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Rights of Children with Intellectual Disabilities within the Criminal Justice System of Kuwait: An Analytical, Comparative, and Empirical Study.

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Rights of Children with Intellectual Disabilities within the Criminal Justice System of Kuwait: An Analytical, Comparative, and Empirical Study

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Abstract

Objectives: This research aims to examine the legislative and institutional frameworks concerning the criminal rights of children with intellectual disabilities (CWID) in Kuwait. These children face excessive challenges in accessing the criminal justice system, despite being among the most vulnerable social groups and at a higher risk of mistreatment due to their struggles with understanding and communication.

Methodology: The research combines comparative, empirical, and analytical approaches. It studies Kuwait's laws and compares them with international conventions and other states' practices. Additionally, it analyses the procedures and guarantees relevant to these children during different stages of the justice process, whether they are involved as victims, defendants, or witnesses. **Results:** The key findings of this research identify gaps between current legislative and institutional frameworks and international standards for protecting the rights of children with intellectual disabilities in Kuwait's criminal justice system. The research also identifies practical obstacles these children face when dealing with judicial and security authorities in Kuwait.

Conclusion: The research concludes with specific recommendations for developing Kuwaiti legislation and judicial practices in accordance with international obligations to ensure the protection of the rights of children with intellectual disabilities. These recommendations include legislative amendments, practical measures, and training programs for criminal justice professionals dealing with this vulnerable group, as

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well as proposals for establishing special mechanisms to support these children throughout the various stages of the criminal justice process.

Keywords: Disability Rights, Children Rights, Mental Health, Fair Trial, Criminal Procedures, Autism.

1. Introduction

1.1 Research Problem

The criminal treatment of children with intellectual disabilities (CWID) in many countries, including Kuwait, remains taboo. CWID and their family members are constant and easy targets for perpetrators.⁽¹⁾ Furthermore, when accessing the criminal justice system, they are often at a significant disadvantage compared to other children without intellectual disabilities, and whether they are involved in the system as victims, defendants, and witnesses. The reasons may include the following: First, the intellectual disability may not affect the child's physical appearance.⁽²⁾ Second, intellectual disability does not necessarily affect the physical ability to commit crimes.⁽³⁾ Third, the low level of understanding and communication difficulties of children with intellectual disabilities means a 'headache' to the criminal justice system, whether in their contact with police, courts, government agencies, or within prisons.⁽⁴⁾ This means that if those children were victims, they would face excessive hardship in accessing the justice system; thus, there would be less reporting and, therefore, fewer prosecutions and, consequently, more victims.⁽⁵⁾ Similarly, if those children were defendants and went to jail without proper account to their condition, they would come out only to commit more crimes. Thus, to

(1) World Health Organization and the United Nations Children's Fund (UNICEF), 'Global Report on Children with Developmental Disabilities: From the Margins to the Mainstream' (2023) pages 49, 63-64 <<https://iris.who.int/bitstream/handle/10665/372864/9789240080232-eng.pdf?sequence=1>>.

(2) 'The Rights of People with Disabilities: Areas of Need for Increased Protection: Chapter 5: Criminal Justice System' (The Australian Human Rights Commission) <<https://humanrights.gov.au/our-work/rights-people-disabilities-areas-need-increased-protection-chapter-5-criminal-justice>>.

(3) Ibid.

(4) Ibid.

(5) Christina Rainville, 'Protecting Children with Disabilities Requires Systemic Change in Our Legal System' (2013) 39 Vt BJ 27 page 27.

break the vulnerability cycle, CWID needs special treatment to address the challenges brought by the disability, particularly in the context of the right of self-defence, right to privacy, reporting and evidentiary related issues, criminalization and punishment, among other complex criminal matters that need a good amount of understanding, consciousness, courage, and expressive ability for a child to participate effectively in the criminal process, as well as, for balancing the contested interests of criminal responsibility, the child's best interests, and public safety.

1.2 Research Objective

Out of 64,157 persons registered with the Public Authority for Disabled Affairs of Kuwait (PADA), the number of people suffering from intellectual disabilities is 16,926, surpassing all other types of disabilities.⁽⁶⁾ While, Kuwait's Criminal Law and Criminal Procedure and Trials Law are both from 1960 and are still effective in the country.⁽⁷⁾ Therefore, unsurprisingly, both laws are behind in recognizing the special needs and unique challenges of childhood, let alone disability and further, intellectual disability. Therefore, this research uncovers the position of CWID within Kuwait's criminal justice system by studying the national laws concerning children and disability affairs. Namely, the Law on the Rights of the Child No. 21 of 2015⁽⁸⁾, the Law of Juvenile No. 111 of 2015⁽⁹⁾, and the Law on the Rights of Persons with Disabilities No. 8 of 2010.⁽¹⁰⁾

1.3 Research Limitations

Although The term ‘children with intellectual disabilities’ to refer to all children with developmental, neurological, and sensory issues may not always be accurate medically, using this term is necessary to

(6) In accordance with the statistics published on PADA's website on 13 January 2024. ‘Statistics’ (Public Authority for Disability Affairs (PADA)) <<https://www.pada.gov.kw/en/information-center/statistics/>>.

(7) ‘Criminal Law and Complementary Laws’ (Collection of Kuwait’s laws, 2011) <<https://moj.gov.kw/AR/Pages/MojLaws.aspx>>.

(8) Kuwait's Law on the Rights of the Child No. 21 of 2015’ (Ministry of Justice) <<https://moj.gov.kw/AR/Pages/MojLaws.aspx>>.

(9) ‘Kuwait's Law of Juvenile No. 111 of 2015’ (Ministry of Justice) <<https://moj.gov.kw/AR/Pages/MojLaws.aspx>>..

(10) ‘Pada Law’ (Public Authority for Disability Affairs) <<https://www.pada.gov.kw/en/authority-law/>>.

accomplish the objectives of this research because, as per the practice of PADA in classification, all these issues may fall under the intellectual disability category. Therefore, some of the common conditions this research is concerned with include Autism (ASD), Down Syndrome, and Attention Deficit Hyperactivity Disorder (ADHD). Additionally, this research recognizes the following limitations: the intellectual disability could be of different nature and include various types of conditions/disorders while the current practice of PADA is to classify as intellectual disability any case with thinking or understanding or social or behavior deficits without detailing what is the accurate diagnose; Also, many parents in Kuwait are resistant to acknowledging that their child suffers from intellectual disability and Kuwait is still behind in the field of the early discovery of intellectual disability thus there are unknown cases of CWID, therefore criminal justice professionals may not be able to identify those cases and provide them with the support they need promptly at early stages of proceedings. The nature and severity of the disability are greatly important information that if provided, alongside proper training, for criminal professionals will help them to address the specific needs of CWID throughout the different stages of the justice process.⁽¹¹⁾ To illustrate, such information could be crucial for understanding the impact of the juvenile's disability on his thinking and acting, thus, for determining the most effective interventions or practices to be undertaken, as well as for determining important issues such as insanity, incompetence for adjudication, intent to commit the offense, and the admissibility of confessions.⁽¹²⁾

1.4 Research Methodology

This research uses the comparative approach to determine the consistency between Kuwait's laws and its international legal obligations

(11) Burrell S and Warboys L, 'Special Education and the Juvenile Justice System- Juvenile Justice Bulletin' (Office of justice programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), July 2000) pages 8-9 <<https://www.ojp.gov/pdffiles1/ojjdp/179359.pdf>>.

(12) Ibid. Also, Daniel P. Mears, Laudan Y. Aron, 'Addressing the Needs of Youth with Disabilities in the Juvenile Justice System: The Current State of Knowledge' (The Urban Institute, November 2003) page ii <<https://www.urban.org/sites/default/files/publication/59476/410885-Addressing-the-Needs-of-Youth-with-Disabilities-in-the-Juvenile-Justice-System.PDF>>.

toward CWID arising from the UN Conventions on the Rights of the Child (CRC)⁽¹³⁾ and the Rights of Persons with Disabilities (CRPD).⁽¹⁴⁾ Also, the research points out, whenever useful, to the Egyptian laws and relevant laws from different States. Further, the research uses the empirical approach by tracing posts on social media platforms and collecting information surveys that took the form of written questionnaires and face-to-face or online interviews. Additionally, a seminar was held on 22 November 2023 at Kuwait International Law School where stakeholders, including academics and practitioners, gathered information and engaged in discussions.⁽¹⁵⁾ The research relied only on social media posts from identifiable accounts, whether belonging to family members and parents of CWID, educators of CWID, lawyers, activists in children or disability affairs, and concerned civil society organizations. The surveys also targeted the same above-mentioned groups. Altogether, the empirical and the analytical approaches contributed to the research's identification, in Chapter 5, of the legislative, institutional, procedural, and practical challenges hindering the promotion of CWID's criminal rights. The research concludes by stating recommendations useful for advancing the criminal rights of CWID.

This research is divided into six chapters as follows:

- 1 - Introduction
- 2 - Sources of Law Concerning the Criminal Rights of Children with Intellectual Disabilities in Kuwait.
- 3 - Institutional Framework Concerning the Criminal Rights of Children with Intellectual Disabilities in Kuwait.
- 4 - Procedural Criminal Rights for Children with Intellectual Disabilities in Kuwait.

(13) Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

(14) Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).

(15) Seminar entitled 'Criminal Protection for Children with Intellectual Disabilities: Law, reality, and Hopes' held at Kuwait International Law School, 22 November 2023.

5 - Challenges to the Criminal Rights of Children with Intellectual Disabilities in Kuwait.

6 - Conclusion

2 Sources of Law Concerning the Criminal Rights of Children with Intellectual Disabilities in Kuwait

Kuwait is party to two major multilateral UN conventions concerning the rights of children and persons with disabilities: Convention on the Rights of the Child 1989 and Convention on the Rights of Persons with Disabilities 2006. Further, national laws comprising the criminal rights of children with disabilities in Kuwait include Law on the Rights of the Child No. 21/2015, Law of Juvenile No. 111/2015, and Law on the Rights of Persons with Disabilities No. 8/2010.

2.1 International Conventions

2.1.1 Convention on the Rights of the Child, 1989 (CRC)

Kuwait ratified the convention in 1991.⁽¹⁶⁾ The main objective of the convention is inspiring governments to change laws and policies and make investments to ensure more children get access to education and health care and nutrition, protect children from violence and exploitation, and enable children to participate in their societies.⁽¹⁷⁾

In the context of promoting criminal justice for children, and in addition to preserving the child's dignity⁽¹⁸⁾, the convention gives special consideration for the following rights/principles: right to non-discrimination (Article 2); right to life and development (Article 6); right to be heard (Article 12); and all decisions and procedures must be based on the child's best interests (Article 3).

(16) 'Convention on the Rights of the Child' (United Nations Treaty Collection) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en#EndDec>.

(17) 'Convention on the Rights of the Child' (UNICEF) <<https://www.unicef.org/child-rights-convention>>.

(18) CRC has repeatedly asserted a child's dignity throughout the convention's text. Particularly, dignity mentioned three times in the preamble, and the remaining in Articles 23, 28, 37, 39, and 40.

Article 23 of the convention contains an explicit mention of the right of a mentally disabled child to ‘enjoy a full and decent life, in conditions which ensure dignity...’

The UN Committee on the Rights of the Child is the body established by the convention and responsible of examining the progress made by States Parties in achieving their obligations under the convention.

According to the Committee, general comment No. 10/2007⁽¹⁹⁾: the recommended minimum age of criminal responsibility (MARC) for juveniles should not be below the age of 12 years. Further, the Committee asserted that this MARC should not be fixed. Instead, emotional, mental, and intellectual maturity should be given consideration.

Also, the Committee recommends States Parties set and implement shorter time limits than those for adults, for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final adjudication and decision by the court or other competent judicial body.⁽²⁰⁾

Additionally, the Committee emphasizes that a child should not be compelled to testify, confess, or acknowledge guilt.⁽²¹⁾ Further, the Committee explained thoroughly the meaning of ‘compelled’ for children by stating the following:

The term ‘compelled’ should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child’s development, the length of the interrogation, the child’s lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment may lead him/her to a confession that is not true. That may become even more likely if rewards are promised such as: ‘You can go home as soon as you have given us the true story’, or lighter sanctions or release are promised.⁽²²⁾

(19) UN Committee on the Rights of the Child (CRC), ‘General comment No. 10 (2007): Children's Rights in Juvenile Justice’ (25 April 2007) CRC/C/GC/10 page 11 <<https://www.refworld.org/docid/4670fca12.html>>.

(20) Ibid 16.

(21) Ibid.

(22) Ibid 17.

Also, according to the Committee, pre-trial detention of a juvenile should be strictly limited and regulated.⁽²³⁾ To illustrate, the law should clearly state the conditions justifying keeping a child in pre-trial detention. Also, the duration of pre-trial detention should be limited and be subject to regular review.⁽²⁴⁾

Further, the Committee recommends that all the professionals including law enforcement and the judiciary should receive proper training on the content and meaning of the provisions of convention.⁽²⁵⁾ Also, this training should include information on the social and other causes of juvenile delinquency, psychological and other aspects of the development of children, with special attention to girls and children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, and the available alternatives in dealing with those children without resorting to judicial proceedings.⁽²⁶⁾

Additionally, to assist States Parties in drafting their national legislation in a way consistent with their international obligations, the United Nations Office on Drugs and Crime (UNODC), in cooperation with other stakeholders, has developed the Model Law on Justice in Matters involving Child Victims and Witnesses of Crime⁽²⁷⁾ and the Model Law on Justice in Matters involving Children in Conflict with the Law.⁽²⁸⁾ This research, in Chapter 4, discusses these model laws. Particularly, their applicability on CWID, and implementation in Kuwait.

2.1.2 Convention on the Rights of Persons with Disabilities, 2006 (CRPD)

Kuwait ratified the convention in 2013.⁽²⁹⁾ The main objective of the

(23) Ibid 21-22.

(24) Ibid.

(25) Ibid 25.

(26) Ibid.

(27) 'Justice in Matters Involving Child Victims and Witnesses of Crime' (UNODC & UNICEF, 2009) <https://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf>.

(28) 'Justice in Matters Involving Children in Conflict with the Law' (UNODC, 2013) <https://www.unodc.org/documents/justice-and-prison-reform/Justice_Matters_Involving-Web_version.pdf>.

(29) 'Convention on the Rights of Persons with Disabilities' (United Nations Treaty Collection) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=iv-15&chapter=4&clang=_en>.

convention is to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.⁽³⁰⁾

Article 1 of the convention identifies persons with disabilities as those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

In the context of criminal treatment, the Convention gives due regard to the dignity of persons with disabilities.⁽³¹⁾ Also, Article 13(1) regarding access to justice states that procedural and age-appropriate accommodations might be necessary to ensure effective access to justice for persons with disabilities and to facilitate their effective participation in all legal proceedings. Further, Article 7 of the convention concerns children with disabilities gives special consideration to the following rights/principles: right to non-discrimination (Article 7.1); right to be heard (Article 7.3); and all decisions and procedures must be based on the child's best interests (Article 7.2).

The Committee on the Rights of Persons with Disabilities is the body established by the convention and responsible for examining the progress made by States Parties in achieving their obligations under the convention.

In a joint statement on the rights of children with disabilities, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities elaborated on the standard of Article 12 of the CRC and 7.3 of the CRPD on the right to be heard. The Committees emphasized that:

States Parties should ensure that children with disabilities are equipped with, and enabled to use, any mode of communication, including sign language, Braille, Easy Read, alternative and augmentative modes

(30) 'Convention on the Rights of Persons with Disabilities (CRPD) | Division for Inclusive Social Development (DISD)' (United Nations) <<https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd>>.

(31) CRPD asserted on the dignity of persons with disabilities throughout the convention's text. Particularly, dignity mentioned three times in the preamble, and further in Articles 1, 3, 8, 16, 24, and 25.

of communication necessary to facilitate the expression of their views, and that their opinion is given due consideration.⁽³²⁾

2.2 National Laws

2.2.1 Law on the Rights of the Child (No. 21/2015)⁽³³⁾

The law discusses all the rights of all children. For example, the right to health care, education, and social inclusion. In the context of criminal rights, the law is more relevant to the child victim and witness. Article 3 of the law reaffirmed all the fundamental principles of the Convention on the Rights of the Child: right to non-discrimination (Article 3.b); right to life and development (Article 3.a); right to be heard (Article 3.c); and all decisions and procedures must be based on the child's best interests (Article 3.d).

Part 6 of the law concerns the protection and rehabilitation of child with disability. This part stipulates children with disabilities rights to health care, rehabilitation, education, work, and social inclusion.

Part 8 of the law concerns the criminal protection of the child; Chapter I, defines some terms like 'Neglect' 'Physical Abuse' 'Psychological/Emotional Abuse' and 'Sexual Abuse'. However, these definitions are not inclusive of all forms of violations, for example, interference with the child's privacy as per Article 16 of the Convention on the Right of the Child; Chapter II concerns the protection of the child against traffic risks; Chapter III concerns the protection of the child against exposure to risks.

Part 9 concerns penal treatment of a child abuser. This part details the penalties for violating children's rights stipulated by the law. Further, Article 94 suggests a double penalty for any crime committed against the child by one of his parents, guardians, anyone responsible for the child's affairs, have authority or control over the child, or a servant. Ironically however, the law does not decide severe punishments on any adult who commits a crime against a child.

(32) OHCHR, 'Joint Statement on the Rights of Children with Disabilities' (18 March 2022) <<https://www.ohchr.org/en/treaty-bodies/crpd>>.

(33) 'Kuwait's Law on the Rights of the Child No. 21 of 2015' (n 8).

1.1.2 Law of Juvenile (No. 111/2015)⁽³⁴⁾

It concerns the criminal rights of child defendants. Child defendant's MARC is 7 to 18 years old (Articles 1(1) and 2 of Kuwait's Law of Juvenile No. 111 of 2015. Also, Article 18 of Kuwait's Criminal Code 16/1960.)

Article 1(3)(f) of the law considers a juvenile vulnerable to delinquency a juvenile who suffers from physical, mental, or psychological illness or mental weakness in a way that affects his ability to perceive or make choices, which raises concerns for his safety or the safety of others. Therefore, Article 1(3)(f) decides a status offense. Meaning, CWID can be treated as juvenile vulnerable to delinquency just because of their disability.

In this regard, Egypt is a good example of a country in the Middle East that recognizes CWID's right to receive different treatment and protection within the criminal justice system. For instance, Article 96(13), part eight, entitled Dealing with children having infringed the penal law, from Egypt's Child Law (No. 126 of 2008) amended Law (No. 12 of 1996), considers a child at risk or vulnerable to danger 'if the child is physically, mentally or psychologically sick or mentally disabled, in a manner affecting his ability to perceive or chose, and where such illness or weakness would endanger his safety or that of others.'⁽³⁵⁾ Accordingly, this child needs the State's protection. Therefore, the Article stipulates that putting a child at risk shall be punishable by imprisonment and fine or by one of the two penalties. This understanding contravenes the amended Law of 1996, which considered those children vulnerable to delinquency; therefore, the State could convict children and their families not because they have committed criminal offenses but instead for status offenses.⁽³⁶⁾

(34) 'Kuwait's Law of Juvenile No. 111 of 2015'(n 9).

(35) 'Law No. 12 of 1996 promulgating Child Law amended by law No. 126 of 2008' (The Cabinet- The National Council for Childhood and Motherhood) page 33 <<https://www.warnathgroup.com/wp-content/uploads/2015/03/Egypt-Child-Law-2008.pdf>>.

(36) 'Charged with being children: Egyptian police abuse of children in need of protection' (Human Rights Watch, February 2003) pages 39-40 <<https://www.hrw.org/reports/pdfs/e/egypt/egyptkids0203.pdf>>.

Interestingly as well, Article 11 of Kuwait's Law of Juvenile mentions juveniles with disabilities. Articles 11 and 7 distinguish between juveniles vulnerable to delinquency and juveniles with disabilities in treatment, measures, and penalties. The problem, which category do CWIDs fit into?

1.1.3 Law on the Rights of Persons with Disabilities (No. 8/2010)⁽³⁷⁾

The law concerns the different rights of persons with disabilities including civil and political, education, healthcare, social and cultural, sports and entertainment, housing, transportation, and employment. In many Articles, the law affirms the duty of the government to provide the necessary arrangements to enable persons with disabilities to enjoy rights and services on an equal basis with others.⁽³⁸⁾

Article 1(1) defines a person with disability as ‘anyone suffering from permanent impairments, wholly or partially, affecting his physical or mental or sensational abilities and might prevent him from securing the work-related necessities or the full and effective engagement in society on an equal basis as others.’ The definition is far from that of Article 1 of the CRPD particularly the approach recognizing as persons with disabilities those who suffer from impairments that stimulated, triggered or intensified in interaction with various social, environmental or other settings or circumstances. For example, people with one eye when driving! Also, unlike Kuwait's definition of a person with disability, the CRPD recognizes as persons with disabilities those who suffer from long-term impairments, not only permanent. As a result, Kuwait does not consider conditions like post-traumatic stress disorder (PTSD) and similar conditions. Thus, children and youth who suffer from PTSD, when in contact with the criminal justice system, are not being treated with consideration to their impairments. Additionally, Kuwait's definition considers only impairments affect the person's ability to secure work-related necessities, instead of life-related. Therefore, for example, retirees are excluded from the definition.

Article 16 of the law concerns the prevention of all forms of abuse

(37) ‘Pada Law’ (n 10).

(38) Ibid Articles 4, 5, 8, and 9.

and exploitation of persons with disabilities at work. While, abuse and exploitation could happen in any place, including public places and private places devoted for public use. Additionally, the form of abuse or exploitation meant by the Article is unclear. Also, there is no articulation on the identity of the possible abuser or exploiter.

Part 9 of the law concerns penalties. Article 61 decides that imprisonment and fine or either one of these two penalties shall be imposed on anyone responsible for the care of a person with disability and neglects to undertake his duties, failed to undertake necessary measures, or refrained to fulfil his duties. If such neglect results in harming the disabled person, penalties increased. If neglect results on the death of the disabled person, penalties increased even further.

Clearly, the law does not pay much attention to the criminal rights of persons with disabilities, including children with disabilities. The law does not specify the types of crimes those persons, including CWID, usually become victim of, such as interference with privacy, bullying, mockery, denial of services, abuse of power and authority, and non-reporting or late reporting of abuses committed against them. Furthermore, the law does not decide severe punishments on anyone target a disabled person, because of his weakness and vulnerability, with a crime. Also, the law does not reflect the realization that persons with disabilities may encounter abuses and violations of their rights in any place and by anyone, even in government institutions and by State officials. Moreover, the law does not recognize the need of the family members of persons with intellectual disabilities for State's protection particularly if family members engaged in criminal actions for the purpose of protecting the interests and safety of the intellectually disabled person against eminent peril and whether the harm, they are trying to protect the disabled person from, is physical or psychological.

In that connection, chapter three of part five from Egypt's Law on the Rights of Persons with Disabilities (No. 10/2018) entitled legal and criminal protection of persons with disabilities, consists of four Articles (35,36,37, and 38) decides special criminal rights and measures for persons with disabilities throughout the different stages of the justice process, and whether they were

defendants, victims, or witnesses.⁽³⁹⁾ For example, according to Article 36, the information contained in the disability identification card, after verifying its accuracy, is taken into account when taking any legal measures against the person with disability during the stages of arrest, detention, investigation or trial, without presenting him to any other party to confirm his disability recorded in the card. Undoubtedly, this protection is necessary to protect persons with disability against abuse of power and arbitrary detention. Furthermore, Article 80 from Egypt's Executive regulation of the Rights of Persons with Disabilities Law No. 10 of 2018 obliges the National Council for Persons with Disabilities and law enforcement and investigation authorities to work together to facilitate the use of Braille, sign language, and alternative means of communication that enable persons with disabilities to present their defence or testimony at all stages of the criminal proceedings, whether collection of evidence, preliminary or detailed investigation, or trial. Moreover, Article 58 of Egypt's Law on the Rights of Persons with Disabilities (No. 10/2018) decides the minimum penalty prescribed for any intentional crime shall be doubled, if it is committed against a person with a disability. Notably as well, Article 375bis of Egypt's Penal Law considers intimidation and bullying criminal offense punishable by law.⁽⁴⁰⁾ Under this Article, without prejudice to any more severe penalty contained in another law, the penalty shall be imprisonment for a period of not less than one year for anyone who uses force or threaten to use force or violence or to inflict harm, whether physical or psychological, or by interference in private life, against any person or his family members, for the purpose of intimidating or terrifying or exposing the life or safety of the person or his family members to danger, or causing damage to property or reconciliation, or prejudice personal freedom, honor, reputation, or preventing the performance of any lawful act, or for obstructing the implementation of laws and regulations or legal and judicial proceedings.⁽⁴¹⁾

(39) 'Law on the Rights of Persons with Disabilities No. 10 of 2018' (Manshurat.org) pages 23-24 <<https://manshurat.org/node/25895>>.

(40) E Mousa, 'Texts and articles of the Egyptian Penal Code and the latest updates and amendments' (*Mohamah*, 24 May 2023) <<https://www.mohamah.net/law/%D9%86%D8%B5%D9%88%D8%B5-%D9%88-%D9%85%D9%88%D8%A7%D8%AF-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B9%D9%82%D9%88%D8%A8%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D8%B5%D8%B1%D9%8A-%D9%88-%D8%A7%D8%AE%D8%B1/>>.

(41) Ibid.

3 Institutional Framework Concerning the Criminal Rights of Children with Intellectual Disabilities in Kuwait

The work of the following institutions is relevant to the criminal rights of CWID:

3.1 Primary Institutions

3.1.1 Police

First. Community Police

This department established by The Ministry of Interior Decree 2411/2008 to oversee various social problems, including the protection of children from domestic violence and violence in schools.⁽⁴²⁾

Second. Juvenile Protection Police

A specialized police unit that prevents and combats juvenile crimes, conducts research and investigates them, collects evidence about them, contains them, enforces judgments and decisions related to juveniles, and guards social care institutions. (Article 1 paragraph 6 of Kuwait's Law of Juvenile No. 111 of 2015).

3.1.2 Juvenile Prosecution

Responsible of the whole criminal investigation and indictment in both misdemeanors and felonies of juveniles. (Article 1 paragraph 5 of Kuwait's Law of Juvenile No. 111 of 2015).

3.2.3 Juvenile Court

Specialized in hearing juvenile cases. (Article 1 paragraph 4 of Kuwait's Law of Juvenile No. 111 of 2015).

(42) OHCHR, 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Fourth periodic report submitted by Kuwait under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2020' (27 October 2020) CAT/C/KWT/4 paras 41-42 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/270/91/PDF/G2027091.pdf?OpenElement>>.

3.2 Supporting Institutions

3.2.1 Ministry of Social Affairs (MOSA)

First. Social Care Institutions

Any institution assigned by MOSA to receive convicted juveniles or juveniles required to be placed in detention pending their classification and distribution to the appropriate placement institutions depending on gender, age, criminal act, and mental state.⁽⁴³⁾

Second. The Membership of the Juvenile Court

The court membership includes one judge and two social worker experts, who are appointed in agreement with the Minister of Social Affairs. (Article 33 of Kuwait's Law of Juvenile No. 111 of 2015).

3.2.2 Child Protection Team

Deals with instances of suspicious of child abuse and undertakes the necessary protective measures. The team consists of children doctors, nurse, social worker, psychotherapist, and police officer. (Article 71 paragraph 7 of Kuwait's Law on the Rights of the Child No. 21 of 2015).

3.1.3 Child Protection Centers

Each center includes representatives from the Ministry of Health, Interior, Education, Social Affairs, and NGOs. Centers are available in all governorates of Kuwait for receiving complaints, undertaking measures, following up, referencing and reporting to the juvenile prosecution and court, and ensuring regular evaluation of the child.⁽⁴⁴⁾

3.1.4 Friends of the Disabled Team of Public Authority of Disability Affairs (PADA)

According to Article 68 of the law 8/2010, Friends of the Disabled is to be determined by PADA and shall be responsible for the enforcement

(43) For examples of these institutions, read Article 1(7) of 'Kuwait's Law of Juvenile No. 111 of 2015' (n 9)..

(44) Articles 77 to 79 of 'Kuwait's Law on the Rights of the Child No. 21 of 2015' (n 8)..

of the law and any relevant decisions. PADA decides, by a decision, the team's competencies, and to fulfill its competencies, the team possesses a judicial power. Also, the article asserted that officials of PADA could be among the team members.

4 Procedural Criminal Rights for Children with Intellectual Disabilities in Kuwait

The justice process for child victims and witnesses covers the following stages: detection of the crime; making of the complaint; investigation; prosecution; trial; and post-trial. While, the process for juvenile includes the following phases: child's arrest; child's treatment in police custody during the questioning and the release from police custody; child in pre-trial detention; trial; sentences; aftercare and reintegration; and alternatives to judicial proceedings, in particular, restorative justice.

Each phase of the justice process has its unique provisions and procedures necessary to accomplish a fair trial and to promote the rule of law. However, since this study is concerned with the specific problem of CWID, this chapter will focus on the stages that are more relevant to the problems those children usually face and caused by their disability. For example, inability to report abuses properly and promptly, dependency on others to file complaints, limited memory, challenges to comprehend orders and comply, poor judgment on what is the proper and proportionate reaction, inability to ask for help or to take care of oneself. Therefore, for child victims and witnesses, the chapter will examine whether Kuwait's laws provide effective procedures concerning the detection of the crime, making of the complaint, and investigation. For juvenile, the chapter will examine whether Kuwait's laws contain effective procedures concerning child's arrest and his treatment in police custody and pre-trial detention.

The undertaken approach is by reviewing the international standards included in the UN Model Law on Justice in Matters Involving Child Victims and Witnesses of Crime⁽⁴⁵⁾ and the UN Model Law on Justice in

(45) 'Justice in Matters Involving Child Victims and Witnesses' (n 27).

Matters involving Children in Conflict with the Law.⁽⁴⁶⁾ Then, relating them to CWID.

4.1 Justice Process for CWID Victims and Witnesses

4.1.1 The Detection of the Crime

According to international standards, the detection of crime committed against or in the presence of children requires developing a robust system for reporting.⁽⁴⁷⁾ Furthermore, reporting offenses should be a legal obligation for specific categories of professionals working in contact with children, including teachers, doctors, nurses, and social workers. Moreover, failure to report should constitute a criminal offense by omission.⁽⁴⁸⁾

Apparently, such system becomes even more important for CWID who, in addition to the childhood and due to their disability, may not realize that they are victims or witnesses; forget details, do not know what to do or who, how, and what to tell; and most significantly the offender might be someone those children are dependent on, live with in the same household, or possess an authority over the child. Therefore, for CWID, an effective system for reporting must be accessible, clear, fast, flexible, and protects the identity of the reporter.

In accordance with the Law on the Rights of the Child (No. 21/2015), child protection centers exist in all governorates of Kuwait, it receives complaints concerning a child's exposure to risks whether the complaint filed by the child, caregiver, parents or a professional whose work is with the child. Additionally, the centers provide a hotline for receiving such complaints [Article 77(a)(g)]. Also, Article 78 ensures the confidentiality of the reporter's identity. Further, everyone responsible for taking care of children including those under the duty of professional secrecy have a duty of reporting, in writing, to child protection centers any risks threatening child's health or bodily safety (Article 26), and reporters are free of any liability (Article 28).

(46) 'Justice in Matters Involving Children in Conflict with the Law' (n 28).

(47) 'Justice in Matters Involving Child Victims and Witnesses' (n 27). 36.

(48) Ibid.

Additionally, in accordance with the Law on Rights of Persons with Disabilities (No. 8/2010), Friends of the Disabled Team may play a role in the discovery and reporting of crimes against disabled children.

Therefore, to improve Kuwait's system for detecting crimes involving CWID, whether they are victims or witnesses, it is useful to add that reporting offenses must be done immediately upon discovery to the authorities.⁽⁴⁹⁾ Also, late reporting or non-reporting must constitute a criminal offense (by omission), and a penalty must be imposed for such offense.

4.1.2 The Making of Complaint

According to the international standards, an effective system for making complaints in relation to crimes involving children must ensure right to be informed; availability of legal assistance; availability of protective measures; and availability of interpreter and other special assistance measures.⁽⁵⁰⁾

Obviously, CWID encounter increased difficulties during this stage of proceedings. To illustrate, someone shall be determined to file the complaint on behalf of the child because the disabled child struggles with decision-making, communication, and advocacy. Also, this person must be willing to put forth the time and energy to navigate the system and to learn about procedures relevant to CWID. Further, CWID may need extra support and effort to benefit from the available resources and measures including legal assistance, protective measures, and interpretation services or other special assistance. Hence, this stage may be mentally, physically, and financially draining. Thus, raising the odds of giving up on the complaint if there were no clear institutionalized settings for regulating this stage in place.

Right to be informed include the right of the child and his family or lawyer to be promptly informed by a competent authority about the procedures of the justice process, like how, where, and who has the right to submit a complaint; the role of the child victim or witness;

(49) Ibid.

(50) 'Justice in Matters Involving Child Victims and Witnesses' (n 27).13-14.

timing and manner of interviews with the child; and the availability of any support mechanisms/services for a child victim or witness –whether legal, financial, medical, psychological or social.⁽⁵¹⁾

Legal assistance means a child victim or witness shall be assigned a lawyer by the State free of charge throughout the justice process upon request of the child, his parents, or the court.⁽⁵²⁾

Protective measures mean at any stage in the justice process where the safety of a child victim or witness is deemed to be at risk, a competent authority shall arrange to have protective measures put in place for the child. Those measures may include avoiding direct contact between a child and the accused, placing the accused in pretrial detention or under house arrest, or providing protection for the child by the police or other agencies.⁽⁵³⁾

Interpreter and other special assistance measures mean that proceedings must be conducted in a simple language that is comprehensible to a child. If due to age, level of maturity or disability, the child requires special assistance measures, such measures shall be provided free of charge.⁽⁵⁴⁾

Laws of Kuwait, particularly the Law on the Rights of the Child and the Law on Rights of Persons with Disabilities, do not specify competent authority(s) responsible for promoting the right to be informed. Also, the laws do not promote the right of child victims or witnesses to receive legal assistance particularly lawyer from the State free of charge. Articles 78 and 79 of Law on the Rights of the Child specify child protection centers as the competent authority responsible for the arrangement of the protective measures in collaboration with the police. Regarding the interpreter and other special assistance measures, the Law on Rights of Persons with Disabilities contains only general guidance for the government to provide persons with disabilities with all assistance they need to ensure their enjoyment of rights and services on an equal basis as others.

(51) Ibid 13.

(52) Ibid 14.

(53) Ibid.

(54) Ibid.

4.1.3 Investigation

According to the international standards, during the investigation phase of cases involving a child victim or witness, the interview with the child and his parents must be conducted by a specially trained investigator who appreciates the situation's sensitivity and can show sympathy and patience. The training may cover issues such as the importance of conveying promptly information about the case to the child and his parents, children-friendly approach in conducting interviews and in asking direct questions and using simple language, the importance of repeated breaks for eating and toileting, flexibility in deciding the interview's timing and place, and notification regarding the use of special measures such as waiting areas for child victims and witnesses and their families.⁽⁵⁵⁾

Kuwait's laws do not require police officers, prosecutors, lawyers and other criminal justice professionals working in the investigation to receive specific training on child-related issues as a prerequisite for working with child victims and witnesses. Similarly, no such training is required to work with intellectually disabled persons.

4.2 Justice Process for CWID Juvenile

There are rights of the child shall apply throughout the proceedings including the right to information; the right to legal assistance; the right to an interpreter and special services; and the right to have the parents present.⁽⁵⁶⁾

4.2.1 Child's Arrest

According to the international standards, the right to information upon arrest is necessary to protect against arbitrary arrests, and it includes the following: First, the arrested child shall be informed immediately of the reason(s) for arrest and of his rights, in a manner which is consistent with the child's age and level of understanding.⁽⁵⁷⁾ Second, the police officer/investigator concerned shall immediately

(55) Ibid 15 and 45.

(56) 'Justice in Matters Involving Children in Conflict with the Law' (n 28) 73.

(57) Ibid 19 and 81.

notify the parents of the child's arrest, providing information on why and where the child is being held.⁽⁵⁸⁾

During arrest, the use of force and instruments of restraint is prohibited by the police except in exceptional circumstances and where all other methods of control have been exhausted and failed. For this purpose, the exceptional circumstances are defined as situations in which action is required to prevent a child from engaging in self-injury behavior, injuring others, or to prevent him from escaping. Nevertheless, the use of force and instruments of restraint shall only last for the shortest appropriate period of time; be proportionate to the circumstances; and not be used in a manner likely to cause humiliation. Under any circumstances, the following instruments of restraint shall not be used on a child: guns, knives, handcuffs, chains, tasers, pepper spray, and any similar means.⁽⁵⁹⁾

A child who is arrested shall be provided with free legal aid; be permitted to consult with his legal representative before being questioned by the police/prosecutor; and be questioned only in the presence of his lawyer.⁽⁶⁰⁾ If needed, the arrested child shall be provided with a free interpreter.⁽⁶¹⁾ The child shall have the right to meet the interpreter before questioning to ensure that he can understand the interpreter. Obtaining any evidence from the child in the absence of the interpreter renders this evidence inadmissible in any court proceedings.⁽⁶²⁾ Further, as a general rule, every child who is arrested shall have the right to be questioned only in the presence of his or her parents.⁽⁶³⁾

In Kuwait, the Law of Juvenile refers to the Law of Criminal Procedures and Trials 17/1960 for any matters unregulated by the Law of Juvenile.⁽⁶⁴⁾ Matters relevant to the arrest stage are regulated by the Law of Criminal Procedures and Trials but not in a way peculiar to children or persons with disabilities. The right of the child and his

(58) Ibid.

(59) Ibid 19-20.

(60) Ibid 20, 21, and 84.

(61) Ibid 21.

(62) Ibid.

(63) Ibid 84.

(64) 'Kuwait's Law of Juvenile No. 111 of 2015' (n 9) Art. 66

parents to information upon arrest is not mentioned in the Law of Juvenile or the Law of Criminal Procedures and Trials. However, Article 58 of Juvenile law contains a general provision under which the child and his parents are entitled to receive information about any procedure or judgment concerning the case of the child. Also, the prohibition of using force and instruments of restraint by the police when arresting a child is unregulated by any law. Kuwait's laws entitle a juvenile to receive free legal assistance (lawyer).⁽⁶⁵⁾ However, there is nothing in Kuwait's laws about the right of the child to consult with a lawyer/interpreter before the questioning. Likewise, there is nothing about the right of the child to be questioned only in the presence of his parents, legal representative, and interpreter. Those protections and measures must be provided by the law to protect against arbitrary arrests and abuse of power therefore preserving the dignity of children defendants in general and CWID in particular.

4.2.2 *Child's Treatment in Police Custody*

Children should not feel frightened when detained at the police station, therefore, the detained child must not be placed in a locked cell or secure area.⁽⁶⁶⁾ Only in very exceptional circumstances, when the child poses a danger to himself or shows violent behavior, may be placed in a locked cell. Even in this case, however, constant supervision and care is required.⁽⁶⁷⁾

Only criminal professionals who have received specialized training in working with children shall conduct the child's questioning/investigation.⁽⁶⁸⁾ The training should cover the special needs of the most vulnerable children, such as girls, disabled children, street children and children of minorities.⁽⁶⁹⁾

No child shall be subjected to coercive questioning or interrogation, and no child shall be compelled to confess guilt.⁽⁷⁰⁾ Determinant factors

(65) Ibid Art. 41

(66) 'Justice in Matters Involving Children in Conflict with the Law' (n 28) 21 and 87.

(67) Ibid 87.

(68) Ibid 22.

(69) Ibid 87.

(70) Ibid 88.

may include the interrogation's length and time; adequate breaks for eating and toilet and rest; age and maturity and personal conditions of the child; use of force like shouting at the child or threatening and inducements.⁽⁷¹⁾

After charging the child with an offense, the child shall be released without delay and handed over to his parents on condition that he may have to return to the police station or appear before court on a specified date. However, if the police officer/prosecutor believes that the child may, if released: commit a serious offence; pose a danger to himself or to others; seek to obstruct the course of justice or interfere with witnesses; or avoid further judicial proceedings, an application must be made to the Juvenile Court for an order for pre-trial detention. In this case the child shall be brought promptly before the Juvenile Court, and in any event no later than 24 hours after the child's arrest.⁽⁷²⁾

In Kuwait, not placing the detained child in a locked cell or secure area is unregulated by the law. Also, special training in child-related issues is not a condition for those who conduct investigations/questioning with juveniles. Further, law of Juvenile does not discuss the right of a child not to be subjected to coercive questioning or interrogation, nor the right of the child not to be compelled to confess guilt.

Article 18 of Kuwait's Juvenile Law discusses the child's release from police custody and the possibility of pre-trial detention at this stage. The Article decides that only a juvenile who aged 15 and above could be placed in pre-trial detention. It further states that a juvenile may be placed in pre-trial detention for one-week from arrest pending his appearance before the Juvenile Court. Also, Juvenile Court may renew the pre-trial detention for longer period(s) but no longer than three months in total. Alternatively, the court also may decide to hand over the child to his parents on condition that he may have to return to the police or the court.

Therefore, to make the national law consistent with the international standards and appropriate for CWID, the one-week period for placing

(71) Ibid 22 and 88.

(72) Ibid 24 and 91.

a juvenile in pre-trial detention from arrest pending appearance before the Juvenile Court should be decreased. Even though the recommended period, according to the international standards, is 24 hours from arrest but for some severe conditions of intellectual disabilities 24 hours is considered long time. Additionally, the law should provide details regarding the mechanism of requesting the pre-trial detention's order. Furthermore, the law should specify the conditions justifying placing a juvenile in pre-trial detention. These conditions must be stricter if the juvenile is a CWID. Alternatives measures or untraditional arrangements, to the pretrial detentions might be considered for CWID. For example, imposing a house arrest order on him, allowing him to have a companion, or monitoring him electronically.

4.2.3 *Child in Pre-trial Detention*

According to international standards, the Juvenile Court may decide to place or renew the pre-trial detention of a child.⁽⁷³⁾ It also may decide to release the child from pre-trial detention. Also, the child shall not be required to pay a sum of money (bail) as a condition of release. Pre-trial detention shall not be ordered as a substitute for child protection measures or mental health treatment or because of homelessness. Any period of pre-trial detention imposed on a child shall count towards and be deducted from a later sentence of deprivation of liberty. The child shall have the right to appeal against the order of pre-trial detention and the Juvenile Court shall review the order every two weeks with the child be legally represented at the review. Further, the Juvenile Court shall ensure that the child is not being detained with adults and convicted children and is being detained in suitable conditions. If the conditions of detention are not suitable, the child shall be released or moved to a suitable alternative place.⁽⁷⁴⁾

This stage is unregulated by Kuwait's Law of Juvenile except for the period of pre-trial detention that it should not exceed three months.⁽⁷⁵⁾

(73) 'Justice in Matters Involving Children in Conflict with the Law' (n 28) 226-5 and 93-94.

(74) Ibid.

(75) 'Kuwait's Law of Juvenile No. 111 of 2015' (n 9) Art. 18

5 Challenges to the Criminal Rights of Children with Intellectual Disabilities in Kuwait

Based on the texts and analysis surveyed in the last chapters, in addition to observation of social media and information collected from various sources, this chapter determines the major legislative, institutional, procedural, and practical barriers hindering the promotion of the criminal rights of CWID in Kuwait.

5.1 Legislative Challenges

There are laws in place to protect the criminal rights of children, but these laws are defective for the following reasons:

- a - Not centered around the main objective of preserving the dignity of all children including CWID. For example, there are no clear rules regarding the implementation of the right to be heard in criminal proceedings for CWID.
- b - No provisions differentiate in treatment, rights, duties, protections, procedures, abuses, and penalties between CWID and children without disabilities or children with only physical disabilities. For example, the MARC is the same for all children. Another example, there are no special rules to promote the right of family members or caregivers to practice self-defense on behalf of CWID to protect his life, safety, mental state, privacy, honor, reputation, and property.
- c - Lack of procedural law necessary for enforcing substantive rules. For instance, there is no legal obligation for reporting abuses against CWID immediately upon discovery without delay.
- d - Inconsistency with the latest international standards and best practices. For example, there are no educational or training requirements for law enforcement, investigators or prosecutors before working with CWID.

5.2 Institutional Challenges

The laws of Kuwait recognize several institutions with a mandate

for preserving the criminal rights of children, but the role of these institutions is weakened because of the following reasons:

- a - Also, the Law on the Rights of Persons with Disabilities allows PADA's officials to become members of the Friends of the Disabled Team, which may result in a conflict of interest; to illustrate, on one hand, PADA forms the team, decides its competency and powers while maintaining membership within the team, and, in the other hand, team members are required to observe PADA's, governmental institutions', and other stakeholder's compliance with the law.
- b - Failure of reporting and complaint systems (access system) due to lack of clarity in the division of competencies and integration between institutions. For example, the law is not clear regarding which institution is responsible for receiving complaints against strangers who harass and bully CWID or interfere with their privacy in public places.
- c - There is no effective system for monitoring to ensure compliance. Such a system requires the law to name a monitoring body(s). The functions of this body(s) must include authority to adopt practice standards. Furthermore, evaluate and approve or disapprove applications to work with CWID. Moreover, review the decisions of government agencies and make recommendations.

5.3 Procedural Challenges

- a - The law does not name a specific authority responsible for facilitating the right to information. Meaning, an authority responsible for providing support and guidance as well as following up throughout the stages of the justice process. Such deficiency might cause late reporting, delay in filing complaints, damaging evidence, thus shaking the trust in the justice process.
- b - The lack of clear criminal procedures in the early stages of the justice process for child victims, witnesses, and juveniles deem CWID at further disadvantage opening up the door for offenses such as discrimination, abuse of power, arbitrary arrest and detention, and other forms of fair trial violations.

5.4 Practical Challenges

- a - Sociocultural challenges. Some victims and witnesses mentioned, in surveys, the following reasons of why they decided not to report offenses: first, fear of revictimization by society by shaming, blaming, and disbelieving, and second, Fear of revenge, embarrassment, and destroy of reputation due to the belief that a child with intellectual disability is unable to provide sufficient evidence. The later reason is that often prevent reporting sexual offenses.
- b - Financial challenges. lack of financial resources may prevent child victims from hiring a competent lawyer.
- c - Educational and knowledge-related challenges. First, inadequate education and training of all actors involved in the criminal proceedings including children, parents and family members, law enforcement, investigators and prosecutors, and caregivers such as teachers, doctors, and anyone works with CWID, and second, low societal awareness and knowledge of disability affairs.

6 Conclusion

The problem of CWID within the criminal justice system is a deeply rooted social problem.⁽⁷⁶⁾ Still, however, societies struggle to understand intellectual disabilities and the impairments associate with them. In particular, how and to what extent do they affect the person's will and actions? and, whether there is any impact on the family members? And what is the role of society in accommodating CWID in the country's criminal justice system? The Kuwaiti society is not far from such questions and the debatable issues underlying them. A quick look at the conversations exchanged on social media platforms confirms the existence of controversy and division among Kuwaitis regarding these matters and the best ways to address them. Therefore, this research presents the following recommendations, necessary to

(76) Alsharif HN, 'The Models of Disabilities in Saudi Arabia' (2019) 6 The Indonesian Journal of International & Comparative Law: Socio-Political Perspectives <<https://go.gale.com/ps/i.do?p=AONE&u=googlescholar&id=GALE|A578157728&v=2.1&it=r&sid=googleScholar&asid=29b3da98>>.

align social reality and legal formulation to promote the criminal rights of CWID:

- 1 - Raising the MARC from seven years old to the internationally acceptable age. Also, increasing this age for some juveniles based on their maturity and mental state.
- 2 - Setting short time limits for examining reports, reviewing complaints, and deciding on cases involving children. However, short periods and speedy procedures should be reasonable and do not conflict with the right to a fair trial.
- 3 - Explaining the meaning of 'compel' in cases involving children.
- 4 - Before working with CWID and their families, professionals should undergo special training or fulfil educational requirements in child-related and disability issues.
- 5 - Including representatives from PADA and civil society organizations in the work of any committees or bodies responsible for examining criminal complaints involving CWID.
- 6 - Obliging criminal professionals to contact PADA to facilitate communication with CWID during the stages of arrest, collection of evidence, investigation, and trial.
- 7 - Redefining a person with a disability in Kuwait's law of disability 8/2010 to make it consistent with that of Article 1 of the CRPD.
- 8 - The law on the right of the child should articulate that respect for the child's dignity is the utmost aim of the law. Accordingly, a child's dignity is the criterion upon which everything contained in the law is interpreted and understood.
- 9 - Explaining the implementation of the right to be heard for children particularly for CWID.
- 10 - Deciding severe punishments on anyone who commits a crime against a child or person with disability. Further, more severe punishments for abusers of CWID.

- 11 - Considering a child with mental issues as a child vulnerable or exposed to risks rather than juvenile vulnerable to delinquency.
- 12 - Encouraging judicial authorities and bodies to provide facilities and assistance to persons with disabilities, including CWID, when they are in contact with the criminal justice system.
- 13 - Expanding criminalization, if the victim is a CWID, especially regarding the intentional actions and words to which these children are repeatedly exposed and which may not amount to crimes when committed against children without disability. For example: intrusion into private life, bullying, mockery, and passivity of the person in power from acting or interfering to protect the child against harmful wrongdoing or behavior.
- 14 - Criminalizing failure to respect the privacy of the child and his family, and setting a penalty for violators, whether they are public or private employees or even from the general public.
- 15 - Criminalizing the intentional obstruction of benefiting from public services, and imposing punishment on the perpetrator, whether he is a public employee, a worker in the private sector, or from among the general public.
- 16 - Criminalizing non-reporting or late reporting of violations against children or children at risk and specifying penalties for non-reporting or late reporting. Prompt reporting should be mandatory for professionals working closely with the child.
- 17 - Explicitly stipulating that the intervention of the person responsible for caring for a physically or mentally disabled child - whether he is legally or de facto responsible for his care - to protect him from imminent physical or moral harm or danger that may befall him or his interests is considered a reason that exempts or mitigates responsibility, as the case may be. This is in analogy with the case of self-defense.
- 18 - Assuming the occurrence of psychological harm to the CWID and his family once it is proven that the criminal act occurred, as

proving this type of harm is difficult or even impossible for those children due to their disability. Especially since the child victim is often the only witness to the crime committed against him.

- 19 - Not accepting the perpetrator's lack of knowledge that the victim is affected by an intellectual disability as an excuse to evade or reduce responsibility. This is a principle established by Kuwait's Court of Cassation.⁽⁷⁷⁾
- 20 - Obliging law enforcement, investigators or any first respondents to treat the disabled persons in accordance with the information registered in the disability identification card, and without a need to refer the person to another party to verify the disability mentioned in the card. Unless it is apparent the information is forged.
- 21 - Developing a special judicial system for child victims and witnesses (similar to the judicial system for juveniles). The system's objectives include protecting the child and his family from hardship during the reporting, making of the complaint, investigation, and trial stages, as well as providing them with post-trial support. Also, protecting the child's and his family's privacy so that they are heard, and their case is discussed in isolated buildings and rooms. Also, this system should pay attention to the psychology of the child or adolescent, and their families as well.⁽⁷⁸⁾
- 22 - In crimes require a complaint as a condition for filing a lawsuit, the law should explicitly stipulate that the prosecution or any other prosecuting body is allowed to file a complaint if the interest of the child with a disability conflicts with the interest of the person caring for him - for example, the parent's refusal to register a complaint about their child being subjected to sexual assault under the pretext of fear of scandal or destroying the family's reputation.

(77) 'A Collection of the Most Important and Latest Legal Principles Established by the Court of Cassation during the Period from 1/4/2012 to 31/3/2016 in Penal Articles' (MOJ, March 2017) pages 70-72 <<https://www.moj.gov.kw/AR/Documents/Moj-Docs2/law100.pdf>>.

(78) 'Justice in Matters Involving Children in Conflict with the Law' (n 28) 59-61.

- 23 - Officials' refusal to register reports or complaints, failure to deal with them seriously, or delaying the procedures for examining or deciding on them without a logical reason or under the pretext of ambiguity or silence of the law should be considered a denial of justice punishable by law.
- 24 - Unifying the entity that receives complaints related to children and defining a clear mechanism for handling and following up on complaints.
- 25 - Like a juvenile, a child victim or witness must receive free legal assistance from the State through the appointment of a lawyer, at the request of the child, his family or the court. A competent lawyer in children and disability affairs must be assigned to CWID.
- 26 - Make the statute of limitations open for claiming criminal rights for those who were subjected to sexual assault during their childhood.
- 27 - Allowing child witnesses to change their statements, especially those with intellectual disabilities, even after they reach legal age. And reopening case files based on new statements, if necessary.
- 28 - The Law on the Rights of the Child should specify the body responsible for forming the child protection team or child protection centers.
- 29. PADA's officials should not be allowed to become members of the Friends of the Disabled Team.
- 30 - Regulating the arrest of juveniles, their treatment in police custody and during investigation, and in pre-trial detention.

References

- 'A Collection of the Most Important and Latest Legal Principles Established by the Court of Cassation during the Period from 1/4/2012 to 31/3/2016 in Penal Articles' (*MOJ*, March 2017) <<https://www.moj.gov.kw/AR/Documents/MojDocs2/law100.pdf>>.

- ‘Charged with being children: Egyptian police abuse of children in need of protection’ (*Human Rights Watch*, February 2003) <<https://www.hrw.org/reports/pdfs/e/egypt/egyptkids0203.pdf>>.
- ‘Convention on the Rights of Persons with Disabilities (CRPD) | Division for Inclusive Social Development (DISD)’ (*United Nations*) <<https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd>>.
- ‘Convention on the Rights of Persons with Disabilities’ (*United Nations Treaty Collection*) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=iv-15&chapter=4&clang=_en>.
- ‘Convention on the Rights of the Child’ (*UNICEF*) <<https://www.unicef.org/child-rights-convention>>.
- ‘Convention on the Rights of the Child’ (*United Nations Treaty Collection*) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en#EndDec>.
- ‘Criminal Law and Complementary Laws’ (*Collection of Kuwait’s laws*, 2011) <<https://moj.gov.kw/AR/Pages/MojLaws.aspx>>.
- ‘Justice in Matters Involving Child Victims and Witnesses of Crime’ (*UNODC & UNICEF*, 2009) <https://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf>.
- ‘Justice in Matters Involving Children in Conflict with the Law’ (*UNODC*, 2013) <https://www.unodc.org/documents/justice-and-prison-reform/Justice_Matters_Involving-Web_version.pdf>.
- ‘Kuwait’s Law of Juvenile No. 111 of 2015’ (Ministry of Justice) <<https://moj.gov.kw/AR/Pages/MojLaws.aspx>>.
- Kuwait’s Law on the Rights of the Child No. 21 of 2015’ (Ministry of Justice) <<https://moj.gov.kw/AR/Pages/MojLaws.aspx>>.
- ‘Law No. 12 of 1996 promulgating Child Law amended by law No. 126 of 2008’ (*The Cabinet- The National Council for Childhood and Motherhood*) <<https://www.warnathgroup.com/wp-content/uploads/2015/03/Egypt-Child-Law-2008.pdf>>.

- 'Law on the Rights of Persons with Disabilities No. 10 of 2018' (*Manshurat.org*) <<https://manshurat.org/node/25895>>.
- 'Pada Law' (*Public Authority for Disability Affairs*) <<https://www.pada.gov.kw/en/authority-law/>>.
- 'Statistics' (*Public Authority for Disability Affairs (PADA)*) <<https://www.pada.gov.kw/en/information-center/statistics/>>.
- 'The Rights of People with Disabilities: Areas of Need for Increased Protection: Chapter 5: Criminal Justice System' (*The Australian Human Rights Commission*) <<https://humanrights.gov.au/our-work/rights-people-disabilities-areas-need-increased-protection-chapter-5-criminal-justice>>.
- Alsharif HN, 'The Models of Disabilities in Saudi Arabia' (2019) 6 *The Indonesian Journal of International & Comparative Law: Socio-Political Perspectives* <<https://go.gale.com/ps/i.do?p=AONE&u=googlescholar&id=GALE|A578157728&v=2.1&it=r&sid=googleScholar&asid=29b3da98>>.
- Burrell S and Warboys L, 'Special Education and the Juvenile Justice System-Juvenile Justice Bulletin' (*Office of justice programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP)*, July 2000) <<https://www.ojp.gov/pdffiles1/ojjdp/179359.pdf>>.
- Christina Rainville, 'Protecting Children with Disabilities Requires Systemic Change in Our Legal System' (2013) 39 *Vt BJ* 27.
- Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).
- Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).
- Daniel P. Mears, Laudan Y. Aron, 'Addressing the Needs of Youth with Disabilities in the Juvenile Justice System: The Current State of Knowledge' (*The Urban Institute*, November 2003) <<https://www.urban.org/sites/default/files/publication/59476/410885-Addressing-the-Needs-of-Youth-with-Disabilities-in-the-Juvenile-Justice-System.PDF>>.

- E Mousa, 'Texts and articles of the Egyptian Penal Code and the latest updates and amendments' (*Mohamah*, 24 May 2023) <[https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/270/91/PDF/G2027091.pdf?>..](https://www.mohamah.net/law/%D9%86%D8%B5%D9%88%D8%B5-%D9%88-%D9%85%D9%88%D8%A7%D8%AF-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B9%D9%82%D9%88%D8%A8%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D8%B5%D8%B1%D9%8A-%D9%88-%D8%A7%D8%AE%D8%B1/>..- OHCHR, 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Fourth periodic report submitted by Kuwait under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2020' (27 October 2020) CAT/C/KWT/4 <<a href=)
- OHCHR, 'Joint Statement on the Rights of Children with Disabilities' (18 March 2022) <<https://www.ohchr.org/en/treaty-bodies/crpd>>.
- Seminar entitled 'Criminal Protection for Children with Intellectual Disabilities: Law, reality, and Hopes' held at Kuwait International Law School, 22 November 2023.
- UN Committee on the Rights of the Child (CRC), 'General comment No. 10 (2007): Children's Rights in Juvenile Justice' (25 April 2007) CRC/C/GC/10 <<https://www.refworld.org/docid/4670fca12.html>>.
- World Health Organization and the United Nations Children's Fund (UNICEF), 'Global Report on Children with Developmental Disabilities: From the Margins to the Mainstream' (2023) <<https://iris.who.int/bitstream/handle/10665/372864/9789240080232-eng.pdf?sequence=1>>.

حقوق الأطفال ذوي الإعاقة الذهنية في نظام العدالة الجنائية الكويتي: دراسة تحليلية ومقارنة وتجريبية

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ملخص الدراسة

الأهداف: يهدف هذا البحث إلى دراسة الأطر التشريعية والمؤسسية المتعلقة بالحقوق الجنائية للأطفال ذوي الإعاقة الذهنية في الكويت. حيث يواجه هؤلاء الأطفال تحديات مفرطة في الولوج إلى نظام العدالة الجنائية، على الرغم من كونهم من بين الفئات الاجتماعية الأكثر ضعفاً وعرضة لسوء المعاملة بسبب معاناتهم المتصلة بالقدرة على الفهم والتواصل. **المنهج:** اعتمد البحث على الجمع بين المنهج المقارن والتجريبي والتحليلي. حيث تمت دراسة قوانين دولة الكويت ومقارنتها بالمعاهدات الدولية وممارسات الدول الأخرى. بالإضافة إلى ذلك، تم تحليل الإجراءات والضمانات المتعلقة بهؤلاء الأطفال خلال المراحل المختلفة لعملية العدالة سواء كانوا ضحايا أو متهمين أو شهوداً. **النتائج:** يمكن تلخيص أهم نتائج البحث في تحديد الفجوات بين الأطر التشريعية والمؤسسية الحالية والمعايير الدولية لحماية حقوق الأطفال ذوي الإعاقة الذهنية في نظام العدالة الجنائية الكويتي. كما تم تحديد المعوقات الواقعية التي تواجه هؤلاء الأطفال عند تعاملهم مع الجهات القضائية والأمنية في الكويت. **الخاتمة:** اختتم البحث بتقديم توصيات محددة لتطوير التشريعات والممارسات القضائية الكويتية بما يتوافق مع الالتزامات الدولية ويضمن حماية حقوق الأطفال ذوي الإعاقة الذهنية. وتشمل هذه التوصيات تعديلات تشريعية وإجراءات عملية وبرامج تدريبية للعاملين في مجال العدالة الجنائية للتعامل مع هذه الفئة الضعيفة، بالإضافة إلى مقترحات لإنشاء آليات خاصة لدعم هؤلاء الأطفال خلال مختلف مراحل عملية العدالة الجنائية.

الكلمات المفتاحية: حقوق الأشخاص ذوي الإعاقة، حقوق الطفل، الصحة العقلية، المحاكمة العادلة، الإجراءات الجنائية، التوحد.

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د. شريفة أحمد المهنا، مديرة برنامج دبلوم القانون وأستاذ مشارك في كلية القانون الكويتية العالمية. تقوم بتدريس القانون الدولي العام، القضايا القانونية المعاصرة، ومقدمة للأنظمة القانونية، والكتابة القانونية والبحث. حصلت على الدكتوراه في القانون من جامعة كيس ويسترن ريزيرف، أوهايو، الولايات المتحدة الأمريكية، ٢٠١٦. عملت في عدة جهات حكومية قبل التحاقها بكلية القانون، ومنها وزارة الأشغال العامة وديوان الخدمة المدنية. لديها عدة أبحاث محكمة منشورة في مجلات أكاديمية وطنية وخليجية ودولية. **الاهتمامات البحثية:** قانون البحار، قانون الموارد الطبيعية، المنظمات الدولية، حقوق الإنسان، القانون الجنائي الدولي، والقانون الدولي الإنساني. البريد الإلكتروني: s.almuhanna@kilaw.edu.kw

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المهنا، شريفة. (٢٠٢٥). حقوق الأطفال ذوي الإعاقة الذهنية في نظام العدالة الجنائية الكويتي: دراسة تحليلية ومقارنة وتجريبية. *مجلة الحقوق، جامعة الكويت*، ٤٩ (٢)، ٤٢٥-٤٦١.

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