



INSTITUTE FOR INTERNATIONAL LAW & HUMAN RIGHTS

Legislative Review of the Draft Law on Child Protection

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EXECUTIVE SUMMARY

Children are neither “adults in training” nor “objects who belong to their parents,” but rather “human beings and individuals with their own rights.” Childhood is a “special, protected time” separate from adulthood. These are the foundational ideas of the Convention on the Rights of the Child, the most widely ratified human rights treaty in history.¹

However, the rights of millions of children around the world continue to be violated to this day through abuse, neglect, and lack of protection. The Iraqi Council of Representatives now has the chance to address violations of children’s rights by enacting a Child Protection Law. In passing this legislation, the Parliament will make a strong commitment to safeguarding the well-being of Iraqi children and upholding the 2005 Constitution’s guarantee to protect childhood.²

The Institute for International Law and Human Rights (IILHR) is pleased to present the following analysis of the draft law on Child Protection. In Part I, we discuss the importance of this type of legislation and provide helpful sources to use in drafting child protection laws. We also identify and explain nine main areas for improvement in the current Child Protection Draft Bill. In Part II, we analyze each article of the draft law in detail and offer comparative examples of best practices based on international standards and existing laws drawn from over 30 countries and regions. We also make recommendations on how to strengthen the content of each article of the draft law.

In summary, this draft law is a good start toward enshrining rights and protections for children. It creates two new government institutions: the National Childhood Committee and the Childhood Protection Department, dedicated to designing and implementing child protection policy. However, most of the provisions in this draft are vague. No financial analysis or budgetary allocations are included. Some of the provisions contravene the articles of the Convention on the Rights of the Child, which Iraq has ratified. There are notable omissions in the scope of the envisioned protections, particularly for girls.

Lawmakers might consider strengthening the draft law by:

- ❖ Expanding the scope of the law to include all the rights guaranteed by the Convention on the Rights of the Child;
- ❖ Ensuring that the law does not discriminate on gender, race, ethnicity, religion or disability;

¹ Convention on the Rights of the Child: For every child, every right, UNICEF, <https://www.unicef.org/child-rights-convention> (last visited April 13, 2023).

² Article 29, The Constitution of the Republic of Iraq of 2005. https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en

- ❖ Omitting any provisions that contravene the Convention on the Rights of the Child, with a specific reference to removing Article 41 of the Iraqi Penal Code of 1969 which permits disciplining of children by parents or teachers within limits specified by law or custom;
- ❖ Including new provisions against practices harmful to the rights of girls, such as female genital mutilation;
- ❖ Strengthening legal penalties for those who engage in harmful practices, particularly when the victims are children;
- ❖ Abolishing or amending any existing legislation that contradicts the aims of this law or the Convention on the Rights of the Child, including provisions in the Penal Code that justify or permit child abuse;
- ❖ Using terminology that conforms with international standards and ensuring that the term “children” is used consistently throughout this and other Iraqi laws and defined broadly to include all individuals under the age of 18 residing in Iraq or holding Iraqi citizenship;
- ❖ Clarifying the processes and measures for implementing the law’s provisions, including current and future budgetary allocations;
- ❖ Elaborating the roles and responsibilities of the National Childhood Committee and the Childhood Protection Department; and
- ❖ Mandating that the new Committee and Department are adequately staffed by qualified personnel with specialist expertise in the field of child protection, including female personnel.

Table of Contents

EXECUTIVE SUMMARY	2
I. CONTEXT AND MAIN ISSUES	5
A. Children’s Rights and Iraq	5
B. Best Practices in Child Protection Legislation	6
C. International Best Practices	7
D. Overview of Main Issues and Suggestions for Improvement.....	8
1. Expand the Scope of the Law	8
2. Ensure that the Law is Non-Discriminatory	8
3. Omit Provisions that Contravene the Convention on the Rights of the Child	9
4. Include New Provisions Against Practices Detrimental to the Rights of Girls	9
5. Abolish or Amend Existing Legislation that Contradicts the Aims of this Law	10
6. Use Terminology in Conformity with International Best Practice Standards	10
7. Clarify the Procedures for Implementing the Provisions of the Law	10
8. Elaborate the Roles and Responsibilities of the National Childhood Committee and the Childhood Protection Department	11
9. Mandate that the Committee and Department be Staffed with Experts in the Field of Child Protection	11
II. Detailed Analysis of the Child Protection Draft Law	12
III. About the Institute for International Law and Human Rights.....	62

I. CONTEXT AND MAIN ISSUES

A. Children's Rights and Iraq

In 1948, the United Nations adopted the Universal Declaration of Human Rights. Article 25 of this Declaration stipulates that, while “everyone has a right to a standard of living adequate for the health and well-being of himself and his family”, “childhood” is “entitled to special care and assistance.”³ Four decades later, in 1989, world leaders enshrined this principle in a historic and legally binding human rights treaty – **the Convention on the Rights of the Child**. It is the most widely ratified human rights treaty in the world.⁴ In 2000, two Optional Protocols to the Convention were adopted, strengthening the protection of children from involvement in armed conflict and from sale and sexual exploitation. The United Nations General Assembly adopted a third Optional Protocol in 2014 allowing children to submit complaints, appeals, and petitions directly to the Committee on the Rights of the Child.⁵

Iraq ratified the Convention on the Rights of the Child in June 1994, “subject to a reservation in respect to Article 14, paragraph 1, concerning the child’s freedom of religion, as allowing a child to change his or her religion runs counter to the provisions of the *Islamic Shariah*.”⁶ Iraq also signed the first two Optional Protocols, though not the third.⁷

Many of the commitments of the Convention on the Rights of the Child are also inherent in the 2005 Constitution of Iraq. Article 29 (First)(A) recognizes the foundational importance of the family, suggesting that other rights shall be built on top of this foundation. Flowing from this, Article 29 (First)(B) emphasizes that “the State shall guarantee the protection of...childhood.” Similarly, Article 29 (Second) states that “Children have the right to upbringing, care and education from their parents.” Finally, Article 29 (Fourth) states that “All forms of violence and abuse in the family, school and society shall be prohibited”. It is clear that neither the provisions relating to importance of the family nor those provisions relating to protection of childhood can be read in

³ Universal Declaration of Human Rights, art. 25. <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>

⁴ Convention on the Rights of the Child: For every child, every right, UNICEF, <https://www.unicef.org/child-rights-convention> (last visited April 13, 2023).

⁵ Strengthening the Convention on the Rights of the Child: Optional Protocols UNICEF, <https://www.unicef.org/child-rights-convention/strengthening-convention-optional-protocols> (last visited April 13, 2023).

⁶ Iraq Reservation, United Nations Treaty Collection (April 13, 2023), https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=en#EndDec

⁷ UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en (last visited April 13, 2023).

isolation. Reading these provisions in harmony, there is implicit recognition of the value of family, which must be balanced with the protection of childhood, while ensuring that there are no circumstances in which violence or abuse are permitted in the context of family or childhood.

Despite its clear commitment to the protection of childhood, Iraq, like many other countries worldwide, continues to face challenges in protecting and implementing children's rights. These challenges include a juvenile justice system that relies heavily on the detention of children; widespread gender-based violence against girls; the killing and maiming of children in conflict-related violence; an increase in the number of unaccompanied minors; lack of identification documents for children born in areas under Daesh control; and lack of psychological support for the hundreds of thousands of children who have been traumatized by violent conflict and displacement.⁸

A recent report by the Iraqi High Commission for Human Rights indicates that five million Iraqi children are orphaned; one million are child laborers; 4.5 million live below the poverty line; and 45,000 have no identification documents.⁹ The latest Multiple Indicator Cluster Survey (MICS) for Iraq contains other troubling statistics. For instance, 80.9% of children aged 1 to 14 years are subjected to violent discipline. Some violations of children's rights are gendered – 27.9% of Iraqi women aged 20-24 years old were married before the age of 18 and 7.4% of girls and women between the ages of 15 and 49 have undergone female genital mutilation, with this number being as high as 37.5% in some parts of Iraq.¹⁰

Given these troubling threats to children's welfare in Iraq, legislation to enshrine and protect children's rights is necessary. The Iraqi Council of Representatives' Child Protection Draft Law is a welcome step toward enacting this important legislation. The following analysis will suggest ways to strengthen the draft law in its stated aim of "guaranteeing children's rights."

B. Best Practices in Child Protection Legislation

There are many useful sources for legislators to consult when writing child protection laws. The Convention on the Rights of the Child is the starting point for best practices in child protection legislation. At a minimum, such legislation should guarantee all the rights enshrined in the Convention. There are also international reference manuals and tools that offer guidance on how to legislate children's rights, such as the *Child Protection Model Law*, which consists of 65 Articles based on international standards and best

⁸ Child Protection, UNICEF, <https://www.unicef.org/iraq/what-we-do/child-protection> (last visited April 13, 2023).

⁹ Fadhel al-Nashmi, *IHCHR Report: 5 Million Orphaned Children in Iraq*, Al-Awsat (Dec. 12, 2021), <https://english.aawsat.com/home/article/3354921/ihchr-report-5-million-orphaned-children-iraq>

¹⁰ 2018 Multiple Indicator Cluster Survey (MICS6) Briefing, UNICEF, <https://www.unicef.org/iraq/media/481/file/MICS6.pdf> (last visited April 13, 2023).

practices drawn from over 68 countries and 130 national laws;¹¹ the *Implementation Handbook for the Convention on the Rights of the Child*;¹² *The Handbook for Legislation on Violence Against Women*;¹³ the *Model Law on Justice in Matters Involving Child Victims and Witnesses of Crime*¹⁴; *The Model Law on violence against women and girls*;¹⁵ and the *United Nations Model Strategies and Practical Measures for eliminating violence against children in the field of criminal justice*.¹⁶ The Luxembourg Guidelines offer guidance on best terminology practices in legislation protecting children from sexual abuse and sexual exploitation.¹⁷ There is also a wide range of child protection laws in force worldwide that offer comparative material from which to derive best practices. This Review cites many of these laws in the article-by-article analysis section below.

C. International Best Practices

Of paramount concern when developing and implementing legislation related to child protection is that all legislation must be “in the best interests of the child”. Article 3, paragraph 1 of the Convention on the Rights of the Child states that a child’s best interests must be a “primary consideration” for all actions undertaken by “public or private social welfare institutions, courts of law, administrative authorities or legislative bodies”.¹⁸ This standard of application also commonly exists in other international instruments, such as the 1959 Declaration on the Rights of the Child¹⁹ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),²⁰ as well as national and international legislation around the globe.²¹

¹¹ *Child Protection Model Law, Best Practices: Protection of Children from Neglect, Abuse, Maltreatment, and Exploitation* (2013), p. 5. https://www.icmec.org/wp-content/uploads/2015/10/Annotated_CP_Model_Law_Jan_2013_Final_w_cover.pdf.

¹² *Implementation Handbook for the Convention on the Rights of the Child* (3^d ed. 2007), <https://www.unicef.org/lac/media/22071/file/Implementation%20Handbook%20for%20the%20CRC.pdf>

¹³ *Handbook for Legislation on Violence Against Women* (2012), https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2012/12/UNW_Legislation-Handbook%20pdf.pdf

¹⁴ *Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Related Commentary* (2009), https://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf

¹⁵ *Model Law on Violence Against Women*, http://www.protectionproject.org/wp-content/uploads/2010/09/Model_Law_against_Domestic_Violence_with_Commentary-FINAL-FINAL.pdf

¹⁶ *Introducing the United Nations Model Strategies and Practical Measures on the Elimination of Violence Against Children in the Field of Crime Prevention and Criminal Justice: A New Tool for Policymakers, Criminal Justice Officials and Practitioners* (2015), https://www.unodc.org/documents/justice-and-prison-reform/14-08451_Strategy_eBook.pdf.

¹⁷ Susanna Greijer and Jaap Doek, *Terminology Guidelines for the Protection of Children From Sexual Exploitation and Sexual Abuse* (2016), <https://ecpat.org/wp-content/uploads/2021/05/Terminology-guidelines-396922-EN-1.pdf>.

¹⁸ U.N. Convention on the Rights of the Child, art. 3(1).

¹⁹ U.N. Declaration of the Rights of the Child (1959), principle 2.

²⁰ U.N. Convention on the Elimination of All Forms of Discrimination against Women, art. 5(b) and art. 16, para. 1(d).

²¹ See, for example, Charter of Fundamental Rights of the European Union (2000/C 364/01), art. 24(2); Children’s Law Reform Act (Ontario, Canada) (RSO 1990, c. C.12), art. 24; The Children’s Act, 1998 (Ghana), art. 2.

Given its ubiquity in national and international law globally, the principle of “best interests of the child” should underscore all provisions of Iraq’s Law on Child Protection and should equally contribute to the interpretation and implementation of this and related legislation.

D. Overview of Main Issues and Suggestions for Improvement

The Child Protection Draft Law is a good starting point for implementing the State’s requirements as a signatory to the Convention on the Rights of the Child. It enshrines many rights for children and creates two new government institutions, the National Childhood Committee and the Childhood Protection Department, with mandates to design and implement child protection policies. However, in its current state the draft has some notable weaknesses. The following are guidelines for ways in which the draft could be improved.

1. Expand the Scope of the Law

The draft law enumerates many rights for children. However, it does not address all the rights outlined in the Convention on the Rights of the Child. The law should include a provision guaranteeing *at a minimum* all the rights in the Convention. Notably, the draft does not include protections for juvenile offenders – a problematic omission given existing legislation such as the Juvenile Welfare Code that creates an over-reliance on the detention of children. This practice runs contrary to Article 37 of the Convention on the Rights of the Child, which mandates that detention be used only as a measure of last resort.²² Similarly, the draft law should also include guarantees for children’s access to healthcare, education and protection from all forms of violence, neglect and abuse.

The law could also include provisions mandating the establishment and promotion of telephone or internet helplines, safe shelters and other child protection resources to ensure that children who are victims of abuse or neglect have access to appropriate services.

2. Ensure that the Law is Non-Discriminatory

Article 2 of the Convention on the Rights of the Child ensures that rights shall be guaranteed to children “without discrimination of any kind.”²³ The draft includes a provision for non-discrimination, but the protections listed therein should be expanded to include race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status and to apply to the parents, legal guardians, and family members of children as well. The provision for non-discrimination

²² U.N. Convention on the Rights of the Child, G.A. Res. 44/25 (Nov. 20, 1989) art. 37.

²³ U.N. Convention on the Rights of the Child, art. 2.

could also be framed to recognize how intersectionality (a more complex form of discrimination that occurs in relation to more than one protected characteristic) changes the nature of discrimination.

3. Omit Provisions that Contravene the Convention on the Rights of the Child

Some of the provisions in this draft contravene the principles enshrined in the Convention on the Rights of the Child. For instance, the provision banning “begging” could be construed as criminalizing a child for begging when in reality that child is a victim of neglect. In this example, provisions should instead focus on addressing the root causes of child poverty, rather than criminalizing those who are victims of it.

4. Include New Provisions Against Practices Detrimental to the Rights of Girls

A significant omission of this draft is the lack of protections for girls from gender-based violence. Child marriage and female genital mutilation are both violations of girls’ rights.²⁴

Although the legal age of marriage in Iraq is 18, the Personal Status Act contains a loophole allowing a judge to authorize the marriage of a child as young as 15 years old. There is no national law in Iraq prohibiting female genital mutilation. Both practices should be specifically proscribed in this law.

The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention) is a human rights treaty that has been signed and ratified by 37 countries. The Istanbul Convention recognizes the disproportionate impact of family violence on women and girls and in response to this, specifically requires parties to take necessary legislative steps to eliminate forced marriages and female genital mutilation, among other detrimental acts.²⁵ Dozens of countries around the world have criminalized female genital mutilation (FGM), including at least 22 of the 28 countries in Africa that actively practice FGM.²⁶ Further, in some

²⁴ Child marriage around the world, UNICEF, <https://www.unicef.org/stories/child-marriage-around-world> (last visited April 13, 2023); U.N. Convention on the Rights of the Child, art. 24; Implementation Handbook for the Convention on the Rights of the Child, p. 344.

²⁵ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention), arts. 32 and 38.

²⁶ Legal Framework in Africa, Community of Practice on Female Genital Mutilation, <https://copfgm.org/2021/08/legal-framework-in-africa-2021> (Last accessed: 16 April 2023).

countries, like the United Kingdom, FGM is criminalized in-country and extraterritorially along with the act of failing to protect a girl from the risk of FGM.²⁷

5. Abolish or Amend Existing Legislation that Contradicts the Aims of this Law

This law should abrogate or amend existing legislation that contradicts the aims of child protection and the principles of the Convention on the Rights of the Child. Alternatively, lawmakers should introduce amendments into this existing legislation to bring it into conformity with the aims and rights enshrined here. For instance, the provision in Article 41 of the Iraqi Penal Code permitting the corporal punishment of children should be amended or repealed. So should other problematic provisions in the Penal Code, including the stipulation in Article 398 that a sexual assault charge will be voided if the perpetrator marries the victim and the implication in Article 394 that a girl who is married cannot be sexually assaulted.

6. Use Terminology in Conformity with International Best Practice Standards

The draft uses some outdated and problematic terminology that should be replaced. For instance, references to child “prostitution” and “porn involvement” wrongfully imply a child’s consent in his or her own abuse. These terms should be replaced with “sexual exploitation” and “child sexual abuse material.”²⁸ By way of example, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse recognizes, as one of its general principles for international co-operation, the need to prevent and combat sexual exploitation and sexual abuse of children, while also referring to “child prostitution”.²⁹ Importantly, the Interagency Working Group on Sexual Exploitation of Children has recognized that, although many existing international instruments have used “child prostitution” as a defined term, a slight change to “prostitution of children” can help indicate that the child is being prostituted by someone or something, rather than freely choosing prostitution.³⁰ The draft law should consider how language can be shaped to emphasize the victimization of children rather than using language that could imply full agency of choice on the part of child victims.

7. Clarify the Procedures for Implementing the Provisions of the Law

²⁷ Serious Crime Act 2015 (United Kingdom), arts. 70-75.

<https://www.legislation.gov.uk/ukpga/2015/9/contents/enacted>

²⁸ Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, p. 31, 38-39.

²⁹ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, art. 38(a).

³⁰ Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, p. 30.

A major point of concern with the current draft law is the vagueness or broadness of most of its provisions. There is not enough detail provided about the measures necessary for implementing the rights and protections envisioned by the draft. It is not clear which ministries and institutions will be responsible for enacting provisions of the law, nor what processes these authorities will follow in implementing the law. There are no articles indicating how implementation of the law will be financed. Furthermore, in the current draft, the enumerated rights and protections are frequently too general and imprecise to be meaningfully enforced. For example, it is not clear what is meant by “indulging” children in all aspects of life.

8. Elaborate the Roles and Responsibilities of the National Childhood Committee and the Childhood Protection Department

The creation of the National Childhood Committee and the Childhood Protection Department is, in theory, one of the major innovations of this legislation. Unfortunately, the provisions surrounding the responsibilities and roles of these new institutions, including their relationship to each other, are insufficiently clear. It is also unclear whether the National Childhood Committee will have any adjudicating capacities in cases of child abuse or whether some other entity will be responsible for this, such as the judiciary. The Childhood Protection Department is tasked with detecting violations against children and “taking the necessary measures to tackle them.” There is no indication of how the Department will detect violations or what the necessary measures to address them might be, nor which members of the Department will carry out these duties.

9. Mandate that the Committee and Department be Staffed with Experts in the Field of Child Protection

Another issue with this draft relates to the membership of the National Childhood Committee and the Childhood Protection Department. The Committee includes too many representatives from government ministries who may have no experience or expertise in child protection fields. Aside from the Department Head, who does not seem to need any specific child rights expertise, membership of the Childhood Protection Department is left up to the instructions of the Minister of Labor and Social Affairs. The draft does not stipulate that either the Committee or the Department must have qualified female personnel, even though girls’ rights are often particularly violated. The law should mandate that both the Committee and the Department be staffed by experts in the field of child protection and that membership must include women.

II. Detailed Analysis of the Child Protection Draft Law

A. Provision 1 of Draft Law:

Provision -1:

Provisions of this law are applicable to:

First- every individual who is under 18 years of age and holds Iraqi nationality.

Second- children who reside in Iraq.

1. Commentary on Provision 1:

The draft clearly indicates that the law applies first to individuals under 18 years of age holding Iraqi nationality, and second to “children” residing in Iraq. However, it is not clear whether the reference to “children” in Provision 1 (Second) applies broadly to all individuals under the age of 18 or whether it applies to some subset of these individuals. For example, the Iraqi Juvenile Welfare Code uses four different terms to describe individuals under the age of 18: “youngsters” (under 9 years old); “juveniles” (who are over 9 years old but under 18 years old); “pre-adolescents” (who are over 9 but under 15 years of age); and “adolescents” (who are over 15 but under 18 years old).³¹ Similarly, the Penal Code stipulates that if a “juvenile” is under the age of 15 years at the time of committing an offence, he is considered a child, but “if he is between the ages of 15 and 18, he is considered to be a young person.”³²

There is an implicit assumption when using different words in the same legislative context that those words are meant to refer to different things. Therefore, it is possible to interpret “children” in Provision 1 (Second) as being different from “individuals under the age of 18,” which narrows the scope of application of Provision 1 (Second) compared to Provision 1 (First).

2. Comparative practice:

The first Article of the **United Nations Convention on the Rights of the Child** defines a child as “every human below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.”³³ The **Implementation Handbook for the Convention on the Rights of the Child** offers a comprehensive checklist for states implementing Article 1 of the Convention in domestic legislation. This checklist includes

³¹ Juvenile Welfare Code Law No. 76 of 1983 (Iraq), art. 3. <https://juvenilejusticecentre.org/wp-content/uploads/2019/01/juvenile-welfare-law-Iraq-76-of-1983.pdf>; Paragraphs 7-8, 11, 16, 17, 40, 129-145, 151-152, 209-210 of U.N. Doc. CRC/C/41/Add.3 (1996), https://www.unicef-irc.org/portfolios/documents/396_iraq.htm.

³² Penal Code Law No. 111 of 1969 (Iraq), art. 66. <https://www.refworld.org/docid/452524304.html>

³³ U.N. Convention on the Rights of the Child, art. 1.

general measures, such as a comprehensive review of all existing legislation, policy and practice in all jurisdictions to ensure its compatibility with Article 1, as well as specific issues to consider, such as establishing protective minimum ages, defined in legislation, for a wide range of activities, including the beginning and end of compulsory education, employment, marriage, and criminal responsibility.³⁴

The **Child Protection Model Law** recommends that “[i]n case of doubt about the majority or minority of a child, minority status shall be presumed.”³⁵ **Colombia’s** Code of Childhood and Adolescence follows this model, specifying that it applies to “all persons under 18” and that minority is presumed in cases of doubt.³⁶ **Iceland’s** Child Protection Act, which also defines “children” as individuals under the age of 18, goes further, stating that child protection authorities, with the consent of the child, might allow arrangements made under the Act’s provisions to remain in effect past the age of 18 years, to a maximum of 20 years.³⁷ **Thailand’s** Child Protection Act defines a long list of terms, including, among others, “child” (as a person younger than 18 years of age unless they have attained majority through marriage), “street child,” “orphan,” “child in difficult circumstances,” and “child at risk of wrongdoing.”³⁸

3. Recommendations:

- The provision should clearly define the term “children” as individuals under the age of 18 years.
- Lawmakers should review existing legislation and practice to ensure its compatibility with this definition of childhood.

4. Suggested Redraft Language:

In this law, the terms “child” and “children” apply to:

- a) Any individual under the age of 18 years holding Iraqi nationality; and*
- b) Any individual under the age of 18 years residing in Iraq.*

³⁴ [Implementation Handbook for the Convention on the Rights of the Child](#), p.13-15.

³⁵ “Defining the Age of a Child as under 18,” [100 Best Practices in Child Protection](#) Vol. 3 (2013), https://www.icmec.org/wp-content/uploads/2015/10/Best_Practices_in_Child_Protection_2013.pdf

³⁶ Code of Childhood and Adolescence Law No. 1098 of 2006 (Colombia), art. 3.

http://normograma.legislacionarl.co/arl/compilacion/docs/ley_1098_2006.htm#35

³⁷ Child Protection Act, Law No. 80 of 2002 (Iceland), as amended by Act No. 62 of 2006, No. 88 of 2008, No. 52 of 2009, No. 162 of 2010, No. 80 of 2011, No. 85 of 2011, No. 126 of 2011, No. 138 of 2011, No. 58 of 2012, No. 134 of 2013, No. 85 of 2015 and No. 80 of 2016, (Iceland), Section 1, art. 3.

https://www.government.is/media/velferdarraduneyti-media/media/acrobat-enskar_sidur/Child-Protection-Act-as-amended-2016.pdf

³⁸ Child Protection Act, B.E. 2546 of 2003 (Thailand), Section 4. <https://www.thailandlawonline.com/thai-family-and-marriage-law/child-protection-act>.

B. Provision 2 of Draft Law:

Provision -2:

This law aims at

First- providing a decent and free life for children.

Second- providing the necessary protection for children from all kinds of violence, force, physical and psychological abuse, neglect or extortion.

Third- preventing child trafficking, enslavement, forced labour, extortion, involvement in armed conflict, prostitution, sex, and porn involvement.

Fourth- raising children to cherish their national identity.

Fifth- providing the necessary protection to children with no gender, colour, religion, language, ethnicity, or cult discrimination.

1. Commentary on Provision 2:

The stated aims of the law establish the framework by which its provisions are interpreted and applied by judges and other public officials. It is important for them to be thorough and to enshrine principles of non-discrimination. The five aims of the law listed here offer a wide-ranging scope of protection, but some of the wording could be changed to be more precise; to include a still broader range of protections; and to ensure the best interests of children as well as the law's compliance with the **Convention on the Rights of the Child**.

This Provision would benefit from more specific language. For instance, lawmakers should provide a clear definition of terms such as “decent and free life,” “abuse” and “neglect.” Furthermore, other offenses need to be specified in addition to those already mentioned. Although the second aim of the law is to protect children from “all kinds of violence, force, physical and psychological abuse, neglect or extortion,” corporal punishment and other cruel and degrading forms of punishment are not specifically listed. These might be construed to be covered by the phrase “all kinds of violence.” However, since the Iraqi Penal Code allows for “the disciplining by parents and teachers of children under their authority,” this Child Protection Law should prohibit all kinds of corporal and humiliating punishment and discipline.³⁹ Lawmakers are also encouraged to specify that this Law abrogates Article 41 of the Penal Code, and any other legislation that contradicts the protections for children laid out in this law, or else to introduce new amendments to the Penal Code to ensure its consistency with this law and with the **Convention on the Rights of the Child**, which specifically enjoins the protection of children from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”⁴⁰

³⁹ Penal Code, Law No. 111 of 1969 (Iraq), art. 41.

⁴⁰ U.N. Convention on the Rights of the Child, art. 19.

It is also a concerning omission that “sexual abuse” and “sexual exploitation” are not specifically mentioned as forms of abuse from which children are protected by this law. Part of the third aim of this law is “preventing...sex,” but this wording is problematically vague. The draft law may be construed as outlawing any sexual activity involving children, even non-coerced consensual sexual intercourse between similarly aged teenagers. Children’s rights experts argue that laws should establish a minimum age for sexual consent. However, the aim of setting a minimum age should be to protect children from sexual abuse, not to control and police children’s sexuality. Laws establishing a minimum age for sexual consent should allow close-in-age exemptions and specify prohibited sexual acts in order to avoid situations in which teenagers could potentially be penalized for consensual activities such as hugging and kissing.⁴¹ The aim of this law, as it is currently worded, to “prevent sex,” could be interpreted as policing or criminalizing consensual behavior between teenagers. This contravenes Article 5 of the **Convention on the Rights of the Child**, which states that responsibilities and duties toward children must be exercised in “a manner consistent with the evolving capacities of the child.”⁴²

The terms “prostitution” and “porn involvement”⁴³ are also problematic, as is the suggestion, implied by the word “involvement,” that children are consensual participants in these forms of exploitation. As noted in the “**Luxembourg Guidelines**,” which harmonize terms and definitions related to child protection from sexual abuse, the term “child prostitution” should not be used in any legislation because it implies that the child bears responsibility for his or her own exploitation. Instead, lawmakers should use the term “sexual exploitation.” In a similar vein, the term “child sexual abuse material” is being used increasingly instead of “child pornography.” Sexualized material depicting children is a form of child abuse and should not be classified as “pornography,” which primarily describes consensual adult sexual acts publicly distributed for sexual gratification. The term “child pornography” might imply that the sexual acts are carried out with the child’s consent or trivialize sexual abuse by equating it with pornography, which is increasingly normalized and accepted. Moreover, colloquial terms such as “porn” should never be used.⁴⁴

The fourth aim of the law, “raising children to cherish their national identity,” is potentially problematic. The specific mention of “national” identity could be interpreted as excluding or deprioritizing any other ethnic, national, or other identities the child might have. It is not clear what lawmakers mean by “cherish,” nor how children will be raised to cherish their national identity. Methods of inculcating nationalism in children could run counter to several rights enshrined in the **Convention on the Rights of the Child**, including the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers;” the “freedom of thought, conscience and religion;” and

⁴¹ *Age is Arbitrary: Setting Minimum Ages*, Child Rights International Network, p. 19-20.

https://archive.crin.org/sites/default/files/discussion_paper_-_minimum_ages.pdf

⁴² U.N. Convention on the Rights of the Child, art. 5.

⁴³ It is possible that this terminology is an error of translation in the English draft.

⁴⁴ Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, p. 31, 38-39.

“access to information and material from a diversity of national and international sources.”⁴⁵

The fifth aim of the law is to protect children without discrimination based on “gender, color, religion, language, ethnicity or cult.” The principle of non-discrimination is welcome and in line with Article 2 of the **Convention on the Rights of the Child**, ensuring rights “without discrimination of any kind.”⁴⁶ However, the basis of non-discrimination outlined in this law could be broadened to include other categories such as race, sexuality, political opinion, and disability. Lawmakers should also clarify that children’s rights and protections are guaranteed without discrimination based on the race, sex, religion, political opinion, nationality, ethnicity, disability or other status of their parents, legal guardians, or family members, as stipulated in Article 2 of the **Convention of the Rights on the Child**.

2. Comparative Practice:

It is helpful to clearly define terms and offences in child protection legislation. An excellent starting point is the definition of “corporal,” “physical,” and other degrading punishments given by the UN Committee on the Rights of the Child:

“The Committee defines “corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking,’ ‘slapping,’ ‘spanking’) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”⁴⁷

The Child Protection Model Law clearly defines offenses including “neglect” (“the intentional or involuntary non-exercising of duties and responsibilities to adequately care for and supervise a child and to provide for the child’s basic physical, mental, emotional, and social needs”); “abuse” (“any intentional or willful act or omission by a parent, guardian, care-giver, or other person in a position of trust or authority causing or likely to cause physical, mental, or emotional harm to the child”); and “maltreatment” (“any

⁴⁵ U.N. Convention on the Rights of the Child, art. 13, 14, 17.

⁴⁶ U.N. Convention on the Rights of the Child, art. 2.

⁴⁷ U.N. CRC/C/GC/8 (March 2, 2007), art. 11. <https://www.refworld.org/docid/460bc7772.html>

intentional or willful act resulting in physical, mental, or emotional harm to the child or any omission by a parent, guardian, or care-giver to protect children from such harm, and in general all forms of violence, aggression, cruel, degrading, or humiliating treatment of a child”).⁴⁸

The Canadian province of **Alberta**'s Child, Youth and Family Enhancement Act defines specific situations and conditions in which a child is considered to be “neglected” (“if the guardian (a) is unable or unwilling to provide the child with the necessities of life, (b) is unable or unwilling to obtain for the child, or to permit the child to receive, essential medical, surgical or other remedial treatment that is necessary for the health or well-being of the child, or (c) is unable or unwilling to provide the child with adequate care or supervision”); “emotionally injured” (“(i) if there is impairment of the child’s mental or emotional functioning or development, and (ii) if there are reasonable and probable grounds to believe that the emotional injury is the result of (A) rejection, (A.1) emotional, social, cognitive, or physiological neglect, (B) deprivation of affection or cognitive stimulation, (C) exposure to family violence or severe domestic disharmony, (D) inappropriate criticism, threats, humiliation, accusations or expectations of or toward the child, (E) the mental or emotional condition of the guardian of the child or of anyone living in the same residence as the child, (F) chronic alcohol or drug abuse by the guardian or by anyone living in the same residence as the child”); or “physically injured” (“if there is substantial and observable injury to any part of the child’s body as a result of the non-accidental application of force or an agent to the child’s body that is evidenced by a laceration, a contusion, an abrasion, a scar, a fracture or other bony injury, a dislocation, a sprain, hemorrhaging, the rupture of viscus, a burn, a scald, frostbite, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth”).⁴⁹

The Goa Children’s Act of **India** provides a multi-part definition of “child abuse” (“the maltreatment, whether habitual or not, of the child which includes any of the following: - (i) psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment; (ii) any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; (iii) unreasonable deprivation of his basic needs for survival such as food and shelter; or failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death”).⁵⁰

The **Philippines** Child and Youth Welfare Code defines a “neglected child” as “one whose basic needs have been deliberately unattended or inadequately attended. Neglect may occur in two ways: (a) There is physical neglect when the child is malnourished, ill clad

⁴⁸ Child Protection Model Law, art. 2.

⁴⁹ Child, Youth and Family Enhancement Act, Chapter C-12 of Revised Statutes of Alberta 2000 (Canada), art. 2.1, 3. https://kings-printer.alberta.ca/1266.cfm?page=C12.cfm&leg_type=Acts&isbncln=9780779835829&display=html

⁵⁰ The Goa Children’s Act 2003, Act 18 of 2003 (India), art. 2. <https://faolex.fao.org/docs/pdf/ind194199.pdf>

and without proper shelter. A child is unattended when left by himself without provisions for his needs and/or without proper supervision. (b) Emotional neglect exists: when children are maltreated, raped or seduced; when children are exploited, overworked or made to work under conditions not conducive to good health; or are made to beg in the streets or public places, or when children are in mortal danger, or exposed to gambling, prostitution and other vices.”⁵¹

Some countries include specific prohibitions against corporal punishment in their child protection legislation. For instance, **Colombia**’s Child and Adolescence Code specifies that “[i]n no case will physical punishment be admitted as a form of correction or discipline.”⁵² **Iceland**’s Child Protection Act states that “any person who subjects a child to mental or physical punishment, threats or intimidation or exhibits other degrading conduct towards a child shall incur fines or up to three years’ imprisonment.”⁵³

It is a best practice of child rights legislation to include protection from sexual abuse. The **Convention on the Rights of the Child** guarantees freedom from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”⁵⁴ Many other countries’ child protection laws specifically mention “sexual abuse.” For instance, **Colombia**’s Child and Adolescence Code includes “sexual exploitation” and “abusive sexual acts” in its definition of child abuse.⁵⁵ **Argentina**’s Law Protecting the Rights of Children establishes the right of children not to be subjected to any form of sexual exploitation.⁵⁶ **Thailand**’s Child Protection Act forbids the “torture” of children, which by the law’s definition includes any “sexual abuses.”⁵⁷ **Tunisia**’s Code for the Protection of Children protects children from all forms of violence, including sexual violence.⁵⁸ **Tunisia** also became the first nation outside of Europe to sign the **Lanzarote Convention**, an international legal instrument for the protection of children against sexual exploitation and abuse that requires signatories to adopt specific legislation and measures criminalizing and preventing sexual violence.⁵⁹

⁵¹ The Child and Youth Welfare Code, Presidential Decree No. 603 of 1974 (Philippines), art. 141. <https://www.officialgazette.gov.ph/1974/12/10/presidential-decree-no-603-s-1974/>

⁵² Code of Childhood and Adolescence, Law 1098 of 2006 (Colombia), art. 18A, and Amendment of Law 2089 of 2021 (Colombia), art. 4.

⁵³ Child Protection Act Law No. 80 of 2002 (as amended by Act No. 52 of 2009, art 3) (Iceland), art. 99.

⁵⁴ U.N. Convention on the Rights of the Child, art. 19.

⁵⁵ Code of Childhood and Adolescence, Law 1098 of 2006 (Colombia), art. 18,

⁵⁶ Law of Integral Protection of the Rights of the Child, Law 26.061 of 2005 (Argentina), art. 9. <https://www.global-regulation.com/translation/argentina/140275535/law-on-the-comprehensive-protection-of-the-rights-of-nias%252c-ni%253fos-and-adolescents-general-provisions---updated-text-of-the-norm.html>

⁵⁷ Child Protection Act, B.E. 2546 of 2003 (Thailand), Section 4, Section 26.

⁵⁸ Code de la Protection de l’Enfant, Loi no. 95-92 of 1995 (Tunisia), art. 2.

<http://clr.africanchildforum.org/country/58>

⁵⁹ In Dialogue with Tunisia, Committee on the Rights of the Child welcomes positive steps and asks about corporal punishment United Nations Human Rights Office of the High Commissioner (May 28, 2021), <https://www.ohchr.org/en/press-releases/2021/05/dialogue-tunisia-committee-rights-child-welcomes-positive-steps->

Some nations' child protection laws also include provisions for children's sexual and reproductive health and rights. **Colombia's** Code mandates a familial obligation to promote the responsible exercise of sexual and reproductive rights and to collaborate with the school in education on this topic.⁶⁰ It also stipulates that the social security system in health must guarantee free access for adolescents to specialized sexual and reproductive health services.⁶¹

It is a best practice of child rights legislation to be as specific as possible when listing grounds of non-discrimination in the implementation of the law. For instance, the **Child Protection Model Law** reaffirms the "fundamental human rights of children as proclaimed in the Universal Declaration of Human Rights and the Convention on the Rights of the Child without discrimination on the grounds of sex, race, religion, political or other opinion, national, ethnic or social origin, property, birth, disability, or other status."⁶² The Model Law also enshrines as a principle that "Every child shall be entitled to the same rights and level of protection, without discrimination on the grounds of her/his or her/his parents' or guardians' age, race, sex, sexual orientation, gender identity, nationality, ethnic or social origin, language, religion, socio-economic position, family status, familial relations, health, disability status, or political, religious, or other opinion."⁶³

Australia's Children and Young People Act notes that government services provided for the wellbeing and protection of children should respect "the individual race, ethnicity, religion, disability, sexuality and culture of children and young people."⁶⁴ **Ghana's** Children's Act guarantees that "No person shall discriminate against a child on the grounds of gender, race, age, religion, disability, health status, custom, ethnic origin, rural or urban background, birth or other status, socio-economic status or because the child is a refugee."⁶⁵ **Latvia's** Protection of the Rights of the Child Law enjoins the State to ensure "the rights and freedoms of all children without any discrimination- irrespective of race, nationality, gender, language, political party alliance, political or religious convictions, national, ethnic or social origin, place of residence in the State, property or health status,

[and-asks; Protection of Children Against Sexual Exploitation and Sexual Abuse](https://rm.coe.int/protection-of-children-against-sexual-exploitation-and-sexual-abuse/1680794e97) (2012), <https://rm.coe.int/protection-of-children-against-sexual-exploitation-and-sexual-abuse/1680794e97>; [Lanzarote Convention](https://www.coe.int/en/web/children/lanzarote-convention), Council of Europe (2023), <https://www.coe.int/en/web/children/lanzarote-convention>

⁶⁰ Code of Childhood and Adolescence, Law 1098 of 2006 (Colombia), art. 39,

⁶¹ Code of Childhood and Adolescence, Law 1098 of 2006 (Colombia), art. 46.

⁶² Child Protection Model Law, art. 1.

⁶³ Child Protection Model Law, art. 4.

⁶⁴ Children and Young People Act, Act 2008-19, Republication No. 86, Effective: 30 December 2022 (Australia/Capital Territory), Part 1.2, 7. <https://www.legislation.act.gov.au/View/a/2008-19/current/html/2008-19.html>

⁶⁵ The Children's Act, Act 560 of 1998 (Ghana), Section 3.

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/56216/101251/F514833765/GHA56216.pdf>

birth or other circumstances of the child, or of his or her parents, guardians, or family members.”⁶⁶

3. Recommendations:

- The provision should clearly define its terms, including “neglect” and “abuse.”
- The provision should include additional specific offenses against which this law protects, such as corporal punishment.
- Lawmakers should either specify in a separate article that this law abrogates Article 41 of the Penal Code (see proposed Provision 15 of this draft law) or amend the Penal Code and any other necessary legislation to be consistent with the protections for children enacted in this law.
- The aim to “prevent sex” should be removed and a specific protection against “sexual abuse” should be included instead. The terms “prostitution” and “porn” should be replaced by “sexual exploitation” and “child sexual abuse material.” Additionally, children should be “protected” from these forms of abuse, rather than “prevented” from “involvement” in them.
- A close-in-age exemption for consensual sexual activity involving teenagers should be included.
- The aim to raise children to cherish their national identity should be removed, unless it is amended by guarantees that this aim will not infringe children’s rights to freedom of belief, thought, expression, religion, and access to information from international sources and regardless of frontiers.
- The bases of non-discrimination should be expanded and should also include children’s parents, legal guardians, and family members.

4. Suggested Redraft Language:

1. This law aims to protect children from all acts or omissions constituting abuse, corporal punishment, neglect, maltreatment, exploitation, and sexual abuse.
2. For the purposes of this Law –
 - (a) “Abuse” shall mean any intentional act or omission by a parent, guardian, caregiver, or other person causing or likely to cause physical, mental, or emotional harm to the child;
 - (b) “Corporal punishment” shall mean any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light, including slapping, spanking, kicking, pinching, boxing ears, pulling hair,

⁶⁶ Protection of the Rights of the Child Law, Law 199/200 of 1998 (Latvia), Section 3.
[https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=\(1\)%20A%20child%20has%20the,hinder%20his%20or%20her%20education.](https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=(1)%20A%20child%20has%20the,hinder%20his%20or%20her%20education.)

- hitting with the hand or any other implement, and forced ingestion (for example, of soap or hot spices);
- (c) “Neglect” shall mean the intentional or involuntary non-exercising of duties and responsibilities to adequately care for and supervise a child and to provide for the child’s basic physical, mental, emotional, and social needs;
 - (d) “Maltreatment” shall mean any intentional or willful act resulting in physical, mental, or emotional harm to the child or any omission by a parent, guardian, or caregiver to protect children from such harm, and in general all forms of violence, aggression, cruel, degrading, or humiliating treatment of a child;
 - (e) “Exploitation” shall mean –
 - (i) Sexual exploitation, including commercial sexual exploitation of children in the form of sexualized material depicting children; child sex tourism; payments to engage in sexual activities with children; and child trafficking for these purposes;
 - (ii) Economic exploitation, including child begging, the worst forms of child labor, and any work or domestic work not in accordance with the regulations of this Law;
 - (iii) Other forms of exploitation, including all forms of slavery or practices similar to slavery, debt bondage or servitude, or forced labor;
 - (f) “Sexual abuse” of children shall mean any –
 - (i) Engagement or incitement of a child under the age of consent to participate in sexual activities except if a teenager aged 14-18 years consents to sexual activities with a partner who is no more than 4 years older and who is not in any position of trust, authority, or dependency on the teenager;
 - (ii) Engagement in sexual activities with a child by any person in a position of trust or authority such as a parent, guardian, family member, or caregiver;
 - (g) “Sexual activities” shall mean sexual intercourse and any other act performed on, by, with, or in front of a child where the presence or participation of the child is for the purpose of the sexual gratification of another person.
3. This law shall apply to every child without discrimination on the grounds of his or her, or of his or her parents’, guardians’, or family members’, age, race, sex, sexual orientation, gender identity, nationality, ethnic or social origin, language, religion, socio-economic position, family status, familial relations, health, birth, disability status, or political, religious, or other opinion, or other status.

C. Provision 3 of Draft Law:

Provision -3 the objectives of this law shall be fulfilled through:

First- making the community aware of children’s rights and making children aware of their rights.

Second- taking the necessary measures to pursue and prosecute whoever exploits the basic rights of children.

Third- indulging children in all areas of life, taking into account their ages, capabilities, and level of maturity, and developing the spirit of voluntary work.

Fourth- securing effective equality amongst children under rights stipulated by the law.

Fifth- setting plans, policies, and programs to guarantee children's rights under the law.

Sixth- consulting experts in the field of children's rights protection.

Seventh- developing staff working in the field of children's welfare.

Eighth- becoming part of international conventions related to the protection and security of children's rights.

Ninth- incorporating educational materials in the curriculums of the Ministry of Education and Ministry of High Education and Scientific Research that emphasize children protection.

1. Commentary on Provision 3:

This provision specifies nine ways that the law's objectives will be fulfilled. As currently written, these methods are too vague to be properly implemented. For instance, there is no indication in the first measure of how the community and children will be made aware of their rights. The second measure does not specify the "necessary measures to pursue and prosecute whoever exploits the basic rights of children". The cursory language of this draft also leaves open other questions, such as how "effective equality amongst children" will be secured; how staff working in the field of children's welfare will be "developed"; and how children will be "indulged" in all areas of life.

This draft does not clarify whether the "indulgence" of children extends to the application of the criminal law. The Iraqi Penal Code specifies that criminal proceedings cannot be brought against any child under 7 years old.⁶⁷ The Juvenile Welfare Act amends the age of criminal responsibility to 9 years old and creates specialized institutions including Juvenile Police, Juvenile Investigating Judges, and Juvenile Courts.⁶⁸ However, the Anti-Terrorism Law of 2005, which stipulates a death sentence or life imprisonment for anyone convicted of a terrorist act, does not include any age exemptions.⁶⁹ While the measures set forth in the Juvenile Welfare Act should apply in anti-terrorism proceedings, in practice this is not always the case.⁷⁰

Moreover, the Iraqi juvenile justice system is "characterized by over-reliance on custodial measures for children in conflict with the law."⁷¹ Juvenile offenders are penalized with

⁶⁷ Penal Code, Law 111 of 1969 (Iraq), art. 64.

⁶⁸ Juvenile Welfare Code, Law No. 76 of 1983 (Iraq), art. 3, 23, 49, 54-56, 58.

⁶⁹ Anti-Terrorism Law, Law No. 13 of 2005 (Iraq), art. 4. <https://www.refworld.org/docid/5bd093414.html>

⁷⁰ Marta Gil and Emad Al-Quraan, Understanding the Legal Pathways for Children in Contact with the Law Within the Iraqi Criminal Justice System, (March 2022), p. 8.

https://www.tdh.ch/sites/default/files/iraq_legal_aid_criminal_pathways_children_en_final_march_2022.pdf

⁷¹ Release of Children Deprived of Liberty in Iraq in Response to COVID-19: Increasing the use of alternatives to detention, UNICEF (Dec. 2020), p. 2. <https://www.unicef.org/media/93111/file/Release-Children-Deprived-Liberty-Iraq-2021.pdf>

sentences in rehabilitation schools, even for misdemeanors.⁷² This “over-reliance on custodial measures” contravenes Article 37 of the **Convention on the Rights of the Child**, which states that “arrest, detention or imprisonment” of a child should “be used only as a measure of last resort and for the shortest appropriate period of time.”⁷³ As part of “indulging” children, this law should explicitly implement new standards and measures for juvenile offenders that better conform to the articles of the **Convention on the Rights of the Child**, and annul and abrogate any conflicting articles of the Juvenile Welfare Act and other legislation. Alternatively, lawmakers should amend the Penal Code, the Juvenile Welfare Act, the Anti-Terrorism Law, and any other legislation as necessary to comply with the **Convention on the Rights of the Child** and the protections and rights enshrined in this Child Protection Law.

The meaning of the “spirit of voluntary work” referred to in the third measure of Provision 3 is unclear and potentially problematic. The wording as it stands could imply that children should perform unpaid work. This would contradict Article 32 of the **Convention on the Rights of the Child**, which protects children from “economic exploitation.”⁷⁴ If the intention of this Provision’s formulation is that children should not be forced to work, this needs to be clarified.

The sixth measure of Provision 3 is helpful as a preliminary step but could be strengthened to ensure that experts are not merely “consulted” but rather must participate and be actively involved in all stages of implementing the law. It would also be beneficial to mandate that some minimum percentage of these experts are women, given that the issues impacting children often disproportionately affect girls.

2. Comparative practice:

Some child protection laws specify ways in which information about children’s rights will be disseminated to the public. The **Child Protection Model Law** calls for “the development and implementation of awareness-raising activities through national conferences and seminars, especially by integrating the mass media, including print media, television, radio, and online media in the process” and “the education of children and adults on the rights of children...through the organization of special workshops in schools and community organizations and the development and dissemination of adequate training and information materials.”⁷⁵

Guatemala’s Law for Integral Protection of Childhood and Adolescence establishes a Defense Agency of the Rights of Children and Adolescents with a mandate to “realize

⁷² Penal Code, Law 111 of 1969 (Iraq), art. 68-70, 72-74; Juvenile Welfare Code, Law No. 76 of 1983 (Iraq), art. 10, 73, 76, 77.

⁷³ U.N. Convention on the Rights of the Child, art. 37.

⁷⁴ U. N. Convention on the Rights of the Child, art. 32.

⁷⁵ Child Protection Model Law, art. 7 (e) and (h).

prevention activities aimed at protecting the human rights of children and adolescents by means of talks, conferences, seminars, forums, videos, TV clips, radio and print media” and to “coordinate...actions to promote and educate the children, youth, and adults regarding the rights and duties of children and adolescents and the protection mechanisms, developing the appropriate training material, reproducing and publishing the same and ensuring that both parents and teachers conduct activities to disseminate those multiple rights.”⁷⁶

Legislation also establishes specific policies and programs aimed at protecting and enforcing children’s rights. The **Child Protection Model Law** establishes a “formal response system” that is “operated by specially trained child protection service providers.” The mandate of this formal system is “to receive and coordinate reported cases of child neglect, abuse, maltreatment, and exploitation” that “shall include measures of emergency medical and psychological assistance and possibilities to place the child in a safe environment.” The Model Law also calls for a “national child helpline free-of-charge to which children can turn to ask for advice and support.”⁷⁷ Many countries have established national child helplines, including the **Kurdistan** region of Iraq.⁷⁸ Child Helpline International maintains a database of national child helplines.⁷⁹

Child protection laws also mandate reporting obligations for any person who becomes aware of a case of child abuse, neglect, maltreatment, or exploitation. The **Child Protection Model Law** stipulates that “any person who becomes aware of a situation or act which may amount to child neglect, abuse, maltreatment, and exploitation in the course of exercising their care for or work with children, shall and any other person may immediately report the same to the police or any other competent domestic authority irrespective of any requirement of occupational secrecy. At request of the authority, any such person is obligated to communicate all information that is likely to facilitate the investigation and to identify perpetrators or victims.” The Model Law also includes an exemption from civil or criminal liability arising from this act of reporting for “anyone providing such information in good faith.”⁸⁰ **Turkey’s** Juvenile Protection Law states that “judicial and administrative authorities, law enforcement officers, health and education institutions and non-governmental organizations have the obligation to notify the Social Services and Child Protection Agency of any juveniles that are in need of protection.”⁸¹

⁷⁶ Law for Integral Protection of Childhood and Adolescence, Decree No. 27 of 2003 (Guatemala), art. 92 (e) and (f). http://www.oas.org/dil/esp/Ley_de_Proteccion_Integral_de_la_Ninez_y_Adolescencia_Guatemala.pdf

⁷⁷ Child Protection Model Law, art. 13 (1) and (2).

⁷⁸ **Iraq: 116 Child Helpline – Kurdistan Region**, Child Helpline International, <https://childhelplineinternational.org/iraq-116-child-helpline-kurdistan-region/> (last visited April 13, 2023).

⁷⁹ **Find your local child helpline**, Child Helpline International, <https://childhelplineinternational.org/helplines/> (last visited April 13, 2023).

⁸⁰ Child Protection Model Law, art. 14, (1) and (2).

⁸¹ Juvenile Protection Law, Law No. 5395 of 2005 (Turkey), art. 6 (1). <http://www.lawsturkey.com/law/juvenile-protection-law-5395#:~:text=The%20juvenile%20protection%20law%20has,their%20rights%20and%20well%2Dbeing.>

Child protection laws also mandate training for personnel working in fields related to children’s rights. The **Child Protection Model Law** establishes “training activities, including on the provisions of this Law and its implementation, for professional and volunteer personnel in the fields of education, medicine, law enforcement, judiciary, social work, and other fields relevant to child protection to increase their knowledge about the various forms of child neglect, abuse, maltreatment, and exploitation, to facilitate the investigation of cases, and the identification of victims and offenders; this shall include the integration of such issues in the curricula of institutes of higher education in the fields of education, social work, medicine, and law and of police academies.”⁸²

Child protective laws and guidelines also establish rights, procedures, and penalties for children in conflict with the law. Many legislate a minimum age of criminal responsibility, in accordance with Article 40 of the **Convention on the Rights of the Child**.⁸³ **Ireland’s** Children’s Act establishes the age of criminal responsibility as at least 12 years old.⁸⁴ **Jamaica’s** Child Care and Protection Act also presumes that “no child under the age of twelve can be guilty of any offence.”⁸⁵ **Sierra Leone** sets the minimum age of criminal responsibility even higher, at 14 years old.⁸⁶ **South Korea** does not punish the acts of a person under 14 years old.⁸⁷ In **Tunisia**, a child under 13 years of age is not considered competent to be tried by penal law.⁸⁸ In the **Kurdistan Region**, the age of criminal responsibility is 11 – lower than some other national standards, but higher than the limits set in Iraq’s Penal Code and Juvenile Welfare Act.⁸⁹

The **Convention on the Rights of the Child** also stipulates that every child accused of breaking the penal law has “at least the following guarantees”: the presumption of innocence until proven guilty; the right to be notified of the charges against him or her; to have appropriate assistance and legal aid in preparing a defense; to have the matter heard promptly by a “competent, independent and impartial authority or judicial body” in the presence of legal assistance and the child’s parents, unless it is considered not to be in the child’s best interests for them to be present; not to be compelled to confess guilt or give testimony; to examine “adverse witnesses” and obtain witnesses on the child’s behalf;

⁸² Child Protection Model Law, art. 7 (f).

⁸³ U.N. Convention on the Rights of the Child, art. 40.

⁸⁴ Children Act, Act No. 24 of 2001 (Ireland), Section 52.
<https://www.irishstatutebook.ie/eli/2001/act/24/enacted/en/html>

⁸⁵ Child Care and Protection Act, 2004 (Jamaica), Section 63.
https://oig.cepal.org/sites/default/files/2005_childcareprotection_jam.pdf

⁸⁶ The Child Right Act, 2007 (Sierra Leone), Section 70. <https://bettercarenetwork.org/sites/default/files/2019-11/Sierra%20Leone%20Child%20Rights%20Act%202007.pdf>

⁸⁷ Criminal Act, Act No. 293 of 1953, as amended by Act No. 7623 of Jul. 29, 2005 (South Korea), art. 9.
https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=86065&p_country=KOR&p_count=147&p_classification=01.04&p_classcount=6

⁸⁸ Code de la Protection de l’Enfant, Loi no. 95-92 of 1995 (Tunisia), art. 68

⁸⁹ Law of the Age of Criminal Responsibility, Law No. 14 of 2001 (Kurdistan Region).

<https://juvenilejusticecentre.org/wp-content/uploads/2019/01/28-Guideline-for-Juvenile-Police-ENG-Dec-2018.pdf>

to have a guilty verdict and any sanctions “reviewed by a higher competent, independent and impartial authority or judicial body; to have a free interpreter if the child cannot speak or understand the language used; and full respect at all stages of the proceedings for the child’s privacy.”⁹⁰

The **United Nations Standard Minimum Rules for the Administration of Juvenile Justice** include basic procedural safeguards, such as the presumption of innocence, the right to be notified of charges, the right to counsel, the right to the presence of a parent or guardian, and the right to confront and cross-examine witnesses. Police officers dealing frequently or exclusively with juvenile offenders should receive special training and instruction, and special police units should be established in large cities for handling juvenile crime.⁹¹ The **Hong Kong Juvenile Offenders Ordinance** prohibits the publication of a written report or broadcast of any juvenile court proceedings; revelation of the name, address, or school of a juvenile offender; any identifying particulars of a child involved in juvenile court proceedings, whether the victim, the accused, or a witness.⁹² **Lesotho’s Children’s Protection and Welfare Bill** also has privacy guarantees for children appearing in Children’s Court.⁹³

The **Convention on the Rights of the Child** further stipulates, whenever “appropriate and desirable,” the use of measures “without resorting to judicial proceedings” in dealing with children who have infringed the penal law. Alternatives to institutionalization, such as “care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes,” should be available “to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”⁹⁴ The **United Nations “Beijing Rules”** mandate that “Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.”⁹⁵ The **Child Protection Model Law** advocates sentences for children that “prioritize rehabilitation, education, and reintegration in society rather than punishment or retaliation” and stipulates that “criminal punishment, particularly imprisonment, shall be used only as a measure of last resort and shall be avoided whenever possible.”⁹⁶

⁹⁰ U.N. Convention on the Rights of the Child, art. 40.

⁹¹ U.N. G.A. A/Res/40/33 (Nov. 29, 1985), art. 7, 12. <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>

⁹² Juvenile Offenders Ordinance, Chapter 226 of 1997, as amended in July 2003 (Hong Kong), Section 20A. <https://www.elegislation.gov.hk/hk/cap226>

⁹³ Children’s Protection and Welfare Act, Act. No. 7 of 2011 (Lesotho), Sections 133-161.

<http://jafbase.fr/docAfrique/Lesotho/children%20act%20lesotho.pdf>

⁹⁴ U. N. Convention on the Rights of the Child, art. 40.

⁹⁵ U.N. G.A. A/Res/40/33 (Nov. 29, 1985), art. 17.

⁹⁶ Child Protection Model Law, art. 64.

3. Recommendations:

- Include more specific details about how these measures for fulfilling the law's objectives will be achieved.
- Remove the reference to children's voluntary work.
- Ensure that experts in the field of child protection are not just consulted, but actively involved in implementing these measures and that a minimum percentage of these experts are women.
- Consider including protections for juvenile offenders in this provision or in a separate article.

4. Suggested Redraft Language:

Provision -3-

The objectives of this law shall be fulfilled through:

1. Making adults and children aware of children's rights and protections through national conferences and seminars; mass media campaigns, including print media, television, radio, online and social media; workshops in schools and community organizations; and the development and dissemination of adequate training and informational material;
2. Implementing the protection mechanisms for children experiencing abuse, neglect, maltreatment, or exploitation established by this Law;
3. Implementing this and other laws in a manner consistent with the evolving capacities of the child, while acknowledging that the child's mental and physical immaturity requires special protection;
4. Treating all children equally without discriminating on the grounds of sex, gender, race, ethnicity, sexual orientation, political or religious belief, birth, disability, or any other status;
5. Establishing policies and programs to protect and implement children's rights, including:
 - (a) A formal response system, operated by specially trained and licensed child protection service providers, that will receive reports of cases of child neglect, abuse, maltreatment and exploitation and coordinate a response, including measures of emergency and psychological assistance for child victims and the option to place the child in a safe environment;
 - (b) A national helpline free-of-charge that provides assistance, information, and support to children experiencing abuse, neglect, maltreatment, or exploitation;
 - (c) The obligation for any person who becomes aware of a situation or act which may amount to child abuse, neglect, maltreatment, and exploitation in the course of working with or caring for children to report the same to the police or any other competent domestic authority;

6. Consulting and actively involving experts in the field of child protection, including a minimum percentage of female experts, in every stage of designing and implementing child protection policies and programs;
7. Designing and disseminating training activities, including on the provisions of this Law and its implementation, for professional and volunteer personnel in the fields of education, medicine, law enforcement, judiciary, social work, and other fields relevant to child protection to increase their knowledge about the various forms of child neglect, abuse, maltreatment, and exploitation, to facilitate the investigation of cases, and the identification of victims and offenders; this shall include the integration of such issues in the curricula of institutes of higher education in the fields of education, social work, medicine, and law and of police academies;
8. Ratifying international conventions related to the protection and security of children's rights;
9. Incorporating educational materials on children's rights and protections in the curricula of the Ministry of Education and Ministry of High Education and Scientific Research.

NEW PROVISION

This law guarantees protections and rights for children accused of breaking the penal law, by:

1. Ensuring at a minimum basic procedural safeguards, including:
 - (a) The presumption of innocence until proven guilty;
 - (b) The right to be notified of the charges against him or her;
 - (c) Appropriate assistance and legal aid in preparing a defense;
 - (d) To have the case heard promptly by a competent, independent, and impartial authority or judicial body in the presence of legal aid and the child's parents, unless it is considered in the best interests of the child for the parents not to be present;
 - (e) The right not to be compelled to confess guilt or give testimony;
 - (f) The right to examine adverse witnesses and to obtain witnesses on the child's behalf;
 - (g) The right to an appeal and to have any guilty verdict or sanctions reviewed by a higher competent, independent, and impartial authority or judicial body;
 - (h) The right to a free interpreter if the child cannot speak or understand the language used;
 - (i) The right to the child's full privacy at all stages of the proceedings;
2. Ensuring special training in children's rights for all police officers, corrections officers, and judicial personnel dealing frequently or exclusively with juvenile offenders;
3. Prioritizing the rehabilitation, education, and reintegration in society of juvenile offenders, rather than punishment or retaliation;

4. Imposing the deprivation of personal liberty as a last resort and only in situations where the child is found guilty of a serious violent offense against another person or of repeat serious offenses and there is no other appropriate response available;
5. Guaranteeing that the death penalty or life sentence without parole shall not be imposed on any person who was a child at the time of the offense, including for offenses related to armed conflict.

D. Provision 4 of Draft Law:

Provision -4- the state guarantees the children the following rights:

First- the right to live.

Second- the right to have an ID.

Third- the right to have a name chosen on their day of birth is based on no discrimination or violation of dignity.

Fourth- the right to freedom of expression.

Fifth- guaranteeing family rights, including:

- A. Living in a coherent and unified family.*
- B. The right to know their biological parents and lineage and not to relate them to non-parents.*
- C. Regularly connect with their parents who they are separated with.*
- D. Putting their parents or guardians in charge of the responsibilities related to raising them.*
- E. Children of unknown lineage join families who wish to adopt them, taking into account the financial and moral aspects of those who request to join families under the law.*

Sixth –Medical Rights- which include:

- A. Providing aid for those who suffer from chronic or incurable diseases through social protection welfare and under the law.*
- B. Providing necessary aid for the handicapped, particularly psychological aid to guarantee that they can depend on themselves and be part of the community.*
- C. Conducting medical checks for the husbands to ensure they are free from genetically transmitted or contagious diseases which could affect the life, health, and psychological or physical or mental capabilities of their children.*
- D. Conducting medical checks for newborns and providing the necessary treatment to avoid any deficiency that could affect them or at least minimize it.*
- E. Providing free medical services to children through a card organized by the ministry of health from the day they are born until they become 18 years old. This could be used to prove the child's medical condition and referred to when they enrol in schools or practice sports activities or when put in medical or social institutions.*
- F. Ensuring their non-attendance to health-affecting places.*
- G. Supporting the school medical system.*
- H. Publishing safety precautions against diseases, contagious diseases, harm caused by smoking, harm caused by games that do not meet health and environmental standards, and environmental pollution.*

Seventh- Educational Rights- which include:

- A. Establishing libraries, educational forums, theatres, and cinemas in provincial centres, districts, and sub-districts under guidelines issued by the minister of tourism, culture, and monuments.*
- B. Allocating a part of the audible, visual, and readable media for educational and social activities for children.*
- C. Reinforcing digital literacy which guarantees the non-abuse of children using the internet.*

Eighth- Right to Education, which includes:

- A. *Children’s right to education in public schools until they finish high school. This includes children with deficiencies or special needs and according to their health, physical, and mental condition to take necessary measures measurements to prevent their early drop out of school.*
- B. *Developing their personalities, talents, and mental and physical capabilities through incorporating educational subjects in their school curriculum that can reinforce their sense of personal value and ability to deal with responsibility.*
- C. *Giving them enough time to rest and practice games and activities appropriate for their age.*
- D. *Developing special programs to enhance the teachers’ performance and rehabilitate them on a regular basis.*
- E. *Developing certain mechanisms to report any complaints such as violations or actions affecting children, and improving the schools’ system that deals with these issues.*
- F. *Providing food at school until they finish their school education.*
- G. *Supporting talented children and preparing the appropriate atmosphere to reward them*

1. Commentary on Provision 4:

The scope of the rights outlined in this draft is broad and includes the rights to life, identity, medical care, and education. This is a great starting point. However, a specific provision stating that this Law guarantees at a minimum all the rights listed and protected in the **Convention on the Rights of the Child** and any other international conventions and treaties ratified by Iraq would be welcome.

The inclusion of a provision entitling all children to a right to ID is a welcome addition to the draft law. This provision could be strengthened by indicating that all children in Iraq, regardless of family status or citizenship, are entitled to a Unified ID document. There are approximately 45,000 children in Iraq without access to identity documents, often due to their inability to prove citizenship.⁹⁷ By enshrining in law a right to an identity document for all children, children’s rights of access to other benefits and protections under this and other laws would also be facilitated.

The Family Rights as laid out in this draft are not sufficiently detailed or comprehensive. The draft stipulates parental responsibility for raising children. The Convention on the Rights of the Child does place “primary responsibility for the upbringing and development of the child” on parents or legal guardians. However, it also stipulates that “State Parties shall render appropriate assistance” to them in performing these responsibilities and “take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities.”⁹⁸ This provision does not specify the ways in which the State will fulfil these obligations of assistance.

Furthermore, the right for children of “unknown lineage” to “join families who wish to adopt them” should be clarified in greater detail, especially given the current lack of Iraqi

⁹⁷ Fadhel al-Nashmi, *IHCHR Report: 5 Million Orphaned Children in Iraq*, Al-Awsat (Dec. 12, 2021), <https://english.aawsat.com/home/article/3354921/ihchr-report-5-million-orphaned-children-iraq>.

⁹⁸ U.N. Convention on the Rights of the Child, art. 18.

legislation on adoption. Please see the discussion of Provision 6 of this draft, which concerns state responsibility for children without parents.

Some of the Medical Rights in this draft as they are currently written potentially conflict with the Convention on the Rights of the Child and other human rights. For example, one of the Medical Rights (Sixth (C)) is the right for husbands to be tested for genetically transmitted and contagious diseases. It is not clear what would happen in the event that such diseases were found during a medical screening. It is concerning that the provision as worded, “ensuring” that husbands are free from disease, could be interpreted to mean that husbands who test positive for diseases in medical screenings would be prevented from fathering children. This would contravene the human right enumerated in the **Universal Declaration of Human Rights** to “found a family.”⁹⁹ This provision also problematically assumes that a child’s father must be a husband, thereby ignoring the rights of children born outside of marriage, and potentially stigmatizes fathers with genetic or contagious diseases, both of which contravene Article 2 of the **Convention on the Rights of the Child** guaranteeing non-discrimination on the basis of “disability, birth or other status” of children and their parents.¹⁰⁰

Furthermore, there is no similar healthcare provision for mothers, which contravenes the principle of non-discrimination based on gender in the **Convention on the Rights of the Child** and in this law. The Iraqi Constitution guarantees “the protection of motherhood, childhood and old age.”¹⁰¹ However, it does not specify what kind of protection, which government ministries will provide the protection, nor the start and end date of this protection.¹⁰² Moreover, despite declines in maternal and infant mortality, Iraq still faces challenges in implementing maternal health services. The most recently published Multiple Indicator Cluster Survey (MICS) in Iraq for 2018 reveals that 13.4% of pregnant women in Iraq did not receive any postnatal care. Maternal health services in Iraq lack resources, funding, and staff.¹⁰³ In addition to being a women’s rights issue, maternal health has a significant impact on children’s health, wellbeing and outcomes.¹⁰⁴ The maternal mortality rate is used as an indicator of how well a signatory nation to the Convention on the Rights of the Child is succeeding at protecting the rights

⁹⁹ Universal Declaration of Human Rights, U.N. G.A. (Dec. 10, 1948), art. 16 (1).
https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf

¹⁰⁰ U. N. Convention on the Rights of the Child, art. 2.

¹⁰¹ Article 29, The Constitution of the Republic of Iraq of 2005.

¹⁰² Mishkat Al Moumin, *Constitutional and Legal Rights of Iraqi Women*, MEI@75 (April 1, 2008),
<https://www.mei.edu/publications/constitutional-and-legal-rights-iraqi-women>

¹⁰³ *Sexual and reproductive health and reproductive rights regulatory frameworks across the Arab states region: Current status and future outlook, Iraq* https://arabstates.unfpa.org/sites/default/files/pub-pdf/14470_-_aub_-_srhrr_iraq_-_opt.3_-_web_version.pdf (last visited April 13, 2023); *Iraq: Five years after the battle of Mosul, women still struggle to access health care*, Doctors Without Borders (April 11, 2022),
<https://www.doctorswithoutborders.org/latest/iraq-five-years-after-battle-mosul-women-still-struggle-access-health-care>

¹⁰⁴ *The U.S. Government and Global Maternal and Child Health Efforts*, KFF (Sep. 29, 2022)
<https://www.kff.org/global-health-policy/fact-sheet/the-u-s-government-and-global-maternal-and-child-health-efforts/>

of children.¹⁰⁵ Given this legal and social context, the draft law should create a provision ensuring healthcare for mothers.

The Medical Right (Sixth (E)) to free medical services via a health card includes the suggestion that this card could “be used to prove the child’s medical condition and referred to when they enroll in schools or practice sports activities or when put in medical or social institutions.” This suggestion seems like an afterthought in the legislation, with no mention of how it would work in practice, how it would be administered, or whether it would result in a system whereby children would be obligated to disclose their confidential medical histories when applying for schools or sports teams. It would be better to remove this suggestion from the draft.

Medical Right (Sixth (H)) calls for “publishing safety precautions against diseases, contagious diseases, harm caused by smoking, harm caused by games that do not meet health and environmental standards, and environmental pollution.” The standard should be above merely publishing information, and should include action taken against smoking, harmful games, and environmental pollution.

It is not clear what distinguishes the Seventh (Educational Rights) and Eighth (Right to Education) measures of the provision. These could be merged. The call for “supporting talented children and preparing the appropriate atmosphere to reward them” (Eighth (G)) could also lead to a two-tiered system in which those children perceived to be “untalented” receive less care and attention than their “talented” peers.

2. Comparative practice:

Some laws explicitly guarantee the protection of all the rights found in international conventions. The **Child Protection Model Law** guarantees at a minimum “the standard protection provided by the Convention on the Rights of the Child and other international conventions ratified by this State.”¹⁰⁶ The **League of Arab States’ Arab Charter on Human Rights** declares that nothing in the Charter “may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws...or those set [forth] in the international and regional human rights instruments which the state parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities.”¹⁰⁷ **Egypt’s Promulgating the Child Law** guarantees “as a minimum” the rights of the child stated in the Convention on the Rights of the Child and all other relevant international covenants.¹⁰⁸

¹⁰⁵ KidsRights Index Methodology, Kids Rights, <https://www.kidsrights.org/research/kidsrights-index/methodology/> (last visited April 13, 2023).

¹⁰⁶ Child Protection Model Law, art. 5.

¹⁰⁷ League of Arab States, Arab Charter on Human Rights, May 22, 2004, entered into force March 15, 2008, art. 43. <https://digitallibrary.un.org/record/551368?ln=en>

¹⁰⁸ Promulgating the Child Law, Law No. 12 of 1996, as amended by Law No. 126 of 2008 (Egypt), art. 1. <https://www.refworld.org/docid/5a4cb6064.html>

International standards and legislation guarantee children’s right to identity. The **Convention on the Rights of the Child** states that a “child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality.”¹⁰⁹ The **Child Protection Model Law** calls for the state to take “the necessary steps to establish the...identity and nationality” of all internally displaced children.¹¹⁰

Some treaties and legislation assign primary responsibility for children’s care and upbringing to parents, while mandating a supportive role for the state in facilitating these duties. The Preamble to the **Convention on the Rights of the Child** includes the conviction that “the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities.” The Preamble also recognizes that the child “should grow up in a family environment.”¹¹¹ Article 18 of the **Convention on the Rights of the Child** declares that “parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child.” State Parties should give “appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities” and develop “institutions, facilities and services for the care of children.”¹¹²

The **Child Protection Model Law** stipulates that the “family shall be primarily responsible to care for and to protect children.” The “State shall assist families with this obligation and intervene only when the family is unfit, unwilling, or needs help to protect children from exploitation.”¹¹³ The Children, Youth and Families Act of the **Australian** state of **Victoria** acknowledges “the need to give the widest possible protection and assistance to the parent and child as the fundamental unit group of society” and the “need to strengthen, preserve and promote positive relationships between the child and the child’s parent.”¹¹⁴ The **Committee for the Implementation of the Convention on the Rights of the Child** notes that states should help families at risk of breakdown with “practical measures, such as financial benefits, housing, day care, home helps, equipment...as well as psychological and professional support.”¹¹⁵

Many laws define offenses against children and situations in which the state must intervene to protect the child. The **Child Protection Model Law** includes a non-

¹⁰⁹ U.N. Convention on the Rights of the Child, art. 7 (1).

¹¹⁰ Child Protection Model Law, art. 59, (1) (b).

¹¹¹ U.N. Convention on the Rights of the Child, Preamble.

¹¹² U.N. Convention on the Rights of the Child, art.18.

¹¹³ Child Protection Model Law, art. 4.

¹¹⁴ Children, Youth and Families Act, Act No. 96 of 2005, as amended in 2009 (Australia/Victoria), Section 10. <https://www.legislation.vic.gov.au/in-force/acts/children-youth-and-families-act-2005/121>

¹¹⁵ Implementation Handbook for the Convention on the Rights of the Child, p. 237.

exhaustive list of “acts and omissions constituting neglect, abuse, maltreatment, and exploitation,” such as “impairing the health, well-being, or physical integrity of child,” “damaging the mental or emotional integrity of a child by threatening, frightening, intimidating, or humiliating the child,” “depriving a child of basic educational or vocational training,” and “failing to protect a child in judicial detention or involved with the justice system as a victim or witness.”¹¹⁶ The **Canadian** province of **Alberta’s** Child, Youth and Family Enhancement Act states that a child “is in need of intervention if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered” for a host of reasons, including the abandonment of the child, neglect, physical injury, sexual abuse, and emotional injury.¹¹⁷ **Ghana’s** Children’s Act defines situations in which a child is “in need of care and protection,” including when orphaned or deserted, neglected, destitute, and begging.¹¹⁸

Many laws also establish a framework for state intervention on behalf of children in need, including the circumstances under which children may be removed from their parents or legal guardians. The **Child Protection Model Law** lays out the necessary investigative procedures for a Child Protection Committee official to follow before ordering that a child be removed, placed in alternative care, or temporarily kept in a place of safety.¹¹⁹ **Ghana’s** Children’s Act outlines five steps to take when child abuse or need for intervention are suspected, potentially culminating, after an investigation by the relevant specialized authorities, in the removal of the child to a place of safety or his or her commitment to an approved residential home or the custody of a social welfare officer or other suitable person.¹²⁰ **Lesotho’s** Children’s Protection and Welfare Bill stipulates that a social worker, police officer or chief may order the temporary removal of a child in need to a place of safety. The child must be brought from the place of safety before the Children’s Court within 48 hours, or, in the event that is not possible, within a period of time not exceeding seven days.¹²¹

Child protective legislation and international standards broadly address children’s physical, mental, and emotional health and often include provisions for maternal health as well. The **Convention on the Rights of the Child** calls on the State to “recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health” and in particular to take appropriate measures to “(a) diminish child and infant mortality; (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the

¹¹⁶ Child Protection Model Law, art. 3.

¹¹⁷ Child, Youth and Family Enhancement Act, Chapter C-12 of Revised Statutes of Alberta 2000 (Canada), Part 5, Section 1.

¹¹⁸ The Children’s Act, Act 560 of 1998 (Ghana), Section 18.

¹¹⁹ Child Protection Model Law, art. 15.

¹²⁰ The Children’s Act, Act 560 of 1998 (Ghana), Section 19.

¹²¹ Children’s Protection and Welfare Act, Act. No. 7 of 2011 (Lesotho), Section 74.

application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; (d) To ensure appropriate pre-natal and post-natal health care for mothers; (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents; (f) To develop preventive health care, guidance for parents and family planning education and services.”¹²² The **Child Protection Model Law** protects the “physical, mental, and emotional health of children,” guarantees “access to health, medical assistance, care, information, and treatment,” and prohibits parents and guardians from “intentionally refus[ing] any required preventive or necessary medical exam and treatment for their child regardless of their religious and moral beliefs.”¹²³ The **Democratic Republic of Congo’s** Law Regarding the Protection of Children stipulates that “any parent, guardian or legal guardian who willfully refuses to provide their child with medical care, especially preventive vaccinations, is punishable by imprisonment for up to five days and a fine of fifty thousand Congolese francs, or one of these penalties.”¹²⁴ As part of its child protective legislation, **Colombia’s** Code of Childhood and Adolescence guarantees care for women during pregnancy, childbirth, and comprehensively for the first five years of the child’s life.¹²⁵

The **Convention on the Rights of the Child** guarantees children’s right to education and calls on States to “make primary education compulsory and available free to all” and to “take measures to encourage regular attendance at schools and the reduction of drop-out rates.”¹²⁶ **Indonesia’s** Law on Child Protection mandates that “every child shall have the right to an education and training in the context of his personal and intellectual development based upon his interests and talents” and that “the government shall be responsible for providing free education, or assistance, or special services to children from families of limited means, neglected and/or abandoned children, and children who live in remote areas.”¹²⁷

Many laws also include specific provisions against corporal punishment in schools. **Costa Rica’s** Code of Children and Adolescents states that “Children and adolescents have a right to receive counseling, education, care and discipline from their mother, father or tutor, as well as from their caretakers or the personnel from educational and health centers, shelters, youth detention or any other type of centers, that in no way represents

¹²² U.N. Convention on the Rights of the Child, art. 24.

¹²³ Child Protection Model Law, art. 35 (1).

¹²⁴ Law Regarding the Protection of Children, Law No. 09/001 of 2009 (Democratic Republic of Congo), art. 196. <https://ihl-databases.icrc.org/en/national-practice/law-protection-child-2009>

¹²⁵ Code of Childhood and Adolescence, Law 1098 of 2006 (Colombia), art. 41.

¹²⁶ U.N. Convention on the Rights of the Child, art. 28.

¹²⁷ Law on Child Protection, Law No. 23 of 2002 (Indonesia), art. 9 and 53.

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=63103

an authorization of any sort to these parties for the use of corporal punishment or degrading treatment.”¹²⁸ Liechtenstein’s Children and Youth Act guarantees the right to “education/upbringing without violence: corporal punishment, psychological harm and other degrading treatment are not accepted.”¹²⁹

3. Recommendations:

- This provision should stipulate that at a minimum this law guarantees all the rights enshrined in the Convention on the Rights of the Child and any other international conventions ratified by Iraq.
- Remove the medical testing requirement for husbands. Consider replacing this with healthcare guarantees for pregnant and post-partum mothers.
- Remove the suggestion that a health card can be used for enrolling in schools and sports teams.
- Take stronger action than simply publishing information against practices that are harmful to children, including smoking and environmental pollution.
- Merge the Seventh and Eighth Provisions of this Article into one section on Educational Rights.
- Include the stipulation that public education is free-of-charge, and that primary school education is compulsory.

4. Suggested Redraft Language:

Provision -4-

Under this law, the state guarantees to children the following:

1. At a minimum, the standard protection provided by the Convention on the Rights of the Child and all other international conventions ratified by this State;
2. The inherent right to life;
3. The right to identity, including:
 - (a) The right to be registered immediately after birth;
 - (b) The child’s right to a name, a nationality, and to know and be cared for by his or her parents as far as possible;
 - (c) The right to a Unified ID document, regardless of family status or citizenship;
4. The right to freedom of expression, belief, thought, religion, and conscience;

¹²⁸ Code of Children and Adolescents, Law No. 7739 of 1998, as amended by Law No. 8654 of 2008, (Costa Rica), art. 24 bis.

¹²⁹ The Children and Youth Act, 2008 (Liechtenstein), art. 3 (1) (b).

5. The right to family life, including:
 - (a) That the family shall be primarily responsible for the care and protection of children, and receive assistance or intervention from the State in meeting this obligation only when the family is unfit, unwilling, or unable to protect children from abuse, neglect, maltreatment, or exploitation;
 - (b) That children shall not be separated from their parents or legal guardians against their will, except when competent authorities determine, subject to judicial review and in accordance with applicable law and procedures, that such separation is in the best interests of the child;
 - (c) That a child who is separated from one or both parents has the right to maintain regular personal relations and direct contact with both parents, unless this is contrary to the best interests of the child;
 - (d) That the State shall enact laws to provide for permanent legal care for children without parents, such as guardianship, adoption, and its functional equivalents;
6. The right to health care, including:
 - (a) The protection of the physical, mental, and emotional health of all children;
 - (b) The right to enjoy the highest attainable standard of health and to access facilities for the treatment of illness and rehabilitation of health;
 - (c) Free healthcare from birth to 18 years of age, organized through a health card issued by the Ministry of Health at the birth of the child;
 - (d) State-provided medical assistance for children with chronic or incurable diseases or disabilities;
 - (e) State-provided mental health care for all children;
 - (f) State commitments to diminish infant and child mortality, including:
 - (i) Routine medical screenings for all newborns;
 - (ii) Pre-natal and post-natal healthcare for mothers;
 - (g) Laws and regulations against practices harmful to children's health, including smoking and environmental pollution;
 - (h) Healthcare providers in schools;
7. The right to education, including:
 - (a) Free and accessible public schooling from kindergarten until high school graduation;
 - (b) Compulsory primary school attendance;
 - (c) Measures to encourage regular attendance in secondary school and reduce the drop-out rate;
 - (d) Accessible higher education opportunities;
 - (e) Accessible educational and vocational information and guidance available to all children;
 - (f) The prohibition of corporal punishment in schools;
 - (g) Mechanisms to report any complaints or violations of children's rights and improving schools' capacity to deal with these complaints and violations;
 - (h) Free assistance and provisions in public schools for children with special needs;
 - (i) Free school lunches from kindergarten until high school graduation;

- (j) Curricula that develops the child's physical and mental abilities;
- (k) Curricula promoting self-esteem and encouraging the development of children's personalities, skills, talents, and interests;
- (l) Sufficient time to rest and play and practice games and activities appropriate for their age;
- (m) Establishing and implementing criteria for evaluating teachers' performance;
- (n) Establishing libraries, educational forums, theatres, and cinemas in provincial centres, districts, and sub-districts under guidelines issued by the Minister of Tourism, Culture, and Monuments;
- (o) Allocating audible, visual, and readable media for educational and social activities for children;
- (p) Promoting digital literacy to protect children from online abuse, through mass media informational campaigns and workshops and seminars in schools and community institutions.

E. Provision 5 of Draft Law:

Provision -5- the state is responsible for protecting the children by banning the following:

First: recruiting or involving them in military operations or conflicts.

Second: any form of sexual exploitation.

Third: drugs, alcohol, smoking, or any use of all the latter.

Fourth: involving children in dangerous labor or industry which harm their health and in any form.

Fifth: selling or importing video games promoting violence.

Sixth: beggary.

Seventh: publishing or displaying any flyers or readable, visual, audible works that promote behavioural or moral deviation.

Eighth: their entrance to cinemas and similar public places if the show does not their age. Owners or managers of such places are responsible for announcing that certain content is not for children.

Ninth: their entrance or work in nightclubs, casinos, or drinking alcohol.

Tenth: all forms of school violence.

1. Commentary on Provision 5:

This provision enacts 10 proscriptions aimed at protecting children, ranging from prohibitions against entering nightclubs and casinos to bans on military recruitment and involvement. One noticeable omission in this draft is the means of enforcing these bans. The draft does not specify which government ministries or organizations are responsible for implementing the prohibitions or any penalties for their violation. Without robust enforcement mechanisms it is doubtful whether these bans can sufficiently protect children from abuse, exploitation, or mistreatment.

The draft does not guarantee the application of these prohibitions in a manner consistent with the child's best interests – the primary consideration in any actions involving children as mandated in the Convention on the Rights of the Child.¹³⁰ For instance, the first ban, on recruiting and involving children in military operations or conflicts, does not establish protections for any children who have been involved in conflict. The Convention on the Rights of the Child enjoins states to “take all feasible measures to ensure protection and care of children who are affected by an armed conflict” and “to promote physical and psychological recovery and social reintegration of a child victim...[of] armed conflicts.”¹³¹

Troublingly, the draft's ban on child involvement in armed conflict could imply criminality in child soldiers. This is especially problematic given both the history and prevalence of child soldiers in Iraq and the current legislative and judicial context. For instance, there are no age restrictions in the Anti-Terrorism Law (see Commentary on Provision 3).¹³² Moreover, the overwhelming number of suspected Da'esh members and collaborators has “led to improper legal handling of former child soldiers.”¹³³ This law should ensure not only that children are not conscripted or recruited into conflicts, but also that former and existing child soldiers receive justice in line with their rights as children (see the Proposed New Article guaranteeing rights to juvenile offenders in the Suggested Redraft of Provision 3).

As written, the third ban on drugs, smoking, and alcohol seems to apply more broadly as a general ban against these activities, rather than a ban on these activities relating to children.

The sixth ban, against “beggary,” is problematic for similar reasons to the ban on child involvement in armed conflict. A proscription against begging could imply criminality in child beggars. The Juvenile Welfare Code already treats “vagrancy,” including begging, as a juvenile offence on par with “deviation of behavior” and stipulates that vagrant children appear before the Juvenile Court.¹³⁴ This contravenes the responsibility of the state to protect children from all forms of neglect outlined in the Convention on the Rights of the Child.¹³⁵ The Committee on the Rights of the Child recommends that all legislation,

¹³⁰ U.N. Convention on the Rights of the Child, art. 3.

¹³¹ U.N. Convention on the Rights of the Child, art. 38-39.

¹³² Mohamed Makalou, *The Situation Regarding Child Soldiers in Iraq*, Borgen Project (Sept. 10, 2021), <https://borgenproject.org/situation-regarding-child-soldiers-in-iraq/#:~:text=The%20use%20of%20child%20soldiers,as%2014%20years%20of%20age>; Anti-Terrorism Law, Law No. 13 of 2005 (Iraq), art. 4.

¹³³ John Millock, *After ISIL: Justice and Protection for Children in Iraq*, *Journal of Middle Eastern Politics & Policy* (May 9, 2018), <https://jmepp.hkspublications.org/2018/05/09/after-isil-justice-and-protection-for-children-in-iraq/>

¹³⁴ Juvenile Welfare Code, Law No. 76 of 1983 (Iraq), art. 24-26.

¹³⁵ U.N. Convention on the Rights of the Child, art. 19.

including laws dealing with vagrancy, be reviewed to ensure that children are not considered offenders.¹³⁶

The seventh ban could be problematic given its breadth. This provision gives wide discretion to ban print or other media under the guise of “protecting children,” which could have broader implications for freedom of expression and censorship in Iraq.

There are proscriptions missing from this provision that, if included, would help protect children’s rights and mitigate the harmful effects of current legislative gaps and loopholes. These include bans on child marriage and female genital mutilation. Existing legislation relating to marriage does not protect children’s best interests. Child marriage is not criminalized in Iraq. The Personal Status Act states that individuals must be at least 18 years old to marry but provides a loophole allowing children as young as 15 years old to marry with the permission of a judge.¹³⁷ However, child marriage is deleterious to the health and well-being of children and has a disproportionate impact on girls. UNICEF recognizes child marriage as a human rights violation, and states that girls who marry before the age of 18 are more likely to suffer from domestic abuse, more likely to suffer medically and economically, and less likely to remain in school. Further, motherhood at a very young age increases the risk of maternal death and infant mortality and morbidity, threatening the right to life of both the child mother and her baby guaranteed by the Convention on the Rights of the Child.¹³⁸

Similarly, there is no national law against Female Genital Mutilation. This practice represents a form of discrimination against girls, which violates their rights.¹³⁹ Article 24, Paragraph 3 of the **Convention on the Rights of the Child**, requiring states to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children,” was included due to “particular concern over female genital mutilation.”¹⁴⁰

2. Comparative Practice:

Laws prohibiting child involvement in armed conflict can emphasize the protective intention of the legislation. **The Child Protection Model Law** guarantees protection for any child belonging to any regular or irregular, state or non-state armed group, including those providing non-combat support functions such as spying, scouting, and carrying

¹³⁶ Implementation Handbook for the Convention on the Rights of the Child, p. 270-271.

¹³⁷ Personal Status Law, Law No. 188 of 1959 (Iraq), art. 7, 8.

https://www.peacewomen.org/sites/default/files/lawref_iraqpersonalstatuslaw1959_aba_0.pdf

¹³⁸ Child Marriage Around the World, UNICEF, <https://www.unicef.org/stories/child-marriage-around-world> (last visited April 13, 2023); Implementation Handbook for the Convention on the Rights of the Child, p. 88.

¹³⁹ Implementation Handbook for the Convention on the Rights of the Child, p. 20

¹⁴⁰ U.N. Convention on the Rights of the Child, art. 24; Implementation Handbook for the Convention on the Rights of the Child, p. 344.

messages, and those recruited for sexual exploitation and forced marriage.¹⁴¹ **Indonesia's** Law on Child Protection stipulates that every child is “entitled to protection” from involvement in war, social unrest, and armed conflict.¹⁴² **Kenya's** Children's Act prohibits child involvement in any hostilities and requires “respect for and protection and care of children” during armed conflict as well as “rehabilitation care, recovery and re-integration into normal social life” for any child who is a victim of armed conflict.¹⁴³

Similarly, child protective laws against begging should emphasize that it is a form of economic exploitation that victimizes children, not a crime they commit. **Tunisia's** Code of Child Protection defines “the exposure of a child to begging” as “economic exploitation.”¹⁴⁴ **Ghana's** Children's Act states that a child “who is begging or receiving alms” is “in need of care and protection.”¹⁴⁵ **Egypt's** Promulgating the Child Law states that “acts of begging include offering for sale trivial goods and services, or performing acrobatic shows and other activities not considered an appropriate source of living” and that a child found begging “shall be considered at risk.”¹⁴⁶ The **Democratic Republic of Congo's** Law Regarding the Protection of Children specifies that a child found begging or wandering “is considered to be in a difficult situation which gives the benefits of a special protection.”¹⁴⁷

Some countries and regions have banned child marriage, female genital mutilation, or both. The **African Union's** Charter on the Rights and Welfare of the Child prohibits child marriage.¹⁴⁸ So does **Ghana's** Children's Act.¹⁴⁹ So does **Sierra Leone's** Child Right Act.¹⁵⁰ **Sweden** bans female genital mutilation and child marriages,¹⁵¹ as do **Kenya**,¹⁵² and **South Africa**.¹⁵³ The **Kurdistan Region of Iraq** has also banned child marriage and female genital mutilation.¹⁵⁴

¹⁴¹ Child Protection Model Law, art. 55.

¹⁴² Law on Child Protection, Law No. 23 of 2002 (Indonesia), art. 15.

¹⁴³ The Children's Act, Act No. 8 of 2001 (Kenya), Section 10.

¹⁴⁴ Code de la Protection de l'Enfant, Loi no. 95-92 of 1995 (Tunisia), art. 26.

¹⁴⁵ Children's Act, Act 560 of 1998 (Ghana), Section 18.

¹⁴⁶ Promulgating the Child Law, Law No. 12 of 1996, as amended by Law No. 126 of 2008 (Egypt), art. 96..

¹⁴⁷ Law Regarding the Protection of Children, Law No. 09/001 of 2009 (Democratic Republic of Congo), art. 62.

¹⁴⁸ African Union, African Charter on the Rights and Welfare of the Child (1990, entered into force on Nov. 29, 1999), art. 21. https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf

¹⁴⁹ Children's Act, Act 560 of 1998 (Ghana), Section 14.

¹⁵⁰ The Child Right Act, 2007 (Sierra Leone), Section 34, Section 46.

¹⁵¹ **Children's Rights**, Informationsverige (last updated Dec. 20, 2022), <https://www.informationsverige.se/en/om-sverige/individens-rattigheter-och-skyldigheter/barnets-rattigheter.html>

¹⁵² The Children's Act, Act No. 8 of 2001 (Kenya), Section 14.

¹⁵³ Children's Act, Law No. 38 of 2005 (South Africa), Section 12. <https://www.gov.za/documents/childrens-act#:~:text=to%20prohibit%20child%20abduction%20and,provide%20for%20matters%20connected%20therewith.>

¹⁵⁴ Act of Combating Domestic Violence in Kurdistan Region – Iraq, Act no. 8 of 2011 (Kurdistan), art. 2; http://www.ekrg.org/files/pdf/combat_domestic_violence_english.pdf

3. Recommendations:

- The ban on child involvement in armed conflict should be reworded to ensure that the rights of child soldiers are protected.
- The ban on smoking, alcohol, and drugs should be reworded to apply specifically to children.
- The ban on “begging” should be reworded, since it implies criminality on the part of the child.
- The ban on publishing or displaying material that promotes behavioural or moral deviation should be removed or reworded so it does not threaten freedom of expression in Iraq.
- The law should explicitly enshrine the principle of non-punishment of child victims.
- Bans on child marriage and female genital mutilation, both of which violate the rights of girls, should be legislated.

4. Suggested Redraft Language:

1. The state is responsible for protecting children by banning the following:
 - (a) Recruitment or direct involvement of children in armed conflicts or military operations. This ban is intended to protect children, not punish child soldiers. The protections in this law extend to children who are part of any kind of regular or irregular, state or non-state armed group in any capacity, including scouts, spies, cooks, messengers, and victims of forced marriage or sex trafficking.
 - (b) All forms of sexual abuse and sexual exploitation, including:
 - (i) Paying to engage in sexual activities with children;
 - (ii) Child sex trafficking
 - (iii) All sexual activities involving children, with a close-in-age exception for teenagers aged 14 to 18 years who consent to sexual activities with a partner who is no more than 4 years older and who is not in a position of trust, authority, or dependency relative to the teenager;
 - (iv) The production, distribution, and possession of materials depicting child sexual abuse.
 - (c) Giving or selling drugs, alcohol, or tobacco products to children.
 - (d) Child labor in any dangerous or unsuitable conditions which can harm children’s health or well-being, contrary to the provisions of this Law.
 - (e) Selling or importing video games promoting violence.

- (f) The economic exploitation of children, including:
 - (i) All forms of slavery, servitude, forced labor, and debt bondage;
 - (ii) All employment of children who have not attained the minimum age for employment;
 - (iii) Neglect leading to child begging.
 - (g) Admission of children to cinemas and other public places showing films or other media or material with a rating of age appropriateness higher than the child's age. The managers and owners of cinemas and similar establishments will be responsible for displaying age ratings for their content.
 - (h) Admission or employment of children in nightclubs, casinos, bars, or other establishments serving alcohol that are intended only for patrons over the age of 18 years.
 - (i) All forms of violence and corporal punishment against children, including in homes and schools.
2. While enacting these bans, the State respects the principle of non-punishment of child victims. Children involved in activities banned by this law, including participation in armed conflict, begging, sex trafficking, working in prohibited environments, smoking, drinking, or taking drugs, will not be penalized and will instead be treated as victims and offered protection, assistance, and rehabilitation as appropriate.

F. Provision 6 of Draft Law:

Provision -6- First- the state is responsible for providing social, psychological, medical, educational, and residential protection for children with family break-down or those who lost one of their parents or both, for any reason, and secure their entire needs.

Second-A- the minister is authorized to grant the child's caregivers or legal person a leave to provide alternative care for the child. Alternative care includes providing social, psychological, medical, and educational care for the child whose circumstances prevented him\ her from being raised in a normal family or who suffers from a family breakdown due to the loss of one of his\her parents or both.

-B- this leave's conditions are organized under guidelines issued by the Council of Ministers.

1. Comments on Provision 6:

The draft establishes state responsibility for children who are orphaned or removed from their parents and authorizes a “leave” for caregivers to provide alternative care. However, the draft is too vague to ensure the optimal implementation of these provisions. It does

not specify how the state will provide for orphans or children with family breakdown. This is concerning given the limited existing resources for such children, including a shortage of orphanages and the fact that adoption is not possible under Iraqi law, which only allows “guardianship” by extended family members or friends.¹⁵⁵

One of the rights enumerated in Provision 4 of this draft law is that children of “unknown lineage” may “join” families who wish to “adopt” them. It is not clear whether the intention of this draft is to establish a new legal form of adoption. If so, the procedures, processes and safeguards surrounding legal adoption need to be clearly legislated. If, however, the “adoption” envisioned in this draft is restricted to the existing system of “guardianship,” this entails other issues. The Juvenile Welfare Code enshrines gender discrimination by requiring “spouses” who “annex” a minor to provide financial support for a girl until she is married and a boy until he reaches an age when his peers are working, unless he is a student.¹⁵⁶ This discrepancy violates girls’ rights and may result in situations in which girls are encouraged to marry early in order to transfer financial support away from the guardian. This provision in the Juvenile Welfare Code also creates a dynamic that may encourage child labor for young boys, as guardians may cease financial support once the peers of the boy begin working. Additionally, the existing practice of guardianship is clearly insufficient to meet the needs of all children who have experienced family breakdown or lost their parents. Recently, the Iraqi High Commission for Human Rights reported that 5 million children are orphaned in Iraq.¹⁵⁷ Article 20 of the **Convention on the Rights of the Child** requires the state to protect and assist children who are temporarily or permanently deprived of their parents.¹⁵⁸ In order to fulfil this obligation, new and additional measures are needed. This law should specify what they are and how they will be funded and implemented.

2. Comparative Practice:

The **Convention on the Rights of the Child** stipulates that States must ensure “alternative care” for children temporarily or permanently deprived of their family environment, which may include “foster placement, kafalah of Islamic law, adoption or if necessary, placement in suitable institutions for the care of children.”¹⁵⁹

Many laws and international treatises establish principles of alternative care for children who need to be removed from their families. The **United Nations** has issued guidelines

¹⁵⁵ 2.17.8. *Children without a care-taker*, European Union Agency for Asylum (last updated January 2021), <https://euaa.europa.eu/country-guidance-iraq-2021/2178-children-without-care-taker#:~:text=Adoption%20is%20not%20possible%20under,last%20resorts'%20in%20Iraq>.

¹⁵⁶ Juvenile Welfare Code, Law No. 76 of 1983 (Iraq), art. 43.

¹⁵⁷ Fadhel al-Nashmi, *IHCHR Report: 5 Million Orphaned Children in Iraq*, Al-Awsat (Dec. 12, 2021), <https://english.aawsat.com/home/article/3354921/ihchr-report-5-million-orphaned-children-iraq>

¹⁵⁸ U. N. Convention on the Rights of the Child, art. 21.

¹⁵⁹ U. N. Convention on the Rights of the Child, art. 20.

for children’s alternative care. These include the responsibility of the State to ensure the child’s safety and to regularly review the appropriateness of the alternative care arrangement, and the State’s adherence to an “overall deinstitutionalization strategy” that prioritizes “family-based” settings of alternative care, especially for children under the age of three years.¹⁶⁰

The **Child Protection Model Law** emphasizes that removing a child from his or her family is a “measure of last resort” and that “regular and continued contact with the child’s family” should be facilitated except in circumstances where such contact is contrary to the child’s best interests. Other principles of alternative care outlined in the Model Law include avoiding multiple placements; placing siblings together whenever possible; giving preference to informal and family-based care over residential care; taking into account the views and wishes of the child; avoiding all form of detention or imprisonment in the alternative care location; and conducting a periodic review of the decision to remove the child from the family. The Model Law encourages states to “adopt an overall deinstitutionalization strategy which allows for the progressive elimination of large residential care facilities and the replacement by family-based care.”¹⁶¹

Australia’s Children, Youth and Families Act lays out “Best Interest Principles” for alternative care arrangements, including that the child may only be removed from a parent when “there is an unacceptable risk of harm” and that placing the child with an appropriate family member must be considered before any other option.¹⁶² **Germany’s** Civil Code states that separating a child from his or her parents is “admissible only if the danger cannot be countered in another way, not even through public support measures.”¹⁶³ **Sweden’s** Social Services Act requires the social welfare committee to review the necessity of alternative care arrangements for a child at least once every six months.¹⁶⁴

Legislation also addresses situations in which children are permanently separated from their families. The **Child Protection Model Law** calls on the State to “enact laws to provide for permanent legal care for children such as guardianship, adoption, and its functional equivalents” and to “provide safeguards and standards that ensure the protection of the child whether through national or inter-country adoption” and

¹⁶⁰ United Nations Guidelines for the Alternative Care of Children, Human Rights Council, June 14, 2009, UN Doc. A/HRC/11/L.13, art. 5, 21, 22. <https://resourcecentre.savethechildren.net/pdf/5416.pdf>

¹⁶¹ Child Protection Model Law, art. 19.

¹⁶² Children, Youth and Families Act, Act No. 96 of 2005, as amended in 2009 (Australia/Victoria), Section 10.

¹⁶³ Civil Code in the version promulgated on 2 January 2002 (Federal Law gazette [Bundesgesetzblatt]/ p. 42, 2902; 2003/p. 738), last amended by statute of 28 September 2009/3161 (Germany), Section 1666a. https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html

¹⁶⁴ Social Services Act, Act 452 of 2001 (Sweden), Chapter 6, Section 8. https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=60673

“laws/regulations for the accreditation of adoption agencies and the prohibition of improper financial gain in the adoption process.”¹⁶⁵

3. Recommendations:

- Specify how the state will care for children temporarily or permanently separated from their parents or families.
- Include principles of alternative care in the law.
- Clarify that state support for children without parents should continue until the age of 18, without being contingent on marital or employment status.
- The Juvenile Welfare Code should also be amended to abrogate any provisions that conflict with the proposed Article 6 (see Proposed 15 in the Suggested Redraft Section of Provisions 11 through 14).

4. Suggested Redraft Language:

1. The State is responsible for providing alternative care arrangements for children who are temporarily or permanently separated from their parents for any reason. These arrangements must ensure that all children’s rights as enshrined in this Law are protected and provided for, including rights to healthcare and education.
2. Removing children from their parents shall be seen as a measure of last resort and be temporary for the shortest possible duration unless permanency is in the best interests of the child.
3. If a child is removed from his or her parents, the State shall adhere to the following principles in arranging alternative care for the child:
 - (a) Preference shall be given to informal and family-based care over institutional or residential care;
 - (b) Multiple placements of the child shall be avoided as much as possible;
 - (c) Siblings shall preferably be placed together;
 - (d) Regular and continued contact with the child’s parents shall be encouraged and facilitated unless it is against the best interests of the child, such as in cases where a parent abused or exploited the child;
 - (e) The child’s immediate safety and well-being as well as his or her long-term care and development will be taken into consideration;
 - (f) The wishes and views of the child in choosing a place of alternative care will be heard and respected;

¹⁶⁵ Child Protection Model Law, art. 20.

- (g) Care-givers shall ensure the safety, health, development, and well-being of the child and the child's rights to education, leisure and play, and to all other protections in accordance with this Law;
 - (h) Arrangements for alternative care will not involve the deprivation of the child's liberty or any detention or imprisonment;
 - (i) Decisions to place a child in alternative care will be periodically reviewed and the possibility of returning the child to his or her parents will be evaluated.
4. In cases where children have been permanently separated from their parents or orphaned, the State will arrange permanent legal care through guardianship, adoption, or its functional equivalent; provide safeguards and standards to ensure the protection and rights of the child; and prohibit improper financial gain in the process of adoption or guardianship.
 5. The State undertakes to provide all necessary support and financial assistance for children separated from their parents until such time as the child returns to the care of his or her parents or reaches the age of 18 years. This State support is not contingent on the employment or marital status of the child.
 6. The care-giver or legal guardian of a child placed in an alternative care arrangement temporarily or permanently may be granted a temporary paid leave from work to care for the child, including attending to the psychological, physical, medical, and educational needs of the child. The conditions for this leave will be stipulated by the Council of Ministers.

G. Provisions 7 and 8 of Draft Law:

Provision-7-First- a committee inside the MoLSA to be formed and named (the National Childhood Committee) and to be headed by the minister of MOMD, and

A- one of his deputies as a member and deputy to the head of this committee.

B- Representatives from the following bodies, as members, whose vocational level is not lower than the first:

- 1. Ministry of Finance.*
 - 2. Ministry of Interior.*
 - 3. Ministry of Education.*
 - 4. Ministry of Health and Environment*
 - 5. Ministry of Planning.*
 - 6. Iraqi Commission of Media and Communication.*
 - 7. High Commission of Human Rights.*
 - 8. Kurdistan Region.*
 - 9. Childhood Protection Department.*
- C- Two members from the civil society organizations specialized in childhood affairs and formally registered as an organization. They are to be nominated by the Department of Non-Governmental Organizations in the General Secretariat of Ministers Council and to be chosen by the committee and their membership will last for two years.*

Second- the committee can ask for the help of specialized and experienced individuals whenever needed, and to ensure that the decisions made are appropriate. However, they do not have the right to vote, and the minister allocates a certain amount of money in exchange for their service.

Third- the committee should have a secretary, assigned by the head of the committee and from the Department of Childhood Protection.

Fourth- the committee's duties are:

- A- Outlining following-up on the general policy for Childhood Protection.*
- B- Coordinating with relevant bodies to implement the general policy for childhood protection.*
- C- Studying the in-force legislation on childhood and issuing recommendations to whether amend or cancel or suggest new legislation.*
- D- Cooperating with national and international bodies specialized in doing necessary research studies and statistics on children through the assistance of national and foreign experts in the field of childhood protection.*
- E- Recommending Iraq's accession to regional and international conventions on child's rights.*
- F- Studying cases or issues referred by the head of the committee.*

Fifth: the committee convenes at least once a month, through an invitation by the head of the committee. The head has the right to hold a meeting whenever necessary.

Sixth: quorum is achieved when two-thirds of the committee's members are present. Decisions shall be taken by a majority of the number of members present. In the event of equal votes, the side with which the head of the committee voted shall prevail.

Provision-8-First- a new department, named Childhood Protection Department, in the MoLSA shall be formed and be run by an employee with a general manager degree who, at least, should hold a BA degree with 15 years of experience and shall be appointed according to the law.

Second- the Department of Childhood Protection's duties are:

- 1. Implementation of the general policy for child protection stipulated by the National Childhood Committee.*
- 2. Detection of violations against children and taking the necessary measures to tackle them in coordination with relevant authorities.*
- 3. Follow up on the implementation of the right stipulated in this law by the relevant authorities and submit reports related to that to the National Childhood Committee.*
- 4. Improvement of the services provided in the field of Childhood Protection in coordination with relevant authorities.*
- 5. Presentation of system, guidelines, and law amendment projects related to childhood protection.*

Third- divisions and duties of the Childhood Protection Department are formed through instructions by the minister of Labor and Social Affairs.

1. Comments on Provisions 7 and 8:

The formation of specialized institutions to protect children's rights is welcome and necessary. However, it is vital to ensure that these institutions are adequately funded and staffed with qualified personnel and that their roles and responsibilities are clearly defined.

The draft envisions the formation of two new institutions: the National Childhood Committee and a Childhood Protection Department. The National Childhood Committee is composed of 13 members drawn from different government ministries and civil society organizations. Its responsibilities relate primarily to planning and oversight, including designing policies for childhood protection, coordinating their implementation, suggesting amendments to current legislation and proposing new legislation, and studying "cases" referred to it by the Head of the Committee. The Childhood Protection Department, located in the Ministry of Labor and Social Affairs, is tasked with implementing the policy of the National Childhood Committee and reporting to it, detecting and addressing offences against children in conjunction with relevant authorities, improving child protection services, and presenting projects, guidelines and legal amendments related to childhood protection.

It is not clear that the institutions created in this draft will adequately ensure the protection of children's rights. Childhood protection is an area requiring specialized expertise. The National Childhood Committee, however, is formed primarily of government representatives who may not have any specialist knowledge and whose ministries may have limited experience with children's issues, such as the Ministry of Finance. The inclusion of two members of non-government organizations specializing in childhood affairs is welcome, yet their influence is likely to be limited compared with the larger number of government representatives sitting on the committee. The Committee can ask for expert opinion and assistance "whenever needed," but there are no specific directives for how often the Committee needs to consult with experts and these experts are explicitly denied voting rights on the Committee.

The composition of the Childhood Protection Department is not specified beyond saying it will be formed and run by an employee with a general manager degree who shall hold at least a bachelor's degree and have 15 years of experience. It is not specified whether the degree and experience of this department head need to be in fields relevant to children's issues and protection. Furthermore, this draft does not make any stipulations about the gender composition of the National Childhood Committee or the Childhood Protection Department. The appointment of qualified female personnel to both the Committee and the Department should be ensured, considering that many forms of child abuse, such as domestic violence and sexual exploitation, disproportionately affect girls.

This draft does not include budgetary allocations for the creation and maintenance of these new institutions. It also fails to specify how the Childhood Protection Department will implement the policy for child protection stipulated by the Committee, how it will

“detect” violations of children’s rights, and what the “necessary measures” it should then take in these cases might be. Instead, it leaves the formation of divisions and duties within the Department to the Minister of Labor and Social Affairs. The draft does not establish the frequency with which the Childhood Protection Department must submit reports to the Committee, nor what actions the Committee should take in response to these reports. It is also not clear to which government entity (or other entity) the Department should present “systems, guidelines, and law amendment projects”. Additionally, it is not clear whether the Committee is intended to have any adjudicative functions. The Committee can “study cases or issues” referred to it, but there is no provision for any actions it might take in these cases.

2. Comparative Practice:

The **Child Model Protection Law** calls for the establishment of the Highest Childhood Protection Agency (HCPA) and Child Protection Committees (CPCs). The HCPA will have “the status of a legal person” and be funded by the state. It will “coordinate, monitor, supervise, and encourage the activities of the Child Protection Committees...and all child protection service providers.” It will also propose legislation and take part in legislative draft deliberations relating to child protection; allocate financial resources to the CPCs, guarantee that all its members and all members of the CPCs have expertise related to child protection and receive continual training; and inform the public of its activities. Furthermore, the HCPA will “conduct and coordinate research and training activities.” The Child Protection Committees will be established on the regional level and be responsible for implementing national child protection policy and the measures of this Law. In conjunction with other child protection service providers, the CPCs will organize a “formal response system to receive and coordinate reported cases of child neglect, abuse, maltreatment, and exploitation, including through maintaining a helpline and/or website to advise and assist actual or potential child victims;” direct the “investigation and intervention measures for the reported cases;” manage support programs for parents and legal guardians who are unfit, unwilling, or otherwise in need of help protecting children; administer a system of safe alternative accommodation for child victims; operate “centers of medical and psychological assistance” for child victims; coordinate with the system of free legal aid for children; and establish programs of “reintegration and rehabilitation for child victims.” The CPCs will regularly report all activities to the HCPA.¹⁶⁶

Along these lines, **Iceland’s** Child Protection Act establishes a Government Agency for Child Protection (GACP) and Child Protection Committees. The Government Agency for Child Protection, an autonomous agency under the authority of The Minister of Social Affairs, is tasked with “administration within the field covered by the Act.” Its duties include coordinating and strengthening child protection work in Iceland; advising the

¹⁶⁶ Child Model Protection Law, art. 6-8.

Minister of Social Affairs on policy-making in the field; ensuring research and training in child protection; providing guidance on interpreting and implementing the Child Protection Act; issuing an annual report; and monitoring the work of the Child Protection Committees.¹⁶⁷ These Child Protection Committees are tasked with monitoring and investigating the “circumstances, behaviour and conditions of upbringing of children” and applying child protection measures stipulated in this Act.¹⁶⁸ They must submit a yearly report to the Government Agency for Child Protection, including information on the number of cases the CPC has dealt with in the previous calendar year, “their nature and how they were resolved.” If the GACP finds that a child protection committee is “not complying with the law in carrying out its work,” the GACP may provide procedural guidance and offer suggestions for improvement and enjoin the committee to fulfil its duties should these suggestions and guidance be ignored.¹⁶⁹

Other countries have created similar agencies and child protection committees. **Thailand’s** Child Protection Act establishes a National Child Protection Committee, a Bangkok Metropolis Child Protection Committee, and Provincial Child Protection Committees. The responsibilities of the National Child Protection Committee include advising the Minister of Social Development and Human Security on policies, plans, and budgets relating to children’s rights; issuing regulations on children’s protection measures; and monitoring and evaluating the Bangkok Metropolis Child Protection Committee and the Provincial Child Protection Committees. The duties of the Bangkok Metropolis Child Protection Committee and the Provincial Child Protection Committees include inspecting nurseries, remand homes, welfare centers, rehabilitation centers and other social welfare institutions; fundraising for social welfare and child protection; examining and summoning people in cases of child abuse; and monitoring the implementation of child assistance.¹⁷⁰

Egypt’s Promulgating the Child Law creates a General Committee for Childhood Protection in each Governate to formulate child protection policy and monitor its implementation, as well as sub-committees for childhood protection within the jurisdiction of each department or police district, tasked with monitoring all cases of children at risk and intervening preventatively or therapeutically in these cases as necessary.¹⁷¹ **Bulgaria’s** Child Protection Act creates a State Agency for Child Protection funded by the state budget and tasked with the “governance, coordination and control of child protection activities.” Its functions include, among others, coordinating the implementation of child protection policies; providing financial resources to child protection departments; proposing legislation and deliberating on legislative drafts related to child protection; and developing and maintaining a national information system on children in need of protection, children eligible for adoption, and non-profit

¹⁶⁷ Child Protection Act Law No. 80 of 2002 (Iceland), art. 7.

¹⁶⁸ Child Protection Act Law No. 80 of 2002 (Iceland), art. 12.

¹⁶⁹ Child Protection Act Law No. 80 of 2002 (Iceland), art. 8.

¹⁷⁰ Child Protection Act, B.E. 2546 of 2003 (Thailand), Section 7, 14, 16, 17, 20.

¹⁷¹ Promulgating the Child Law, Law No. 12 of 1996, as amended by Law No. 126 of 2008 (Egypt), art. 97.

organizations working in child protection.¹⁷² **Kenya's** Children's Act establishes a Council to "exercise general supervision and control over the planning, financing and coordination of child rights and welfare activities."¹⁷³ **Tunisia's** Code for the Protection of the Child creates a child protection delegate in each governate with a mission of preventative intervention in cases of suspected child abuse.¹⁷⁴

Some countries specify the membership of these agencies and committees, including experts in the field and women. In **Iceland**, Child Protection Committees, comprising five members and five alternates, are elected by the municipal councils. These committees "shall generally comprise both men and women." Members should have a "good understanding of the matters dealt with by child protection committees." Efforts should be made to elect a lawyer.¹⁷⁵ The National, Bangkok Metropolis, and Provincial Child Protection Committees in **Thailand** must include in their membership two experts with no less than 7 years of professional experience from each of the following fields: social welfare, teaching, psychology, law, and medicine. No less than one third of the members must be women.¹⁷⁶ In **Colombia**, Family Defenders, who are in charge of protecting, guaranteeing, and restoring children's rights, must be a practicing lawyer; hold a postgraduate degree in family law, civil law, administrative law, constitutional law, procedural law, criminal law, human rights, or social sciences; and have two years of experience related to the position's functions.¹⁷⁷

Some countries mandate specialized training for institutions and authorities working in the field of child protection. For instance, **Colombia's** Law mandates the creation and integration of mandatory training on children's rights, child development, and national and international standards and procedures into the academic program of police training schools.¹⁷⁸ **Botswana's** Children in Need of Care Regulations stipulate training for social workers, health care workers, home economists, and officers responsible for training children.¹⁷⁹

3. Recommendations:

- Consider reorganizing the structure and functions of the National Childhood Committee and the Childhood Protection Department.

¹⁷² Child Protection Act, 2002, as amended in 2005 (Bulgaria), art. 17, 19. [https://archive.crin.org/en/library/legal-database/bulgaria-child-protection-act-2000.html#:~:text=\(1\)%20Every%20child%20has%20a,mental%2C%20moral%20and%20educational%20development.](https://archive.crin.org/en/library/legal-database/bulgaria-child-protection-act-2000.html#:~:text=(1)%20Every%20child%20has%20a,mental%2C%20moral%20and%20educational%20development.)

¹⁷³ The Children's Act, Act No. 8 of 2001 (Kenya), Section 32.

¹⁷⁴ Code de la Protection de l'Enfant, Loi no. 95-92 of 1995 (Tunisia), art. 28, 30.

¹⁷⁵ Child Protection Act Law No. 80 of 2002 (Iceland), art. 10, 11.

¹⁷⁶ Child Protection Act, B.E. 2546 of 2003 (Thailand), Section 7, 16, 17.

¹⁷⁷ Code of Childhood and Adolescence, Law 1098 of 2006 (Colombia), art. 79-80.

¹⁷⁸ Code of Childhood and Adolescence, Law 1098 of 2006 (Colombia), art. 90.

¹⁷⁹ Children in Need of Care Regulations, 2005 (Botswana), Section 38.

<https://www.botswanalaws.com/consolidated-statutes/principle-legislation/children-s>

- Reduce the number of ministry representatives and increase the membership of experts in childcare and child protection on the Committee and ensure that members of the Childhood Protection Department have relevant expertise.
- Insert provisions requiring female membership in both the Committee and the Department.
- Clarify the system of monitoring and evaluating the implementation of child protection measures.
- Specify the duties of the Child Protection Department, including investigation and intervention in cases of child abuse, and ensure that it operates branches or committees in every governate and major population center.
- Insert budgetary provisions to fund the establishment and work of the Committee and the Department.

4. Suggested Redraft Language:

Provision 7:

This Law creates an autonomous agency under the authority of the Minister of Labor and Social Affairs to be named the National Childhood Committee.

1. The National Childhood Committee's membership shall consist of:
 - (a) A deputy of the Minister of Labor and Social Affairs to serve as head of the Committee;
 - (b) One representative from each of the following bodies to serve for a term of two years as a voting member:
 - (i) Ministry of Education
 - (ii) Ministry of Health and Environment
 - (iii) Ministry of Youth and Sport
 - (iv) Ministry of Justice
 - (v) Ministry of Interior
 - (vi) Childhood Protection Department
 - (vii) Public Prosecutors Office
 - (viii) Iraqi Commission of Media and Communication
 - (ix) High Commission of Human Rights
 - (x) Kurdistan Region
 - (c) Two members from formally-registered civil society organizations specialized in children's rights and child protection to be chosen by the National Childhood Committee from candidates nominated by the Department of Non-Governmental Organizations in the General Secretariat of Ministers Council, who will serve for a term of two years as voting members;

- (d) Three members who are experts in the field of child protection, with a minimum of 5 years of professional experience, who will serve for a term of two years as voting members;
 - (e) A secretary from the Child Protection Department, assigned by the head of the National Childhood Committee, who will serve as a non-voting member.
2. A minimum of 30% of National Childhood Committee voting members will be women.
 3. Quorum is achieved when two-thirds of the committee's members are present. Decisions shall be taken by a majority of the number of members present. In the event of equal votes, the side with which the head of the committee voted shall prevail.
 4. The National Childhood Committee will have the following duties:
 - (a) Coordinate, monitor, supervise, and encourage the activities of the Childhood Protection Department and all child protection service providers;
 - (b) Review in-force legislation relating to children's rights and issue recommendations for amendments or repeals;
 - (c) Propose new legislation and participate in deliberations on draft legislation relating to child protection;
 - (d) Conduct and coordinate research and training activities related to child protection;
 - (e) Develop and implement awareness-raising activities through national conferences, seminars, mass-media campaigns, and workshops in schools and community organizations;
 - (f) Cooperate with national and international bodies specializing in child protection research and analysis and with domestic and foreign experts in the field of child protection;
 - (g) Recommend Iraq's accession to regional and international conventions on children's rights;
 - (h) Review the reports of the Childhood Protection Department;
 - (i) Issue an annual report on its work that is available to the general public.
 5. The National Childhood Committee will convene at least once a month, and more often if the Head of the Committee deems it necessary.

Provision 8

This Law creates a new department within the Ministry of Labor and Social Affairs, named the Childhood Protection Department.

1. The Childhood Protection Department will be run by a person who holds a Bachelor's degree or other advanced degree in a field related to child protection

- and who has a minimum of 15 years of professional experience related to child protection.
2. The staff of the Childhood Protection Department will have expertise and professional experience in the field of child protection and include a minimum percentage of female members.
 3. The Childhood Protection Department will have the following duties:
 - (a) Implement the national child protection policies established by the National Childhood Committee;
 - (b) In cooperation with governmental and non-governmental child protection service providers, implement an operating system of child protection measures;
 - (c) License child protection service providers according to established regulations, ensure their presence in every governate and major population center, and ensure that there are female child protection service providers in each governate and major population center;
 - (d) Maintain a national helpline and/or website to assist actual and potential child victims free of charge;
 - (e) Organize a formal response system to receive reports of child neglect, abuse, maltreatment, and exploitation;
 - (f) Direct the investigation and intervention measures of child protection service providers in reported cases of child neglect, abuse, maltreatment, and exploitation;
 - (g) Administer a system of safe accommodation for actual or potential child victims and directing the system of alternative care;
 - (h) Operate centers of medical and psychological assistance for actual or potential child victims;
 - (i) Manage programs of support and assistance to parents, other family members, and guardians who are unfit, unwilling, or need help to protect children from neglect, abuse, maltreatment, and exploitation.
 4. The Childhood Protection Department will issue monthly reports on its work to the National Childhood Committee.

H. Provisions 9 and 10 of Draft Law:

Provision-9-First- anyone who commits the following acts shall be punished by imprisonment or fine:

- A. *Publishing or displaying or dealing with any printed, readable, audible, or visual materials that promote children's behavioral and moral degradation.*
- B. *Hiring children in nightclubs or casinos or letting them enter such places or drink alcohol.*
- C. *Letting children enter cinemas or public venues where content that is non-suitable for children is being displayed.*

Second- every employee or civil servant shall be punished under the sentence stipulated in provision (1) if they fail to report that a child has been a victim of violence or extortion or his life and safety were under threat. As for those who work in the medical sector, whoever fails to report similar incidents to the relevant authorities shall be punished under provision (1) of Penal Code number (23) of 1971.

*Provision-10-First- whoever violates the principles of provision (10) of Article (5) of this law shall be punished by imprisonment for no more than two years or a fine.
Second- the sentence shall be harsher if the offender is a relative to or responsible for taking care of the child.*

1. Commentary on Provisions 9 and 10:

This draft only specifies penalties for a limited range of acts. The first part of Provision 9 penalizes offenses against morality, such as publishing materials promoting children’s “behavioral and moral degradation.” There are no criteria given for what sorts of materials might promote behavioral or moral degradation or what that degradation consists of specifically. As worded, this provision is problematically broad and could be interpreted in a way that significantly impacts freedom of expression in Iraq. Moreover, the prescribed penalty for the offenses listed in the first part of Provision 9 is “imprisonment or fine,” but the draft law does not set parameters on the amount of the fine or the term of imprisonment.

Provision 10 establishes a specific penalty for “school violence” (Provision 10 of Article 5 of this Law). It is not clear why this offense is singled out for specific penalties, and not offenses related to child sexual abuse or other similar offenses. Further, although it is singled out (indicating its importance), it is not stated in a manner that emphasizes this importance as there is no lower limit on the penalty and no indication of what the fine might be.

There are no penalties or measures specified for cases of neglect, abuse, mistreatment, or exploitation of children. In the absence of such measures and penalties, sentencing for these offences will be guided by existing legislation, including the Iraqi Penal Code. This will entail conflict with the provisions of this Law as well as the articles of the **Convention on the Rights of the Child**. For example, as noted earlier, the Penal Code explicitly permits the disciplining of children by their parents and teachers.¹⁸⁰ Existing legislation also has an extremely problematic approach to sexual assault. For instance, the Penal Code states that any action for sexual assault becomes void and any sentence quashed if the offender lawfully marries the victim.¹⁸¹ The Code also makes sex with a girl under 18 years old illegal unless the offender is married to her.¹⁸² Provisions like these contravene the right to non-discrimination on the basis of gender enshrined in the

¹⁸⁰ Penal Code, Law 111 of 1969 (Iraq), art. 41.

¹⁸¹ Penal Code, Law 111 of 1969 (Iraq), art. 398.

¹⁸² Penal Code, Law 111 of 1969 (Iraq), art. 394.

Convention on the Rights of the Child and fail to protect child victims of sexual assault who are married.

2. Comparative practice:

Some countries establish specific penalties for failure to report known or suspected child abuse or exploitation. The Care and Protection of Children Act of **Australia's Northern Territory** sets a maximum penalty of "200 penalty units."¹⁸³ In **Southern Australia** specifies a maximum penalty of \$10,000.¹⁸⁴ In **Iceland**, a person neglecting to notify a child protection committee of an offence against a child that endangers his or her health is subject to "fines or imprisonment for up to two years."¹⁸⁵

Many laws stipulate penalties for the sexual assault and exploitation of children. **Germany's** Criminal Code mandates a sentence of imprisonment no less than two years for the sexual abuse of children when the perpetrator is over the age of 18 years, the offence is committed jointly by multiple people, or the offender places the child at risk of "serious injury or substantial impairment." Any offender who "seriously physically abuses the child or places the child in danger of death" is "liable to imprisonment of not less than five years."¹⁸⁶ **Iceland** imposes a sentence of imprisonment up to five years, "unless more severe penalties provided in other legislation," for a "custodial party" sexually abusing a child.¹⁸⁷ **Canada's** Criminal Code establishes prison sentences of minimum one year and maximum 14 years for various kinds of sexual abuse of children.¹⁸⁸

Laws and treaties also stipulate remedies for child victims. The **Convention on the Rights of the Child** mandates the State to "take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim."¹⁸⁹ The **United Nations' Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime** include access for child victims to "assistance and support services such as financial, legal, counselling, health, social and education services, physical and psychological recovery services" and "adequate training, education and information" for professionals working with child victims.¹⁹⁰

¹⁸³ Australia/Northern Territory, Care and Protection of Children Act, 2007 (Australia/Northern Territory), Section 26. <https://legislation.nt.gov.au/Legislation/CARE-AND-PROTECTION-OF-CHILDREN-ACT-2007>

¹⁸⁴ Children's Protection Act, 1993 (Australia/Southern Australia), art. 11. <https://www.legislation.sa.gov.au/lz/path=%2Fc%2Fa%2Fchildrens%20protection%20act%201993>

¹⁸⁵ Child Protection Act Law No. 80 of 2002 (Iceland), art. 96.

¹⁸⁶ Criminal Code, 1998, as amended in July 2009 (Germany), Section 176a. https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html

¹⁸⁷ Child Protection Act Law No. 80 of 2002 (Iceland), art. 98.

¹⁸⁸ Criminal Code, R.S. C., 1985, c..C-46 (Canada), art. 151, 152, 153. <https://laws-lois.justice.gc.ca/eng/acts/c-46/fulltext.html>

¹⁸⁹ U.N. Convention on the Rights of the Child, art. 39.

¹⁹⁰ Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted by UN Economic and Social Council, Resolution 2005/20 of July 22, 2005, IX, 22, 40-42. <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>

The **Child Model Protection Law** states that a child victimized by a violation of this law will receive free medical assistance to recover from physical and mental trauma, including psychological counseling, and assistance with reintegrating into society, including educational and vocational training.¹⁹¹ **Estonia's** Child Protection Act accords “necessary assistance” to any child who has been subjected to violent treatment or mistreatment.¹⁹² **Kenya's** Children’s Act mandates “appropriate treatment and rehabilitation” to any child who is a victim of abuse.¹⁹³ **Latvia's** Protection of the Rights of the Child Law grants free emergency assistance to any child who is a victim of abuse; establishes “special institutions or sections in general medical institutions” for the “medical treatment and rehabilitation of a child who has suffered as a result of violence;” and prohibits child victims of violence from being “left without psychological or other form of care.”¹⁹⁴

3. Recommendations:

- Specify penalties for the neglect, abuse, maltreatment, and exploitation of children that respect the principles of gender equality and the best interests of the child.
- Specify the amount of the fine and the term of imprisonment when prescribing these penalties.
- Reword Provision 9 (A) so as not to be potentially detrimental to freedom of expression in Iraq.
- Review and evaluate existing legislation for its compliance with the articles of the **Convention on the Rights of the Child** and the principles enshrined in this Law. Any legislation contravening children’s rights, such as the laws on sexual assault and child marriage, should be amended or repealed (see Proposed Provision 15).

4. Suggested Redraft Language:

Provision 9

First, the following offenses shall be penalized by a term of imprisonment of up to [X] years or a fine of [X] dinars:

1. Creating, displaying, disseminating, or publishing any printed, readable, audible, or visual materials that promote or portray child abuse or child sexual abuse;

¹⁹¹ Child Protection Model Law, art. 21.

¹⁹² Child Protection Act, RT/1992, 28, 370, as amended by Act RT/2004, 27, 180 (Estonia), Section 31.

<https://www.riigiteataja.ee/en/eli/531102014002/consolide#:~:text=%C2%A7%201.,in%20the%20Republic%20of%20Estonia>.

¹⁹³ The Children’s Act, Act No. 8 of 2001 (Kenya), Section 13.

¹⁹⁴ Protection of the Rights of the Child Law, Law 199/200 of 1998 (Latvia), Sections 51 and 52.

2. Hiring children to work in establishments intended for patrons over the age of 18 years, such as nightclubs or casinos;
3. Allowing children to enter establishments intended for patrons over the age of 18 years;
4. Giving or selling alcohol to children;
5. Allowing children to enter cinemas or other venues where material rated above their age level is displayed;
6. Any employee or civil servant failing to report a case of child abuse, neglect, exploitation, or maltreatment to the relevant authorities.

Second, every medical professional failing to report a case of child abuse, neglect, exploitation, or maltreatment to the relevant authorities shall be punished under Provision (1) of Penal Code Number (23) of 1973.

Provision 10:

The following offenses shall be penalized in the following ways:

1. Any person who abuses a child, including administering corporal punishment, shall be punished by a term of imprisonment of [X] years or a fine of [X] dinars;
2. The penalty shall be increased to a term of imprisonment of [X] years or a fine of [X] dinars if the offender is a relative of the child or a person in a position of trust, responsibility, or authority over the child, including teachers.
3. Any person who neglects a child shall be punished by a term of imprisonment of [X] years or a fine of [X] dinars;
4. Any person who economically exploits a child shall be punished by a term of imprisonment of [X] years or a fine of [X] dinars;
5. Any person who sexually abuses a child shall be punished by a term of imprisonment of [X] years or a fine of [X] dinars;
6. The penalty shall be increased to a term of imprisonment of [X] years or a fine of [X] dinars if the offender is a relative of the child or a person in a position of trust, responsibility, or authority over the child, including teachers.
7. Any person who sexually exploits a child shall be punished by a term of imprisonment of [X] years or a fine of [X] dinars;
8. The penalty shall be increased to a term of imprisonment of [X] years or a fine of [X] dinars if the offender is a relative of the child or a person in a position of trust, responsibility, or authority over the child, including teachers.

I. Provisions 11, 12, 13, and 14 of Draft Law:

Provisions-11- the provisions of this law shall not prevent the application of other legal provisions that guarantee better rights and protection of the child.

Provision-12-first- the decision of the Dissolved Revolution Command Council number (272) of 1982 to be cancelled and the instructions of the Childhood Care Commission number (10) of 1989 to be kept in line with the provisions of this law, until they are replaced or cancelled.
Second- rights, obligations, and employees of the Childhood Care Commission shall be transferred to the new Childhood Protection Department under the provisions of this law.
Provision-13- the minister may issue instructions and by-laws to facilitate the implementation of this law's provisions.
Provision-14- this law shall come into force when it is published in the Gazette.

1. Comments on Provisions 12, 13, and 14:

These provisions do not include the repeal or abrogation of any existing legislation or parts of legislation that contravene this Law or the articles of the Convention on the Rights of the Child, such as sections of the Iraqi Penal Code, Juvenile Welfare Act, or Personal Status Law. They also do not contain budgetary allocations to fund the provisions of this law.

2. Recommendations:

- Insert provisions explicitly repealing any laws or articles that conflict with the provisions of this law, or else amend those laws and articles as necessary.
- Insert a provision to ensure that the Child Protection Law serves as the primary reference for all regulations related to children and, in the event of any discrepancies or conflicts between this law and any other law, reference should be made to the Child Protection Law and the principle of “best interests of the child”.
- Insert provisions for funding this law.

3. Suggested Redraft Language:

Provision 15:

First, this law repeals the following legislation:

1. Article 41 (1) of the Iraqi Penal Code (Law No. 111 of 1969);
2. Article 394 of the Iraqi Penal Code (Law No. 111 of 1969);
3. Article 398 of the Iraqi Penal Code (Law No. 111 of 1969);
4. Article 8 of the Iraq Personal Status Law (Law No. 188 of 1959);
5. Articles 24, 25, 26, 27, and 28 of the Juvenile Welfare Code (Law No. 76 of 1983);
6. Article 3 (first) of the Iraqi Care of Minors Law (Law No. 78 of 1980).

Second, this law amends the following legislation:

1. Article 43 of the Juvenile Welfare Code (Law No. 76 of 1983):

- (a) Guardians who annex a child shall provide for the child's entire physical, emotional and mental well-being needs and support the child financially until the age of 18 years, regardless of the marital, educational, or employment status of the child.
2. Article 4 of the Anti-Terrorism Law (Law No. 13 of 2005):
 - (a) Any person who was under the age of 18 years at the time of committing any terrorist act, and any person who was under the age of 18 years at the time of planning, inciting, financing, or assisting terrorists shall be exempt from punitive measures under this law and shall be subject to the punitive measures contained in laws on juvenile compliance and child protection.
 - (b) Any person who was under the age of 18 years at the time of covering up any terrorist act or harboring a terrorist with the purpose of concealment, shall not be subject to a sentence of life imprisonment.

Provision 16:

The State shall:

1. Allocate a sufficient amount of its budget to implement the rights guaranteed in this law and to fund the activities of the National Childhood Committee and the Childhood Protection Department;
2. Collaborate with stakeholders to obtain additional resources to fund these activities;
3. Fund evidence-based programs to enhance implementation of these activities; and
4. Establish mechanisms for public monitoring and feedback in relation to these activities.

J. The Rationale for the Law

The Rationale

To guarantee the children's rights, improve the situation of childhood in Iraq, detect ways of protecting these rights and the suitable punishments in case they were violated, provide alternative care for children, secure children's needs, to ensure the implementation of the convention of Children's Rights which Iraq approved by law number (3) in 1994.

1. Comments on the Rationale:

Although the rationale is clear that the overall aim of the draft law is to guarantee children's rights in line with the Convention of Children's Rights, it could be strengthened by also recognizing the principle of "best interests of the child" and specifically mentioning the goal of securing basic needs of children (food, shelter, education and healthcare). The rationale should also include reference to specifically providing additional support and care for the most vulnerable children, including children subject to abuse, neglect and exploitation, and children that have been internally displaced. Such additional support could include access to education, healthcare, safe and adequate housing and prevention of separation from family members.

2. Recommendations:

- Insert explicit reference to the “Best interests of the child”.
- Insert reference to additional protections for particularly vulnerable children, including those subject to neglect, abuse and exploitation, as well as internally displaced people.
- Insert reference to providing adequate housing, education, healthcare and protection for all children, and in particular vulnerable children.
- Insert reference to how the law will be implemented, including through reference to mandating adequate staffing of institutions with qualified personnel, and establishment of institutions specifically dedicated to implementing child protection policies.

III. About the Institute for International Law and Human Rights

The Institute for International Law and Human Rights (known as IILHR) is a non-profit charity registered in Washington, D.C., Belgium, and Iraq. IILHR helps states in the early stages of democracy develop the capacity to strengthen the rule of law and build respect for human rights. With a staff of diplomats, parliamentarians, human rights activists, jurists, and attorneys, IILHR has a strong track record of implementing successful programs that help local partners strengthen support for human rights and the rule of law.

IILHR has been a strong, supportive presence in Iraq since July 2005. It collaboratively engages with leaders of both the Iraqi government and civil society to strengthen approaches to human rights issues by a) developing draft legislation; b) working to enact that legislation; c) helping local partners in and out of government to develop the capacity to advocate about specific issues as well as to assess, develop and draft legislation; and d) building consensus on priorities, tactics and strategies for achieving stronger systems of law and human rights protection. IILHR partners with leading civil society leaders, jurists, academics, legislators and policy makers to ensure that its work is built on a foundation of Iraqi jurisprudence and practice.

Examples of IILHR’s work include extensive participation in drafting more than 100 different analyses of legislative and constitutional issues. IILHR has also provided commentary on approaches to a broad spectrum of issues, including Constitutional Review, Gender Law, Iraq’s Human Rights Commission, Social Safety Net development, Freedom of Expression and Information, Accountability, Transitional Justice, and Minority Rights. IILHR also works closely with Iraq’s judiciary and executive branch.