

**TERMS OF REFERENCE**  
**CONSULTANT/INDIVIDUAL CONTRACTOR**

Section:	Child Protection Section	Date:	10 July 2020
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Title:	<b>Consultant/Institution to identify opportunities for diversion and alternatives for children in conflict with the law, and to recommend ways forward</b>	Duty station:	Beirut, Lebanon
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Reporting to:	Child Protection Specialist (Justice)	Contract type:	SSA: Individual Consultant/Institution
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Duration:	70 days (within a period of 6 months)	Start date:	Q4 2020
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Section	Content
<b>Objectives</b>	<p>The <b>Consultant/Institution</b> will – under the guidance of UNICEF Child Protection Specialists (Justice) and the international expert - explore the feasibility of promoting diversion<sup>1</sup> and alternatives to deprivation of liberty for children in conflict with the law in Lebanon, by:</p> <ol style="list-style-type: none"> <li>1. Identifying and qualifying opportunities for diversion, alternatives to pre-trial detention,<sup>2</sup> alternative sanctions<sup>3</sup> and modalities for the execution of imprisonment<sup>4</sup> <i>within the existing legal framework and practice</i></li> <li>2. Identifying and qualifying <i>possible ways forward (both with and without law reform)</i></li> </ol>
<b>Background</b>	<p>The UNICEF Child Protection Programme is currently working with the Government of Lebanon to strengthen the justice sector and address concerns of justice for all boys and girls.</p> <p>The overall efficiency of justice and social welfare institutions in Lebanon remains constrained. Diversion is not explicitly provided for under current law, and the range and utilization of alternatives to deprivation of liberty is limited up to today. For these</p>

<sup>1</sup> Diversion: measures for referring children away from the judicial system, at any time prior to or during the relevant proceedings, usually to programs or activities (e.g. warning, community work, victim-offender mediation, family group conferencing, community/life skills programs etc.), see Committee on the Rights of the Child, General Comment No 24.

<sup>2</sup> Pretrial detention: detention from the moment of the arrest to the stage of the disposition or sentence, including detention throughout the trial. Alternatives to pretrial detention may include measures like house arrest, supervision, reporting obligations and similar. For Lebanon, some options are found in Art 110, 111 CPC.

<sup>3</sup> See the list of available alternative sanctions (non-custodial sanctions) in Art 5 Law 422.

<sup>4</sup> Like suspension/conditional sentence; early release...

	<p>reasons, UNICEF has identified the need for diversion and non-custodial responses to child offending as a priority area to be addressed within the framework of its Country Programme 2017-2021. This effort is in line with the international framework on child justice, and the Concluding Observations of the Committee on the Rights of the Child on the combined fourth and fifth periodic report of Lebanon (CRC/C/LBN/4-5) of 2017.</p> <p>The objective of promoting diversion and alternatives to deprivation of liberty is to reduce the harms of justice proceedings and of deprivation of liberty (including the stigma of conviction, sentence and criminal record; the risk of alienating children from family and society instead of integrating them; the risk of violence against children during incarceration); to reduce pre-trial detention; to promote rapid and constructive response to child offending, to combat recidivism and promote the reintegration of children who were in conflict with the law; to unload the justice system; and to reduce costs.</p>
<p><b>Scope of work and specific tasks</b></p>	<p>The <b>Consultant/Institution</b> is expected to conduct research that serves as a basis for exploring the feasibility of promoting diversion and alternatives to deprivation of liberty in the context of child justice, and to undertake the following specific tasks:</p> <ol style="list-style-type: none"> <li>1. Draft a <b>report</b> in Arabic<sup>5</sup> (30-40 pages, excluding annexes) that would be based on: <ol style="list-style-type: none"> <li>a) Legal review: Mapping of what is currently legislated for in terms of diversion, alternatives to pre-trial detention, alternative sanctions and modalities for the execution of imprisonment as a sanction, for children in conflict with the law in Lebanon.</li> <li>b) Review of practice: Analytical overview of the implementation status of existing legislation, including identification of gaps and bottlenecks within the existing system.</li> <li>c) Identification of what works and why.</li> <li>d) Qualification of today's law and practice, and identification of possible ways forward.</li> </ol> </li> <li>2. Present the report in a meeting/workshop for UNICEF and other relevant stakeholders to share findings and receive inputs to be integrated in the final report.</li> </ol> <p>The report shall explore the following:</p> <ol style="list-style-type: none"> <li><b>1. Analysis of situation today:</b> Identify and qualify opportunities for diversion, alternatives to pre-trial detention, alternative sanctions and modalities for the execution of imprisonment as a sanction <i>within the existing legal framework and practice</i> <ol style="list-style-type: none"> <li>a. Identify existing opportunities for diversion, alternatives to pre-trial detention, alternative sanctions and modalities for the execution of</li> </ol> </li> </ol>

<sup>5</sup> The report would be translated into English by UNICEF LCO.

imprisonment as a sanction. With regard to diversion, which is not explicitly provided for so far, the research should verify whether there are *de facto* diversion options which are not officially labelled as such, including e.g. forms of dismissal, release from criminal responsibility, suspension, informal conflict resolution or other forms of referring children away from the justice system.

- b. Analyse how often the available options are *utilized*, by whom/at what moment in the justice process, in what types of cases (type and severity of act, sex and age of child); reasons for non-utilization; identify and qualify implementing structures for each option.
- c. *Collect experiences* of justice professionals, children in conflict with the law and victims in Lebanon on “what works”, why or why not.
- d. Identify *gaps, barriers and bottlenecks* within the existing system.
- e. Identify *lessons learnt by new practices applied in the context of Covid-19* to reduce the number of children deprived of liberty.

## **2. Identification of possible ways forward**

Identify and qualify practical recommendations for moving forward with regards to diversion, alternatives to pre-trial detention, alternative sanctions and modalities for the execution of imprisonment as a sanction.

Suggested recommendations should contemplate two possible scenarios:

- a. *Moving forward with no law reform*: Analyse how the utilization of the existing opportunities could be increased, and under what conditions (e.g. issuance of decrees and guidance notes).
- b. *Moving forward with law reform*: Analyse which additional options for diversion, alternatives to pre-trial detention, alternative sanctions, modalities in the execution of imprisonment could be introduced, and what supportive structures would be needed for their implementation (including actors of relevance, mechanisms and resources necessary).

For the identification of new opportunities, the following shall be considered:

- i. Possible diversion options may include warning, community work, restorative approaches (mediation, family conferencing, compensation of damage, symbolic compensation etc), vocational training, life skills programs, counselling, orders re behaviour of child, etc. Possible additional alternatives to pre-trial detention may include supervision, house arrest, placement in family, etc. Possible additional non-custodial sentences may include

	<p>restorative approaches (mediation, family conferencing, compensation of damage, symbolic compensation etc), parenting support, vocational training, life skills programs, counselling, orders re behaviour of child, etc.</p> <p>ii. The selection of new opportunities should be oriented by the following criteria, in particular: the needs, capacities and best interests of children in Lebanon; feasibility; promising practices and lessons learned in Lebanon (e.g. mediation for adults; covid 19); promising practices and lessons learnt in other countries with a comparable context/culture; promotion of reintegration and restorative justice objectives.</p>
<p><b>Methodology</b></p>	<p>The Project will adopt a qualitative approach including:</p> <ol style="list-style-type: none"> <li>1. Desk review consisting of an in-depth analysis of existing legislation, policies, decrees, and other relevant documents.</li> <li>2. At least 30-40 key informant interviews (KIIs) with strategic actors including but not limited to the juvenile judges, key prosecutors, ISF officers, lawyers, representatives from key ministries, social workers of mandated NGOs, children who have been in conflict with the law, and victims.</li> <li>3. At least two roundtables/focus group discussions with children in conflict with the law and caregivers, to be inclusive of children and their families (in accordance with Articles 12, 13 and 14 of the CRC), as well as community gatekeepers.</li> <li>4. Field visits to explore the possibility of programme setting and delivery using existing structures, and to identify bottlenecks in relation to implementation.</li> </ol> <p>Selection of participants and outreach to them is to be done by the Consultant/Institution. UNICEF may be able to support within reasonable parameters.</p> <p>The implementation of the Project requires a gender consideration through:</p> <ul style="list-style-type: none"> <li>- Data collection that is gender balanced.</li> <li>- The existence of a gender analysis paragraph on how systems/institutions and practice are impacted by the gender roles and/or expectation of boys and girls in conflict of the law.</li> <li>- A gender balance with regards to the key informants participating in interviews.</li> <li>- The integration of gender into the recommendations to ensure consideration of the diverse needs, risks and practices of boys and girls in conflict of the law.</li> </ul>

<p><b>Deliverables and schedules</b></p>	<p><b>Tasks</b></p>	<p><b>Timeframe (days)</b></p>	<p><b>Deliverable / Expected result</b></p>	<p><b>Payments</b></p>
	<p>Meetings with UNICEF and international expert before the start of the research,</p>	<p>2 days (September)</p>		

during and at the end of the research			
Desk review	2 days (September)		
Inception Report	3 days (September)	Submission of Inception Report including work plan, methodology, data collection tools, and timeline for completion of project	
Data collection and analyses (interviews, roundtable/focus groups discussions)	30 days (October-December)		
Draft report (in Arabic)	18 days (December-January)	Submission of draft report	Instalment #1: 70% of total payment
UNICEF and partners have 2 weeks to comment on the report (and an additional week for the translation of the report into English)	(0 days) (January)		
Revise the draft report based on the comments received from UNICEF and partners	8 days (February)	Submission of revised report which includes the recommendations / comments received	
Organize and hold meeting/workshop to present findings	2 days (February)	Presentation of findings to UNICEF and partners	
Finalize draft report by integrating any further input that may be provided by stakeholders during the meeting/workshop	5 days (February)	Final report	Instalment #2: 30% of total payment
<b>Total # of days:</b>	<b>70 days (within a period of 6 months)</b>		

<b>Technical Evaluation Criteria</b>	<b>Evaluation Criteria</b>	<b>Benchmarks</b>	<b>Maximum Score</b>
	The Consultant/Institution has a good understanding of the task	Understanding demonstrated during interview (if consultant), or in proposal through its, structure, elements and rationale (if institution)	20
	Experience of the Consultant/Institution in legal research, particularly penal law	Previous research project to be shared	10 (5 points per project shared)
	Experience of the Consultant/Institution in multi-stakeholder and multi-sectoral research (minimum 15 years)	Previous multi-stakeholder and multi-sectoral research to be shared	10 (5 points per piece of research, for a maximum of 10 points)

	<p>Previous experience of the Consultant/Institution on child justice, preferably alternatives to detention and diversion (minimum 10 years)</p>	<p>Previous projects to be shared</p>	<p>20 (10 points per project for a maximum of 20 points)</p>
	<p>Consultant/Institution has access to relevant ministries, ISF, judiciary, and/or NGOs working on child justice issues</p>	<p>Demonstrated through previous work, mainly in terms of direct engagement with different stakeholders</p>	<p>20</p>
	<p><b>Total</b></p>		<p><b>80</b></p>
	<ul style="list-style-type: none"> <li>• Technical evaluation is composed of 80 points</li> <li>• Minimum successful score for the technical evaluation is 60 points. Only bidders obtaining the minimum passing score in the technical evaluation (60 points) will be considered for the financial evaluation;</li> <li>• Financial evaluation is composed of 20 points. The lowest financial offer will obtain 20 points.</li> </ul>		
<p><b>Timing</b></p>	<p>The duration of the assignment is 70 days during a period of 6 months (October 2020 to March 2021).</p> <p>Start date: Q4 2020</p>		
<p><b>Reference documents</b></p>	<p>Suggested references include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Law 422/2002 on the Protection of Juveniles in Conflict with the Law and those At Risk</li> <li>• UN Convention on the Rights of the Child (1989), <i>in particular Art 37 and Art 40 (CRC)</i></li> <li>• UN General Comment No. 24 on children’s rights in the justice system, 2019</li> <li>• UN CRC Concluding observations on the combined fourth and fifth periodic report of Lebanon, June 2017</li> <li>• UN Model Strategies and Practical Measures on the Elimination of Violence Against Children, 2014</li> <li>• UNICEF Non-Custodial Measures for Juvenile Offenders in Lebanon: An Assessment of the Community Service Measure, September 2012</li> <li>• UNICEF (2009) Diversion and Alternatives to Detention Toolkit, <a href="https://www.unicef.org/tdad/">https://www.unicef.org/tdad/</a></li> <li>• The Guidance Note of the United Nations Secretary-General: United Nations Approach to Justice for Children, 2008</li> <li>• UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005; and UNODC-UNICEF Model Law and Related Commentary, 2009</li> <li>• UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for</li> <li>• UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (“Havana Rules” / JDL)</li> <li>• UN Guidelines for the Prevention of Juvenile Delinquency, 1990 (“Riyadh Rules”)</li> <li>• UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (“The Beijing Rules” / BR)</li> <li>• Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985</li> </ul>		

<p><b>Ethical considerations</b></p>	<p>In line with the Standards for UN Evaluation in the UN System (developed by the UN Evaluation Group), all those engaged in designing, conducting and managing evaluation activities will aspire to conduct high quality and ethical work guided by professional standards and ethical and moral principles. The proposal must identify actual or potential ethical issues, as well as measures and methods adopted to mitigate against these issues. All interviewees will be informed with the purpose of the study and their role and what information is required specifically from them. No deceptive practices are adopted in the research methodology. Confidentiality of participants and right of withdrawal are ensured. If interviewees include minors, a written consent should be taken from the persons in charge of their care.</p> <p>The research methodology and every personnel involved in the study must ensure and abide by the “Do No Harm” principle. This means that during all stages of the research, the team needs to avoid putting the participants at any risk, providing false information, or giving false promises. The harm can be physical, psychological, social, or financial. The three pillars of the Do No Harm are Respect, Beneficence and Non-maleficence, and Justice. The least to ensure Do No Harm, the research team must abide by the aforementioned considerations (see UNICEF Procedure for Ethical Standards in Research, Evaluation, Data Collection and Analysis for details). All the documents, including data and fieldwork instruments, developed in the course of this consultancy are the intellectual property of UNICEF.</p> <p>Three Basic Ethical Principles:</p> <ul style="list-style-type: none"> <li>• <i>Respect for subjects</i>: protecting the autonomy of all people and treating them with courtesy and respect and allowing for informed consent. Researchers must be truthful and conduct no deception.</li> <li>• <i>Beneficence</i>: The philosophy of "Do no harm" while maximizing benefits for the research project and minimizing risks to the research subjects. Subjects are treated in an ethical manner not only by respecting their decisions and protecting them from harm, but also by making efforts to secure their well-being.</li> <li>• <i>Justice</i>: ensuring reasonable, non-exploitative, and well-considered procedures are administered fairly — the fair distribution of costs and benefits to <i>potential</i> research participants — and equally to each person an equal share.</li> </ul> <p>There are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.</p>
<p><b>Reporting Requirements</b></p>	<p>The Consultant/Institution will report to the UNICEF Child Protection section, with overview of the research team of UNICEF.</p> <p>The Consultant/Institution will make reasonable time at the beginning and end of the assignment to meet and discuss the assignment (e.g. outcome, methodology and findings) with, at a minimum, the Chief of Child Protection and the Child Protection Specialist (Justice) at the UNICEF Lebanon Country Office. These lines of communication will remain open for regular contact throughout the assignment, and UNICEF staff will remain available to assist in the assignment as necessary or appropriate. Ultimately however, the contractor is expected to have the self-sufficiency to work independently.</p>
<p><b>Profile</b></p>	<p>It is required that the Consultant/Institution has the following requirements:</p>

<b>Requirements</b>	<ul style="list-style-type: none"> <li>• Fluency in Arabic. English is a strong asset.</li> <li>• Advanced university degree in Law. Preference for specialization in penal law.</li> <li>• Minimum 15 years of experience in multi-stakeholder research and analysis on child justice, preferably with a focus on alternatives to detention and diversion.</li> <li>• Demonstrated strong knowledge of the global conceptual framework around diversion.</li> <li>• Demonstrated strong knowledge of the Lebanese legal, justice, security and social systems as they relate to children.</li> <li>• Strong portfolio of work with national justice for children actors, including but not limited to relevant ministries, internal security forces and public prosecution, social workers, and civil society organizations.</li> <li>• Should be innovative and adopt an evidence-based approach to improvement and change.</li> <li>• Excellent research, report writing, presentation and analytical skills.</li> </ul>
<b>Administrative Issues</b>	<ul style="list-style-type: none"> <li>• Consultant/Contractor are not entitled to payment of overtime. All remuneration must be within the contract agreement.</li> </ul>