



## CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN IRAQ-KURDISTAN

**National Report for AIMJF's Comparative and Collaborative Research.**

*La participación de niños como víctimas o testigos en causas penales en Irak*

*Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

*La participation des enfants en tant que victimes ou témoins dans des affaires pénales en Irak*

*Rapport national pour la recherche comparative et collaborative de l'AIMJF*

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**Abstract:** The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Iraq.

**Resumen:** El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Irak

**Résumé :** Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice en Irak.

### **Introduction**

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links

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between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation as victims and witnesses in criminal cases is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

Arabic version follows

## Questionnaire

### **1. Right to be heard**

1.1. Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)?

1.1 According to Article 60 of the Code of Criminal Procedure, children can serve as witnesses.

1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)?

1.2 Yes, there is an age restriction for the right to be heard, which is set at 11 years old under Law No. 14 enacted by the Kurdistan Regional Parliament in 2001.

1.3. Are children allowed to refuse to make a statement? If so, in which cases?

1-3 Yes, children have the right to refuse to testify in family matters and disputes between parents.

### **2. Broad perspective of the legal framework and procedure**



2.1. Is there a specific legal framework that defines how to treat child victims/witnesses of crime (e.g. special norms in the criminal procedural code, special child code, special victims code, etc)?

2.1 Yes, there should be specific legislation governing the treatment of children. It's important to note that both Iraq and the Kurdistan Region have laws, such as the Special Procedural Law and the Juvenile Welfare Law, that outline how children should be treated. However, the key issue is the practical implementation and enforcement of these laws.

2.2. Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and intervention), including avoiding multiple interviews of the child? Is there any flowchart in your country to coordinate these interventions? If so, could you please share it?

2.2 Yes, there is coordination among various authorities (police, social workers, health services, and public prosecution), as well as social researchers. However, from a scientific perspective, there is no humanitarian plan in place; the focus tends to be on routine procedures and completing investigative paperwork without sufficient consideration of broader needs.

2.3. Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved?

2.3 In criminal cases, children (juveniles) are initially brought in to provide their statements. If the offense is a felony, penalties are imposed according to the relevant article in the Penal Code. If the child is over 14 years old, the judge may order their detention; otherwise, the child cannot be arrested and must be returned to their parents after investigative measures are taken, in exchange for a pledge and personal bail. If the child is a witness, their testimony can be accepted as evidence if they are 15 years old (completed 15 years) or older and take a legal oath. If they are younger than 15, their testimony can still be taken without an oath under Article 60 of the Basic (Procedural) Law.

2.4. In which moment(s) can a child be heard in this procedure?

2.4 During the investigation and trial stages.



2.5. Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? If so in which cases?

2.5 Children have the right to consent to the complaint, initiate proceedings, and provide comments. However, they do not have the authority to reject or withdraw the complaint, as it pertains to public rights.

### **3. Preparation for the child participation**

3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc)? If so can you please share them?

There are no resources available (Guidance Materials) for child victims.

3.2. How do children have access to these materials? (e.g. brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with support of a video, or with support of a special professional; investigator/judge orally explaining in child-friendly language before interview/hearing, or any other?) How long before the interview/hearing does this happen?

3.2. No awareness materials Not available at the police station.

3.3. Is there any assessment of the child conducted before a child is interviewed/heard? If so, what is assessed / for what purpose (e.g. background and circumstances of child; whether the child would be able to speak freely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? If so, what is the legal background of their professional conducting this assessment? To which institution does this professional belong? Is there any kind of report produced?

3.3. No assessment is conducted prior to interviewing or hearing the child. Instead, assessment occur after the interrogation, focusing on the child's background, circumstances, and social environment, conducted by specialists in social workers. The social worker submits a report on the child's personal situation during the investigation phase. In the trial phase, the report addresses the personal, family,



and social circumstances that contributed to the crime, as well as the child's health and psychological state.

3.4. Is there any kind of contact or evaluation with the parents or legal guardians?

3.4. Yes, the law differentiates the role of parents in the care of juveniles during the investigation and trial stages, particularly during the trial, where their presence is intended to provide moral support and strengthen the child psychologically and personally. This is outlined in Article 58 of the Juvenile Welfare Law. Parents can be questioned regarding their attention and care for the child; if they are found negligent, they may be held accountable and face criminal charges under Articles 29 and 30 of the Juvenile Welfare Law for negligence in childcare. However, it appears that this provision is not effectively enforced in practice.

3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing?

3.5. The child is not permitted to review the facilities prior to the hearing.

3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)?

3.6. Before the interview, the child does not receive any form of support, which only occurs during and after the interrogation and questioning, as well as during the trial. This lack of support negatively impacts the investigative process and the child's future.

#### **4. Protection and Support**

4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? If so, who conducts it? Is there any specific tool? If so, can you share it please?

4.1 There is no risk assessment conducted for children after a crime is reported, and this procedure is not implemented.



4.2. In case of identification of risks, what kind of protective measures are available in your country?

4.2 There are no preemptive or proactive measures in place.

4.3. What kind of support measures are available for child victims / witnesses of crime (psychosocial, medical, legal) before, during, after the judicial process)

4.3 There is a limited support for children during the judicial process, both psychologically and medically. While a personal study office that is recently reactivated provides some guidance and advice to the children and their families. Legally, under the Code of Procedure of Trials, a lawyer must be appointed either by the family or by the court to accompany the children including representation at the court. After the judicial process, support is lack or very limited to educational opportunities, vocational training, PSS, and Case Management.

4.4. In case of intrafamilial violence, which measures can be / are usually adopted to grant the child's security? Is there any/which kind of support offered to the remaining members of the family? Are there any specific measures in case of child abduction or child kidnapping?

4.4 In cases of domestic violence, no special measures are implemented in practice, despite existing legal protections aimed at ensuring the child's safety and security. While support may be offered to other family members, there are no specific measures for cases of child abduction; these are treated like any other incident.

## **5. Children's listening environment**

5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase?



5.1 The child is interviewed during the pre-trial stage at the juvenile police station and the juvenile judge in the investigating court. The environment in general is inappropriate and inappropriate psychologically, socially and personally due to lack of the social workers in the structure of the police and court investigation process, while a juvenile investigation court (children) must be formed or be established under the Juvenile Law, but there is a juvenile investigative judge dedicated to this task.

5.2 Is there any specificity in this environment to adapt it for children? (e.g. separate 'building' specifically for children; non child- specific building, but separate entrance for children; separate interview/hearing room for children)

5.2 There is separate juvenile police in each governorate however in some places due to difficulty in accessing to the juvenile police the children will be referred to the ordinary police and mix with adults which violates the Juvenile Law especially at the District and sub-district level. Regarding investigation court and the juvenile court, there are separate rooms for the investigation using the same main gate in the same building of the Presidency of the Appeal Courts.

5.3. Are there guidelines for the environment where the child is interviewed/heard? (architecture, setting)? If so can you please share it? Can you share a photo of this space?

5.3 There is no procedural evidence regarding the place from which the child is heard, neither in the police station nor in the investigation trial, but two months ago some minor changes were made with the support of UNICEF through awareness about the rights of the children display in the screen of the Corridor and some photo essay on the walls of the juvenile court in Erbil. There is also a separate room for the online trial for Children that is also recently created with UNICEF Support

5.4. Is there a specific waiting area for the child?

5.4 There is an area designated for waiting for children, a small room with bathroom. Needs some improvements to make a friendly space.

5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? if so what kind? ( e.g. separate entrance, separate waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc)



5.5 There are no protective measures Contact between the child and the accused.

5.6. In case identification of the offender is needed, how is this conducted, and where?

5.6 is diagnosed with the abstract eye and if the child offender is meant, his identity must be confidential and may not be known to anyone other than the members of the court body, namely the judge, a member of the public prosecution court, a representative of the Office of Personal Study, the lawyer of the parties to the lawsuit and the parents of the child and may not be detected outside the court, which is stipulated in the Juvenile Welfare Law in Article (58) and that the violation of this procedure, i.e. the disclosure of the child's identity, is considered a crime under Article (63) of the Welfare Law Juvenile

5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake?

5.7 The child is referred by police vehicle to the city where he is being prosecuted.

5.8. Is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? In which circumstances? Are any / which special security measures (are) adopted?

5.8 There is no remote interview currently however Erbil Cort has initiated with UNCIEF support to create video conference inside the juvenile court and process trial remotely without the availability of the children in person (face to Face) and should be confidential. It is stipulated in Article 59 of the Juvenile Law that the juvenile court should conduct the trial without requiring the child to be present for offenses related to ethics and general morality.

5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? If the child has to appear in court, which circumstances are determinant?

5.9 same answer





## 6. Specific legal guarantees for the child

6.1. Does the child have the right to legal assistance? for free? Is this assistance specialized? At what moment does this assistance come in (e.g. already advising whether or not to report a case / during the first interview / only in court / other)

6.1. Yes, the child is entitled to free legal aid, although it is general rather than specialized. This right applies only at the trial stage and is limited to the appointment of a lawyer to represent them by submitting a defense list on the child's behalf. While this right is also legally guaranteed during the investigation phase, it is often overlooked. Unfortunately, this process tends to be routine or formal, primarily serving to provide legal legitimacy to the trial procedures, as outlined in Article 144 of the Code of Procedure, Article 60 of the Juvenile Welfare Law, and Article 19, paragraph 11 of the Iraqi Constitution.

6.1.1 What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child; ...)?

6.1.1 The legal assistant's role is primarily to submit a defense statement to advocate for the child during the trial stage. Additionally, it is important to acknowledge the role of the public prosecution member in court, who discusses the evidence presented in favor of the child, as this is a positive aspect of the process.

6.2 Does the child have the right to be accompanied by a support person? If so, what is the role of this person? What is this person entitled to do in support of the child?

6.2 The child has the right to be accompanied by a supportive and approved individual, particularly their parents (guardians), during the simulation stage to provide moral and personal support. This right is stipulated and guaranteed by law, but it has a limited positive impact on the trial proceedings.

6.3. What is the role of parents/legal representative?



6.3 The role of parents is primarily to provide moral, personal, and psychological support to the child. Their presence is often a legal formality rather than one that positively impacts the child's interests, even though the juvenile welfare law grants parents the right to defend their child.

6.3.1 When are parents/legal representative excluded (e.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests...)?

6.3.1 Parents may be excluded from their role in cases of conflict of interest or if one of them is sentenced to imprisonment for moral offenses or for neglecting their duty to raise or care for the child. In such instances, their right to guardianship and supervision is revoked. If a parent is unwilling or unaware, the law grants the court the authority to appoint a suitable guardian for the child, excluding individuals, institutions, and organizations deemed inappropriate.

6.3.2. If excluded, is there another legal representative appointed/ if so by whom?

6.3.2 If a hospital designates another legal representative, referred to as the legal guardian, this individual is appointed by the juvenile court (for children) and the Sharia court.

6.4. What kind of measures are adopted to grant the right to privacy / confidentiality (public excluded / in all cases / in which cases? press statements so that child can not be identified?)

6.4 The law guarantees the right to privacy for proceedings involving a child during the investigation and trial stages. Trials must be confidential to protect the child's personal and moral well-being in the future. Legally, it is prohibited to make public statements, record videos, or share information that identifies the child.

6.5. Is the child allowed to plea for cautionary measures?

6.5 The precautionary measures mandated by law are compulsory, not optional, and are enforced after the completion of the child's sentence. These measures focus on monitoring the child's behavior and providing aftercare for the duration of the measure, which includes social supervision. Support is offered to encourage the child morally, psychologically, and financially through grants, as well as guidance to help them navigate their new life. This includes assistance in obtaining necessary documents, requalifying for community integration, and providing opportunities for education and employment, along with financial support and temporary housing. However, these rights, although



legally guaranteed under the Juvenile Welfare Law and the Constitution, are often not effectively implemented.

6.6. Does the child have the right to appeal any decision?

6.6 The child has the right to appeal the decision.

## 7. Interview Structure and procedure

7.1 Who hears the child victim/witness in the pre-trial phase / who in the trial phase? How often is a child usually heard in total (pre-trial and trial)? Does the law limit the total number of interviews/hearings conducted?

7.1 During the investigation stage, the child is heard by the social researcher as well as by the child personality study office. There are no limits on the number of sessions or interviews based on the trial's progress, while the social researcher and personality study office typically conduct only one interview or hearing.

7.2. Is it mandatory that this professional has specific training for child interviews?

7.2 It is essential for the specialist to be trained, recognized, and dedicated to their work when interviewing the child. They must have academic qualifications and be reputable in their field.

7.3. Is any kind of interview protocol adopted in your country (pre-trial and/or trial stage)? If so, which one? If so, could you please share it?

7.3 Protocol: The existing protocol refers to the rules outlined in the procedural law for criminal trials, which define investigative and trial procedures from start to finish. These procedures cannot be overlooked as they relate to public order. Consequently, procedural law distinguishes juveniles from adults through specific measures. There are specialized police stations for investigating juvenile cases, a dedicated judge for child victims, and a special court known as the Juvenile Court. For instance, the arrest of a juvenile is generally limited to taking statements or conducting a personality study unless they lack a sponsor to secure their release on bail, among other circumstances.



7.4. Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child / who is sitting in another room, if any?

7.4 Parents are permitted to participate in the session/interview, which tends to be more formal than objective, but can still be effective for the child's defense.

7.5. Who is addressing the child victim/witness: only the interviewer? cross examination allowed? if only the interviewer, how can other participants ask questions? How is the communication between those who follow the interview and the interviewer? What kind of communication tool is used?

7.5 The child is addressed by the investigator, judge, prosecutor, or investigating officer during questioning. Questions may be posed by the defense attorney through the trial judge. Communication is restricted to attendance at the trial session and includes the defense list or asking questions.

7.6. Is the interviewer allowed not to ask the questions raised by others? Is the interviewer allowed to rephrase the questions raised by others?

7.6 The interviewer (judge) may not permit others to question the child directly; instead, questions must be directed to the court, which will then relay them to the child.

7.7. Is the interview audio and video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)?

7-7 Audio or video recordings of interviews are strictly prohibited and considered an offense under the Child Welfare Law. Such recordings are inadmissible as evidence and regarded as a crime against the child. ( I am not agree with this part: Article 59 of the Juvenile Welfare Act no. 76/1983 indicated that *The juvenile court may conduct the trial without confronting the juvenile in crimes against morals and public morals, provided that the trial is attended by those who have the right to defend him, and the court must bring the juvenile to inform him of the action taken against him.*



7.8. How is the quality of the recording? In case of failure in the recording, what are the measures adopted?

7.8 There is no mechanism in place for recording interactions.

7.9. If no audio/video recording: is the child allowed to review his or her statements and to correct them? Is the child/legal representative allowed to get a copy of written statement / recording?

7.9 Reviewing or altering statements is not permitted, and the child or their legal representative may obtain a copy of the statement or testimony by submitting a formal request with court approval.

7.10. If there is a special procedure for hearing child victims and witnesses, is it mandatory for the child to participate in such a way or has he/she the right to choose to be heard as any other victim or witness? Are there still adaptations in this case?

7.10 In cases of indecency, the measures taken against the child are private and confidential, conducted without the child's presence. After the trial, the court judge informs the child of the measures and decisions made in private to protect their personality, reputation, and privacy.

## 8. The Rights of the Accused

8.1. Is the alleged offender allowed to participate in the interview of the child witness? Is his/her defence attorney allowed to participate? Is participation of either of the two mandatory?

8.1 The accused has the right to participate in meetings with the child, except in cases of indecency, where such participation is not permitted. The presence of the defense lawyer is mandatory.

8.2. If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child's statements?

8.2 The trial must be conducted in person, be confidential, and cannot proceed if the accused is absent; otherwise, all procedures are deemed null and void. The child victim must be present in court along with their parents or a legally equivalent guardian. However, the Article 59 of the Juvenile Welfare Act no. 76/1983 indicated that *The juvenile court may conduct the trial without confronting*



*the juvenile in crimes against morals and public morals, provided that the trial is attended by those who have the right to defend him, and the court must bring the juvenile to inform him of the action taken against him.*

## **9. Parallel proceedings – coordination**

9.1. In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview?

9.1 The questions in the translated Arabic text are unclear, and I apologize for that.

9.2. Is there any coordination procedure between different courts/authorities? How is the coordination procedure?

9.2 Coordination between courts does not exist and is not legally permissible, except in cases where the child victim has committed multiple offenses across different jurisdictions. In such instances, the child may be heard in an expedited manner, with no specific limit on the number of interviews and sessions during the investigation and trial.

9.3. If another court/authority has not participated in the interview and needs additional information, is this court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)?

9.3 The only court authorized to conduct interviews with the child is the juvenile court. Any actions involving the child must go through the juvenile investigation judge or the juvenile court; otherwise, any actions or information obtained from the child are considered null and void. The child's lawyer and parents have the legal right to participate in the interview and investigation processes, which are deemed legal safeguards. However, in practice, the situation often differs.

## **10. Training**

10.1. Are judges and magistrates trained to deal with child victims?

10.1 Very limited opportunity for Judges and counselors in receiving training course to work with children.

10.2. Is the content of the training interdisciplinary? Do other professionals also participate in the same training?

10.2 No, there should be training for all relevant parties across various disciplines, including psychological, social, personal, educational, and medical fields.

## 11. Reforms Under Implementation

11.1. Are there reforms in progress in your country regarding child's victim rights, the procedure among others? What is the aim and the main subject of it?

11.1 Yes, there are ongoing reforms related to children being carried out by international organizations and UN-affiliated bodies, as well as by international and local civil society organizations, though these efforts are somewhat limited. The focus is not primarily on legal procedures for the welfare and rights of children, but rather on improving the appearance and functionality of courts and their institutions, including police and security forces, to reflect the objectives and provisions of the law concerning childcare and their future interests. Instead of prioritizing the substantive application of the law to uphold the legal rights of children, there seems to be an emphasis on the formal aspects and the outward appearance of these institutions as effective and exemplary, which, upon impartial examination of the law, raises concerns.

### ARABIC VERSION

حق الاستماع 1\_1 بموجب المادة (60) من قانون أصول المحاكمات الجزائية الاطفال قادرون ان يكونوا شهودا 1-2 نعم- هناك قيد السن لحق الاستماع وهي 11 سنة بموجب قانون رقم (14) الصادر بتاريخ 2001 من برلمان اقليم كردستان 1\_3 نعم يسمح للأطفال برفض الادلاء بالشهادة في المشاكل والنزاعات العائلية بين الوالدين (الام\_ الاب) 2-الاطار القانوني والاجرائي 1-2 نعم يجب ان تكون هناك قانون محدد حول كيفية معاملة الاطفال والجدير بالذكر في العراق و اقليم كردستان هناك قانون ينظم و يحدد كيفية المعاملة مع الاطفال مثل قانون الاجرائي خاص و قانون الرعاية الاحداث ولكن النقطة الفاصلة هنا هو امكانية التطبيق من الناحية العملية و التطبيقية 2-2 نعم هناك تنسيق بين الجهات (شرطة ,الباحث الاجتماعي , الصحة الادعاء العام ولكنة ليس هناك مخطط انساني من ناحية العلمية ولكن أخذ الجانب الروتيني لتمشية و اكمال الاوراق التحقيقية و ليس الاخذ بنظر الاعتبار 2-3 يتم استخدام الاطفال ( الاحداث ) في القضايا الجنائيات في بادى الامر لأخذ الافادة واقواله الطفل و بعد الاستماع اذا كان الجريمة من نوع الجنائيات تفرض العقوبة بموجب المادة المحددة في قانون العقوبات. واذا كان سن الطفل تجاوز 14 السنة بإمكان القاضي توقيفه و بعكسة لايحوز توقيف بل يجب تسليمه الى والديه بعد اتخاذ الاجراءات التحقيقية لقاء تعهد والكفالة الشخصية اما اذا كان شاهدا فبالامكان الاستماع الى شهادته على سبيل الاستدلال اذا كان عمر الطفل قد اتم السنة من عمره مع القسم القانوني واذا كان عمره أقل تأخذ شهادته بدون القسم القانوني بموجب المادة(60) من القانون 15 الاصول(الاجرائي) 4\_2 في مرحلتي التحقيق والمحاكمة 5\_2 يملك الاطفال حق الموافقة على الشكوى و البدء و التعليق

ولكن لا يملك حق الرفض أو الإلغاء الشكوى لأنه متعلق بالحق العام 3-التحضير لمشاركة الطفل 1\_3 ليس هناك مواد ارشادية للأطفال الضحايا 2\_3 غير متاح في مركز الشرطة كتب/برو شور..... 3-3 لاتجرى اية تقييم قبل مقابلة أو استماع للطفل انما التقييم تكون بعد الاستجواب و مسائلته الطفل مثل خلفية و ظروف الطفل والبيئة العائلية والاجتماعية من قبل مخصصين في مجال البحث الاجتماعي ويقدم الباحث الاجتماعي تقرير حول حالة الطفل الشخصية في مرحلة التحقيق اما بخصوص مرحلة المحاكمة فيقدم مكتب دراسة الشخصية الحالة الشخصية والعائلية والاجتماعية و ظروف التي دعت الى ارتكاب الجريمة وكذلك حالة صحية والنفسية 4-3 نعم،تميز القانون رعاية الاحداث من قبل الوالدين في مرحلة التحقيق والمحاكمة وخاصة في مرحلة المحاكمة بالحضور بجانب الطفل في المحاكمة وذلك لغرض دعمه معنوياً و تقويته من الناحية النفسية و الشخصية وهو ما نص عليه قانون رعاية الاحداث في المادة (58) ويتم استجواب ومسائلة الوالد من الناحية الاهتمام والرعاية بالطفل اذا كان مقصرا بالامكان محاسبته و فتح قضية الجزائية ضده بموجب المادة (29 و30) من قانون رعاية الاحداث بحجة الاهمال وتقصير في الرعاية الطفل ولكن نرى عدم تطبيق وتفعيل هذه المادة من ناحية العملية 5-3 لايسمح للطفل بمراجعة المرافق قبل الاستماع 6-3 قبل المقابلة لا يتلقى الطفل اي نوع من دعم وانما يتم ذلك اثناء و بعد استجواب و التحقيق والمسائلة و اثناء المحاكمة وهذا ما ينعكس سلبي على الاجراءات التحقيقية و مصير الطفل و مستقبله 4-الحماية والدعم 1-4 ليس هناك تقييم للمخاطر على الاطفال بعد الابلاغ عن الجريمة ولا يجرى هذا الاجراء 2-4 ليس هناك التدابير الوقائية متاحة من قبل او الاستباقية 3-4 تدابير الدعم المتاحة للاطفال من قبل اثناء العملية القضائية من الناحية النفسية والطبية لا يوجد اما من الناحية الاجتماعية هناك مكتب دراسة الشخصية يتم فيها دراسة شخصية الطفل مع إعطاء بعض ارشادات والنصائح و من الناحية القانونية بموجب قانون الاصول المحاكمات فيجب توكيل وانتداب المحامي من قبل محكمة لغرض الدفاع عن الطفل الجانح و ( بعد الاجراءات و العملية القضائية هناك دعم محدود متعلقة بتوفير دراسة وتعليم اذا كان راغبا فيه اثناء قضاء مدة محكومية تدبيره) 4-4 في حالة عنف الاسري ليس هناك اي تدابير خاصة من الناحية العملية رغم وجود الحماية القانونية حول ذلك لضمان امن و سلامة الطفل ,نعم يقدم دعم لبقية افراد الاسرة ليس هناك تدابير خاصة في حالة خطف الطفل وانما يتعامل مثل اية حالة او حادث اخرى 5-البيئة الخاصة 1-5 يتم مقابلة الطفل في مرحلة ما قبل المحاكمة في المركز الشرطة الاحداث(الاطفال) وقاضي الاحداث في محكمة التحقيق.والبيئة بشكل عام بوليسي غير ملائم و غير مناسب من ناحية النفسية والاجتماعية والشخصية في حين يجب تشكيل او ان تكون هناك محكمة تحقيق الاحداث (الاطفال) بموجب قانون الاحداث الا ان هناك قاضي تحقيق الاحداث خصصت لهذه المهمة 2-5 هناك شبه انفصال (المكان) في مركز الشرطة وهو ما يخالف قانون الاحداث والجدير بالذكر ان مركز شرطة الاحداث(الاطفال) مختلط و مشترك مع مركز شرطة البالغين من الناحية الواقع لانهما مقيمين و واقعين في نفس البناية اما بخصوص محكمة تحقيق و محكمة الاحداث فليس هناك باب منفصل وليس هناك غرفة منفصل خاصة في التحقيق وانما البناية مشتركة مع بقية المحاكم اخرى 3-5 ليس هناك ادلة اجرائية بخصوص المكان التي يستمع منها الطفل لا في مركز الشرطة لا في محاكمة التحقيق ولكن قبل شهرين تم بعض تغيرات البسيطة في جدران محاكمة الاحداث وذلك بتعليق بعض اللوحات و الشخصيات ورسوم كارتون الشكلية 4-5 ليس هناك منطقة مخصصة للانتظار الاطفال وقد نص عليه القانون الا انه غير موجود من الناحية العملية 5-5 ليس هناك تدابير الحماية الاتصال بين الطفل والمتهم يتم تشخيصه بالعين المجرد واذا كان المقصود الطفل الجاني فيجب ان تكون هويته سرية ولايجوز ان يعلم به احد غير 5-6 الاعضاء هيئة المحكمة وهم القاضي و عضو الادعاء العام المحكمة و ممثل مكتب دراسة الشخصية و محامي اطراف الدعوى و الاولياء الطفل ولا يجوز كشفه في خارج المحكمة وهو ما نص عليه قانون رعاية الاحداث في المادة (58) وان مخالفة هذا الاجراء اي كشف هوية الطفل تعتبر جريمة بموجب المادة (63) من قانون رعاية (الطفل) الاحداث 7-5 يتم ارسال الطفل بواسطة سيارة الشرطة الى المدينة التي يتم المحاكمة فيه 8-5 لا يوجد ان تجرى المقابلة عن بعد، القانون لايسمع بذلك في بلدي -وانما يجب ان تكون المحكمة حضوريا وجاهيا و سرىا بموجب المادة 58 من قانون الاحداث(الاطفال) 9\_5 نفس الجواب 6 الضمانات القانونية 1-6 نعم يحق للطفل الحصول على المساعدة القانونية مجاناً وغير متخصصة بل عامة . فقط في مرحلة المحاكمة وتنحصر في انتداب محامي للدفاع عنه عن طريق تقديم لائحة دفاع لمصلحة الطفل علما ان هذا الحق كفله القانون في مرحلة التحقيق ايضا الا انه تهمل في مرحلة التحقيق ومع الاسف غالبا تكون هذا الاجراء روتيني او شكلي الهدف منه اعطاء الشرعية القانونية لاجراءات المحاكمة وهو ما نص عليه القانون في المادة 144 من قانون الاصول المحاكمات والمادة (60) من قانون رعاية الاحداث والمادة (19 الفقرة 11) من الدستور العراقي. 1-1-6 دور مساعد القانوني ينحصر في تقديم لائحة الدفاع لغرض الدفاع عن الطفل في مرحلة المحاكمة وكذلك لا بد من ذكر دور عضو الادعاء العام المنسب في المحكمة لمناقشة الادلة المعروضة للمحكمة لمصلحة الطفل وهو جانب الايجابي. 2-6 يحق للطفل ان يرافقه بشخص داعم و مسموح به وخاصة يكون الوالدين (الاولياء الطفل) موجود في مرحلة المحاكمة لدعمه معنوياً و شخصياً ونص عليه و كفله القانون ولكن



ليس له دور ايجابي تذكر في الاجراءات المحاكمه . 3-6 دور الوالدين تنحصر فقط لدعم الطفل معنوياً وشخصياً ونفسياً اي حضورهم شكلي فرضه القانون وليس دور تذكر لة تأثير ايجابي بنسبة المصلحة الطفل رغم ان القانون رعاية الاحداث المعطى الحق للوالدين للدفاع عن الطفل 1-3-6 يستثنى الوالدين في حالة تعارض المصالح او اذا كان احدهم محكوم عليه بالسجن بسبب الجرائم المخلة بالاداب او بسبب الاهمال و التقصير لتربية او رعاية الطفل ففي هذه الحالة ترفع عليه حق الولاية والاشراف على الطفل او اذا كان فاقد الادراك والارادة الا ان القانون اعطى الصلاحية للمحكمة ان يعين من ترثا او من تكون مناسباً لتعيينه وصياً من يكون اهلاً للطفل سوى من الاشخاص او المؤسسات والمنظمات 2-3-6 اذا كان مستشفى يعين ممثل قانوني اخر تسمى الوصي القانوني ويتم تعيينه بواسطة المحكمة الاحداث(الاطفال)والمحكمة الشرعية 4-6 القانون اعطى الحق في الخصوصية للاجراءات المتخذة ضد الطفل في مرحلتي التحقيق والمحاكمة ويجب ان تكون المحاكمة سرية ضماناً لمصلحة الطفل وعدم التأثير عليه شخصياً ومعنوياً في المستقبل هذا من الناحية القانونية ولايجوز الادلاء بالتصريحات الصحفية او تقريره وتسجيل الفيديو الصوري او المعلومات عنه او تحديد هوية الطفل الى الجمهور او الاشخاص مطلقاً. 5-6 التدابير الاحترازية فرضه القانون اجبارية وليس اختيارية ونص عليه القانون وتطبق بعد تنفيذ مدة محكوميته (تدبيره ) بمعنى ان التدابير تفرض بعد انتهاء مدة المحكومية(التدبير) وتنحصر بمراقبة السلوك الطفل و الرعاية اللاحقة لمدة تدبير بمراجعة الباحث الاجتماعي والاشراف على الطفل وتشجيعه ودعمه معنوياً ونفسياً ومادياً عن طريق منح مالية وتزويده بالارشادات اللازمة لمواجهة متطلبات الحياة الجديدة ومساعدته للحصول على الوثائق المطلوبة وإعادة تأهله للمجتمع وتوفير فرص الدراسة والعمل وسد احتياجاته المالية وتوفير السكن بصورة مؤقتة وحمايته الا انه لا نلمسه في ارض الواقع رغم ان هذه الحقوق من الناحية القانونية حق مكتسب بموجب قانون رعاية الاحداث(الاطفال) و الدستور 6-6 يحق للطفل استئناف القرار 7 هيكلية المقابلة 1-7 يستمع الطفل من قبل الباحث الاجتماعي في مرحلة التحقيق وكذلك من قبل مكتب دراسة الشخصية للطفل وليس هناك تحديد للجلسات او المقابلات بنسبة المحاكمة الطفل اما بخصوص الباحث الاجتماعي ومكتب دراسة الشخصية تنحصر في مقابلة او استماع واحد فقط غالباً ما . 2-7 نعم ضروري ان يكون هذا الاخصائي مدرب معترف وأمين ومخلص لعمله وللمقابلة الطفل أي يجب ان تكون اكدامياً ومعترف في عمله 3-7 البروتوكول نعم من الممكن القول ان البروتوكول الموجود وهي القواعد المذكورة في القانون اصول ( الاجرائي) للمحاكمات الجزائية الذي رسم الاجراءات التحقيقية والمحاكمة من بدايتها الى نهايتها ولا يجوز تجاوزه او اغفاله لانه متعلق بالنظام العام وبموجبه فقد ميز القانون الاصول الاجرائي الاحداث (الاطفال) عن البالغين عن طريق بعض الاجراءات الخاصة. فهناك مركز شرطة مختصة بالتحقيق مع (الاحداث) الاطفال و هناك قاضي خاص معني (مختص) بشؤون الاطفال الضحايا وهناك محكمة خاصة تسمى محكمة الاحداث وعلى سبيل المثال لا الحصر لا يجوز توقيف المتهم الحدث الا لغرض اخذ افادة و مكتب دراسة الشخصية او اذا لم يكون لديه الكفيل لاطلاق سراحه بكفالة... الخ 4-7 يسمع الوالدين بالمشاركة في الجلسة / المقابلة وهي شكلية اكثر من ان تكون موضوعية فاعلة للدفاع عن الطفل. 5-7 يخاطب الطفل المعني بالمقابلة المحقق /القاضي / المدعي العام / ضابط التحقيق يسمع باستجابات الطفل يجوز طرح الاسئلة من قبل محامي الدفاع عن طريق القاضي المحاكمة . ان اداءة التواصل تنحصر في الحضور في جلسة المحاكمة و عن طريق لائحة الدفاع او طرح الاسئلة . 6-7 نعم للمعنيين بالمقابلة ( القاضي) عدم السماح للاخرين بتوجه اسئلة الى الطفل ( الحدث) التي يثيرها الاخرون ويجب ان تكون الاسئلة موجه الى المحكمة ثم المحكمة بدوره يوجه السؤال الى الطفل 7-7 لايسمح تسجيل المقابلات صوتاً او صورة اطلاقاً وتعتبر وتشكل الجريمة بموجب القانون رعاية الاطفال. 1-7-7 . التسجيل الصوتي او الصوري لايجوز قبوله كدليل كما بيننا تعتبر جريمة بحق الطفل 8-7 ليس هناك الية التسجيل كما بيننا مراجعة تصريحات وتصحيحهما غير مسموح به ولا تقبل و يسمح للطفل او الممثل القانوني بالحصول على نسخة من 7-9 افادته او شهادته بواسطة تقديم طلب رسمي بموافقة المحكمة. 10-7 في جرائم المخلة بالاداب ، الاجراءات المتخذة ضد تكون خاصة و سرية بدون حضور الطفل و بعد المحاكمة يتم فهم الطفل عن طريق قاضي المحكمة حول الاجراءات والقرارات المتخذة سرا في سبيل عدم التأثير على شخصيه و سمعته و خصوصيته . 8-8 حقوق الجاني 1-8 يسمع للمتهم بالمشاركة في مقابلة الطفل الا في جرائم المخلة بالاداب غير مسموح به و يسمح لمحامي الدفاع بالمشاركة , الزامية . 2-8 يجب ان تكون المحاكمة حضورية و جاهية و سرية وفي حالة غياب المتهم لا يجوز محاكمته غيابياً والا تعتبر جميع الاجراءات باطلة و معدومة لذا يجب حضور الطفل الضحية مع اوليائه او من تكون بمنزلتها قانوناً شخصياً امام المحكمة 9-9 التنسيق 1-9السؤال غير واضح في النص العربي المترجم مع أعتداري 2-9 التنسيق بين المحاكم غير موجود ولا يسمع به قانوناً الا في حالة تعدد الجرام المرتكبة من قبل الطفل الضحية في حدود و مناطق مختلفة خارج عن سلطة المحكمة المختصة بالمحاكمة ويستمتع للطفل في المعجل وليس هناك عدد محدد للمقابلات و الجلسات في تحقيق والمحاكمة 3-9 ان المحكمة المختصة بأجراء المقابلة مع الطفل هي محكمة الاحداث فقط و اية اجراء تتخذ ضد طفل يجب ان تكون عن طريق قاضي تحقيق الاحداث او محكمة

الاحداث و بعكسة يكون باطلا كل اجراء او معلومات تؤخذ من الطفل وان المحامي الطفل و كذلك الوالدين لهم الحق بالمشاركة في اجراءات المقابلة والتحقيق من الناحية القانونية و تعتبر من الضمانات القانونية و لكن من الناحية العملية والتطبيقية نلمس شي آخر 10- التدريب 1-10 لا يتلقون القضاة والمستشارون تدريبا للتعامل مع الاطفال بشكل عام 2-10 كلا في حين كان من الاولي ان تكون هناك تدريب للمعنين بشكل عام على كل التخصصات منها النفسية والاجتماعية والشخصية والتربوية والطبية الاصلاحات قيد التنفيذ 1-11 نعم هناك الاصلاحات قيد التنفيذ بخصوص الاطفال بواسطة المنظمات و الهيئات الدولية -11 التابعة للامم المتحدة و كذلك منظمات المجتمع المدني الدولي و المحلي ولكن في مجال ضيق . والهدف منه ليست العملية و الاجراءات القانونية لمصلحة و رعاية الطفل او الحفاظ على الحقوق الطفل القانونية المكتسبة بموجب القانون و الاتفاقات و المعاهدات الدولية بل يتمحور على اضهار المحاكم و مؤسساتها و الاجهزة التنفيذية مثل الشرطة و الأمن بشكل جيد لاداء مهمة الوظيفية وهذا ما ينعكس الهدف و مضمون القانون ورعاية الاطفال و مصالحهم المستقبلية فبدل الاهتمام بالناحية الموضوعية والتركيز على تطبيق القانون بشكل سليم للحقوق المكتسبة القانونية ، نرى يثير اهتمامات المعنيين بالامور الشكلية و اضهار مؤسساتها على أنها جيدة و نموذجية و اذا نظرنا بحيادية الى متن و نص قانون رعاية الاحداث نرى بأن قانون رعاية الاحداث العراقي جيد من الناحية الموضوعية و الشكلية بسبب مراعاتها المبادئ و الاساسيات الدولية لحماية و حقوق الاطفال و الاحداث وكذلك اعطى الخصوصية في مرحلتي التحقيق و المحاكمة و بعد تنفيذ التدبير ياتي مرحلة مراقبة سلوك الطفل او الحدث لتأهيله و إعادة اندماجه بالمجتمع عن طريق الباحثين الاجتماعيين و المختصين بشؤون الاطفال في جميع المجالات.تم الاجابة على الاسئلة من قبل منظمة (كوشكي داد) للشؤون القانونية و القضائية و حقوق الانسان و التنمية البشرية و الدفاع عن حقوق الاطفال في اقليم كردستان/العراق رئيس المنظمة المحامي المستشار بدران حسن احمد