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Juvenile Penal Mediation in Palestine

A Framework for Advancing the Regulatory Process

Elaborated within the Project “Exploring Procedures of Juvenile Penal Mediation in Palestine with Community Actors following Article 23 of the Juvenile Protection Law”

Terre des hommes Foundation
& Attorney General Office
of the State of Palestine



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TABLE OF CONTENTS

ACRONYMS	4
INTRODUCTION	5
1. Project's background and objectives	6
2. Key terminology	7
3. What is juvenile penal mediation? How is it conceptualized in Palestine?	8
4. What are the benefits of using juvenile penal mediation?	11
5. The juvenile penal mediator	11
5.1 Key notions on the role and on the specific qualities of the juvenile penal mediator	12
5.2 The 5 deontological principles for juvenile penal mediators	13
6. Proposed stages of juvenile penal mediation in Palestine	14
6.1 Stage 1: The appointment of the mediator	14
6.2 Stage 2: Making contact with the parties and collecting their consent	14
6.3 Stage 3: Preparation of the mediation sessions, including individual meetings with the parties	14
6.4 Stage 4: Juvenile penal mediation sessions with the child offender and the victim together	16
6.5 Stage 5: The conclusion of the juvenile penal mediation process	17
6.6 Stage 6: The legal enforcement of the juvenile penal mediation agreement by the Juvenile Prosecution Department	18
7. Execution of juvenile penal mediation agreements: An accountable system in place	18
A WORD OF CONCLUSION & NEXT STEPS	19

ACRONYMS

ADR	Alternative dispute resolution
A2J	Access to Justice
AGO	Attorney General Office of the State of Palestine
BIC	Best interests of the child
HJC	High Judicial Council of the State of Palestine
JP	Juvenile Police
JPL	Juvenile Protection Law of the State of Palestine
MoEHE	Ministry of Education and Higher Education
MoL	Ministry of Labor
MoJ	Ministry of Justice
MoSD	Ministry of Social Development
Tdh	Terre des hommes Foundation
ToC	Theory of Change

INTRODUCTION

The Access to Justice (A2J) Programme at Tdh creates a comprehensive and strategic framework for action, combining axes on operations, advocacy, research and quality and accountability, with a view to creating lasting and meaningful change in the lives of children in contact with the law. Within the A2J Programme, Tdh has achieved to be the leading worldwide reference on restorative juvenile justice. The A2J Programme's Theory of Change comprises 4 main pillars in order for children and youth in conflict and in contact with the law to access child-friendly justice and for their rights to be upheld through administrative, civil and criminal judicial processes in all jurisdictions they participate: (1) Foster the legal inclusion and enforcement of non-custodial measures; (2) Ensure that children and youth deprived of liberty are treated with dignity and prepared for reintegration; (3) Apply prevention and reintegration child-friendly methodologies for children and youth at risk or already in conflict and in contact with the law; (4) Facilitate evidence-based, coordination and dialogue between formal and informal/customary justice systems to promote synergies in contexts of legal pluralism that ensure the application of restorative justice for children in a manner that better serve their best interests.

In order to better adapt justice interventions to the realities of the children and to ensure access to child-friendly justice system for all children, Tdh has been studying since several years the legal pluralism systems, with a particular focus in the Middle East and North Africa (MENA) region. The results of these studies in MENA revealed the opportunity to advance context appropriate restorative justice systems, informal/non-State community-based conflict resolution mechanisms based on cultural, social norms or religion that coexist in parallel with the State Rule of Law.

Particularly in Palestine, Tdh initiated this work in collaboration with the Attorney General Office of the State of Palestine (AGO) in 2012, when a country wide study was jointly compiled in Hebron: "*Children in Contact with the Law and the Informal Justice System in Hebron Governorate*". The findings in this study confirmed the considerable number of child cases in country that are handled by informal/customary justice actors and, thus, the importance of exploring mechanisms of collaboration to make sure children and youth have their rights guaranteed and that their best interests are considered at all times.

The same year, 2012, Tdh launched a state-of-the-art regional action-research "*Shifting the paradigm for access to justice for children*". In Palestine, a total of 1.911 cases

have been collected and analyzed from 2012 till 2019 in West Bank and Gaza, presenting a solid evidence to improve justice programming.

While during the last seven-year period, Tdh has been engaging with number of national institutions, particularly the AGO, informal/customary actors, civil society organizations, families and mostly children aiming at improving access to justice following the Theory of Change (ToC) programmatic pillars set above. More importantly, the enactment of the Juvenile Protection Law No.4, 2016 in country, which included the process of juvenile penal mediation in Article 23, opened a tangible possibility to start framing a collaboration between the State Justice System and the Customary Justice System (also known as alternative dispute resolution mechanisms).

Towards this end and since then, Tdh in coordination with AGO organized several consultation workshops with key actors in country. Notably, in July 2017, a nation-wide event was organized: "*Exploring linkages between the Juvenile Justice State System and informal community-based mechanism of dispute resolution in Palestine*". Among the rich discussions, it was collectively agreed that juvenile penal mediation, led by AGO, was the imperative process to delve into restorative justice for children via de-judicialization mechanisms, but also to foster coordination and synergies with the informal/customary justice actors.

The Project "*Exploring Procedures of Juvenile Penal Mediation in Palestine with Community Actors following Article 23 of the Juvenile Protection Law*" is a crystallization of a long process of research, consultation and evidence-based programming carried out in country by Tdh with the key state partners. It is led and implemented by AGO with the financial and technical support of Tdh and it has brought together more than 80 key stakeholders from State Ministries, non-State justice system, academia and civil society. This project is central to the reforms led by AGO and the other institutions at the country level to establish restorative justice processes for all and its success to date is the evidence of a strong commitment and willingness to improve child-friendly justice and ensure its restorative nature through the juvenile mediation procedures by taking the best elements of the justice practices coexisting in Palestine.



1. Project's background and objectives

The entry into force in March 2016 of the Juvenile Protection Law of the State of Palestine (JPL) was a breakthrough in the field of human rights, in general, and in the child rights and access to justice for children, at the country level. It embodied the most advanced provisions relating to juvenile justice in line with the Convention of the Rights of the Child (CRC) and related international justice standards for children.

Since the approval of JPL significant progress on its implementation has been made to ensure a child rights-based approach to children's access to justice with a common goal: to reduce the number of children in custody. In this context, Article 23 of the JPL, which sets forth the process of "Juvenile Penal Mediation" as a mechanism of restorative justice for children in conflict and in contact with the law, plays a crucial role.

Article 23 of the JPL states that:

"The Juvenile Prosecution shall, sua sponte, and before initiating the criminal proceedings, offer mediation in between the victim and the juvenile in the misdemeanours and violations, under the approval of the juvenile or his/her guardian and the victim if it appears to the Juvenile

Prosecution that such action would remedy the damage caused to the victim, or put an end to the disorder caused by the offence, or contribute to the rehabilitation of the doer. In this regard, the Juvenile Prosecution is also authorized to ask the assistance of the Juvenile Police or the Child Protection Counselor or one of the mediators, provided the juvenile shall confess to the offence in question".

Two important notes coming from this legal provision:

- The Juvenile Prosecution (within the Attorney General Office – AGO) is given full legal competency on the process of juvenile penal mediation in country. It is the duty-bearer for its activation, due process and oversight.
- While the term "mediators" as set forth in the Art. 23 is still pending to be legally determined, the legal provision opened the door for the AGO to request the assistance to proceed with juvenile penal mediation from the Juvenile Police, the Child Protection Counsellors (part of Ministry of Social Development – MoSD) and other mediators, who could be community actors (non-State actors, also named in country as social mediators).

Since the approval of the JPL, the Juvenile Prosecution has dealt successfully with more than a thousand of juvenile mediation cases. However, the lack of specialized mediators has been identified as a challenge to be addressed in subsequent technical workshops and consultations with country stakeholders.

In 2018, the Juvenile Prosecution elaborated two key policy documents pertaining to the juvenile mediation process: (i) “*Strategic Framework for the Application of the Mediation in Juvenile Justice*” and (ii) “*A mechanism for evaluating the quality of mediation for juvenile prosecutors*”. Both documents contain relevant procedural considerations to comply with when exercising and following-up the effectiveness of the mediation agreements. Even more, they clearly show a strong willingness of the Juvenile Prosecution to improve and strengthen the juvenile mediation process in Palestine.

Alongside the State Juvenile Justice System, Palestine has a long history of community-based alternative dispute resolution mechanisms, who deal with a high number of children’s cases through different processes. Those mechanisms include good practices with close elements to conciliation and/or arbitration (non-formalized methods in the Palestinian law). However, the dispute resolution mechanisms led by community actors have also in some occasions been argued of lack of transparency and compliance with children’s rights, as well as lack of control by the State Judicial Authorities.

Within this scenario and coming for the long-standing partnership and areas of expertise in the topic, Tdh and AGO partnered in 2018-2019 to conceptualize and implement a pilot and innovative project towards setting up the juvenile mediation process in Palestine with the collaboration of community and non-State actors.

The framework for juvenile penal mediation presented in this publication comprises the analysis of the different activities carried out within the Project by AGO and Tdh in collaboration with a number of key governmental institutions (MoSD, Ministry of Justice-MoJ and Juvenile Police-JP mainly), Tribal Affairs Department, Reconciliation Committees, international and national civil society organizations, academic actors in country and abroad, legal professionals as well as community actors dealing with children’s cases un-officially. It is meant to be a **mean and an outcome for the advancement of the juvenile penal mediation regulatory process in Palestine. It proposes key elements to be considered for the juvenile penal mediation secondary legislation and enforcement of the process: definition and conceptualization of the mediation, the role of the mediator, accreditation process, mediation phases, accountability mechanisms** (including enforcement and follow up) as well as the **main principles of juvenile mediation** and how it relates with restorative justice.

A second phase of the Project which has been agreed by Tdh and AGO to be implemented in 2020, will build upon the extensive work done in the previous years, having as a core element the drafting of the bylaws of juvenile penal mediation in Palestine. Therefore, this publication will be used as an initial framework and roadmap for consideration and further discussion.

2. Key terminology

Below some key terminology particularly relevant for the purpose of this publication.

Alternative dispute resolution (ADR) refers to different methods for resolving conflicts through which the parties work out their differences outside court proceedings, but through the help of a third party. Mediation, conciliation and arbitration are ADR processes.

Arbitration is the procedure in which a dispute is submitted, by agreement between parties, to one or more arbitrators who make a binding decision on the conflict. Conciliation is the procedure by which a conciliator is responsible for proposing a solution to two parties in conflict.

Mediation is the procedure by which an impartial mediator accompanies the parties to find their own solution to the conflict between them. It differs from the conciliation by the non-intrusive role of the mediator in resolving the conflict, the latter playing more the role of a facilitator. Article 23 of the JPL sets forth juvenile penal mediation as will be detailed in the Section 2 above.

The best interests of the child (BIC) is one of the four general principles of the Convention of the Rights of the Child. It is an evolving concept to be adapted on a case-by-case basis. While there are not universally agreed criteria to determine the BIC, the child’s opinions, his/her identity, the preservation of the family and social environment family, his/her care, protection and safety, the vulnerability situation of the child, and his/her right to health and education are fundamental elements to take into account in determining the best interests of the child within a given case.

The child in conflict with the law (also refer to child offender or juvenile), according to Art. 1 of the Palestinian Juvenile Protection Law (JPL) means any person under 18 years at the time of the offence who is suspected, charged or convicted.

The child in contact with the law refers to child victims or child witness of an offence (both below the age of 18 at the time of the alleged offence). The JPL does not explicitly provide for a concrete definition of victim or witness but refers to “victim” in Art. 23 which foresees mediation.

Offenses in the Palestinian Criminal Code and the JPL there are three types: felonies, misdemeanors, violations and felonies. In terms of seriousness, the misdemeanors are the lightest offenses, the felonies are the most serious.

Restorative justice focuses on the harm caused by trying to restore the broken balance between the parties: the society, the offender and the victim. Mediation, diversion, alternatives to detention are part of the restorative justice practices.

3. What is juvenile penal mediation? How is it conceptualized in Palestine?

Generally speaking, juvenile penal mediation is the process in which the child offender and the victim are brought together with the help of an impartial third party, the mediator, to find solutions to resolve their conflict, to assume offender's responsibility and to repair the victims damage resulting from the offence.

To this end, the mediator establishes a process of constructive communication between the victim and the offender. This alternative process of conflict resolution, inspired by the restorative justice approach, gives a **central role to both the child offender and the victim**. The restorative and educational nature of the mediation allows, on one hand, to make the child offender responsible by putting him/her in front of the material, physical or moral damage s/he has caused and by offering him/her an opportunity to change his/her behavior. On the other hand, mediation allows the victim to be recognized as such, which it is the first step in the restoration justice processes, to try to understand the motivations that prompted the child offender to do so and to receive his/her apology and/or reparation. Finally, **by promoting reintegration and reducing the risk of re-offending**, mediation provides a **response to the community affected by feelings of insecurity resulting from juvenile delinquency**.

From a legal and social point of view, penal mediation **relieves the court system and minimize the bureaucratization of justice allowing for efficiency** of human and financial resources. But what is more important, at the same time, it provides an accountable response to primary delinquency, it offers an alternative to resolve less serious offenses through non-judicial mechanisms and it boosts reintegration of children.

In Palestine, Art. 23 of the JPL, juvenile penal mediation:

- has been conceptualized precisely for cases in which the process would *"remedy the damage caused to the victim"*, *"put an end to the disorder caused by the offence"* and/or *"contribute to the rehabilitation of the doer"*. Therefore, grounding the juvenile medi-

ation process in restorative justice principles.

- can be activated by the Juvenile Prosecutors Department at any time before initiating criminal judicial proceedings and, therefore, it is a mechanism directed to de-judicialize cases in which minors are involved (diversion).
- applies to misdemeanors and violations. Hence, it does not apply to felonies which should go through formal judicial proceedings considering the seriousness of the crime.
- requires the free consent of the parties involved (child offender and victim).
- requires the child offender to assume his/her responsibility to the offence committed as a precondition for activating the process.
- can be assisted by Juvenile Police, Child Protection Counsellors and other mediators. Importantly, the Art. 23 does not specify how AGO would mandate these actors regarding their role as mediators. Further Sections of this publication offer some propositions.

WHAT IS RESTORATIVE JUSTICE?

Restorative justice has been defined as: *"A response to crime that respects the dignity and equality of each person, builds understanding and promotes social harmony through the healing of victims, offenders and communities"*.

Restorative justice starts from a different and broader conception of the crime itself, since it is not perceived just as an infringement of the law, but acknowledges that child offender harm the victim, the community and him/herself. It considers that society is formed by the conjunction of individual interests which forms the social fabric, broken when a crime is committed. Restorative justice processes aim at bringing the different interest of the parties (victim, offender and community) together. Each of them plays a crucial role:

- The **offender** needs to assume his/her responsibility and he/she must repair the harm caused. He/she needs to understand that (i) is the action what it is sanctioned and not the person who is stigmatized and judged, (ii) the objective of the restorative process and its sanction is to find his/her place in the social fabric composed by his/her community for his/her future and well-being and this is just possible and depends on his/her capacity to exercise the responsibility for the crime committed. Therefore, the offender has obligations, rights and guarantees.
- The **victim** needs to have a voice to decide how the harm can be repaired according to his/her needs. The victim has rights and guarantees and he/she is a key part for the resolution of the conflict.
- The **community** needs to provide tailored and specific (but different although comprehensive) support to both, the offender and the victim.

The implementation of restorative justice programmes, as a complement to the criminal justice system, was accompanied by the development of safeguards for participants and efforts to maximize their restorative and crime prevention outcomes.



**PRINCIPLES OF RESTORATIVE PROCESSES AS PER INTERNATIONAL STANDARDS:
THE ECOSOC RESOLUTION 2002/12 -
Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters**

In 2002, the United Nations Economic and Social Council (ECOSOC) adopted a resolution (2002/12) containing a set of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.

Some of the principles are relevant to juvenile penal mediation in Palestine specifically:

- To be used only where there is enough evidence to charge the offender and with the free and voluntary consent of the victim and the offender. The victim and the offender should be able to withdraw such consent at any time during the process.
- Restorative agreements should be arrived at voluntarily and should contain only reasonable and proportionate obligations.
- Participation of the offender shall not be used as evidence of admission of guilt in subsequent justice proceedings.
- Power imbalances between the parties (gender, religion, social position, etc.) should be addressed in the restorative process to ensure equality among them.
- Safety of the parties and confidentiality should always be ensured, including once the process concludes.
- Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decisions.
- Neither the victim nor the offender should be coerced, or induced by unfair means, to participate in restorative processes or to accept restorative outcomes.
- The results of agreements arising out of restorative justice processes should be judicially supervised/ incorporated into judicial decisions or judgements.
- Where no agreement is reached among the parties, the case should be referred to the established criminal justice process.
- Facilitators of the restorative justice processes should perform their duties in an impartial manner, with due respect to the dignity of the parties. In that capacity, facilitators should ensure that the parties act with respect towards each other and enable the parties to find a relevant solution among themselves. Facilitators should be trained and prepared to take up their duties.

4. What are the benefits of using juvenile penal mediation?

Juvenile penal mediation is a restorative justice modality that comprises several benefits for the children and the youth but also for the justice system and the professionals within it.

- Juvenile penal mediation **considers the best interest of the children and youth involved, but also those of the victim and the community.**
- Juvenile penal mediation **fosters the repair of individual bonds and promotes social cohesion.** Mediation is a consensual process that allows parties to avoid contradictory and repressive criminal proceedings that focus on the punishment of the author and often reinforce the conflict. On the contrary, mediation focuses more on searching for a solution of appeasement between the parties, the repair of the bonds between the author and the victim, but also the reinstatement of a social peace within the community. As a result, juvenile penal mediation should benefit all the parties and thus should limit the frustration or bitterness born of a contentious outcome of which a decision is made in favor of one party to the detriment of another.
- Juvenile penal mediation **empowers the child offender and the victim and contributes to their safe reintegration back in their communities.** The opportunity offered to reach an agreement with the victim to implement a remedy by the child offender, allows, in the first place to reflect on the offence committed, to understand and assume the responsibility and, after, to propose an activity to compensate for this damage. This sort of educational process strengthens the ties of the child with his/her reintegration and reduces the risks of recidivism. For the victim, the juvenile penal mediation intends to reduce the risks of secondary victimization; the victim is given a central place in the procedure and its outcome, where s/he can express the suffering and consequences of the harm caused and well as request the author a concrete compensation; process that can have a therapeutic value for the reintegration of the victim.
- Juvenile penal mediation **reduces the stigma of the child offender and the victim from engaging in formal judicial proceedings.** Going through formal judicial procedures, often not adapted to children, in addition to be sanctioned with a punitive measure, to have registered criminal records, or to be required to provide repeatedly testimony of the facts increasing chances for secondary victimization, can seriously jeopardize the reintegration of the child offender and the victim. Mediation offers an alternative solution that minimizes the above-mentioned issues.

- Juvenile penal mediation **adapts to each case and it is a confidential process.** While the process of mediation counts with specific principles and rules, those are also designed to allow the parties involved to choose their own communication style (child-friendly) tailored to their needs, their cultures and traditions and come up with solutions that respect children's rights but are also adapted to their community values. In addition, juvenile penal mediation should take place behind closed doors and outside the presence of the public; confidentiality allows for freedom of speech, mutual respect, awareness of each other's needs and interests.
- Juvenile penal mediation **speeds up procedures, reduces expenses and avoids judicialization of child cases when an agreement is reached.** In general, a solution can be obtained much more quickly by mediation than by judicial means. By elsewhere, penal mediation is free unlike the litigation procedure which is usually very expensive and time consuming and may discourage some people from accessing justice. In addition, mediation allows for de-judicialization of cases, being more restorative for children as well as more efficient for the justice system. Finally, victim's rights of compensation are absolutely granted; in case a mutually agreed mediation settlement is not reached, judicial procedures could be opened without being affected by the mediation process held.

5. The juvenile penal mediator

In Palestine, the JPL attributes legal competency to the General Attorney Office for the juvenile penal mediation. It is the official national party in country "entrusted with conducting mediation by assessing the availability of the appropriate conditions for conducting it. It is also the party in charge of organizing, supervising and monitoring the execution of the mediation" as stated in the AGO's Strategic Framework for the Application of Mediation in Juvenile Justice. Hence, the juvenile prosecutors are mandated to act as juvenile penal mediators but, given their competency, they can request the assistance of others to be mediators under the supervision of the prosecutors (delegation). Those are the Juvenile Police Officers, the Child Protection Counsellors or "one of the mediators", in the latter, **social mediators/community actors** that could be: non-State actors (informal justice actors), member of the Reconciliation Committees or civil society organizations actors relevant in justice and children's rights.

It is worth to note that ideally juvenile penal mediators should not be part of the justice system per se having another role within it (prosecutors, police, judges). The underlying reason is to ensure the needed impartiality.

principles in Section 6.2 below), to keep coherence with the de-judicialization of the mediation as a form of restorative mechanism and to avoid that mediators wear a double hat that can impact how the mediation process is organized, its impact on the parties and its outcome at the end. However, as further explained in the following sections, it is important that the juvenile penal mediation process is overseen and guaranteed by the State Justice System.

As per the outcomes of the consultation process with the stakeholders, there are certain **essential conditions and requirements** (not exhaustive) that those social mediators/community actors would need to demonstrate prior to become juvenile penal mediators:

- They could be men or women.
- They need to previously have been exercising a recognized local practice of resolving conflict in their communities, including with children.
- They are required to prove human skills as well as deep interest for the well-being of children.
- They must also possess the enjoyment of their full civil and political rights, not to have been subject of a criminal conviction at any point of time of their lives.
- They will need to obtain the official accreditation by AGO/MoSD, after having followed a specific training whose curricula will be developed by AGO/MoSD.
- Once accredited, mediators must adhere to a professional code of conduct that they must respect in any situation. This code will be elaborated following the deontological principles stated in the Section 6.2 below as well as the “*Strategic Framework for the Application of Mediation in Juvenile Justice*” approved by AGO and any official secondary legislation that will be eventually approved regulating the juvenile penal mediation in country.
- Annually, mediators should abide themselves by the obligations stated in the “*Mechanism for evaluating the quality of mediation*” that will be adapted by AGO to include social mediators’ role and accountable duties.

The above-mentioned essential criteria are not exhaustive and could include other specific requirements. However, for the purpose of this document aimed at serving as a framework for advancing the juvenile penal mediation regulatory process in Palestine, those should be regarded as the minimum ones. Jointly, AGO and MoSD are currently working on setting up the official criteria to be included in the subsequent piece of legislation on juvenile penal mediation (2nd phase of the Project AGO-Tdh).

Within the Tdh-AGO’s pilot project “*Exploring Procedures of Juvenile Penal Mediation in Palestine with Community Actors following Article 23 of the Juvenile Protection Law*”, some specific trainings have been performed during 2019, particularly focused on: (i) child rights and juvenile justice regulatory frameworks (international, regional and national levels), (ii) social reconciliation approach to mediation and how to implement it according to the best interest of the child, (iii) juvenile mediation processes in Palestine: coordination and referral mechanisms, (iv) mediator’s skills, (v) media training focused on mediation as a form of restorative justice provided by the University of Birzeit (Ramallah).

As mentioned above, a specific training curriculum would be developed allowing for the formal accreditation of mediators, including social mediators/community actors. Then, AGO will count with a list of mediators that can be called upon to proceed with juvenile penal mediation processes.

5.1 Key notions on the role and on the specific qualities of the juvenile penal mediator

The mediator’s main role is to facilitate the re-establishment of communication and dialogue between the child offender and the victim so that they can find their own solution to their dispute and restore the social bond. Within this main objective, there are some key notions on the role of a juvenile penal mediator that should be highlighted and considered when legally defining their concrete function, how they must develop their role and, importantly, for the annual evaluation of the mediation processes and mediators’ role.

- The mediator **helps the parties to express their views, to explicit their interests and needs**. It also allows them to widen the scope of possible solutions, sometimes quite different from those initially envisaged.
- The mediator has an **obligation of mean** and an **obligation of result**:
 - √ Regarding the mean, s/he must help to the best extend possible the parties to communicate and allow them to find a solution to the conflict, assume the responsibility on the side of the child offender and repair the damage caused. They need to ensure that while the exchanges happen, the parties respect the other, his/her values and traditions, his/her culture.
 - √ Regarding the result, the mediator is abided by the current legislation, where the mediation agreement reached should comply with children’s rights enshrined in the national and international regulatory frameworks. Particularly, in Palestine,

mainly the Child Law and the JPL as well as the CRC as ratified by the country.

- **The mediator is neither judge nor arbitrator:** s/he must not impose her/his points of view on the parties, neither to take sides with one of the parties, nor to give her/his opinion to what the parties express during the process. Hence, the mediator must rely on the individual responsibility and capacities of the parties and consider them as real actors who can find solutions to their conflict themselves.
- Mediators need to be **conscious of their own cultural baggage** in terms of values, beliefs, etc. in order to ensure an **impartial and equitable stance** during juvenile mediation processes.
- **Knowledge and strict compliance of the basic principles on the use of restorative justice procedures** (see ECOSOC Resolution 20/2012 in Section 4 above) as well as the "*Strategic Framework for the Application of Mediation in Juvenile Justice*" approved by the AGO.
- Several **qualities** are required for juvenile penal mediators. Those are not exhaustive but conform the basic ones that will have to be assessed during the accreditation period and, accordingly, to be included in the training curricula for juvenile penal mediators in Palestine:
 - √ The capacity for active listening and reformulation;
 - √ The ability to foster constructive communication;
 - √ Analytical and synthesis skills;
 - √ Notions on child psychology, child participation and child-friendly language;
 - √ Cultural respect and open-mindedness;
 - √ Intuition;
 - √ Self-control;
 - √ Empathy;
 - √ Discretion.

5.2 The 5 deontological principles for juvenile penal mediators

Once the juvenile penal mediator status is granted, s/he has the duty to guarantee the 5 main deontological principles within the mediation process: (1) the voluntary participation of the parties, (2) the confidential process, (3) her/his independence, (4) her/his impartiality and (5) his/her neutrality. If, during the mediation process, any of these deontological principles is breached, mediation should be invalidated by the AGO, as supervisor grantee.

- **Voluntary participation** of the parties: juvenile penal mediation is a voluntary procedure and consensual

in the sense that it requires and relies on the mutual agreement and participation of the parties, provided the acknowledgment of the facts by the child offender. Thus, the juvenile mediator has the obligation, before each mediation process, of ensuring thoroughly that the parties have understood the mediation process and of collecting by written their free and informed consents. The parts may decide to withdraw from the mediation process at any time without any penalization.

- **Confidentiality of the process:** as a fundamental guarantee of juvenile mediation. It is crucial that the mediator and the parties commit to guarantee the confidentiality of the exchanges and documents provided and/or elaborated during the mediation (including the eventual mediation agreement reached). All the information exchanged during the mediation process cannot be disclosed to third parties or brought before a judge if the conflict is finally to be channeled to judicial proceedings (in case a mediation agreement is not reached or because of the withdrawal of any of the parties). This applies as well for the juvenile mediator who can by no means communicate about the nature of the case, the way the parties acted during the mediation, etc.
- **Independence:** the juvenile mediator cannot intervene in a mediation if s/he has personal or business relations with any of the parties or if it could be inferred a direct or indirect benefit from the result of the mediation for him/her. In addition, the mediator must be able to act without pressure or instructions from the outside. This independence will have to be asserted vis-à-vis the AGO at least.
- **Impartiality:** it is a central principle of the juvenile mediation which implies that the mediator must consider whether there is a conflict of interest between her/his own values, traditions or prejudices and the nature of the conflict for which it has been appointed by the AGO.
- **Neutrality:** while the mediator must be attentive to everyone's sensitivities, s/he must never take sides or use her/his position to benefit any of the parties, whatever the elements are put forward by them. Moreover, neutrality also means that whatever techniques the juvenile mediator uses to help parties to reach a solution, the mediator does not have the power to bring the solution in the place of the parties and render a decision on their behalf.

These fundamental principles will have to be verified by AGO and respected by the juvenile mediator at each stage of mediation processes. If any of the 5 deontological principles could be not observe, the juvenile mediator is required to self-inhibit for the process. Alternatively,

the parties or the AGO must challenge and apart her/him from the mediation process from the beginning or during any of the stages of the process.

6. Proposed stages of juvenile penal mediation in Palestine

The future piece of legislation which will govern in Palestine the juvenile penal mediation from Art. 23 JPL will require to precisely foresee each of the stages and the rules applicable to each of them. Currently, the AGO is following two key public documents approved after the enactment of the JPL in Palestine: (1) “*Strategic Framework for the Application of Mediation in Juvenile Justice*” and (2) “*A mechanism for evaluating the quality of mediation for juvenile prosecutors*”. These two documents have been very useful for activating juvenile penal mediation in the country since 2017. However, further developments are to be included to articulate comprehensively the process of juvenile penal mediation in Palestine, including the role of social mediators.

This Section aims at proposing how the different stages of the juvenile penal mediation could be regulated in the future secondary legislation/by-law in Palestine. The two above mentioned documents approved by the AGO, the inputs provided by the Project Steering Committee¹ and the rest of the stakeholders (academic, civil society), including the informal justice actors/social mediators engaged within the project and the analysis done by the Juvenile Prosecution Department in the reports elaborated within the Project: (1) “*Analytical Report: Legal Practice and Procedures of Juvenile Mediation at the AGO*” and (2) “*Assessment of the Tribal Reconciliation System for Children*” have been considered and factored within the proposal below.

6.1 Stage 1: The appointment of the mediator

1. After the offense is committed by the child, there are usually two scenarios:

- The child is reported, referred or arrested to/by the juvenile police officer, by the victim or a witness, or the family.
- The child offender is referred or reported to the social mediator/community actor by the victim, by a witness, or a member of the community (including relatives).

In both cases, the police/social mediator referents should immediately inform the parents or the legal guardian of the child offender as well as the Juvenile Prosecution Department of the facts reported.

2. Once informed of the facts, the Juvenile Prosecution Department should verify the presence of the conditions

of the mediation (as a minimum, the type of offense: misdemeanor or violation and availability of the confession of the child offender) and, then, will appoint the suitable social mediator from the list of accredited social mediators approved by AGO and MoSD eventually.

Ideally, the Juvenile Prosecutor Department will favor the designation of the social mediator of the community in which the offense took place. If, however, the parties do not belong to the same community, the prosecutor will give priority to the appointment of the social mediator from the community of the victim.

6.2 Stage 2: Making contact with the parties and collecting their consent

1. Once the social mediator has been appointed by the Juvenile Prosecution Department (and MoSD eventually), s/he needs to make initial and separate contact with the child offender and the victim, as well as their parents/caregivers/legal guardians. In this initial meeting, the social mediator will inform them of the different stages of the juvenile penal mediation, its benefits, process and purposes. S/he will explain about the voluntary and consensual character of the mediation, as well as the 5 main deontological principles that will apply to the mediation process. With all this information, the parties will be able to make an informed decision about their willingness or not to settle their conflict through this restorative justice mechanism.

2. The social mediator will explicitly ask the parties whether they have understood the process and if they wish to use mediation to resolve their conflict.

3. Once the explicit consent of the parties has been obtained by written (preserving the required confidentiality), the social mediator shall obtain the consent of the parents or legal representatives regarding the application of the procedure of juvenile penal mediation conflict involving their child. If parents/legal representatives refuse the mediation process while their child has agreed, the social mediator will inform the Juvenile Prosecution Department aiming at jointly trying to convince the parents/legal representatives of the advantages of the mediation, both for the child offender and the victim.

6.3 Stage 3: Preparation of the mediation sessions, including individual meetings with the parties

1. If the parties consent to the mediation, the social mediator will propose to the parties to meet them individually. This individual meeting with the parties allows the mediator to inform them in-depth about the mediation process stage by stage. This stage is essential for the social mediator to know the story of each of the parties, their points of view, their expectations and their proposals concerning the case. It will certainly allow the social mediator to

1. MoSD, MoJ, High Judicial Council, Ministry of Education and Higher Education (MoEHE), Ministry of Labor (MoL) and Ministry of Women's Affairs (MoWA).



gain knowledge, prepare the parties and, hence, extract the best of the juvenile penal mediation process to help each of the parties to achieve real restorative outcomes for both and for the social peace/cohesion at their communities.

This step is to be arranged and done preferably without the presence of the parents/caregiver/ legal representatives of the child offender and the victim, unless they oppose it, or a specific protective-wise reason/s arise/s. However, it is also during this/ese session/s where the social mediator should inform the parties of the possibility of appealing at any time to a counselor (legal, social), to a family member or to certain community members with whom s/he would like to exchange before the juvenile penal mediation session/s are arranged for the two parties to meet. Although these resource people cannot influence or take decisions on issues raised during the mediation, their support during the preparatory phase and their presence during the mediation is often valuable to reassure the parties and advance mediation.

Importantly, the social mediator should explain in detail the deontological principles governing her/his role during the mediation process and the obligations s/he is abided to.

Why this stage is a paramount in the process of juvenile penal mediation?

For the **social mediator**, it allows her/him to be able to establish a relationship of mutual trust with the parties, to prepare them to meet and discuss their differences and to consider more serenely proposals for solutions for both.

For the **parties**, it is also a time when they can freely express themselves about how they felt before and during the offense, and how they currently feel (post-offence), what are their needs as well as their fears. For this to happen in the correct way, the child offender and the victim should be ensured with attentive listening, advice without judgment and complete confidentiality from the social mediator.

2. The social mediator should repeat these individualized sessions with the parties as many times as s/he feels is necessary or if the parties ask for it. The preparation of the parties is crucial in order to ensure that the mediation session/s with both together are safe and are applying restorative justice principles.

MINIMUM CONDITIONS AT THIS STAGE TO BE MET BY THE SOCIAL MEDIATOR

Present in details the juvenile penal mediation process to the parties: clearly explain its framework, clarify the role of the social mediator, the link with the AGO and further with eventual judicial process, stress the governing rules of the mediation, rights and obligation of the parties, including those of the social mediator

Make sure to inform and apply strict confidentiality to the whole process

Encourage the parties to think freely and explore solutions and possible arrangements

Use an appropriate child-friendly language and ensure you fully meet the due impartiality and neutrality

Inform the parties about the benefits and usefulness of juvenile penal mediation to strengthen their voluntary commitment to participate in the process, as well as to the possibility of counting with an advisor if it is deemed appropriate

Evaluate carefully with the parties if juvenile penal mediation can meet their needs and their expectations. Listen to them and identify underlying issues and expectations. Be open to all questions from the parties

6.4 Stage 4: Juvenile penal mediation sessions with the child offender and the victim together

1. Once the individual sessions have been finalized, the social mediator will invite the child offender and the victim, as well as their legal representatives/ counselors, parents/caregiver/legal guardian if appropriate, and eventually a Child Protection Counsellor from MoSD, to meet for the juvenile penal mediation joint sessions.

- The place selected for the meeting must be conducive to mediation as a form of restorative justice: a neutral, private and child-friendly place where the parties can exchange confidentially without being listened to or seen by others not involved in the process.
- It is advised to not exceed a period of 2 hours per session. It is better to favor the organization of several successive sessions rather than a long-term session to allow the parties to think between their exchanges.

2. The reception and introduction of the parties. The social mediator should begin with a welcoming and introductory message from all people in the room, explain the main purpose of the mediation process, its voluntary

character, its nature of restorative justice process, rights of the parties, including the recourse of the parties to the judicial criminal system.

3. The social mediator will remind to the parties and to the other people present in the mediation session the basic communication rules to be observed at all times:

- **Attentive listening:** each party (and others) speaks in turn, at the invitation of the social mediator, without being interrupted by others, even in case of disagreement. After each intervention, the other party will be able to express itself freely to respond to about the other party's narrative of facts. This attentive listening allows to understand each other's point of view without necessarily accepting it.
- **Priority:** the central parties to the juvenile penal mediation are the child offender and the victim. Other people participating in the session do not have the priority, although, they will be given the chance to express themselves only at the invitation of the social mediator.
- **Respect:** during a mediation, everything can be said but in the respect of the other, without use of offensive or abusive terms.

- **Confidentiality:** everything that is exchanged during the mediation is confidential. The rule of confidentiality applies to all comments but also to the all documents produced during the session/s, even in the event of legal/judicial proceedings.

All these commitments must be materialized in a mediation agreement signed by the parties, the legal representative/s, parents/caregiver/legal guardian, Child Protection Counsellor and the social mediator.

4. The child offender and the victim will then narrate the facts of the case from their own point of view. The active listening of the social mediator is essential: (i) s/he invites the others to listen to the version being narrated, s/he rephrases the words of each to avoid misunderstandings and (iii) summarize the main points of agreement and disagreement.

The social mediator should encourage the parties to express their views, needs and interests. S/he should observe carefully the reactions of the parties and should ask for clarifications as needed to make sure the parties and the rest of the participants can exchange constructively.

5. Once narrative of facts, needs, interest, etc. has finalized, the social mediator leads the child offender and the victim to formulate solutions that suit everyone and that reflect the needs and interests of the parties. It is at this moment when reparations of the harm caused and/or better pathway for reintegration for child offender and victim are discussed.

While the social mediator should encourage the parties to be creative, realistic and conciliatory, s/he should make very clear that the proposed solutions cannot be contrary to the public order, the public moral, the well-being and the best interests of children.

6. Only proposed solutions that can satisfy both parts are kept for further discussion. Of those selected, the parties should analyze what is the one that best fits the 4 main objectives of the restorative justice:

- (i) It allows the child offender to take full responsibility of his/her act,
- (ii) it repairs the damage cause to the victim,
- (iii) it supports the reintegration of the child offender and the victim, and
- (iv) it restores the interpersonal relationships and social cohesion in the community.

During this step, the social mediator should have no influence over the parties, but s/he should ensure the restorative outcomes for both parties.

While discussing the reintegration of the child offender and the victim, the Child Protection Counsellor should be able to give her/his views on what would be the best pathway according to the options provided by the JPL and those in the Child Law.

By involving two parties in the repair decision of the offense committed, **the penal juvenile mediation gives a central role to the victim and the perpetrator and makes their self-determination to prevail.** Indeed, because child offender and victim have defined the terms of the mediation agreement, **the final outcome will be more appropriate to the needs and interests of the parties** but also way more effective than solution imposed on them by an outside party.

6.5 Stage 5: The conclusion of the juvenile penal mediation process

The process of the juvenile penal mediation can conclude in two ways: with a mediation agreement or without it.

- **The juvenile penal mediation agreement:** if after evaluating the different proposed solutions, the parties have reached an agreement on the commitments and the reparation to be carried out, the social mediator will include the point of negotiation and the solution/s agreed in detail in a written document (called the **juvenile penal mediation agreement**, for which a form/template should be in place), handle the mediation agreement to each party and their companions and make sure everyone clearly understand it. If that is the case, the mediation agreement is signed by both parties and their representatives, as well as by the social mediator.
- **Disagreement of juvenile penal mediation:** If despite the constructive exchanges during the sessions of mediation, the parties do not reach an agreement or if there is no progress at some point of the discussions, the social mediator can unilaterally terminate the mediation. S/he would need to inform previously to the Juvenile Prosecution Department and elaborate a document (called **juvenile penal mediation disagreement**, for which a form/template should be also elaborated). This mediation disagreement should be shared with the parties, understood and signed by them.

The mediation disagreement must not contain any ele-



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ment likely to harm either party in the course of the judicial proceedings.

6.6 Stage 6: The legal enforcement of the juvenile penal mediation agreement by the Juvenile Prosecution Department

In order to give legal value and enforceability to the juvenile penal mediation agreement, an additional step is required: The Juvenile Prosecution Department at AGO should officially validate it.

The social mediator is responsible for submitting the same day the mediation agreement that have been signed by the parties to the Juvenile Prosecution Department, who will then (in a maximum of 5 working days to comply with the principle of speediness in child-friendly legal procedures) verify that the agreement does not affect public order, the public moral, the wellbeing and/or the best interests of the children. The Juvenile Prosecution Department must observe that the main governing rules and principles of the juvenile penal mediation (as stated in the future juvenile penal mediation by-law developing Art. 23 JPL) have been complied with. Then, the mediation agreement is officially homologated and a copy of it is sent to the parties.

7. Execution of juvenile penal mediation agreements: An accountable system in place

As stressed above, the Juvenile Prosecution Department holds the competency to monitor the execution of the mediation agreement reached and validated. This agreement needs to be complemented (fully included or mentioned) by the report of the Child Protection Counsel-

lor from MoSD which hold the competency to ensure the reintegration of the child offender as well as that of the child victim if need be.

In order to do so a clear accountability mechanism should be put in place. It will require the coordination of the Juvenile Prosecution Department and the MoSD, but also the social mediator plays a central role as well as the civil society organizations that can provide the appropriate services for the reintegration.

Different situations can occur:

1. The commitments and reparation in the mediation agreement were successfully executed by the parties. The social mediator will verify with the parties, in coordination with the Child Protection Counsellor/s assigned to the case/s. Then, the social mediator will officially inform the Juvenile Prosecution Department to legally confirm the performance and therefore closure of the process.
2. In the event of partial or total non-performance by one or both of the parties, the social mediator in coordination with the Child Protection Counsellor should contact the defaulting party/ies to deepen in the causes of change of intention and possibly to fix it a new turnaround time. However, if the contacted party/ies refuse/s to execute the agreement the social mediator will inform the prosecutor of the non-respect of the agreement minutes. Juvenile Prosecution has the right then to open investigation within a formal judicial proceeding, where confidentiality principle regarding exchanges during mediation should always be respected.

A WORD OF CONCLUSION & NEXT STEPS

“ Juvenile Penal Mediation process is a journey in which governmental and community members should work together in a unified manner to achieve restorative justice for children in Palestine”. These words, pronounced in his welcoming speech by his Excellency General Attorney in Palestine during the Restitution Workshop celebrated in October 2019 in Ramallah, capture the paramount of this joint project: child-friendly justice can only be restorative.

This art-of-the-state project, which 2nd phase will start in January 2020, set the first step to achieve a solid, clear and functional juvenile mediation process in the country, coordinated with all the stakeholders from the formal and the informal/customary justice sectors as well as with academia and child protection actors, in which the principles of justice for children, the rights of child offender and those of the victim together with the social peace and cohesion values at the community level are central to it.

The next phase will focus on four core pillars: providing technical assistance in drafting the bylaws/secondary legislation of the Art. 23 JPL; (ii) specialized training for social mediators; (iii) regional and international exchanges with professional mediators within criminal systems; (iv) interdisciplinary coordination network in country to move forward the process of juvenile penal mediation.



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