

ARDD-Legal Aid, Legal Assistance Department

# Mandatory Reporting, Confidentiality & Legal Privilege under Jordanian Law



**ARDD-LEGAL AID**

Arab Renaissance for  
Democracy & Development

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## **NOTE**

Published July 2015 by ARDD-Legal Aid, Legal Assistance Depart,  
Complex No. 8 Khalil Mardam St., 11193 Jordan.

This legal summary reflects Jordanian law as of the date of publication.

The perspectives herein are solely those of ARDD-LA and, unless otherwise specified, do not necessary reflect the opinions of the organization's partners.

Ghaleb Abdelraheem contributed by leading efforts to locate and analyze the relevant local law and legal processes. Dennis Ardis assisted in that effort, as well as contributed in terms of overall development, presentation and writing.

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## **ABBREVIATIONS**

- ARDD-LA Arab Renaissance for Democracy and Development – Legal Aid
- CP Child Protection
- FPD Jordanian Family Protection Department
- PSEA U.N. Framework, Protection from Sexual Exploitation and Abuse
- MoU Memorandum of Understanding
- NGO Non-Governmental Organization
- JOD Jordanian Dinar
- SOP Standard Operating Procedure
- SGBV Sexual and Gender-Based Violence
- ToR Terms of Reference
- UNHCR United Nations High Commissioner for Refugees



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## 1. INTRODUCTION

This report seeks to provide humanitarian professionals and their organizations with concise, practical information about mandatory reporting, confidentiality and privilege under Jordanian national law. It considers professionals of several types, including doctors, lawyers, teachers and psychosocial staff, as well as individuals without specialist certifications, such as caseworkers and social workers.

In particular, the report is centered on answering two independent questions that have particularly important implications for work within the humanitarian field:

- A. When must humanitarian actors proactively inform police of a past crime that has come to their attention?
- B. When can humanitarian actors be required to testify in court about information gained from their beneficiaries?

It is important to underscore from the outset that this report focuses almost exclusively on Jordanian law. While it seeks to be comprehensive in this regard, readers must bear in mind that typically humanitarian professionals must abide by several layers of regulations, such as those of their professional associations and employers. Even partners, like the UNHCR, might help set standards and impose important duties. Thus, while the report provides practical guidance with respect to the two issues above, its ability to be comprehensive and definitive is limited by the fact that other considerations likely apply based on one's professional capacity and the overall context.

This report aims foremost to provide an accurate accounting of the law. While it lays the foundation for future advocacy in doing so, the report strives to be objective and thus devoid of value judgments about one's legal obligations (or the absence thereof).

The factual circumstances and concerns that gave rise to this report appear in depth below. ARDD-LA sheds lights on them from two distinct perspectives. One is ARDD-LA's perspective as an organization that staffs, not only lawyers, but also mental health professionals, caseworkers and others who frequently interact with sensitive beneficiary information, and that often participates in interagency coordination and planning. The other is ARDD-LA's perspective as legal advisor to many humanitarian organizations. For reasons of anonymity, the report does not identify ARDD-LA's partners, nor discuss any case specific examples. What can be said, however, is that the pressing need to clarify the law has become apparent through the concerns of many individuals and organizations. Moreover, the repeat occurrence of sensitive legal issues has given life to those fears not only for service providers but also for particularly vulnerable beneficiaries. In short, this paper embodies ARDD-LA's best effort to clarify the law and thereby help key stakeholders avoid and mitigate important protection risks going forward.

## 2. EXECUTIVE SUMMARY

This section provides a concise, easily accessible summary of the report’s primary findings and recommendations. For the sake brevity, it omits important details, and thus readers should readily refer to the Report’s more in-depth legal analysis that appears further below.

### 2.1. Summary of Legal Findings

#### ••• A. *Must I proactively inform police of a past crime?* •••

*Most likely not, unless you are a doctor who provided medical services.*

There is no general legal obligation to report past crimes. In fact, the law only breaks its silence with respect to two scenarios. In particular, they pertain to: (1) **doctors** and the provision of first aid medical services; and, (2) **doctors, teachers and social service providers** who have observed the effects of domestic violence.

Under the law, doctors are the only group of professionals that have a clear, legally enforceable obligation to report past crimes. Namely, they must do so if (a) the patient received “first aid” medical services (اسعاف شخص) and if (b) the prior occurrence of a crime is apparent. “First aid” medical services is likely broad enough to include most first-time visits to the hospital – even those that occur days and weeks after the underlying incident. Here the legal obligation to report includes a penalty. Namely, failure to do so may result in imprisonment from one to three months, as well as payment of a fine of 5 to 20 JOD.

Jordanian law contains special provisions on domestic violence. One requires doctors, teachers, and social service providers to inform police if they observe the effects of domestic violence. The law seems to contemplate physical effects; however, its wording is likely broad enough to encompass mental effects, i.e. psychological harm, as well. It is important to underscore that the relevant law pertains only to cases of domestic violence and that, relative to the cultural context in which the law exists, its definition of the family is rather limited. It excludes individuals like first cousins who are often involved in daily family life. The law clearly imposes the duty to report cases of domestic violence but fails to specify any penalty for failure to do so. Thus, in practice, no legally enforceable obligation to report seems to exist. Here FPD is the relevant authority.

In sum, doctors are the only professionals that risk legal liability for failure to report a crime. The obligation to report domestic violence applies more broadly, i.e. to teachers and social service providers as well. However, the need to report cases of domestic violence is limited by a narrow definition of the family and the omission of a specified penalty.

••• *B. Can I be required to testify in court?* •••

*Most likely, unless you are a doctor, lawyer or agent. However, under the law, being required to testify about the statements of beneficiaries should be unlikely.*

Local courts typically have the power to compel witnesses to testify. They can force witnesses to appear in court and impose modest fines. There is one noteworthy exception, however, as well as one complicating factor. Both serve to make the need to testify relatively unlikely.

Doctors, lawyers and agents are typically shielded from the need to testify about knowledge of information or events that they have gained from their clients or beneficiaries.

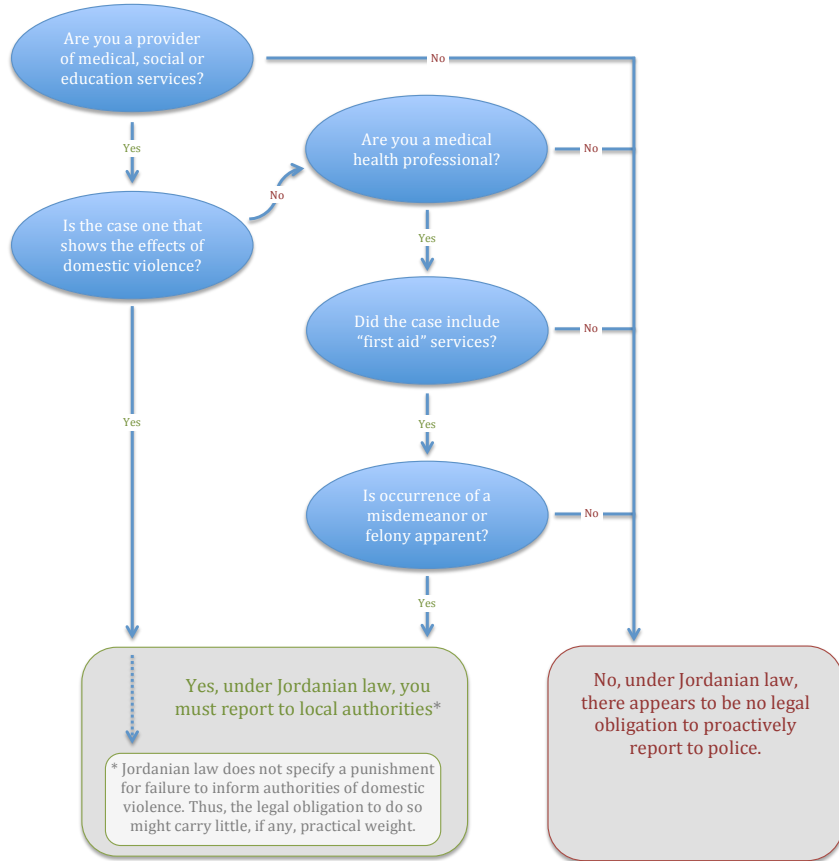
There are some key exceptions. Namely, they might be required to testify: (i) if the information or events (knowledge of which the professional gained via his or her work) indicates the intention to commit a crime; *or*, (ii) if the professional is asked by the client or beneficiary to testify. In the latter case, if the client or beneficiary wants the professional to testify, he or she might be able to compel the professional to do so via court order. The ability of the client or beneficiary to waive this protection is the largest concern for professionals who, perhaps for their own safety, wish to avoid appearing in court. Unfortunately, the law does not afford the same protection with respect to information shared with professionals of other types, like teachers, psychosocial staff and caseworkers.

The complicating factor relates to so-called “hearsay testimony.” Jordanian law, like the law of many countries, places limits on the ability of witnesses to testify about matters that they did not personally observe. In practical terms, this means that often witnesses cannot testify about what others, such as their clients or beneficiaries, have said with respect to past events. Here there is a noteworthy exception. Namely, one can still testify about the statements of others if those statements occurred shortly after the underlying incident, i.e. the event that the statements describe. While the law refers to “a brief moment” (برهة وجيزة), local courts tend to interpret this wording somewhat expansively, even to mean as long as one or two days. It is important to emphasize that this exclusion applies only to the statements of clients and beneficiaries. Importantly, it does not apply to the professional’s personal observations, for instance his or her having seen a bruise firsthand.

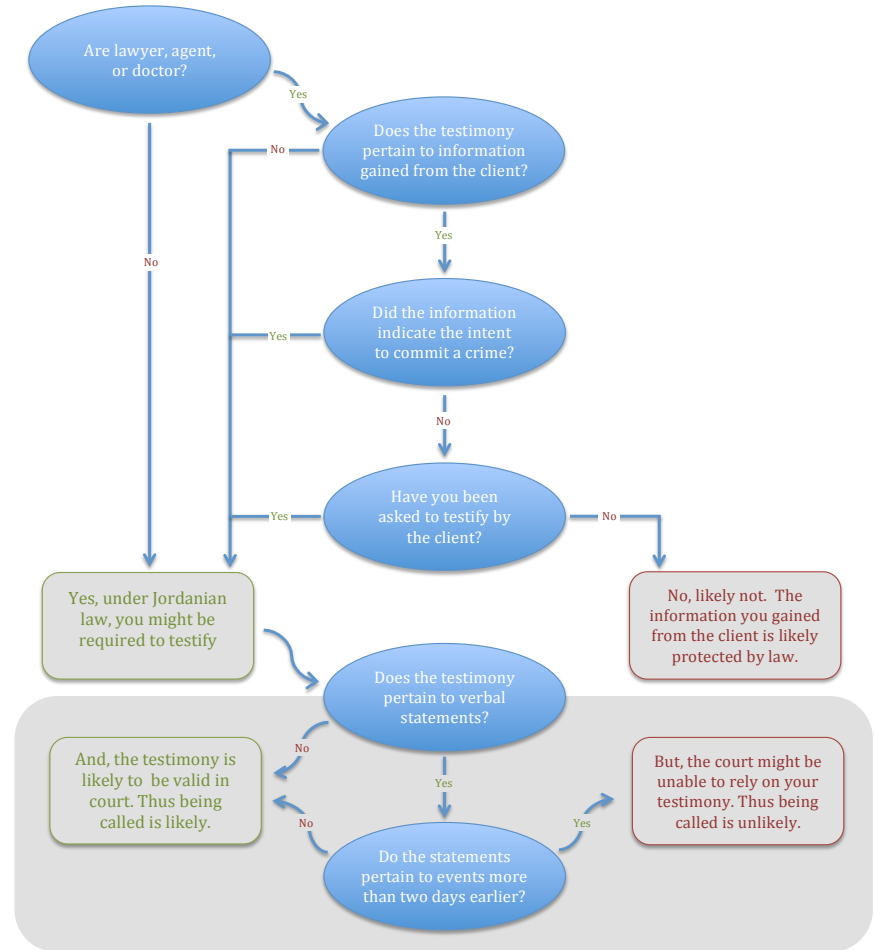
In sum, doctors, lawyers and agents might escape the need to testify, provided the client or beneficiary does not wish for them to do so. Unfortunately, information shared with other professionals does not receive the same protection. However, professionals of all types should not be required to recount the statements of clients or beneficiaries in most circumstances, given that clients and beneficiaries often describe events and circumstances that occurred days, weeks and months earlier.

# Summary of Legal Findings

## 1. Must I report the incident to police?



## 1. Can I be required to testify in Court?



### ••• C. Other Important Considerations •••

#### The Above Reflects Jordanian Law

It is imperative to emphasize that the above conclusions are based on Jordanian law. In particular, readers must bear two additional considerations in mind. First, the law as it is written might not reflect the law as it is put into practice. Contrary to the above, an individual judge, for instance, might ask a witness to recount the statements of a beneficiary made long after the underlying incident. The need for symmetry between the law and its implementation reflects another reason why understanding the law is so critically important. The report seeks to highlight provisions that might be underused and that can serve the interests of vulnerable parties. Second, humanitarian professionals are often obligated to follow, not only Jordanian law, but also many other rules and regulations, such as those of their professional associations and employers. As noted above, this report's ability to be comprehensive and definitive is limited by the fact that other considerations likely apply based on one's individual circumstances.

#### Witness Protection

This paper largely focuses on the obligations and responsibilities of individual service providers. A related issue, explored only modestly, is the extent to which the law affords witnesses – including survivors of crimes, like gender-based violence – protection with regard to their participation in legal processes. In short, the law includes only limited provisions in this regard, which, in practical terms, serve only to afford limited protection to minors. While those provisions exist, lawyers and courts rarely make use of them. Awareness raising and training on the utility of these provisions is particularly important.

#### What the Law Does not Say

It is equally important to consider those topics and concerns that Jordanian law does not address. For instance, Jordanian law does not include provisions that require reporting crimes committed against minors in particular. The report aims to identify key omissions, especially as they relate to key concerns and misconceptions.

To be clear, there can be no crime or punishment under Jordanian law in the absence of a related, preexisting penal obligation. The idea corresponds to a well-recognized principle under international law, *nullum crimen sine lege*, and it constitutes an important element of the overall legal framework.

#### The Role of Organizations and Interagency Cooperation

Related to these observations is the fact that humanitarian organizations have an important role to play in advancing policies on confidentiality and the protection of staff and beneficiaries. This is particularly true where Jordanian law is silent and where day-to-day guidance for staff and partners can be beneficial. Creating policies that strike the right balance, between reporting crimes and maintaining confidentiality for instance, can

be difficult. Interagency discussion and cooperation can help greatly in developing best practices.

Finally, humanitarian actors are ultimately the ones responsible for ensuring that their actions are both legally and morally sound. Doing so requires staying up to date on Jordanian law, which changes quite frequently. The absence of a penalty for failure to report an incident of domestic violence, for instance, might only be temporary. As the disclaimer on the first page of the report makes clear, the report is designed to help stakeholders understand the law as it currently stands. It does not amount to legal advice, nor should stakeholders rely upon it as such.

## 2.2. Recommendations

### ••• Individual Humanitarian Professionals •••

- Individuals should ***understand mandatory reporting, confidentiality and privilege*** as these topics relate to their day-to-day work – based not only on Jordanian law but also on other regulations, such as those of their professional associations and employers.
- Individuals should ***work within their organizations to foster awareness*** of mandatory reporting, confidentiality and privilege and, if possible, help their organizations create policies that are harmonious with the broader local legal framework.
- Individuals should ***clarify the rules to new beneficiaries***, as well as **refresh their understanding** at key junctures.

Doing so is critical for beneficiaries to make fully informed decisions about the scope of the information they disclose. Moreover, when courts are unlikely to compel the professional to testify, due to the privileged nature of the communications for instance, acknowledging this fact will encourage beneficiaries to speak more freely and thereby better convey their needs.

- Individuals should ***use the law to protect the interests of vulnerable parties*** to the greatest extent possible. For example, on a case-by-case basis, humanitarian actors should advocate for the use of the legal provisions under which the identity of minors participating in legal processes can be concealed or obscured.

Likewise, when doing so is possible, individual humanitarians should inform their beneficiaries of this fact, thereby alleviating some of their fears regarding their safety and encouraging their effective and secure participation in the legal proceedings.

### ••• Organizations •••

- Organizations should ***maintain comprehensive policies and regulations*** regarding issues of confidentiality that, to the extent possible, are harmonious with other key regulatory frameworks and that prioritize the interests of beneficiaries. These policies and regulations, and any related protocols, should be formalized in SOPs tailored to individual areas of work.



- Organizations should ***maintain the tools and systems necessary to ensure confidentiality*** internally and externally. One key step is designating a focal point to maintain the integrity of these internal systems and to handle external reporting of sensitive cases.
- Organizations should ***include information about the law and those policies and regulations in postings for vacant positions*** to ensure candidates are willing and able to assume the related responsibilities (including the potential need to someday testify in court). Likewise, organizations should ***detail the same responsibilities in individual job descriptions and ToRs***.
- Organizations should ***otherwise ensure that staff fully understand their obligations and rights*** related to mandatory reporting, confidentiality and privilege. This includes providing trainings on an ongoing basis.
- Internal processes should ***account for those situations in which reporting or testifying is likely*** to be required. Senior staff should be involved in monitoring these situations.
- Organizations should ***strive to maintain confidentiality***, even internally, and otherwise act in the best interests of clients and beneficiaries. Where litigation is possible, this includes ensuring that local attorneys utilize the legal provisions that allow them to conceal the identities of witnesses and survivors under 18 years of age.

#### ••• Interagency bodies •••

- Interagency bodies should ***strive to facilitate dialogue and consensus-building***. The paper highlights many nuanced concerns. For instance, in many cases, mandatory reporting comes at the expense of honoring the wishes of the survivor. Discussions about how to mitigate risks, while accounting for both the law and complicated cases, are much needed.
- Likewise, interagency bodies and core protection actors should ***help raise awareness of key issues***, as well as help develop advocacy messages with the aim of reforming and otherwise strengthening local law.
- Interagency bodies should ***ensure that SoPs and other interagency protocols, such as referral pathways, take into consideration local laws and regulations and prioritize the interests of beneficiaries***.

### **3. THE LOCAL CONTEXT**

#### **3.1. ARDD-LA's Work on These Issues**

This section aims to provide greater insight into the concerns motivating this report. For this purpose, it is helpful to provide some information about the nature of ARDD-LA's work.

ARDD-LA is a key provider of legal services to refugees. The organization staffs not only lawyers but also caseworkers and other individuals focusing on protection and psychosocial support, including, at present, a licensed mental health professional. Often the organization serves as the initial point of contact for refugees regarding a variety of complex issues, including ones that give rise to the concerns that motivate this report. Thus, ARDD-LA staff deal with these concerns in their day-to-day work; likewise, the organization, as such, does so from the perspective of being an employer and independent actor within the humanitarian field.

ARDD-LA is also a key provider of legal services to humanitarian agencies, including local and international NGOs, UN bodies, and, at times, local authorities. Like ARDD-LA, many of ARDD-LA's partners staff professionals of many different types, both doctors and caseworkers for instance, thereby necessitating the need to consider relatively nuanced sets of legal concerns. Moreover, many cases necessitate the involvement of multiple organizations. For instance, CP and SGBV cases will most often originate with the caseworkers of one organization, yet require the involvement of doctors and lawyers of one or two others.

In recent years, ARDD-LA has been frequently asked for legal advice and guidance on issues related to the two primary question noted above. Some organizations have sought advice due to the concerns of their staff members, as well as, unfortunately, due to the very real potential for serious legal consequences to materialize in some of their specific cases. ARDD-LA's role in individual cases often extends beyond giving legal guidance as an outside party. As the designated legal partner of some organizations, ARDD-LA frequently serves as an intermediary or direct legal representative. For instance, under the terms of one MoU, ARDD-LA reports cases of SGBV to local authorities, so as to allow ARDD-LA's partner to more easily preserve its anonymity and protect its staff. ARDD-LA is often one of the key legal parties to the dispute. In turn, the organization itself has faced potential legal consequences in the past.

Thus, in the context of this report, ARDD-LA not only provides analysis of the law but also, perhaps more importantly, much first-hand experience that relates to the concerns surrounding the law and its potential implementation. ARDD-LA has already brought some of this knowledge to bear in interagency fora, namely with respect to the creation of interagency SoPs. However, while the issues discussed herein have gone from being ones raised by individual organizations to ones raised at the interagency level, a great deal of uncertainty and misconceptions about the law nevertheless remain. Experience tells, for



instance, that this is true even among local lawyers, which has made some of the key underlying challenges far harder to solve.

Finally, it is important to note that this section omits reference to specific partners and case-specific details due to the highly sensitive nature of the issues it explores. Instead, this section provides only general insights for the purpose of illustrating the scope and gravity of the issues at stake, as well as for the purpose of highlighting key linkages with certain operational aspects of work within the humanitarian sector.

### **3.2. What's at Stake**

#### **The Duty to Report or Participate in Trial**

It is important to understand what is at stake, both at the level of individual cases, namely once one has come to the attention of humanitarian professionals, and with respect to how humanitarian service providers operationalize key aspects of their work much more generally. Scenarios that involve highly sensitive information, such as those regarding gender-based violence, raise important obligations and risks, as well as potentially harmful incentives for both staff and beneficiaries.

In terms of its legal analysis, this paper focuses in part on those circumstances under which staff must report an incident to the relevant authorities, typically FPD, thereby breaking confidentiality, irrespective of what the beneficiary desires. Likewise, in at least some cases, staff risk being compelled to testify in court once the judicial process has been set in motion. Some beneficiaries may seek to hold perpetrators accountable. Yet, for reasons highlighted below, staff might wish to remain outside the resulting dispute, legal or otherwise. As this paper notes, with respect to the judicial process, staff can be compelled to testify. Moreover, while the focus of this paper is legal, it is important to highlight the reality that disputes extend beyond courthouse doors and into local communities. The victim, hoping to substantiate the veracity of his or her case, might note to family and friends that he or she shared the details of the incident with an outside individual, whom they might perceive as relatively impartial. Moreover, it is important to note that judges and relatives might be able to compel the victim to identify the individuals with whom the victim spoke, especially for those individuals who were among the first to learn of important information. Likewise, in many cases, this information can easily be deduced. Thus, even if staff do not have a duty to report to police, the risk of being heavily involved in the dispute might remain alarmingly high.

This dynamic entails serious risks for staff and beneficiaries. The duty to report, for instance, poses obvious risks to beneficiaries, especially those who have faced incidences of gender-based violence. In the event the crime comes to light, the survivor might face not only retaliation from the perpetrator's relatives but also material threats to his or her physical and mental well-being from others within the community, including, in some cases, the survivor's own immediate and extended family.

In the context of this paper, it is important to highlight that similar risks can be imposed on others involved in the dispute, including, of course, staff compelled to serve as witnesses. This aspect of the issue is equally important to frame in terms of local dynamics due to the fact that disputes are often inter-familial in nature. Large families predominate in many areas of the country, particularly rural ones, and the reputations of individual families carry tremendous importance. By testifying or otherwise becoming involved, staff risk entering into circumstances that extend far beyond the instant case. The results include very real risks to one's own reputation, as well as the reputation of one's family, and one's own personal security. Thus, irrespective of what an individual believes is right, i.e. in keeping with his or her professional and moral responsibilities, he or she might be adamantly opposed to being involved in the dispute for good reason.

It is important to highlight that these circumstances can easily give rise to conflict between organizations and their staff based on competing concerns and what each party expects of the other. An organization might require staff to intervene and participate; whereas, for instance, having been forced to participate for one reason or another, staff might expect support and protection that their organizations cannot or will not offer

These concerns reflect not only the worries of humanitarian staff but also, more concretely, the circumstances of specific cases on which ARDD-LA's legal advice and guidance has been sought. Some of those cases have given rise to an incredible constellation of complicated factors that carry tangible risks for many of the parties involved. Subsequent cases between employees and employers are but one potential result of this.

### The Impact on Humanitarian Work

These dynamics have a large impact on how humanitarian staff carry out their work. In individual and group discussions, for instance, humanitarian staff have admitted that they avoid asking beneficiaries about certain issues based upon their belief that by doing so they risk being required to inform local authorities and/or to participate in future court proceedings. Likewise, humanitarian staff have noted that upon inadvertently learning of sensitive information, such as the occurrence of past crimes, they might avoid following the required reporting procedures of their organizations for the same reason. Rather than report, or risk facing legal consequences for failing to do so, humanitarian workers have quit their jobs after learning of what the law and their organizations might require.

Due to the dynamics of the issue, which include considerable confusion about the law, the most serious crimes might also be the least likely ones to come to light. Fears about reporting seem to be strongest with regard to gender-based violence. Needless to say this phenomenon greatly increases the likelihood that survivors of serious crimes will not receive the support they need.

By clarifying the law, this report aims to improve not only how humanitarian staff approach individual cases but also, more generally, how humanitarian organizations and coordinating bodies plan and operationalize their work. The creation of SoPs that are

sensitive to confidentiality concerns are particularly important with regard to SGBV (including PSEA) and CP.

Likewise, the law should inform how individual organizations operate on a daily basis. For instance, the duties the law imposes on staff who interact with beneficiaries, to report incidences of domestic violence for instance, should be reflected in job descriptions and ToRs. Likewise, organizations should supplement the law with internal policies that, in the context of the organizations work and key protection concerns, help strike the correct balance. Moreover, organizations should help staff and beneficiaries understand the bounds of confidentiality for the purpose of encouraging beneficiaries to speak more openly about their experiences and needs in at least some cases. In fact, the concept of legal privilege (discussed below) exists primarily based upon the understanding that candid exchange of information is necessary for certain professionals to work effectively.

ARDD-LA's perspectives on these issues are informed by the organization's participation in many interagency groups, including the Protection Working Group and several of its subsidiary bodies. ARDD-LA also works with many individual organizations to ensure that their internal procedures comply with local law. Likewise, as noted above, ARDD-LA provides legal support to many of its partners on an ongoing basis. Thus, in short, both from the perspective of a humanitarian actor and that of a legal advisor, ARDD-LA recognizes the ways in which issues of confidentiality and legal privilege have broad repercussions for the day-to-day work of humanitarian organizations, most importantly with respect to the effectiveness of their efforts to assist and protect beneficiaries.

#### 4. LEGAL ANALYSIS

This paper deals with two concepts, confidentiality and legal privilege, which likewise appear in the domestic laws of many other countries. The conceptual differences between confidentiality and privilege can be difficult to articulate insofar as they both relate to maintaining the confidences of clients and beneficiaries. The comparison might be easiest to understand in terms of the following distinction: confidentiality is a *professional duty* owed to clients and beneficiaries; whereas privilege is a *legal entitlement* against being compelled, even by judicial authorities, to divulge client information. Rules regarding the former, the duty confidentiality, are often articulated by organizations that oversee the practice of certain professions (such as the relevant bar association for lawyers). Rules regarding the latter, legal privilege, appear, by necessity, in national law. While this paper focuses largely on the law, and thus largely legal privilege, awareness of both concepts – and, more importantly, the distinction between them – is important. While this is true, it is unlikely that transposing these concepts onto Jordanian law can be done seamlessly. Thus, while the concepts are important and helpful, stakeholders should exercise caution in using them to understand their obligations under the law.

The duty of confidentiality does not stem directly from Jordanian law.<sup>1</sup> Instead, rules on confidentiality often appear in professional codes of conduct, which, like the Jordanian Medical Constitution, can acquire quasi-legal status. While often not law *per se*, these

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<sup>1</sup> Confidentiality with respect to state secrets being an one exception.

rules remain important. They reflect important ethical guidelines, and the professional societies that promulgate them can often levy heavy sanctions, even revoke members' professional certifications. Like individual professional societies, individual employers can (and should) be an important source of regulations in this regard. Anecdotal evidence suggests, however, that far too few organizations possess sufficiently comprehensive and well-thought policies on maintaining the confidentiality of beneficiary information.

Providing a thorough analysis of potentially relevant codes of conduct is beyond the scope of this paper. Nevertheless, in the Appendix, the paper includes portions of the Jordanian Medical Constitution, which applies to any professional licensed to practice by the Ministry of Health.

In Jordan, like in other countries, legal privilege finds its basis in the applicable rules of evidence. In particular, Article 37 of the Jordanian Evidence Law precludes three types of professionals – lawyers, agents and doctors – from having to testify except in relatively narrow circumstances. Those circumstances are ones in which: (i) the information or circumstances communicated the intent to commit a crime; *or*, (ii) the professional must testify, having been asked by the client or beneficiary (who shared the information) to do so. Article 37 makes clear that this protection endures despite changes to the relationship between the parties. In the context of this paper, Article 37 is equally important for what it does not say. Namely, as discussed below, professionals of other types most likely lack its protection.

#### **4.1. When must an individual proactively report to police?**

In other words, when does the law oblige individuals to proactively inform police of a crime that has already taken place? The law says very little on this question, and, in keeping with the well-recognized international principle noted above, *nullum crimen sine lege*, no crime exists under Jordanian law in the absence of a clearly defined prohibition and punishment.

There are two relevant circumstances in which Jordanian law breaks its silence, thereby imposing an affirmative obligation to report. Article 207(3) of the Penal Code requires medical health practitioners to inform authorities when the prior occurrence of a misdemeanor or felony is apparent. The Article applies to cases that give rise to “first-aid treatment” (اسعاف شخص). Within the local context, “first-aid treatment” might include any first-time treatment for an injury, even if the underlying event occurred much earlier in time. This condition might not impose a temporal limitation, *per se*, though it appears to do so on its surface. Moreover, the wording of the law might be broad enough to encompass health professionals who see the patient during the later stages of his or her care, provided the case required first-aid treatment at some point. It is important to think about this provision in the context of gender-based violence in particular. Survivors risk having hospital staff and other medical professionals inform police of the situation irrespective of their wishes. This puts survivors at increased risk, namely (i) by drawing attention to extremely sensitive circumstances that they most likely wish to keep secret and thus, consequently, (ii) by dissuading survivors from gaining much needed treatment

in the first place. Failure to report under Article 207(3) is punishable, in accordance with the prior subsection, by imprisonment from one to three months and by a fine of 5 to 20 JOD.

The second exception appears in Article 8 of the Jordanian Domestic Violence Law of 2008. It stipulates that providers of medical, social and education services must inform authorities of cases that display the effects of domestic violence. On one hand, this provision is much broader in the sense it includes a wider range of professionals. Moreover, unlike the exception above, it clearly includes no temporal constraints: it pertains, more generally, to any case that displays the effects of domestic violence. The wording of the law (اثار عنف) implies physical effects, like bruising, but might also include emotional and behavioral effects that could remain present or manifest themselves long after the occurrence of the abuse. On the other hand, its applicability is limited to instances of family violence. Thus, while violence within the family, including gender-based violence, falls within its ambit, violence outside the family does not. Article 3 of the law defines family members as immediate family, plus grandparents, aunts and uncles. It also includes step-children (the biological children of only one spouse), as well as familial relationships of these types formed through foster care. It is important to note that Article 3 excludes more extended family, even first cousins. In a cultural context in which extended family play an important role in day-to-day life, its practical scope is even more limited.

Moreover, while the law clearly requires reporting cases of domestic violence, it fails to specify any punishment for failure to do so. In the absence of a specified punishment, the law likely lacks the possibility of any meaningful application.

In sum, where the law is silent, criminal responsibility cannot be lawfully imposed, and ARDD-LA has found only two ways in which the law speaks clearly to the question at hand. And yet, one obligation to report, that which appears in Article 8 of the Jordanian Domestic Violence Law, might be ineffectual in practice due to the lack of a specified punishment. As noted above, professionals must also be conscious of the requirements imposed upon them by their respective professional societies. Those rules (often in codes of conduct) apply concurrently, and failure to abide by them can carry repercussions that extend beyond those found in the law.

#### **4.2. When can an individual be compelled to testify in court?**

Even if the law does not require professionals to proactively inform police of past crimes, namely under the circumstances noted above, the law might still require them to testify in court if they are asked to do so. Here legal privilege is the core concept of concern. Recall that Article 37 of the Jordanian Evidence Law precludes lawyers, agents and doctors from having to testify except in narrow circumstances. As noted above, those circumstances include ones in which: (i) the information or circumstances communicated the intent to commit a crime; *or*, (ii) the professional must testify, having been asked by the client or beneficiary to do so. The most important observation here pertains to those professionals who fall outside Article 37's scope, such as case workers. They can be

made to testify under Article 72(2) of the Jordanian Code of Criminal Procedure, the general provision regarding witness cooperation. Under Article 72(2), the prosecutor has the power to force a witness to appear in court and to fine him or her up to 20 JOD for non-compliance.

There is at least one important caveat to consider. Individuals, like social workers, generally hear of circumstances second-hand from beneficiaries. Thus, with respect to past crimes, they are likely “hearsay witnesses” (شهود سماعية) whose statements are inadmissible before the court. However, Jordanian law, like domestic law elsewhere, allows for hearsay testimony in a limited number of circumstances. Under Article 156 of the Jordanian Code of Criminal Procedure, hearsay testimony is valid when based on statements that occurred within “a brief moment” (برهة وجيزة) of the underlying incident. Jordanian courts have interpreted this wording somewhat expansively. Even then, the relevant amount of time still only extends to one or two days at most. Thus it is unlikely that case workers and others who learn of information days and weeks after the underlying event will still need to testify. This of course covers the vast amount of interactions that take place, as clients and beneficiaries most often relay information about circumstances that took place much earlier. Lawyers should make use of these rules to protect beneficiaries and staff when they can (whereas anecdotal evidence suggests that few lawyers do).

In sum, while professionals other than doctors, layers and agents lack the protection of legal privilege, they too should be able to avoid appearing in court in the vast majority of circumstances. The risk of having to do so remains for professionals who, due to the nature of their work, are likely to learn of crimes shortly after their occurrence. Doctors are one, potentially nuanced example.<sup>2</sup> Finally, it is important to reiterate that the mere risk of being called to testify might induce some humanitarian providers to avoiding asking critically important questions. For this reason, it is important educate staff and to ensure that lawyers utilize the law for their protection when needed.

### 4.3. Witness Protection

As noted above, this paper largely focuses on the obligations and responsibilities of individual service providers. A related issue, explored only modestly herein, is the extent to which the law affords witnesses – including survivors of crimes, like gender-based violence – protection with respect to their participation in legal processes. In short, the law includes only limited provisions in this regard. In practice, they might only afford substantial protection to minors.

The Domestic Violence Law includes two relevant provisions. Article 8(b) states that officials must take measures to ensure the safety of affected family members. However, it provides no practical insight into how they can or should do so. Likewise, Article 10 puts forth a generic statement about confidentiality, namely via non-disclosure of identifying information. Insight into the legal process suggests that identifying information (such as

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<sup>2</sup> Note that doctors might be required to inform police of a crime (under Article 207(3) of the Penal Code), but not be required to testify absent patient consent (under Article 37 of the Jordanian Evidence Law).



the survivor's name) will almost certainly be disclosed in the event of litigation, unless specific means of safeguarding that information are in place.

Two legal provisions provide such means, but only for minors. Article 22(I) of the Juveniles Act and Article 158(3) of the Code of Criminal Procedure allow the prosecutor or the court to use modern technology to protect the identity of witnesses in all stages of the legal process. For instance, seemingly, the court could allow the use of prerecorded, anonymous testimony in lieu of an in-court appearance. While these provisions seem to provide effective means for protection, it is likely that too lawyers push for their use. The laws refer to the prosecutor and the court, but lawyers and others involved in the process can – and should – take initiative by highlighting the existence of these provisions and by vigorously advocating for their use.

## 5. CONCLUSION

This legal guidance note strives to provide humanitarian professionals with concise, practical information about mandatory reporting, confidentiality and privilege under Jordanian law. To this end, the guidance note addresses two fundamental questions: (A) When must humanitarian actors inform authorities (such as FPD) of a past crime?; and, (B) When might humanitarian actors be required to testify in court about their knowledge of past crimes or circumstances? The guidance note describes one's legal obligations (or lack thereof), as well as the risks of noncompliance based upon the circumstances.

It is important to reiterate that, in terms of its analysis, this paper focuses almost exclusively on the legal obligations that flow from Jordanian law (and Jordanian courts). While the paper seeks to be nuanced and comprehensive in this regard, its ability to provide definitive guidance to humanitarian professionals is hindered by the fact that other considerations almost certainly apply. As noted above, many professionals can also be censured by their professional societies. Likewise, employers should enforce internal policies that regulate the ability of staff to share or otherwise disclose confidential client information. In other words, even if humanitarian actors comply with the law as herein described, they might nevertheless run afoul of other critically important policy standards and humanitarian values.

This guidance note also aims to illustrate the importance of understanding the law by highlighting both the practical concerns and misunderstandings of some humanitarian professionals. With respect to the latter, it is important to bear in mind that humanitarian actors base their perspectives and actions on what they believe the law to be, irrespective of whether or not their assessments are entirely accurate. The guidance note aims to avoid and to mitigate certain protect risks for staff and beneficiaries.

Unfortunately, even when the law is properly understood, there are circumstances in which protection risks will nevertheless remain. This guidance note stops short of engaging in substantive debate about what, ideally, the law should be. However, by accurately describing the law, ARDD-LA hopes that this paper strengthens the bases upon which debates about the law and its incorporation into the day-to-day work of



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humanitarian organizations can move forward. In certain respects, it can be difficult to strike the appropriate balance, and ARDD-LA hopes that this paper spurs productive discussions and, perhaps, well-informed advocacy.

## 6. ANNEX: RELEVANT LAWS & REGULATIONS

The following includes the official (Arabic) versions of the legal provisions noted in the paper, as well as ARDD-LA's English translations of them.

Please note that the English texts are unofficial and provided only for increased accessibility to non-Arabic speakers. ARDD-LA endeavored to translate word-for-word to the greatest extent possible (even where doing so results in less than ideal diction). The use of [brackets] indicates places in which the translation is relatively less literal.

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الدستور الطبي الاردني  
1989 واجبات الطبيب واداب المهنة لسنة  
خصائص الطب البشري

### **Jordanian Medical Constitution** Duties of the Doctor and Ethics of the Profession for the Year 1989 Specialty of Human Medicine

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#### المادة 22

يدخل في نطاق السر الطبي كل ما يطلع عليه الطبيب من أحوال مريضه الصحية والاجتماعية وما قد يراه ويسمعه أو يفهمه من مريضه أثناء اتصاله المهني به من أموره وأمور غيره

#### Article 22

Within the scope of the medical secret is everything disclosed to the doctor regarding the patient's health and social conditions, as well as that which the doctor may have seen and heard or understood from the patient during the doctor's professional contact with the patient with respect to matters of the patient or the matters of others.

#### المادة 23

على الطبيب إلا يفشى بدون موافقة مريضه معلومات حصل عليها أثناء علاقته المهنية إلا في الأحوال التي يتطلبها القانون ولا يشترط في السر أن ينبه المريض طبيبه للحفاظ عليها

#### Article 23

The doctor must not disclose without the patient's consent information the doctor obtained during his or her professional relationship except in cases where required by law; it is not a requirement of a secret that the patient alert the doctor to preserve it

## المادة 24

يجوز إفشاء سر المهنة بأحد الأسباب الآتية

- أ. للمريض نفسه لما يتعلق به من مرضه أو مستقبله
- ب. للوصي أو الولي فيما يتعلق بسر مريض قاصر أو غير مدرك
- ج. لذوي المريض إذا عرف أن لهذا الإفشاء فائدة في المعالجة وكانت حالة المريض لا تساعد على إدراك ذلك
- د. أثناء خبرة طبية قضائية أو طبابة شرعية
- هـ. عندما تقتضي الضرورة حفاظا على أمن المجتمع الصحي
- و. يمكن للطبيب أثناء تأدية شهادته كخبير طبي أن يذكر سوابق المريض المفحوص المرضية إذا حصل على طلب خطي من قبل القضاء يسمح له بذلك
- ز. في الحالات التي يحددها القانون مثل حالات العدوى والتبليغ عن الوفيات والولادات وبعض الأمراض الصناعية التي تؤثر على الصحة العامة
- ح. لأغراض علمية وللبحوث الطبية دون ذكر الأسماء والصور المعرفة

## Article 24

Disclosure of the professional secret is permissible for one of the following reasons:

- A. To the patient him- or herself when it concerns his sickness or future;
- B. To the administrator or guardian regarding the secret of a minor or incompetent patient;
- C. The family of the patient if the doctor knows the disclosure is useful in his or her treatment and the patient's condition is not conducive to the patient realizing this;
- D. With regard to medical expertise in judicial proceedings or expertise of medical examiners;
- E. When necessary to preserve [the security and health] of the community;
- F. The doctor can, while serving as an expert medical witness, testify to the patient's history of medical examinations if the doctor obtains a written order from the judge permitting him or her to do so;
- G. In cases prescribed by law, such as cases of infections and reporting of deaths and births and some industrial diseases that affect public health;
- H. For the purposes of scientific and medical research without mentioning (or showing) identifying names and images.

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قانون العقوبات الأردني رقم 16 لسنة 1960 و جميع بديلاب

## Jordanian Penal Code, No. 16 of 1960, as Amended

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## المادة 207

## Article 207

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2 كل من موظف أهمل أو أرجأ إعلام السلطة ذات الصلاحية عن جنابة أو جنحة عرف بها أثناء قيامه بالوظيفة أو في معرض قيامه بها عوقب بالحبس من أسبوع إلى ثلاثة أشهر أو بالغرامة من خمسة دنانير إلى عشرين دينار

2 - Every employee who neglected or delayed to inform the competent authority about a felony or misdemeanor of which he or she had knowledge while undertaking his or her job, or while giving the appearance thereof, shall be punished by imprisonment of one to three months and by a fine of 5 to 20 JOD.

3 كل من قام حال مزاولته إحدى المهن الصحية باسعاف شخص يبدو أنه وقعت عليه جنابة أو جنحة ولم يخبر بها السلطة ذات الصلاحية عوقب بالعقوبة المنصوص عليها بالفقرة الثانية

3 - For every circumstance, for which the practitioner is a health professional, concerning the work of first aid treatment where the occurrence of a felony or a misdemeanor is apparent and where the relevant authorities are not informed, shall be punishable by the penalty stipulated in [Article 207] paragraph 2.

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قانون العنف الاسري الاردني لسنة 2008

Jordanian Domestic Violence Law of 2008

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المادة 3

لغايات هذا القانون يقصد بأفراد الاسرة:

- أ الزوج والزوجة بعقد زواج شرعي وابتناؤهم واحفادهم  
ب ابناء احد الزوجين من زواج شرعي آخر  
ج والد ووالدة أي من الزوجين  
د الاخوة والاخوات لاي من الزوجين  
ه الشخص المشمول بحضانة اسرة بديلة ممن لم يتم الثامنة عشرة من عمره وفقا لاحكام أي تشريع نافذ المفعول

Article 3

For the purposes of this law, family members mean:

- (A) Husband and wife by a legal marriage contract and their children and grandchildren;  
(B) Children of one spouse from another legitimate marriage;  
(C) The father and mother of either spouse;  
(D) The brothers and sisters of either spouse;

(E) A person in the custody of foster parents who has not [reached] the age of eighteen according to any effective legislation.

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#### المادة 8

أ. على أي من مقدمي الخدمات الطبية او الاجتماعية او التعليمية من القطاعين العام او الخاص ابلاغ الجهات المختصة حال علمه او مشاهدته اثار عنف واشعاره انها ناجمة عن عنف اسري

#### Article 8

A. All providers of medical, social or education services, within the public and private sectors, must inform the competent authorities (FPD) of cases that [present] the effects of violence where there is indication that they are the result of domestic violence.

ب. على الموظفين المكلفين اتخاذ الاجراءات اللازمة لضمان سلامة المتضرر من افراد الاسرة حال علمهم بأي من قضايا العنف الاسري

B. Designated officials must take measures to ensure the safety of the affected family members in the event of indications of issues of domestic violence.

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#### المادة 10

يلتزم الموظفون المكلفون بضمان حماية المبلّغ بعدم الافصاح عن اسمه وهويته الا اذا تطلبت الاجراءات القضائية غير ذلك وذلك تحت طائلة المسؤولية القانونية

#### Article 10

Designated officials are obliged to ensure confidentiality via non-disclosure of the name and identity (of the victim/survivor) unless the judicial procedures require the contrary and non-disclosure is subject to legal liability.

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قانون البينات الاردني

#### Jordanian Evidence Law

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#### المادة 37



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لا يجوز له ان يفشيها ولو بعد من علم من المحامين او الوكلاء او الاطباء عن طريق مهنته او صنعته بواقعة او بمعلومات انتهاء خدمة او زوال صفة مالم يكن ذكرها له مقصود به ارتكاب جنائية او جنحة ويجب عليهم ان يؤدوا الشهادة عن تلك الواقعة او المعلومات متى طلب منهم من اسرها اليهم على الا يخل ذلك باحكام القوانين الخاصة

### Article 37

A lawyer, agent or doctor who learns, by way of his or her profession or craft, of circumstances or information shall not disclose the circumstances or information even after the cessation of [his or her] services or the termination of [his or her] professional status, *unless* (i) the circumstances or information indicate the intention to commit a felony or misdemeanor; *or*, (ii) it is necessary for him or her to testify about the circumstances or information, [having been] asked [to testify] by the individual who confided in him or her, provided [his or her doing so] does not prejudice any specifically applicable law.

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قانون الاحداث رقم 32 لسنة 2014

Juveniles Act No. 32 of 2014

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المادة 22

Article 22

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ط. يجوز للمدعي العام أو المحكمة ، استخدام التقنية الحديثة وذلك حماية لكل من لم يتم الثامنة عشرة من عمره في إجراءات سماع الشهود والمناقشة والمواجهة وعلى أن تمكن هذه الوسائل أي خصم من مناقشة الحدث أو الشاهد أثناء المحاكمة ، كما يجوز استخدام هذه التقنية الحديثة في إجراءات سماع الحدث بصفته شاهداً في أي قضية

(I) The prosecutor or the court is permitted to use modern technologies [to] protect persons who have not [reached] the age of eighteen in the processes of listening [to] testimony, [to] discussions, and [to] confrontations, provided that these means enable [opposing parties] to [have] discussions [with] the juvenile or the witness during trial; modern technologies can be used in the process of listening to [the testimony of juveniles] in any case.

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قانون أصول المحاكمات الجزائية

**Code of Criminal Procedure**

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المادة 158

Article 158

3 مع مراعاة احكام المادة 74 من هذا القانون والفقرتين 1 و 2 من هذه المادة، يجوز للمدعي العام او المحكمة اذا اقتضت الضرورة و بقرار معلل استخدام التقنية الحديثة وذلك حماية للشهود الذين لم يكملوا الثامنة عشر من العمر عند الادلاء بشهادتهم وعلى ان تمكن هذه الوسائل أي خصم من مناقشة الشاهد اثناء المحاكمة ، وتعد هذه الشهادة بيينة مقبولة في القضية

(3) Subject to the provisions of Article 74 of this law and paragraphs 1 and 2 of this Article, the prosecutor and the court can, [where] necessity requires and [where supported] by a justified decision, use modern technologies [to] protect witnesses who have not [reached] the age of eighteen [with respect to providing] their testimony, provided that these means enable [opposing parties] to [have] discussions [with] the juvenile or the witness during trial; this testimony is admissible evidence in the case.