



النهضة العربية للديمقراطية والتنمية
Arab Renaissance for Democracy & Development

Legal Paper
Legal Aid Unit

العدالة
Justice



Legal Paper on children's rights draft bill



July
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ARDD

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I. Background

The Convention on the Rights of the Child, one of the most important documents concerning children, was adopted in 1989, after the UN General Assembly approved making it into international law. It entered into force in 1990, having been ratified by most United Nations member states and is an international charter outlining children's civil, political, economic and cultural rights.

In 1991, Jordan was one of the first Middle Eastern countries to ratify the CRC. Over time, Jordan has continued to be a pioneer in ratifying international and regional human rights instruments related to children. In 2006, Jordan issued law 50/2006, which ratified the Convention on the Rights of the Child as after the legislature approved its adoption. However, no other law concerning the rights of children has been issued since then, despite many attempts throughout the years.

On January 14, 2020, Jordan published a draft bill for children's rights, to be promulgated pending the approval of the legislature¹.

This paper is part of Arab Renaissance for Democracy and Development's (ARDD) efforts and programmes advocating for raising children in a safe environment and ensuring their protection and access to justice.

ARDD hopes to achieve this through the following main principles:

- Protecting children within the context of external environmental factors such as harassment, bullying, drugs, or crime through enhancing the concept of street law, as well as protecting them from the physical environmental hazards such as poor infrastructure and pollution – this also includes protecting their right to play and access safe spaces
- Protecting children within domestic environments by creating positive family atmospheres and providing guidance to parents as it pertains to protection and parenting skills
- Protecting children by enhancing laws and policies related to their universal rights at national and international levels through engaging in dialogue and conducting research and evidence-based lobbying and advocacy.

II. Objective of the paper

In this paper, ARDD aims to present its legal opinion on the draft bill for children's rights 2020, and to shed light on the main legal text as it pertains to the importance of this bill at the local level. This paper also considers the role of this legislation in creating a solid and clear legal text, and expanding the legislative frame

¹ To read the full children's rights draft bill, follow the link:
http://www.lob.jo/View_LawContent.aspx?ID=1226

work concerning children's rights and protection. The bill is also important internationally as it strengthens the main principles and commitments of the Convention on the Rights of the Child by implementing the international conventions on human rights. Finally, the bill is a positive addition to strengthening human rights in general, and children's right in Jordan, in particular.

III. The main legal text of the draft bill on children's rights

The draft bill on children's rights includes important legal text; in the following section, we highlight the most important components that are of unique value:

1. In Article 2, **the bill identifies the following as "competent authorities" in charge of children: "every public institution, whether official or unofficial, or local or private party designated in accordance with the law in force to provide services, or that is somehow concerned with children or their rights."**

Through this definition, the bill stresses that protecting children and ensuring their welfare is a responsibility shared by the private and public sectors. It also asserts the role of civil society organisations working and specialised in this field, and the importance of collaboration between the public sector and civil society organisations in order to work towards best practices and promoting "the rights of children in Jordan".

2. The bill includes some very important rights, paramount among them is **the right to obtain all rights and freedoms without discrimination**. The bill stipulates respect for all rights listed in international conventions, and regional and local legislation pertaining to human rights, in general, and children's rights, in particular.

The bill does not limit these rights to Jordanian children only; it covers all children in Jordan, irrespective of their nationality, including refugees and asylum seekers.

3. Article 7 of the bill asserts **the right of the child to receive legal support in all forms, be it legal consultation or legal representation before the courts, police and the public prosecutor, and any legal services related to follow up on administrative and juridical procedures**. It clearly stipulates the right of children of all ages to free legal aid.
4. The bill also asserts the need to take all required measures to protect children from all forms of violence, abuse, and exploitation. It mentions the measures required to ensure their growth, wellbeing, upbringing and health, and to ensure that they receive education and other social rights.

5. Article 60 of the bill states that **finances are enforceable in case the rule of law is violated with respect to applicable legislation, enforcing stricter penalties especially in articles 26/B, 44/B, 46/B, and 47/B**). As the aforementioned articles mention cases when the child's caregiver fails to enrol the child in school, negligence, violence, exploitation, abuse, assault, detention, any act of cruelty that affects the child's mental and emotional health, and/or failure to protect a child by not reporting cases in which he/she is threatened. This text is a qualitative addition, specifically in the field of education, as there was no text criminalising the failure of caregivers, or those legally acting for them, to enrol children in school for the compulsory grades and there were no measures to prevent that from happening.

IV. Legal notes and recommendations for the draft bill

Firstly: Notes and recommendations for the draft bill on children's rights

This bill is an important step towards the advancement of the care, protection and rights of children. However, to ensure its proper implementation and avoid any legal loopholes, challenges and obstacles that might prevent the implementation of its stipulations, ARDD has made the following observations:

1. It is essential that the bill and its texts include amendments to legislation related to the juvenile law and criminal procedures law, especially relating to the provision of legal aid. Alternatively, it should clearly state the child's right to legal aid before courts and other bodies, such as administrative or security agencies and the public prosecutor for all procedures and types of trials, regardless of the gravity of penalties as per the legislation. Juvenile law and criminal procedures law do not enforce the provision of legal aid apart from limited cases, as stated in Article 208 of the criminal procedures law. Thus, amendments are needed in order to avoid contradiction and arguments about whether the criminal or juvenile law is to be applied in which case.
2. ARDD recommends amending the definition of the child in Article 2 of the draft bill, in line with the definition in the Convention on the Rights of the Child which states in Article 1: **"For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, maturity is attained earlier."**
3. ARDD also recommends amending Article 7/D of the draft bill by adding: **"the interest of the child's parents or guardian or custodian"** after the phrase **"taking into consideration the conflict between the child's interest and (...)."**
4. Article 9/B, where the text reads as follows: "The child has the right to be affiliated to his parents, to enjoy their care, and has the right to prove her/his filiations by all legitimate means in accordance with the applicable personal status legislation." Here, ARDD suggests adding the phrase: **"and any other relevant applicable legislation"** after the phrase **"in accordance with personal status"**

legislation." As it stands, the text would indicate that proof of filiation cases are limited to the Personal Status Law and thus be restricted to Sharia courts, excluding other applicable laws such as the Civil Status Law or any other laws or jurisdiction of courts such as the Christian Communities Council.

5. ARDD recommends amending paragraph F of Article 15 of the draft bill by adding: "**Using modern methods that ensure the child's safety**" to the end of the text.
6. Article 15 stipulates a number of measures to ensure the protection and care of the child under clause G; among them, "**providing the child with the required protection from cybercrime**". ARDD suggests amending it by adding "**and the crime of human trafficking and all forms of discrimination and exploitation.**"
7. Article 16 mentions the obligation of the Ministry of Health to find specialised centres for treatment and rehabilitation of children with substance abuse problems (such as drugs, alcohol, and smoking). The use of the word "**find**" opens the door to interpretations: for example, is the ministry's role limited to finding centres? In case no centres are found, or in the absence of centres specialised in treating addiction among children, does the Ministry's responsibility end here? Therefore, ARDD suggests changing the word "**find**" with "**establish**" or "**provide**", as most addiction treatment centres in Jordan are specialised in treating adults, with no centres for children. Currently, the ones that offer these services to children specifically are expensive.
8. ARDD suggests adding a fourth clause to Article 16, with the following text: "Prohibiting the import or selling of any items that do not meet the country's standards for children's food or nutrition, health, and nutritional hormonal supplements."
9. ARDD suggests adding a clause at the end of Article 20/2, which would be "**creating a national archive for the purposes of this article and its enforceability.**"
10. ARDD proposes amending Article 27 of the draft bill by adding "**considering the sound and purposeful usage of it**" after "**to information and communication technology.**"
11. In the case of Article 30, ARDD suggests adding "**and justice and human rights**" to the end of the text, after "**and the principles of equality**".
12. The text of Article 32, clause B, is incoherent and open to interpretation. It could be used to limit freedoms and rights since it says: "**It is permissible to limit the enjoyment of this right**" in reference to what is stated in clause A of the same article: "**The right of the child to entertainment, engagement in sport, arts and suitable art activities, and the provision of safe parks and spaces.**" Then, clause B states that this right can be limited "for the protection

of the rights and reputation of others, of national security, of the public order, health, or public decency". Therefore, ARDD suggests making the text clear and specific by adding clearly stated conditions, such as **"that these activities not affect the child's health, physical and mental soundness, or the right to education"** and **"that these activities not be practiced during late hours, in spaces that might cause inconvenience to others or in spaces that are not designated for that purpose."**

13. ARDD recommends amending the text of Article 35 by adding **"and putting in place comprehensive programs to treat children's disabilities"** at the end of the text, after the word **"appropriate"**.
14. In Article 36, regarding the rights of people with disabilities, ARDD believes the rehabilitation of these individuals should be comprehensive, not only vocational, as this helps with their integration. Therefore, we suggest deleting the word "vocational" with regard to rehabilitation.
15. In articles 38/A, and 56, and wherever it comes after the phrase **facilitating measures**, ARDD suggests deleting the word **"reasonable"**. Reasonable is too vague of a word when talking about official bodies having the obligation to provide facilities and ensure an environment conducive to the best interest of people with disabilities"
16. In Article 39/C, ARDD suggests replacing the phrase **"every child with disability"** with **"for the child with disability"** as the first phrase means all children with disability must be vocationally habilitated, while the second one **"for the child with disability"** gives the choice to the child.
17. What was stated in article 46/B is generally about reporting whereby the phrase "reporting to specialised entities" and the definition of the specialised entities is very general and inclusive to all bodies in article 2 of the bill. Therefore, this text might be problematic in the phase of implementation. ARDD suggests that the text clearly identifies the entities to be approached for reporting; moreover, we suggest that such entity be the police handling juveniles.
18. ARDD proposes amending the text of Article 50 by adding the word **"mental"** after the phrase **"physical wellbeing"**, which would become **"their physical and mental wellbeing"**.
19. ARDD suggests amending the text of Article 58 by adding the words **"and legal"** to the phrase **"and providing financial, moral, and mental support services"**; it would thus become **"and providing financial, moral, mental, and legal support services"**.
20. In the case of Article 60, on the one hand, we suggest harsher penalties, reaching arrest and detention, not only fines. On the other hand, violations that result in penalties should be specified, highlighting legislation that enforces stricter penalties.

21. ARDD envisages that linking the law on children's rights to other pieces of legislation, such as the status law, juvenile law, cybercrime law, crime prevention law, criminal procedures law, and legal aid system, and bringing these laws in line with the children's rights draft bill to avoid any clash or contradiction among laws when implementing their stipulations.
22. ARDD proposes proactively setting up future plans and programs and selecting potential partners for the purpose of implementing the law in case it is promulgated.

Secondly: Notes and recommendation for the children's rights draft bill in comparison to the Convention on the Rights of the Child

Within a comparison of the draft bill on the rights of children to the Convention on the Rights of the Child, ARDD found that the draft bill omitted many essential rights and measures that provide protection for children. These rights and measures are very important and their mention makes it possible to solve many legal challenges facing children, especially when parents have different nationalities or religions. For example, in cases of custody battles due to conflict between parents, separation or the departure of one of them to his/her home country, there is usually a clash between juridical specialisation and law implementation

At the same time, there is no clear and established legal text in the local legislation that can solve such challenges, neither in the status law before Sharia courts and nor in the canon law before the ecclesiastical court. This creates legal challenges that affect the children's physical and mental well-being and their legal status in general. If added to the draft bill, such text will play a role in creating a comprehensive legislative framework that would help solve many legal issues that lead to the loss of family care and support, often due to the children's inability to live with the parent of their choice, which would work to the child's best interest.

Equally lacking is legal text specifically regarding refugee children and unaccompanied and separated children (UASC), as well as text regarding rehabilitation programs and the integration of children surviving different forms of abuse.

The Convention on the Rights of the Child addresses these problems by stating the rights and protection measures that work in the child's best interest. Accordingly, the draft bill must include the rights and protection measures stated in the Convention on the Rights of the Child, which Jordan ratified, in order to reflect all texts that Jordan has no reservation against in Jordanian legislations, as per The Vienna Convention on the Law of Treaties.

Perhaps the most important text in the Convention on the Rights of the Child that ARDD argues must be added to the draft bill is contained in articles (10, 11, 15, 22, 39). The following are stipulations to be found in these articles:

a. The right of the child to reside with his or her family, the right to be reunited with his/her family, to enter and leave the country, to live with his/her parents, or one of them, which is stated in Article 10 of the convention as follows:

1. "In accordance with the obligation of States Parties under Article 9, paragraph 1², applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family."

2. "A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under Article 9, paragraph 2³, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention."

b. *Text related to the state's responsibility to take measures to prevent children from being illegally moved*, in addition to addressing the lack of measures ensuring their return, as stated in Article 11 of the convention:

1. "States Parties shall take measures to combat the illicit transfer and non-return of children abroad."

2. "To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements."

c. *The right of the child to freedom of association and to freedom of peaceful assembly*, in addition to the prohibition of limitations of these rights, as stated in Article 15 of the convention:

1. "States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly."

2 Article 9/1 of the convention: "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence."

3 Article 9/2 of the convention: "In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known."

2. **"No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."**

d. *Text regarding state measures regarding refugee children, whether they are accompanied by their parents or not, and measures to help the child reunite with or help him/her find his or her parents, as well as provision of appropriate protection when parents are not found, as stated in Article 22 of the convention:*

1. **"States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties."**
2. **"For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or nongovernmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention."**





e. *Text on measures required to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment, as stated in Article 39 of the convention:*

"States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."



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