



Roundtable Discussion on Developing and Strengthening Legislative Efforts in Iraq on Non-Custodial Enforcement Measures



- On 21 and 22 July 2024, the Institute for International Law and Human Rights (IILHR) held a roundtable workshop on non-custodial enforcement measures. The workshop was held under the auspices of the Office of the Deputy Speaker and was attended by representatives from the Council of Representatives, the Judiciary, Ministry of Justice, Ministry of Interior, Public Prosecutors Office, and civil society. Supporting civil society organizations included the Public Aid Organization and Al-Rafidain Peace. During the roundtable, participants acknowledged the overburdened justice system and crowded prisons and stated that legislators must develop solutions to these issues. Participants also consistently emphasized the need to pass an effective and implementable law to allow for the use of non-custodial measures in lieu of prison sentences in Iraq.
- Discussions at the workshop centered on two documents: the first was the *Draft Law on Substituting Custodial Penalties with Monetary Amounts*, which has passed first reading in the Council of Representatives as of the date of the workshop. The second was a draft proposal titled *Penalties and Alternative Measures Law* prepared by the Ministry of Justice (MOJ). This draft is currently in the review process with the State Council before it progresses to introduction to the Council of Representatives. At the time of the workshop, the Ministry of Justice version, while more comprehensive than the Monetary Substitution law, has not yet been introduced to the Council of Representatives.
- As the MOJ document was more comprehensive than the Monetary Substitution draft law, much of the discussion during the workshop involved assessing the provisions of the MOJ document. The MOJ document contemplates implementing a wide array of non-custodial measures as a substitution to prison time, provided the convicted individual meets certain criteria. Participants emphasized that this law is quite strong but requires time and careful assessment to ensure that its provisions are fully implementable by existing or created institutions, and that the administrative structure to implement the law should be developed by the time the law enters into force.
- The following table sets out some proposed alterations to the MOJ version with commentary from participants and reasons for the proposed changes. All comments came from participants at the workshop and have been recorded by IILHR as possible suggestions and conversation-starters to ensure the eventual law is implementable and effective.



Current Version of the Alternative Enforcement Mechanisms Draft Law	Proposed Amendments to the Current Version of the Alternative Enforcement Mechanisms Draft Law	Roundtable Participant's Reasons for Amendments
<p>Article 1: For the purposes of this law, the following terms shall have the meanings assigned to each of them:</p> <p>First: The Minister: The Minister of Justice.</p> <p>Second, the competent court: the court that issued the conviction, criminalization, and custodial sentence.</p> <p>Third: sentences and alternative measures: are one of the sentences or measures stipulated in provision (first) of Article (2) of this law, which the court may rule on instead of the custodial sentence.</p>	<p>Article 1: For the purposes of this law, the following terms shall have the meanings assigned to each of them:</p> <p>First: The Minister: The Minister of Justice.</p> <p>Second, the competent court: the court that issued the conviction, criminalization, and custodial sentence or measure.</p> <p>Third: sentences and alternative measures: are one of the sentences or measures stipulated in provision (first) of Article (2) of this law, which the court may rule on instead of the custodial sentence.</p>	<p>Roundtable participants asserted that there is no need to define the term “Minister” as the word “minister” is only used in specific contexts in the draft law, such as “Minister of Justice”. Terms should only be defined where they are ambiguous in the law.</p> <p>In courts and legal language, both “sanction” and “measure” are used when discussing “alternative enforcement”. Both terms should be used in the definition for clarity.</p>
<p>Article (2): First: The competent court may, when sentencing imprisonment for a period not exceeding 3 (three) years for adults, and (2) years for juveniles, replace the sentence with one or more of the following alternative sentences or measures, provided that the period of the sentence or alternative measure does not exceed the period of the custodial sentence which he received:</p> <p>A- Work in community service: The convict shall be assigned to work for one of the government</p>	<p>Suggestion A: First: The competent court when adjudicating a crime whose original penalty does not exceed 3 (three) years for adults,</p> <p>Suggestion B: First: The competent court may, when adjudicating a crime whose original penalty does not exceed 3 (three) years for intentional crimes or detention and imprisonment for unintentional crimes for adults, and (2) two years of detention for juveniles, replace the sentence with one or more of the following alternative sentences or measures, provided</p>	<p>Roundtable participants expressed the need for clarity regarding qualification- to qualify it must be based on the original sentencing as judges may already use judicial discretion to reduce penalties for mitigating circumstances. Thus, if the conviction has already benefitted from a reduction which makes the penalty less than 3 years, it should not be able to qualify. The qualifications should be based on the original sentencing before any reduction.</p>



<p>institutions free of charge in proportion to his qualifications and abilities and not exceeding 8 (eight) hours a day, provided that the institutions and works practiced by the convict are determined under instructions issued by the Minister of Justice.</p> <p>B- Replacing the remaining period of the sentence with a cash allowance, and it shall be by paying the inmate or the person imprisoned in the correctional institution a cash allowance of not less than (10,000) ten thousand dinars and not more than (30,000) thirty thousand dinars as an alternative to the rest of the period of his sentence, provided that the inmate has spent at least a quarter of the period for which he was sentenced.</p> <p>C - House arrest in a specific place: It is obligatory for the convicted person not to leave a specific place or area of residence.</p> <p>D- Attendance of rehabilitation and training programs: The convict shall be obliged to undergo one or more rehabilitation and training programs in the rehabilitation and</p>	<p>that the duration of the sentence or alternative measure does not exceed the period of the custodial sentence to which he was sentenced .</p> <p>Attendance of rehabilitation and training programs: The convict shall be obliged to undergo one or more rehabilitation and training programs in the rehabilitation and vocational training centers of the Ministry of Labour and Social Affairs, and relevant civil society organizations.</p>	<p>Roundtable participants sought clarity to indicate whether the law allows for a maximum penalty of up to three years or whether the law allows for a maximum penalty of more than three years but the judge uses discretion to issue a penalty of only three years.</p> <p>Consider making a distinction between wilful and non-wilful crimes as those who commit non-wilful crimes are less morally culpable than those who commit wilful crimes.</p> <p>To ease the burden on the justice system, there may be opportunities for pre-approved civil society organizations to carry out rehabilitation programs, provided these programs are approved by a government authority.</p>
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<p>vocational training centers of the Ministry of Labour and Social Affairs.</p> <p>E - Repair of the damage resulting from the crime: It shall be obligatory for the convicted person to return the thing to its origin, repair it, or compensate for it.</p> <p>F- Pledge not to attack or contact certain persons or entities, which requires obligating the convict not to attack physically, verbally, or in other forms, and preventing him from contacting or communicating with persons or entities related to the crime by any means whatsoever.</p> <p>Second: The provisions of clause (first) of this article shall apply to the inmate or detainee who is serving the period of detention or imprisonment in the correctional institution if the sentence of imprisonment does not exceed (3) three years for adults and (2) for juveniles, provided that the period of sentence or alternative measure does not exceed the period of the sentence the convict has to serve.</p>		
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<p>Article (3) First: - A- The competent court shall rule on its own motion or at the request of the Public Prosecution or the person sentenced to punishment or alternative measure.</p> <p>b) The sentence or alternative measure shall be imposed against the inmate or the detainee based on a request submitted to the competent court by the convicted person or his family to the High Commission for Human Rights or the Iraqi Correction and Juvenile Reform Departments.</p> <p>Second: Subject to paragraph (b) of provision (first) of Article (2) of this law, the court shall rule on the sentence or alternative measure when the following conditions are met:</p> <ul style="list-style-type: none">A. The convict must be of good conduct and behavior.B. The convict shall not pose a danger or threat to public security.C. The convict must have paid the financial obligations adjudicated in the same lawsuit.	<p>Article (3) First: - A- The competent court shall rule on its own motion or at the request of the Public Prosecution or the person sentenced to punishment or alternative measure, or by a party on behalf of the person sentenced.</p> <p>b) The sentence or alternative measure shall be imposed against the inmate or the detainee based on a request submitted to the competent court by the convicted person or his family to the High Commission for Human Rights Iraqi Correction and Juvenile Reform Departments.</p>	<p>As this would place a huge burden on the judges, this authority should be delegated to Public Prosecution, the sentenced individual or someone on behalf of the sentenced individual (such as a lawyer or family member) to assert qualification and apply for the benefit.</p> <p>Roundtable participants agreed that the High Commission for Human Rights is not the relevant authority for receiving requests. The Correction and Juvenile Reform Departments have authority over this topic and so they should retain responsibility.</p>
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<p>D. d. He must not have been previously sentenced to a custodial sentence or any of the sentences or measures stipulated in this Law.</p> <p>E. The sentence or alternative measure imposed on the convict shall not affect his social, psychological and health condition and the circumstances surrounding him.</p> <p>F. Provide one or more guarantors or any other guarantees determined by the competent court to ensure that he does not escape.</p>		
<p>Article 4: Penalties and alternative measures shall not be imposed for the following crimes: First: crimes that have a personal right that is not judicially waived. Second: terrorist crimes. Third: dealing with narcotic drugs and psychotropic substances crimes. Fourth: trade or possession or use of silenced weapons, fireworks, and weapons of special categorization. Fifth: corruption crimes. Sixth: assisting prisoners or detainees or arrested breaking out of jail. Seventh: crimes of rape, sodomy, and incest.</p>		<p>Many of these exclusions would implicitly not apply to this law as they carry mandatory penalties of greater than three years with no discretion to lower this penalty.</p> <p>This provision would achieve the same effect by stating “Crimes for which there is a minimum punishment of greater than three years are not eligible for alternative measures.”</p> <p>Roundtable participants recommended replacing Article 4 with Article 7 of the 2019 draft law of monetary penalties proposed the Supreme Judicial Council:</p>



<p>Eighth: smuggling artifacts. Ninth: Human trafficking. Tenth: currency or banknotes or bonds counterfeiting. Eleven: Money laundry crimes.</p>		<p><i>Article (7)</i> <i>The following shall be excluded from the provisions of this law:</i> <i>First: Those who were included in the previous amnesty laws.</i> <i>Second: Convicts of drug crimes, except for those convicted of the crime of manufacturing, possessing, or purchasing narcotic drugs or psychotropic substances with the intention of personal use under Article 32 of the Narcotic Drugs and Psychotropic Substances Law No. 50 of 2017, are covered by this law.</i> <i>Third: Convicts of human trafficking crimes.</i> <i>Fourth: Convicts of money laundering crimes.</i> <i>Fifth: Convicts of rape, sodomy, and incest.</i> <i>Sixth: Convicts of prostitution offences.</i> <i>Seventh: Convicts of crimes against the internal and external security of the State.</i> <i>Eighth: Convicts of trading or possession or use of silencer weapons.</i> <i>Ninth: Convicts of crimes of smuggling prisoners, detainees, or arrested persons and the crime of sheltering convicts if the convicts or accused is not a spouse or relative of the first or second degree.</i></p>
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<p>Article 5: The court's judgment of penalty or alternative measure shall be subject to appeal before the Court of Cassation if the judgment is issued by the Criminal Court, and before the Criminal Court in its cassation capacity if the judgment is issued by the misdemeanor Court within a period of 15 (fifteen) days from the date of issuance of the judgment of the penalty or alternative measure.</p>		<p>It is the Misdemeanor Court that adjudicates cases in which the judgment does not exceed five years of imprisonment.</p>
<p>Article 6: First: The competent court shall decide on all disputes relating to the execution or cancellation of the penalty or alternative measure, and issue all decisions and orders relating to them after hearing the statements of the Public Prosecution, and in particular it shall have the following:</p> <p>A. Order the execution of the original custodial sentence or the remainder thereof.</p> <p>B. Enforcing another alternative penalty in the event of refusal to execute any of the alternative penalties or breach thereof during the period of their execution.</p>	<p>b) Enforcing another alternative penalty in the event that any of the alternative penalties cannot be implemented or violated during the period of their execution.</p> <p>c) Order to extend the period during which the alternative penalty must be carried out in paragraph (e) of item (first) of article (2) of this law taking into consideration the period stipulated in Article 2 of this Law.</p>	<p>A convicted individual should not be given a different alternative measure than the originally-issued measure simply by refusing to carry out the originally-issued measure. Instead, a different alternative measure should only be given if there is some reason that the convicted individual is physically or mentally unable to carry out the originally-issued measure. For example, if a judge orders that the convicted individual must clean streets as part of a community service order and that convicted individual becomes disabled, they should be able to apply for a different measure that aligns with their abilities.</p>



<p>C. Order to extend the period during which the alternative penalty must be carried out in paragraph (e) of provision (first) of article (2) of this law.</p> <p>D. Consider the reports related to the execution of penalties and alternative measures submitted to it and take what it deems appropriate in this regard.</p> <p>Second: Decisions and orders issued by the court shall be subject to appeal in accordance with the provisions of Article 5 of this law.</p>		
<p>Article (7): It is permissible to cancel the penalty or alternative measure and execute the issued custodial sentence in any of the following cases:</p> <p>First: If the convicted person does not execute the penalty or alternative measure in accordance with the provisions of this law.</p> <p>Second: If the convicted person commits, during the period of execution of the penalty or alternative measure, a felony or intentional misdemeanor.</p>	<p>First: If the convicted person cannot execute the penalty or alternative measure in accordance with the provisions of this law.</p>	<p>Refusal to carry out an alternative measure should not be reason to be offered another alternative measure. Instead, a different alternative measure should only be given if there is an inability to carry out the originally-issued measure.</p>



<p>Third: If it appears during the period of execution of the penalty or alternative measure that the convicted person had been issued a final judgment against him in a felony or intentional misdemeanor and the court had not been aware of it at the time of sentencing the penalty or alternative measure.</p>		
<p>Article 8: The provisions prescribed by law for the original custodial penalty shall apply to alternative penalties, and the imposition of the alternative penalty shall not prejudice the implementation of consequential or complementary penalties to the custodial penalty.</p>		
<p>Article 9: The competent bodies in the Ministry of Justice and the Ministry of Interior, under the supervision of the Public Prosecution, shall follow up on the implementation of penalties and alternative measures, and this shall be regulated by instructions issued by the Minister of Justice.</p>	<p>Article 9: The competent bodies in the Supreme Judicial Council, the Ministry of Justice and the Ministry of Interior shall follow up on the implementation of penalties and alternative measures.</p>	<p>The Public Prosecution is not linked to the Ministry of Justice, but rather to the Judiciary so it is better to issue instructions by the President of the Supreme Judicial Council.</p>
<p>Article 10: The provisions of the Penal Code No. 111 of 1969, the Code of Criminal Procedure No. 23 of 1971, the Juvenile Care Law No. 76 of 1983, and the Inmates and Detainees Reform Law No. 14 of 2018 shall apply to what is not stipulated in this law.</p>		
<p>Article 11: The provisions of this law shall not apply to those who have previously been given a special amnesty.</p>	<p>Article 11: The provisions of this law shall not apply to those included under any amnesty laws.</p>	<p>The participants discussed how any individual who received a declaration of amnesty under an amnesty law (past</p>



		or future) should not be permitted to receive a non-custodial measure under this law.
<p>Article 12: First: The Minister of Justice shall issue instructions to facilitate the implementation of the provisions of this law.</p> <p>Second: No provision that contradicts the provisions of this law shall apply.</p>	<p>Article (12): The President of the Supreme Judicial Council shall issue instructions to facilitate the implementation of the provisions of this law.</p>	<p>Authority to issue instructions should fall under the scope of the Supreme Judicial Council as it will be judges making the determination of suitability for any alternative measure.</p> <p>Roundtable participants all agreed that these instructions should be developed in consultation and coordination with the relevant stakeholders involved in implementation such as the MOJ and MOI.</p>
<p>Article 13: This law shall be implemented after 6 (six) months from the date of its publication in the Official Gazette.</p>		<p>When the draft law reaches the Council of Representatives, the time period and the availability and development of infrastructure needed to implement this law must be in place, which is very important as the law will be ineffective without them. If the law enters into force without the necessary administrative institutions in place, this will likely undermine public and political confidence in the effectiveness of non-custodial measures.</p>
<p>Justified Reasons To develop the Iraqi legislative reality, match the modern criminal policy, implement Iraq's international obligations, and avoid the negative impacts of the</p>		



short-term custodial penalties, this law has been legislated.		
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