A2D in Palestine

Relevant principles under the JPL 2016 are found in Articles 2-4, 6-7, 12. These principles are not just guaranteed under the international standards but also national laws.

Alternatives to Detention take place if the child has not been diverted through mediation (Art. 23 of the Juvenile Protection Law) and if the child in conflict with the law is presented to the judge. Alternatives to detention can also be offered if the child is in pre-trial detention.

Another point to be made is that the measures shall be practical, precise and as few as possible, and be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and of increasing the offender's chances of social integration, taking into account the needs of the victim. At the beginning of the application of a non-custodial measure, the offender shall receive an explanation, orally and in writing, of the conditions governing the application of the measure, including the offender's obligations and rights.¹⁰

The Juvenile Protection Law (2016) provides **nine different options**.

The law makes a clear distinction between children who have not attained the age of 15 and those between 15 and 18.

Measures for Children Between 12 and 15 years old

Reprimand

It is the blame, oral punishment and/or reprehension by the court to the juvenile for his conduct so that he does not revert again to such behaviour. This alternative to detention is only available for children below fifteen years of age.

Hand-over of the child under the responsibility of parents, legal guardians or foster family

The juvenile shall be handed over to one of his parents, custodian or guardian. If none of them has the ability to raise him or her, he or she shall be handed over to whoever is able to do so from amongst family members. If none is available, he or she shall be placed with a foster family which will undertake to raise him or her pursuant to the provisions of the Palestinian Child Law No. 7 (2004).

If a mentor can be identified within family members this can be a particularly effective measure called mentoring. Mentors may work with both the young person and his or her family, and meet with them on a regular basis. Mentors provide support, advice and guidance to young people, and listen to any concerns they may have. Mentors can often serve as positive role models for young people, and, through the process of forming a friendship, can provide stability in the young person's life. In line with principles set forth in Guidelines for the Alternative Care of Children (2010), placement in institutions is discouraged. If placement is considered it should be an open alternative care facility for children without parental care, not a closed rehabilitation centre.

¹⁰ Tokyo Rules 12.3

Vocational Training

As for enrolment in vocational training, the court shall entrust the child to a centre specialized for this purpose. In its verdict, the Judge shall determine the duration of this measure provided that the child's stay in the aforementioned places does not exceed three years.

Commitment to Certain Obligations

This shall encompass a ban on frequenting certain places, request attendance before certain persons or commissions at certain times, regular attendance at certain steering meetings or any other restrictions determined by ministerial resolution. The order of such a measure shall not be less than six months and shall not exceed three years. This category is quite broad and can be interpreted by the Judge upon recommendation of the Prosecutor, Child Protection Counsellor (CPC) or Family Group Conference (FGC)¹¹. It can include measures that are known in other contexts as "Reparation Orders". A reparation order involves an element of helping the victim or his or her community directly. For example, if a child in conflict with the law was involved in stealing from a shop, the reparation order would consist of working in that shop for a certain amount of time, under the supervision of the Child Protection Counsellor. One of the key strengths of such a programme is that it allows the young person to remain in the community, and that it provides for an element of restorative justice through the involvement of the victim.

ARTICLE (36)

MEASURES PERTAINING TO JUVENILES BELOW FIFTEEN

The juvenile who is convicted of a criminal act
and who did not attain 15 shall be punished
with one of the following measures:

1. Reprimand
2. Hand over
3. Enrolment in vocational training
4. Commitment to certain obligations
5. Judicial examination
6. Social control order
7. Placement in a social care home
8. Placement in a specialized hospital.

Source: *Juvenile Protection Law (2016),
Chapter 4 "Measures"*

Judicial Examination

This measure occurs when a child is placed in his or her natural environment under the guidance and supervision of the child protection counsellors while observing the obligations ordered by the court. The duration of judicial examination shall not exceed three years. If the juvenile fails the judicial examination, the court shall take the measures it deems suitable as outlined in article (36) of this Law after consulting the child protection counsellors and juvenile prosecution. Reference should also be made to the importance of courts taking guidance from CPCs and / or outcome of a FGC in deciding on the most relevant obligations to impose.

Social Control Order

It is the order given pursuant to this Law to place the juvenile under the supervision of a child protection counsellor on the terms deemed necessary by the court to ensure the juvenile's good behaviour provided that the duration shall not be less than one year and shall not exceed five years.

The court shall impose on the juvenile who violates any of the social control terms any of the measures outlined in article (36) of this Law and which are commensurate with his status and with

¹¹ Outcome of cases conferences, Family Group Conferences (FGC) or mediations are relevant to the type of obligations chosen by the judge. Reparative conditions can only be used with involvement and consent of the victim, generally discussed and agreed through a FGC convened by the CPC prior to the trial, and reflected in the social enquiry report.

a fine not exceeding JOD 500¹² against his custodian if proven to be at fault. The court that issued the social control order may; at the request of the juvenile prosecution, the child protection counsellors, the juvenile, his custodian cancel or amend the order after reviewing the report of the child protection counsellors on this issue. If the juvenile is convicted of a crime during the enforcement of the social control order issued against him or her, the order shall be cancelled except if the verdict is restricted to reprimand or handover, in which case, the court may, on the recommendation of the child protection counsellor, decide to continue with the social control order.

Note: The following two measures relate to placements in institutions. Technically they are custodial dispositions, not alternatives to detention. As such they should be used “restrictively” in line with guiding principles under the Juvenile Protection Law and UN Committee Comment No 10.

Placement in Social Care Homes

This measure is specifically restricted to felonies. Placement shall not be ordered in misdemeanours and violations. It should be used restrictively in keeping with the principle that custodial measures should be the last resort. Other alternatives may be examined and recommended by Child Protection Counsellors.

The law stipulates that:

- 1. The child shall be placed in a social care home under the authority of the ministry or endorsed by it. If the child is disabled, placement shall be in an institution suitable for his or her rehabilitation. In its verdict, the court shall determine the duration of placement and its place.*
- 2. In felonies, the duration of placement shall not exceed five years. The court may substitute the placement measure after ordering it with any measure outlined in article (36) of this Law.*
- 3. Placement shall not be ordered in misdemeanours and violations. In this case, the juvenile shall be sentenced with any of the other measures outlined in article (36) of this Law.*

Placement in Hospitals or Specialized Centers

The law stipulates that:

- 1. The convicted person shall be placed in a hospital or a specialized centre that cares for his or her condition.*
- 2. The court shall exercise periodical control during his stay under treatment.*
- 3. Any duration of stay may not exceed six months unless his condition requires more time based on a medical report. During this period, the medical report shall be presented to the court.*
- 4. If the child attains 21 and his or her condition necessitates further treatment, he or she shall be placed in a hospital or specialized centre for adults.*

In order to avoid institutionalization of children, it is preferable to plan for young people to attend a day care centre with a designated frequency. While there, they must follow the established guidelines for the treatment of a mental disorder, an addiction to alcohol or other substances, or for alterations in their perception. This measure can be applied as a standalone measure, or in addition to other measures. If the young person refuses treatment for addiction, the judge may apply other suitable measures.

Once again child participation is key and an initial interview is held with the young person and his or her parents in which the content and meaning of the measure is explained. The time which the

¹² Equivalent to USD 705.

young person is already engaged in training, work, or other activities must be taken into account. Before the measure begins, an individualised care plan is drawn up.

Measures for Children Above 15

The only measure available under the law for children above 15 who commit a felony is placement in a **social care home**. However, under Art. 46(3) the judge can order a suspended sentence. Judges should be encouraged to use that option wherever appropriate, in line with the principles of best interests of the child and deprivation of liberty as last resort.

Applying a placement measure under Art. 46(1) creates a number of challenges, not least the question of availability of places and transportation from distant governorates to Ramallah. There is currently only two such institutions in Ramallah (Dar Al Amal, only for boys) and in Bethlehem (Girls House of Care, only for girls). Children may wait for weeks before a security coordination is obtained for their transfer to Dar el Amal.

For children above 15 who are accused of committing misdemeanours punishable with imprisonment, the Judge may also place the child in a social care home for a period not exceeding one third of the duration of the sentence. However judges should be encouraged to apply one of the measures foreseen in Art. 36 of the law, such as Reprimand, Hand over, Enrolment in vocational training, Commitment to certain obligations, Judicial examination, Social control order or Placement in a specialized hospital or sentence him/her to a public service measure. Public service is discussed below as a separate alternative to detention measure.

The “Reprimand” measure as per Article 37 may not be considered as a sufficient measure for a child above 15 who has committed a misdemeanour punishable with imprisonment, considering the age and development of 15-18 year old children. However, Art. 36 of the JPL needs to be interpreted and applied in accordance with the principles under Art. 3 of the national law which states that every decision taken regarding juveniles shall aim at retaining the child in his/her family environment and Art. 7(4) of the same law which gives priority to preventive, educational and rehabilitation measures over provisional detention and/or deprivation of liberty measures.

The law does not expressly foresee the measures the judge has at his or her disposal when a child above 15 years old has been accused of committing misdemeanours punishable with measures other than imprisonment. Article 15 of the Jordanian Penal Code Num. 16. of 1960 foresees, other than imprisonment, a fine or a bail bond as penalties for misdemeanours. Even though the law does not provide for alternative measures in the case of misdemeanours that can be punishable with fine or bail bond, it could be considered that the spirit of the law advocates for the applicability of the measures foreseen in Art. 36, in line with the applicable international standards. Hence, it would be advisable that, for the sake of accuracy and legal security, the High Judicial Council provides for clarity in this regard.

ARTICLE (46) SPECIAL MEASURES FOR JUVENILES ABOVE FIFTEEN

1. If the juvenile who attained 15 but did not reach 18 committed a felony, he shall be sentenced to placement in a social care home as follows:

- (a) A period not exceeding nine years if the felony carries the death penalty.
- (b) A period not exceeding seven years if the felony is punishable with life imprisonment.
- (c) A period not exceeding five years in any other felony.

2. If the juvenile committed a misdemeanour punishable with imprisonment, he shall be placed in a social care home for a period not exceeding one third of the duration of the sentence outlined in the law. In lieu of placement, the court may sentence him to a measure as outlined in article (36) of this Law or sentence him to provide a public service pursuant to the applicable laws.

3. If given a suspended sentence, the juvenile judge shall pair this with any of the measures outlined in article (36) of this Law except the reprimand measure.

[...]

Source: *Juvenile Protection Law (2016), Chapter 4*
“Measures” - Emphasis added.

If the judge decides to suspend the fulfilment of the sentence's content (suspended sentence procedure)¹³ as stated in Art. 46(3) JPL, any of the measures foreseen in Art. 36 except a Reprimand can be applied instead.

Suspended sentence is the only legal mechanism for imposing A2D (Art. 36 of the JPL) on children over 15 years old who commit a felony.

Public service

In Palestine, public service is available to children above 15 only. As mentioned above under the child participation section, this type of measure cannot be imposed without the consent of the young person.

The choice of public service will be made by the judge upon presentation of an individualised project (e.g. Individualized Project of Judicial Measure Execution). It generally falls into the category of tasks relating to **caring for people**, or work relating to **protecting the environment**. Examples include: tasks to help persons with disabilities, tasks to care for senior citizens, clean up public spaces, civil defence or firefighting, sports clubs.

Voluntary activities which have a social benefit or which benefit people in precarious situations will be preferred. If this measure is considered suitable, the young person is interviewed together with his or her parents in order to explain the measure to them. The time which the young person is already engaged in school, vocational training, work, or other activities must be taken into account.

Before the measure begins, it must be approved by a Judge. Public service should aim at making the child responsible and repair for his offence, keeping in mind his future as community member and citizen of the country. It is very important for the Judge to explain this to the child, in order to make the measure fruitful. The public service should be designed in a way that is both adapted to the capacities of the child and proportionate to the offence he or she committed.

The work to be carried out by the young person may vary depending on what is required by the beneficiaries of the work. Different individuals or local groups may be involved in the implementation of the measure; however the **overall responsibility for co-ordinating the measure** should be assigned to a non-profit organisation that remains in contact with these groups as well as with the young person and his or her parents throughout the period of implementation. A final assessment interview is done once the measure is completed, and this assessment is attached to the final report on the judicial measure.

The Judge may need to revise the measure depending on its effects on the child. Some children might not cope entirely or may need second or third chances before they get involved in such a structured activity. It should not be a one chance measure.

*

After having reviewed the Palestinian regulation on the A2D, one question that arose is whether this list is exhaustive or not. From a legal standpoint the list is exhaustive, but some of the alternatives can be interpreted quite broadly (for instance "Commitment to certain obligations"). Other valuable alternative measures (e.g. obligations for a child to reside in a specific place, restrictions of contact with specific persons, reporting obligations to the competent authorities, participation in educational measures) can all be applied under existing categories listed in Art. 36.

¹³ Article 4.54 (bis) of the Jordanian Penal Code 16.1960 states that: "*When passing an imprisonment sentence of not more than one year for a felony or a misdemeanor, the court may order in the judgment a suspension of sentence execution, according to the conditions stipulated in this law, if based on the convicted person's character, past, age and circumstances of offence it perceives any reason to believe that he / she will not violate the law again. The court must indicate in its judgment its reasons for suspending the sentence. The suspension might include any supplemental penalty and all other criminal effects which result from the conviction*".

Chapter Three

Promising Practices

As various actors are moving towards the implementation of alternatives to detention, it may be useful to look at examples of promising practice in various parts of Palestine and to consider whether they may be suitable for adaptation or implementation in other contexts. It is too early to decide whether these are good practices, however the following were highlighted by the authors and various contributors. They range from the application of Vocational Training in Gaza to the inclusion of Social Inquiry Reports into the Mizan System, the introduction of Family Group Conferences and Case Conference Models and Child Protection Case Management.

Promising Practice 1 Vocational Training as Alternative to Detention

Brief Description	<p>A judge applied a Vocational Training measure (both at pre-trial and post-trial stages) to 11 children aged 15-17 detained in Al Rabee. They were enrolled into a MoSD-run Vocational Training centre in Gaza City.</p> <p>The 7 steps below show the process of the conditional discharging of the 11 children and the process of integrating them into MoSD's VTC in Gaza City.</p> <p>First step: Starts by MoSD's initial approval of discharging children who met the eligibility criteria from Al-Rabee Rehabilitation Center and MoSD's approval of enrolling children into its VT center.</p> <p>Second step: MoSD's contacts the Attorney General (AG) to get the tentative approval of conditionally discharging the detained children; the AG refers to cases to the prosecution department.</p> <p>Third step: The prosecution department prepares all the needed documents, including the list of charges and then transfer the cases to the High Judicial Council</p> <p>Fourth step: The High Judicial Council sets up a date and time to hold trial sessions. The juvenile judge sentences the children with discharge that is conditional to children enrollment into MoSD's VTC. The discharged children go back to Al-Rabee to complete the paper work of their release.</p> <p>Fifth step: Al-Rabee Rehabilitation Center discharges the children accompanied with their legal guardians; the legal guardians sign a consent form indicating their approval on enrolling their children into MoSD's VTC.</p> <p>Sixth step: MoSD admits the released children into their VTC and prepares all the required files and documents for them.</p> <p>Seventh step: MoSD 's probation officers follow up the discharged children and provide them with the needed psychological support.</p>
Location	Gaza Strip
Context	The Ministry of Social Development in Gaza indicated that, in a context where the Juvenile Protection Law would not be applied in practice in the foreseeable

	future, it was willing to consider applying selected provisions
Type of A2D and legal provision	Vocational Training. Ordinance No. 2 of 1937, Art. 18(e)
Actors involved	Tdh and UNICEF initiated discussions with the MoSD and renovated the MoSD Vocational Training Centre. Actors involved in the legal process included: MoSA Al Rabee Director, child's legal guardians, Police and Judges.
Children targeted	The children were selected based on the following inclusion criteria: <ul style="list-style-type: none"> ✓ Child age should be 15 or older. ✓ Child comes from underprivileged family¹⁴. ✓ Charge or offence should be classified as minor misdemeanours. ✓ Child was consulted and is interested in vocational training¹⁵. ✓ The child and his family approve enrolment into vocational training. ✓ Place of residence should be either from Gaza or Gaza North governorates (for practical reasons). ✓ Child is physically and mentally¹⁶ fit to be enrolled into MoSD vocational training centre.
Additional details	MoSD and Tdh have established a committee to review the files of all the detained children at Al-Rabee Rehabilitation Centre and then to interview the shortlisted children. The committee had selected 11 children, of them, 10 children were accused of stealing different things such mobile phones and dry food from minimarkets and a child was accused of trafficking illicit drugs.
Lessons learned	<ul style="list-style-type: none"> ■ The level of formal actors' knowledge about the A2D (whether pre-trial or sentencing phases) approach is very limited. Tdh needs to conduct capacity training sessions about this new approach, which should target all formal and informal actors. ■ There is a need to conduct a workshop with the involvement of all juvenile justice actors in the Gaza Strip, including judges and prosecutors to share the knowledge gained with them. ■ The formal actors in the Gaza Strip, mainly MoSD, Attorney General, Prosecution department, and the High Judicial Council are in favour of applying the Alternatives to Detention approach in the Gaza Strip. ■ MoSD needs to fully coordinate and collaborate with the Attorney General Office and to follow up the process of discharging the children with the prosecution department in each governorate. Thus, it is important that MoSD assign an experienced focal point that has the ability to follow up the process of activating the Alternatives to Detention approach. ■ Children who do not have history of recidivism are the best candidates to apply the A2D approach. ■ There is an urgent need to activate the Juvenile Court in the Gaza Strip. ■ The A2D approach needs to be institutionalized within the Juvenile Justice System in the Gaza Strip. ■ An in-depth gender assessment will be done by Tdh in the Gaza Strip on

¹⁴ Assessment criteria included: employment status of the caregiver, the monthly family income, and families who receive cash assistance from MoSD.

¹⁵ All were interviewed in the presence of their legal guardians to select the vocational training workshops that best suits their interests and aspirations. Based on their interest, 11 children selected four workshops: aluminium workshop (2 children), car tinsmith workshop (4 children), building electrical systems workshop (3 children), and carpentry (2 children).

¹⁶ Personal interviews and diagnostic tests were conducted. The diagnostic tests aimed to assess children's ability to read, write and communicate effectively with others (criteria was to have enough level to follow vocational training courses).

	girls in conflict with the law in order to specify the A2D approach and measures that can be boosted specifically for them.
Next Steps	Along with renovating Gaza's VTC, Tdh had supplied the VTC with the needed tools, equipment, and material needed to efficiently train the children. Tdh has been also providing the children with transportation, clothes, and stationary. In addition to following up the integrated children throughout their studying period at the VTC, after their graduation from VTC, Tdh will provide the graduated children with tool kits related with the Vocational Trainings they have followed.

Promising Practice 2 Social Inquiry Reports and Mizan4C

Brief Description	A new Social Inquiry Report was presented to the Ministry of Social Development. See Annex 1 for more details.
Location	West Bank
Context	SIRs are not computerized, confidentiality is not respected.
Type of A2D and legal provision	All
Actors involved	Ministry of Social Development, High Judicial Council.
Children Targeted	All children in conflict with the law who are not following a diversion path.
Additional details	The completion of detailed SIR document is recognised as a best practice internationally. In all cases (except those involving minor offences), the background and circumstances in which the child is living (his or her social environment) or the conditions under which the offence has been committed have to be properly investigated before the competent authority renders a final disposition prior to sentencing. This is not optional if a State is to follow the Beijing Rules.
Lessons learned	<p>A SIR report is aimed at facilitating judicious adjudication of the case by the competent authority. Social inquiry reports are an indispensable aid in most legal proceedings involving juveniles including when applying alternatives to detention. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences and interests. In Palestine, probation officers now called Child Protection Counsellors have served this function. The Beijing Rules require that adequate social services should be available to deliver social inquiry reports of a qualified nature.¹⁷</p> <p>The Tokyo rules add that SIR shall be completed by competent, authorized official or agency. The report should contain social information on the offender that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified.¹⁸</p>

¹⁷ See Beijing rule 16.1

¹⁸ See Tokyo Rule 7.1

Next Steps	Next planned step of Tdh, along with the Palestinian High Judicial Council (HJC) and the MoSD, will be the software development to operationalize the e-SIR (revised) into the already operational case management system Mizan2. The aforementioned system is providing services to the judicial system, under the authority of the High Judicial Council. It is available to include juvenile courts data and cooperate with the police and MoSD to exchange the data on high level, retrieving information at MoSD and providing an efficient service to CPC who, with the operationalization of Mizan4C (1 st milestone: e-SIR), will be able to share on the spot the information contained in the social report of each child case. The SIR is a crucial document for the prosecution and the judges to decide the application of A2D measures.
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Promising Practice 3 Family Group Conference and Case Conference Models and Individual Care Plans

Brief Description	22 case conferences were organised in 2016 and 2017 in Bethlehem and Hebron
Location	West Bank and Gaza (the case conference model practiced in Bethlehem and Hebron was disseminated with key JJ stakeholders in the Gaza Strip).
Context	<p>The concept of Family Group Conference was first introduced in New Zealand with the passing of the New Zealand Children, Young Persons and their Families Act in 1989. This Act required that conferencing involving the extended family, community representatives and professionals be used in decision-making in juvenile delinquency and child protection cases (so, for both, children in conflict and in contact with the law) Two FGC models can be identified: 1) Restorative justice-focused FGCs for children in conflict with the law, which ideally include the victim (in cases where is appropriate and do not cause harm or re-victimization) and focus on child accepting responsibility, apologising and eventually preparing a Reparation Plan; 2) Care Planning FGCs for children in need of protection (children in contact with the law, victims and witnesses), which engaged the extended family and professionals in deciding on what support and protection the child needs. Therefore, participants, objectives and procedures are different although models allow for flexibility to be adaptable to different context and situations.</p> <p>Case Conference (CC) is a model that evolved from the FGC scheme. CCs involve a different methodology and can be used for both children in conflict with the law and/or children in contact with the law. They consist of convening different key sets of people (child protection professionals in direct contact with the case: probation officer, police, prosecutor, health, education, social workers, etc.) who are meeting together to jointly and thoughtfully design a Child Individual Care Plan for the development, rehabilitation, reintegration and future well-being of the child or the young person in question. At the CCs, family members and the child may attend (if some premises are met, safety, effectiveness and well-being of the child primarily), but the professionals are responsible for making decisions and drawing up the Child Individual Care Plan.</p>
Type of A2D and legal provision	In Palestine, while the Juvenile Protection Law does not expressly provide for case conferences to be developed, the key actors appointed for its implementation are open to develop a case conference model and corresponding procedures in Palestine.
Actors involved	Children in conflict with the law, families or legal guardians, police officers, child protection counsellors, school counsellors, prosecutors, health advisors social workers, etc. Actors in direct contact with the child's case.

Children Targeted	Sensitive or complex cases. Can include children in conflict with the law but also victims and witnesses.
Additional details	<p>CCs are useful and innovative restorative practices that:</p> <ul style="list-style-type: none"> ✓ Allow a multidisciplinary protection and prevention approaches and a progressive follow-up and accompaniment of the child and the family. ✓ Enhance the coordination among the different professionals that are key in the safe and sustainable rehabilitation and social reintegration of the child. ✓ Produce a Child Individual Care Plan addressing the concrete needs of [the individual nature of each case is very important. <p>The Child Individual Care Plan is drawn up by the CPC in co-operation with the rest of key participants in the CC. In drawing up the plan, it is important that there is an awareness of the complexity of the social issues involved, to ensure that the plan is individualised to meet those needs, and to enable the young person/child to complete it successfully. The plan should be detailed, and should provide for the involvement of the young person/child and their family, while taking into account their personal and social circumstances. It should also detail specific commitments concerning education, work and other activities, and should detail the role of the particular actors involved in implementing the plan. It should provide a plan for possible restoration and conciliation with the victim and the community.</p> <ul style="list-style-type: none"> ✓ In the cases of children in conflict with the law, FGCs/CCs allow for the best way to find the most suitable A2D (from the ones stated in the Juvenile Protection Law) and follow-up progress with the range of multi-disciplinary actors involved in the implementation of the Child Individual Care Plan. ✓ Strengthen the ties of the child, his/her family and the community. <p>Despite some progressive laws on child protection/juvenile justice in the MENA Region, few researches and/or practices have been published or disseminated in the region.</p>
Lessons learned	<p>One peculiarity of case conferences organised in Palestine is that organisers (usually Child Protection Counsellors) normally invite informal justice actors to take part in the conference. In the events facilitated by Tdh, informal actors seem to have played a positive role but this should be more systematically assessed.</p> <p>The prevalence and effectiveness of this informal system does not mean that it is necessarily good for children. To examine the extent of appropriate outcomes in such intervention, Tdh has collected qualitative and quantitative information. A research was first conducted on informal justice in cases dealing with children in the Hebron governorate. Subsequently, Tdh embarked on a longitudinal data collection exercise. An analysis of 228 cases collected in Gaza and the West Bank (Bethlehem and Hebron governorates) between January and November 2016 revolved around three questions. First: “were the terms of the outcome reasonable and proportionate to the dispute?” In our assessment this was fully the case for 37% of entries, 42% partially and 21% not the case. The second question (“did the outcome meet the needs and contribute to rehabilitation of the children?”), showed a 23% prevalence of “yes”, 57% “partially,” and 19% “no.” To the question: “Did the process contribute to reparation of harm done to community?”, local experts answered yes (25%), partially (57%) and no (18%). This data sheds light on the dilemma</p>

	whether informal justice actors make decisions in the best interests of children. Preliminary analysis suggests that the lower the matter, the most likely it is for the decision to be in the best interests of the child. Half of decisions (50%) in personal status disputes were found to be fully or partially in the best interests of children whereas decisions dealing with crimes such as sexual assault (41.7%) and fights (34.8%) were less likely to be appropriate.
Next Steps	<p>With a progressive and child-centred Juvenile Protection Law coupled with the knowledge, practices and engagement of the actors, case conferences are likely to be a useful, innovative and restorative methodology to be scaled-up in Palestine.</p> <p>There are multiple possible uses of FGC/CC model(s) and entry points under the JPL 2016 that would not require legislative changes, including 1) As the preferred form of “mediation” as per the law for juveniles who are diverted; and 2) As part of the “social inquiry” process undertaken by the CPCs. In particular, if judges are to be encouraged to incorporate restorative elements into their A2D orders, then an FGC/CC would need to be convened prior to the disposition hearing, and the proposed plan presented to the court (usually via the Social Inquiry Report).</p>

Promising Practice 4 Child Protection Case Management

Brief Description	A robust case management system is essential in applying and following up on alternatives to detention.
Location	Gaza
Context	<p>In the past, MoSD staff have been using a paper-based documentation system. With such system it is hard to collect, analyse, and disseminate any data, and to systematically monitor and follow up the cases of children kept within Al-Rabee Rehabilitation Institution.</p> <p>In order to address vulnerability and protection concerns, and following the Ministry of Social Development’s articulation of capacity and knowledge gaps, UNICEF and Tdh supported the establishment of a case management system aimed at responding to violence, abuse and neglect of children in the context of Gaza’s protracted crisis (that can also include children in conflict with the law that are subject to any of these situations). Thus, in partnership with UNICEF, Tdh developed an interagency web-based case management system linked with the updated service directory that was previously developed and updated by NRC.</p>
Type of A2D and legal provision	All types. No legal provision.
Actors involved	MoSD, UNICEF, Tdh.
Children Targeted	All. Four categories of prioritization.
Additional details	The system has been tested by NGOs and community organisations in three successive workshops.
Lessons learned	Create user model contracts

Next Steps	Roll-out of the system in all Governorates and user training workshops. MoSD will enable all organisations that provide child protection services to use the system. Tdh is hoping to tailor the already developed case management system to be used within Al-Rabee Rehabilitation Institution.
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Promising Practice 5 Restorative Gestures as Alternative to Detention

Brief Description	A Restorative Gesture Workshop System is established with Yes Theatre in Hebron.
Location	Hebron
Context	There is little in the current legal framework, whether in Gaza or the West bank, that encourages “restorative” justice as it is understood internationally. As such this Report does not purport to incorporate restorative practices into existing A2D provisions. However under “commitment to certain obligations”, it is hoped that measures that are known in other contexts as “Reparation Orders” (e.g. reparation order involves an element of helping the victim or his or her community directly) could be included. For example, if a young offender was involved in stealing from a shop, the reparation order would consist of working in that shop for a certain amount of time, under the supervision of the Child Protection Counsellor. It is also hoped that “restorative gesture” or “victim empathy” courses could be included under this category.
Type of A2D and legal provision	Art. 40. JPL - Commitment to Certain Obligations This shall encompass a ban on frequenting certain places, request attendance before certain persons or commissions at certain times, regular attendance at certain steering meetings or any other restrictions determined by ministerial resolution. The order of such a measure shall not be less than six months and shall not exceed three years.
Actors involved	MoSD, Yes Theatre, Tdh
Children Targeted	Any child in conflict with the law who accepts the offence and is willing to repair.
Additional details	Alternative to detention is premised on the belief that juvenile justice systems should not be punitive but restorative. The system should aim to reconcile the child with himself/herself and the community. Thus, reforming a child's life in all its different aspects is crucial and cannot be achieved if justice is simply turned into punishment. A measure that is applied in order to punish the child, in a retributive fashion (for example forcing him to stay with the same person he offended or suffering from the same conditions that created the offence) would not follow this principle. Conversely, a restorative measure is a measure that helps a child understand his victim, for example working for an NGO that supports children with disabilities, if the child had offended a person with disability.
Lessons learned	This practice is currently at inception stage (fundraising). Restorative approach refers to the treatment of children in conflict with the law, where the objective is to promote the reparation of the damage caused to the individual, affected parties and society, and requires their active and joint participation. Restorative processes lead to responses such as reparation, restitution, community service, etc. The goal is to meet the responsibilities as well as the individual

	and collective needs of the parties, to promote the rehabilitation of the children in conflict with the law and, when possible, the reparation to the victim ¹⁹ . The restorative approach should be present in all stages of justice and is particularly fulfilled when applying A2D measures.
Next Steps	<p>Certain conditions must be met for an application of restorative juvenile justice processes, as set forth in the ECOSOC Resolution 2002/2012 “Basic principles on the use of restorative justice programmes in criminal matter”: (i) there is sufficient evidence to charge the offender; (ii) free and voluntary consent of the offender and the victim, that can withdraw from the process at any time; (iii) safety, power imbalances and/or gender and cultural differences shall be especially considered; (iv) participation of the offender shall not be used as evidence of admission of guilt in subsequent proceedings; (v) process is subject to national law; (vi) agreements should be arrived at voluntarily and should contain only reasonable and proportionate obligations.</p> <p>Therefore, the role and place of the victims are essential in the process of reparation of the damage. In the absence of victim or when they may or may not wish to participate in the reparation process, it is done indirectly or symbolically (i.e. community service).</p>

¹⁹ Tdh's Thematic Policy *Restorative Juvenile Justice*, pag. 22

Annexes

Annex 1: Revised Social Inquiry Report

SOCIAL INQUIRY REPORT							
GENERAL INFORMATION (File)							
Report No.:				Date:			
Child Protection Counsellor's office:				Child Protection Counsellor name:			
Court:							
File No.:				Case No.:			
Charge of the children in conflict with the law:							
Type of offence:							
Date of the offence:							
PERSONAL INFORMATION OF THE CHILDREN IN CONFLICT WITH THE LAW							
Child's name:							
Place of birth:				Date of birth:			
Profession/Studies:							
Address:				Phone (Land line and Mobile):			
Family: <input type="checkbox"/> Nuclear <input type="checkbox"/> Extended							
Number of family members who live in the same house:							
Family composition:							
#	Name	Age	Relation to the child	Marital status	Profession	Education level	Health and mental level
RESIDENCE INFORMATION STATUS							
Type of residence: <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Owned by relatives							
Is the residence healthy for the child (physically and mentally)? <input type="checkbox"/> Yes <input type="checkbox"/> No							
Explain briefly why:							
Furniture status: <input type="checkbox"/> Luxurious <input type="checkbox"/> Normal <input type="checkbox"/> Worn							
Number of rooms:							
CHILDREN IN CONFLICT WITH THE LAW'S BACKGROUND							
Health status of the juvenile: <input type="checkbox"/> Good <input type="checkbox"/> Average <input type="checkbox"/> Bad							
Mental status of the juvenile: <input type="checkbox"/> Good <input type="checkbox"/> Average <input type="checkbox"/> Bad							
Does he/she have illness that affected him/her?							
<input type="checkbox"/> Yes, please specify:							
<input type="checkbox"/> No							
Does he/she have disability?							
<input type="checkbox"/> Yes, please specify:							
<input type="checkbox"/> No							
Personality: <input type="checkbox"/> Strong <input type="checkbox"/> Moderate <input type="checkbox"/> Weak							
Memory: <input type="checkbox"/> Strong <input type="checkbox"/> Moderate <input type="checkbox"/> Weak							
Attention: <input type="checkbox"/> Strong <input type="checkbox"/> Moderate <input type="checkbox"/> Weak							
Imagination: <input type="checkbox"/> Wide <input type="checkbox"/> Moderate <input type="checkbox"/> Weak							
Intelligence: <input type="checkbox"/> Strong <input type="checkbox"/> Moderate <input type="checkbox"/> Weak							
Mood: <input type="checkbox"/> Calm <input type="checkbox"/> Nervous <input type="checkbox"/> Unstable							
Children's view to his family:							
<input type="checkbox"/> Agrees <input type="checkbox"/> Disagrees <input type="checkbox"/> Indifferent							
Family's view of the juvenile:							
<input type="checkbox"/> Agrees <input type="checkbox"/> Disagrees <input type="checkbox"/> Indifferent							
Does the juvenile go to school? <input type="checkbox"/> Yes <input type="checkbox"/> No							
If the juvenile goes to school, please answer the following:							
School: ___ class							

<p>Academic achievement: <input type="checkbox"/> Superior <input type="checkbox"/> Moderate <input type="checkbox"/> Weak</p> <p>Behaviour at school: <input type="checkbox"/> Good <input type="checkbox"/> Moderate <input type="checkbox"/> Bad</p> <p>Relationship with peers: <input type="checkbox"/> Compatible <input type="checkbox"/> Incompatible</p> <p>If the juvenile doesn't go to school, please answer the following:</p> <p>Profession:</p> <p>Income level:</p> <p>Stable in profession: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Reason of heading to work:</p> <p><input type="checkbox"/> Need <input type="checkbox"/> Unsuccessful at school <input type="checkbox"/> child's desire <input type="checkbox"/> Family's desire <input type="checkbox"/> Friends' influence</p>
<p>Motives to commit the offense:</p> <p><input type="checkbox"/> Need <input type="checkbox"/> Imitation <input type="checkbox"/> Friends' influence <input type="checkbox"/> Family</p> <p><input type="checkbox"/> Person not from family <input type="checkbox"/> Lack of monitoring <input type="checkbox"/> Likes to harm <input type="checkbox"/> Fate</p> <p><input type="checkbox"/> Lack of emotion <input type="checkbox"/> Health reason <input type="checkbox"/> Mental disorder <input type="checkbox"/> Self- defence</p> <p><input type="checkbox"/> Others, please specify:</p>
<p>Did the child receive previous charges after an offense:</p> <p><input type="checkbox"/> Yes, please specify:</p> <p><input type="checkbox"/> No</p>
FAMILY BACKGROUND
Relationship between family members:
Relationship between family members, relatives, and surrounding environment:
Does any family member suffer from disease?
<input type="checkbox"/> Yes, please specify:
<input type="checkbox"/> No
Does any family member suffer from a mental disorder or disease:
<input type="checkbox"/> Yes, please specify:
<input type="checkbox"/> No
Economic situation of the family:
Family's income sources:
Total monthly income of the family:
Notes about the family that require concern:
CPC'S INTERVENTION PLAN WITH THE CHILDREN IN CONFLICT WITH THE LAW
What has been done with the child during the period of release?
Was the child in conflict with the law committed to the working plan with him/her during the period of release?
<input type="checkbox"/> Yes, please specify:
<input type="checkbox"/> No, please specify:
Were the parents committed to the working plan with the child during the period of release?
<input type="checkbox"/> Yes, please specify:
<input type="checkbox"/> No, please specify:
CPC'S OPINION IN THE CASE OF PROPOSING NON-CUSTODIAL ALTERNATIVE MEASURES
Proposed measure:
Justification of the measure:
Place of implementation of the measure:
Proposed duration:
Monitoring mechanism:
Proposals other than A2D measures:
CPC'S FINAL COMMENTS/RECOMMENDATION

Annex 2: Abbreviations used in this document

A2D	Alternative(s) to Detention
ADR	Alternative Dispute Resolution
CC	Case Conference
CPC	Child Protection Counsellor
CRC	Convention on the Rights of the Child - 1989
CSO	Civil society organisation
DCI	Defence for Children International-Palestine
EC	European Commission (EU: European Union)
ECJJ	European Council for Juvenile Justice
FGC	Family Group Conference
FJPU	Family Juvenile Protection Unit
IEC	Information, Education, Communication
INGO	International Non-Governmental Organisation
IJJO	International Juvenile Justice Observatory
JOD	Jordanian Dinar
MoSD	Ministry of Social Development (Gaza)
MoSD	Ministry of Social Development (State of Palestine)
MoU	Memorandum of Understanding
NIS	New Israeli Shekels
NGO	Non-Governmental Organisation
PSS	Psychosocial Support
RJJ	Restorative Juvenile Justice
SW	Social Worker
Tdh	Terre des hommes Foundation, Lausanne Switzerland
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Programme
VTC	Vocational Training Centre