

THE RIGHTS OF JUVENILES DURING TRIAL IN IRAQ: A LEGAL AND ISLAMIC JURISPRUDENTIAL ANALYSIS

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ABSTRACT

The administration of justice in any legal system is based on implementing appropriate punishment. There is a tendency towards deviating from applying the rules of normal criminal procedures in treating juvenile offenders. The law requires that in dealing with a child, “the best interest of the child” should be considered, including appropriate social procedures from arrest until the determination of the case. The procedure is in line with the Islamic perspective on the rights and protection of children from birth to when they reach majority. The juvenile is subject to two procedures; one applicable to adults within the fundamental rights requirements and the second, applicable to juveniles, requiring confidentiality in the trial process, which is guaranteed in both conventional and Islamic laws. Recent developments in Iraqi juvenile justice, such as the STRIVE Juvenile and the 2024 Proposal (recently enacted into law), to reduce the marriage age, have profound implications for juvenile detainees and juvenile justice. In Iraq, for instance, both the Criminal Procedure Code and the Juvenile Welfare Law make provisions in the best interest of the child in the trial proceedings. However, the Iraqi courts make exceptions in cases relating to juvenile recruitment into terrorism. This research examines the enforcement of guarantees in juvenile trials in cases of juveniles recruited into terrorism under the current development in Iraq and from the Islamic perspective. The methodology adopted is the doctrinal legal analysis with a case study approach to determine the court's adherence to the guarantees stipulated in the law in juvenile trials. This research found that the STRIVE juvenile project has a positive effect, while the 2024 proposal to reduce the marital age limit for girls harms the guarantees for juvenile justice. This research suggests a suspension of the 2024 proposal for marriageable age limit reduction with a contemporary Islamic view on protection for children. And a complete reliance on the Juvenile Welfare Law in handling juvenile cases. While enacting legislation or amending existing criminal laws to keep pace with technological advancements and novel and emerging issues.

Keywords: Juvenile; Guarantees; Shariah Perspective on Children; Legal System; Iraq.

INTRODUCTION

Iraq has taken some steps in recent years to improve the rights and protections afforded to young defendants in court. One noteworthy development is the Strengthening Resilience through Victim Identification, Engagement and Support for Juveniles (STRIVE Juvenile project), which was started in July 2021 by the Iraqi

government in partnership with the United Nations Office on Drugs and Crime (UNODC) and the European Union (UNODC, 2021). The goal of this initiative is to provide all-encompassing national measures to stop and combat violent extremism and terrorism that targets

Juveniles.¹ It focuses on enhancing conditions in detention, guaranteeing equitable treatment, and assisting in the rehabilitation and reintegration of young people who have been deprived of their freedom (UNODC, 2021).

A juvenile is generally referred to as a person who has not attained the age of 18 years of age based on standard international usage. Under the Iraqi Welfare Law, Article 3 defines a juvenile in the following words:

“This law applies to juvenile delinquents, minors, and juveniles at risk of delinquency, and their guardians, with the meanings defined below for the purposes of this law.

First: A child is anyone who has not yet reached the age of nine.

Second: A juvenile is anyone who has reached the age of nine but has not yet reached the age of eighteen.

Third: A juvenile is considered a (*sabi*) if he has reached the age of nine but has not yet reached the age of fifteen.

Fourth: A juvenile is considered a (*fata*) if he has reached the age of fifteen but has not yet reached the age of eighteen.

Fifth: A guardian is the father, mother, or any person to whom a minor or juvenile is entrusted or to whom the upbringing of one of them is entrusted by a court order.”

From the above definition, a juvenile is referred to as a minor when he/she is less than 9 years old, the person becomes a juvenile at age 9 but below 18 years, and the juvenile is regarded as a young person from 15 years old but below 18 years.

Under Islamic Law, there is no specific definition of a child. Rather, a child is distinguished from an adult based on the attainment of puberty. For instance, the Quran states:

“The pen is lifted from three: the sleeping person until he wakes, the child until he reaches puberty, and the insane until he

regains sanity.” (Hadith: Abu Dawood, 4402; Qur’an, 24:59; 4:6).

Similarly, Islamic scholars traditionally define juveniles (*sabi*) as those who have not reached puberty (*bulugh*). Puberty is determined not just by physical signs but also by mental maturity (*rushd*) (Islam, 2015). In Islamic jurisprudence, a juvenile is defined as a human being who has not yet reached puberty and is therefore not subject to legal rulings. The age of puberty differs for males and females, and is usually defined as 15 years of age or the occurrence of certain signs, such as menstruation in females and wet dreams in males (Obalowu & Bolanle, 2022). From the different perspective of juveniles under Islamic law. There is no specific definition of a juvenile. Rather, a juvenile is determined by the attainment of puberty and mental capacity. Hence, where a juvenile lacks understanding of his actions and has not attained 15 years, the person is a juvenile.

In June 2023, the Iraqi Ministry of Justice, UNODC, and UN-Habitat partnered to improve facilities and living conditions at juvenile detention centres in Baghdad and Mosul, in line with the goals of the STRIVE Juvenile project, furthering efforts to improve juvenile justice (UNODC, 2023).

Furthermore, the second National Steering Team Meeting of STRIVE Juvenile in Iraq took place in December 2022. This meeting, which was organised by the Ministry of Justice's Juvenile Reform Department, the National Security Advisory, and the High Judicial Council, focused on fostering national ownership through ongoing communication, demonstrating Iraq's dedication to juvenile justice reform (UNODC, 2022).

¹ The term ‘juvenile’ is used throughout this paper to refer to individuals below 18 years of age, in accordance with Iraqi Juvenile Welfare Law No. 76/1983 and standard international usage. When a

child is used, it is only in reference to international conventions or Islamic law. While, a minor is only used to refer to a court document or citation.

Recent legislative ideas, however, have created anxieties about the rights of minors. According to reports in November 2024, the government of Iraq was debating changes to the personal status law that would allow men to marry young girls by lowering the legal age of consent to nine (9) years old. Critics contend that by essentially legalizing child marriage and putting young girls at greater danger of abuse, this action could compromise Juvenile's rights and protections, including juvenile rights and protections in juvenile justice circumstances (Reyes, 2024).

These contrasting developments highlight the ongoing challenges and complexities in Iraq's efforts to balance juvenile reforms with legislative changes that have a greater impact on Juvenile's rights.

Researchers have expressed their opinion on the guarantees in domestic and international legislation for juveniles in juvenile trials in Iraq and across the globe. Al-Matchomia and others (2020) discussed the protections that the juvenile defendant should have during the trial process. They also addressed the right to defense, which states that the juvenile defendant should be allowed enough time, if able, to voice his or her own opinions on the charges against him. After taking on the role of defending the young person. They concluded that the laws governing juveniles, both domestically and internationally, generally fall short of the guarantees that they ought to contain. In her article, Cecilia Polizzi (2017) offers a thorough examination of the parallels and discrepancies between counter-terrorism procedures and the rule of law's regulations on juveniles in battle. The article demonstrates how nation-states can issue anti-terrorism treaties that violate juvenile justice principles because they focus on punishment rather than rehabilitation and reintegration when terrorism and crimes related to it are not addressed at the international level. With an emphasis on the

Israeli occupation and the previous Coalition in Iraq, Khen (2014) His article examines the distinctive juvenile justice systems seen in occupation regimes. It draws attention to how these regimes are evolving and calls for more safeguards for juveniles' rights within criminal justice systems. Either the direct application of human rights law or the modification of particular laws governing occupied territory can accomplish these protections.

Similarly, scholars have discussed juvenile guarantees from an Islamic perspective. Comparing Islamic teachings on child protection with child protection and guarantees under domestic and international regulations. Jauhari and others (2023) in their research, where they compared Islamic law on child protection with Indonesian Civil Law, Child Protection opined that Islamic law provides the best protection for Juveniles when compared to conventional domestic legislation and international conventions on child protection. Adding that child protection begins from when a mother becomes pregnant until growth. It also protects Juvenile in special conditions. Similarly, Saiful Islam (2015) argues that justice and penalty inscribed in Islam differ from what is applicable in conventional legislation. Adding that Islamic law in upholding peace in the society does not punish juveniles with qiyas and hadd under Islamic criminal law. Also, Chughtai and others (2021) added that the Qur'an and Sunnah focus on compassion and mercy when dealing with Juvenile in the justice system. For the reason that Islam emphasizes reformation, rehabilitation, and social reintegration of Juvenile into society, which are considered the modern-day concepts for juvenile justice.

Therefore, compared to other studies reviewed above, this research examined juvenile guarantees within the recent policy and legislative reforms in Iraq alongside the Juvenile Welfare Law and the Islamic

perspective on child protection and juvenile justice.

This research adopts qualitative doctrinal legal research in its analysis. Qualitative legal research lays down a different emphasis on legal doctrines and concepts. The doctrinal research emphasis is purely fundamental in exposing the laws as they exist; however, qualitative legal research analyses the law from a social reality, as revealed in this research (Kaka et al., 2024). It also seeks to answer broader issues with a specific focus on points of law as a direction. Qualitative legal research does not restrict itself to case reports and other traditional primary and secondary legal documents for analysis (Soren, 2021). However, it is dependent on doctrinal methods in the sense that, without a thorough grasp of fundamentals, the qualitative researcher would not be able to chart their voyage in a meaningful manner (Alhejaili, 2024). The researchers utilized the traditional method of research in law to analyse online-based resources that were gathered (Cahyani et al., 2024). To examine the guarantees available to a juvenile defendant during trial in Iraq.

THEORETICAL FRAMEWORK: RESTORATIVE JUSTICE AND ISLAMIC MAQASID AL-SHARIAH

Restorative justice theories prioritize rehabilitation, community involvement, and reparation over retribution. Islamic law aligns with this via the principles of *rahma* (mercy), *islah* (reform), and *maslahah* (public interest) (Chughtai et al., 2021). Restorative justice programs seek to restore victims' dignity and facilitate offender reintegration through community involvement and informal supervision (de Beus & Rodriguez, 2007). Restorative justice principles rely on processes that encourage offenders to accept responsibility, which is linked to lower re-offending (Choi et al., 2012). Braithwaite (1989) and Zehr (1990) have, as far back as the 1990s,

addressed the concept of restorative justice. While Braithwaite introduced “re-integrative shaming,” an important aspect of restorative justice, Zehr, on his part, criticized the conventional punitive justice system. Their integrated principle developed the concept of restorative justice, especially in the context of *islah* (reform) in Islamic law. Furthermore, the best interest of the child principle is codified in Article 3(1) of the UNCRC, and parallels can be drawn with *maslahah al-atfal* in Islamic jurisprudence (Jauhari et al., 2023).

Comparatively, other Islamic countries have incorporated restorative justice and Islamic principles into their juvenile justice systems. Egypt's Juvenile Law No. 12 of 1996 sets the legal age of responsibility at 12 and prioritizes rehabilitation, which aligns with Shariah. Morocco raised the marriage age to 18 under Islamic justification (Islam, 2015, p. 15). Malaysia, in its Child Act 2001, emphasizes diversion and child-sensitive proceedings. In Jordan, Juvenile Law No. 32 of 2014 provides for specialized juvenile courts and restorative justice measures. Indonesia's Juvenile Court Law No. 11 of 2012 prioritizes diversion and restorative justice, and integrates restorative justice with Islamic child protection norms (Hadiputra et al., 2024; Islamicus et al., 2024; Zampini, 2023).

Therefore, Iraq needs to incorporate restorative justice and Islamic principles in its juvenile justice system, like its other Islamic counterparts. This will enable it to effectively achieve “the best interest of the child principle” in its juvenile justice.

RECENT DEVELOPMENT IN JUVENILE GUARANTEES AND THE IRAQI JUVENILE WELFARE LAW

Iraq's Juvenile Welfare Law No. 76 of 1983 ensures specific rights for juveniles during trials, such as confidentiality, rehabilitation, and protection from harsh punishment. Recently introduced changes in Iraq have

had varied effects on these rights. They include both positive and negative developments.

Positive Developments:

1. STRIVE Juvenile Project (2021–Date)

The STRIVE Juvenile project was launched as a collaborative effort between the EU and the UNODC to assist Iraq in preventing juvenile radicalization and rehabilitating Juvenile associated with terrorism. The initiative focuses on the rehabilitation, reintegration, and justice reform of Juvenile and teens who have been involved in violent extremism or terrorism-related crimes (UNODC, 2023a). It follows the ideas of preventing young radicalization, improving juvenile justice protections, and rehabilitation and reintegration for affected juveniles.

The STRIVE Juvenile project operates in Iraq, Jordan, and Lebanon, with Iraq being a key focus due to the high number of juveniles arrested on terrorism-related offenses. This effort, backed by the EU and the UNODC, seeks to improve juvenile justice standards by ensuring proper legal representation, compassionate detention facilities, and fair trial procedures. It promotes trial confidentiality by campaigning for closed hearings and the protection of juvenile identities (UNODC, 2023a).

The project also aims to train judges, prosecutors, and law enforcement officers on how to deal with juvenile cases while adhering to international child rights norms. The key objectives are to:

Prevent Radicalization: Law enforcement and juvenile justice personnel will be trained on how to handle situations involving adolescents who are related to violent extremism. Develop programs to combat extremist narratives in juvenile incarceration facilities and to engage local communities

and families to prevent re-recruitment into extremist organizations.

Provide a fair juvenile justice system: the project works with Iraq's government to increase legal protections for juveniles under the Juvenile Welfare Law No. 76 (1983). Ensuring that fair trials, alternative sentencing, and rehabilitation are being promoted as alternatives to severe sentences for juvenile offenders. At the same time, it advocates for confidential trials for juveniles, so that their cases are not treated in the same way as adult terrorism cases.

Rehabilitate and reintegrate former child combatants: The project calls for the provision of education, psychological support, and vocational training to incarcerated juveniles (UNODC, 2023a). Assisting with the social reintegration of minors forced to join ISIS or other armed groups (UNODC, 2024b). As well as supporting Iraqi families in reintegrating their juveniles once they have been released from detention.

2. Judicial Reforms and Juvenile Detention Improvements (2023)

In 2023, Iraq implemented significant judicial changes and improvements in juvenile confinement, with emphasis on improving the treatment and rehabilitation of young people charged with criminal offenses. The collaboration between UN-Habitat, UNODC, and Iraq's Ministry of Justice aims to rehabilitate juvenile detention centers in Baghdad and Mosul, ensuring that detained juveniles receive a fair and compassionate trial. The emphasis has been focused on rehabilitation rather than punishment, which coincides with the confidential trial rights by seeing Juvenile as victims of circumstances rather than criminals.

The judicial reforms were focused on the following aspects:

i. Drafting the Juvenile Welfare Law

On July 15, 2023, the Investigator Organization for Supporting the Rule of Law and Democracy (IOL), in partnership with the Iraqi Ministry of Justice, held a conference in Baghdad to debate the Juvenile Welfare Law draft. This program, sponsored by the EU and supported by the Norwegian People's Aid (NPA) and Public Aid Organization (PAO), seeks to align Iraq's juvenile justice system with international norms and commitments. This serves as a positive move towards protecting the guarantees available to juveniles.

ii. Renovation of Juvenile Detention Centres

The United Nations Human Settlements Programme (UN-Habitat) and the UNODC, in collaboration with the Iraqi Ministry of Justice, have undertaken projects to improve conditions at juvenile detention facilities in Baghdad and Mosul. Notably, the Ninawa Juvenile Reformatory in Mosul has added classrooms, a gym, and a multipurpose hall, helping roughly 300 Juvenile and young people (UNODC, 2023a). Similar changes were made to the Young Boys Rehabilitation School (Al-Rashad) in Baghdad, which was completed in November 2024. Now equipped with four outdoor leisure areas, a solar-lit football field, refurbished restrooms, a dental clinic, and a quarantine room for isolating infectious diseases, the institution serves about 270 minors, including those imprisoned for terrorism-related offenses. These improvements are intended to create a safer and healthier living space, which will aid in the rehabilitation and reintegration of young people into society. These programs demonstrate a larger dedication to treating young people involved in terrorist actions primarily as victims, emphasizing rehabilitation and reintegration over punishment. Iraq hopes to assist these young people in re-establishing their lives and making valuable contributions to their communities by

improving living circumstances and granting them access to education and vocational training.

iii. Workshops on Juvenile Treatment

Terre des Hommes Italy (TDH Italy) held a workshop in June 2023 as part of the UNODC-led, EU-funded STRIVE Juvenile project, focusing on the treatment of adolescents detained owing to alleged terrorist affiliations. This program sought to provide professionals with the required skills to facilitate the rehabilitation and reintegration of these young people (UNODC, 2023b). As part of the government's efforts to enforce the guarantees for juveniles during trial.

iv. Mapping and Assessment of the Child Justice System

In February 2023, the Ministry of Justice in Iraq's Kurdistan Region (KRI), in collaboration with UNICEF and funded by the German government through the KfW Development Bank, released a comprehensive report evaluating the KRI's child justice system (Iraq, 2023). The analysis identified gaps in policy, legislation, and institutional capacities, laying the groundwork for developing child-friendly services for juveniles in contact with the law. These reforms and enhancements in 2023 demonstrate Iraq's commitment to strengthening its juvenile justice system, ensuring that it corresponds with international norms and prioritizes the rehabilitation and reintegration of young people into society.

IMPACT OF THE STRIVE JUVENILE PROJECT IN IRAQ

The STRIVE Juvenile in Iraq has three major impacts. They are:

1. Rehabilitation and Reintegration of Juveniles

The project, which collaborated with the UN-Habitat and the Iraqi Ministry of Justice, as stated earlier, improved conditions in juvenile detention centers in Baghdad and Mosul for rehabilitation and reintegration of the juveniles (UNODC, 2024a). Similarly, the project increased family engagement by expanding the capacity for family visits at the Ninawa Juvenile Reformatory by 60%. Providing greater reintegration opportunities through enhancing family ties while the child is in detention. While the STRIVE project has indeed renovated juvenile centers (UNODC, 2023a), its long-term impact remains dependent on sustained local governance and community engagement, areas where current policy remains ambiguous and under-resourced.

2. Capacity Building and Training

The project has held workshops to improve the skills of professionals working with adolescents affiliated with terrorist and violent extremist organizations. These seminars are focused on rehabilitation and reintegration techniques, ensuring that stakeholders have the required tools to properly serve affected juveniles (Nation, 2023). This move is not only limited to the intentions of the Juvenile Welfare Law but equally aligns with Islamic principles on the care for juveniles, especially those under detention.

3. Policy Development and Cross-Sector Coordination

STRIVE Juvenile has played an important role in promoting cross-sector collaboration, bringing together diverse governmental and non-governmental organizations to face the difficulties posed by child recruitment into terrorist activities. This collaborative approach guarantees that policies are holistic and address the multiple juvenile justice characteristics (UNODC, 2024c). Also, the project has been essential in raising awareness about the significance of child safety in preventing and combating

terrorism. By creating information assets and facilitating discussions, STRIVE Juvenile has helped to a better understanding of the necessity for specialized techniques when dealing with juveniles in Iraq.

In conclusion, the STRIVE Juvenile Project has made tremendous progress in addressing the complicated issue of Juvenile involvement in terrorism and violent extremism in Iraq. The project has built a strong foundation for the rehabilitation and reintegration of affected juveniles, while also encouraging a more coordinated and informed national response to these difficulties.

THE RULES AND PROCEDURES FOLLOWED IN CASES INVOLVING JUVENILES' *VIS-À-VIS* RECENT REFORMS

It cannot be overemphasized that the accused (juvenile) does not possess full mental maturity and requires special procedures and guarantees when appearing before the court. This is in line with ensuring justice for young people and providing them with distinctive procedures that consider their psychology and feelings. Juvenile courts specialize in hearing cases for a specific age group and are based on personal considerations. These procedures apply to all crimes committed by juveniles, whether they are terrorist crimes or non-terrorist crimes. Therefore, in adjudicating cases against juveniles, guarantees for juvenile justice must consider the following:

1. Confidentiality of Sessions or Trial

The general rule is that trial sessions are conducted publicly, as stipulated by all procedural laws. This enables the public to monitor court proceedings directly, which fosters confidence in the court's fairness and seriousness (Mahdi, 2015). By extension, it allows the parties involved to do the same. Publicity guarantees human rights and is one of the general principles of law. Publicity

means that the doors of the session are open to anyone who wishes to attend (Al-Billeh & Al-Hammouri, 2023). However, under the Iraqi Juvenile Care Law, the minor is tried confidentially according to Article 58, which states that: "The trial of the minor is conducted in a secret session in the presence of their guardian or a relative, if available, and others whom the court deems relevant to the matters concerning juveniles" (Article 58 of the Iraqi Juvenile Welfare Law).

It is clear that the Iraqi legislator, in the Juvenile Care Law, has deviated from applying the general rules regarding the confidentiality of sessions, allowing the trial to take place in ordinary rooms, not in courtrooms. The confidentiality principle aims to instill confidence in the juvenile and enhance their sense of reassurance, distancing them from fear, and also to avoid the psychological impact that the juvenile may suffer from the public's perception. It is worth noting that confidentiality in trials is a matter of public order and is considered one of the principles to be followed by the courts in order not to vitiate the proceedings or for the trial to result in nullity (Mohamed, 2006). Therefore, it is expected that in all trial proceedings regarding juveniles, including proceedings against juveniles charged with terrorist-related offenses, confidentiality must be observed by the courts.

2. The trial of a juvenile cannot be conducted in absentia

In the case of a juvenile who is absent or has escaped from trial, the court issues an order for their arrest or for them to surrender. For the reason that the trial cannot proceed until they are apprehended and tried in person. In this regard, the Nineveh Juvenile Court, in its capacity as an appellate court, ruled that: "Upon review and deliberation, it was found that the appeal was within the legal time frame, thus it was decided to accept it in form. Upon reviewing the contested decision, which involved referring the

juvenile defendant (S) as a fugitive to this court for a non-summary trial based on the provisions of (Resolution No. 160 of the dissolved Revolutionary Command Council of 1983, amended/First/1), it was discovered to be incorrect and contrary to the law: it is not permissible to refer a juvenile defendant who is a fugitive to the competent court for trial in absentia based on the provisions of Article 70/First of the Juvenile Care Law No. 76 of 1983, as it states: (The criminal case shall expire after ten years for felonies and five years for misdemeanors. It was established from the civil status card that the defendant (S) was born on 2/5/2000, thus they are considered a juvenile at the time of committing the crime. Therefore, it was decided to annul the contested referral decision and return the case file to its court to follow the aforementioned procedures and make efforts to apprehend them and refer them in custody to this court. The decision was issued unanimously based on the provisions of Article (54) of the Juvenile Care Law on 31/7/2022" (Decision of the Nineveh Juvenile Court in its capacity as the Court of Cassation, No. 326/T/2018, [unpublished]).

3. Conducting the Trial of the Minor Without Their Presence in Offenses Against Public Morality:

Most Arab and foreign legislation related to juvenile matters adopted the principle of conducting trials of minors in absentia if the offenses involve issues of public morality and ethics. The Iraqi legislators, in the Juvenile Care Law, also adopted this principle and specifically stated in Article 59 thus and it reads: "The juvenile court may conduct the trial without the presence of the minor in offenses against public morals and ethics, provided that someone entitled to defend them is present at the trial, and the court must bring the minor to inform them of the measures taken against them."

The purpose of removing the accused minor from the courtroom is to prevent them

from hearing words that could be detrimental to public morals and ethics, as such exposure could also negatively impact the minor's psychological state. In other cases, however, it is not permissible to conduct the trial of the minor without their presence (Al-Darwish, 2019).

4. Study of the Juvenile's Personality

Legislation concerning juveniles has focused on their psychological and social aspects, leading to the establishment of various offices dedicated to studying juveniles' personalities. The Iraqi legislator, in the Juvenile Care Law, established an official specialized office for conducting preliminary examinations of juvenile defendants, named the "Personality Study Office." This office is responsible for assessing the juvenile physically, psychologically, and socially before their trial and preparing a report to be attached to the case file (Mohamed, 2006, p. 374). The law does not entrust this task to unofficial entities due to concerns over potential bias or influence on the personnel involved. The office is designed to be comprehensive, involving specialists from multiple fields and tasked with several responsibilities.

The Personality Study Office consists of various specialists, including psychologists, psychiatrists, and social researchers, and may also include experts in criminal sciences or other relevant fields (Nasser, 2020). The Supreme Judicial Council is responsible for appointing the office members, with a physician serving as its director (Article 15 of the Juvenile Welfare Law). The law permits the Personality Study Office to collaborate with specialized scientific and health institutions to prepare the pretrial examination report.

According to Article 12 of the Juvenile Care Law:

1. "A Personality Study Office shall be formed in each juvenile court, linked to

the juvenile court, consisting of: a specialist physician or practitioner in mental or neurological disorders, or a paediatrician if necessary; a specialist in psychoanalysis or psychology; several social researchers.

2. The office may be reinforced with several specialists in criminal sciences or other fields related to juvenile affairs.
3. The Minister of Justice appoints the office members, and a physician serves as its director."

It is noteworthy that the legislators directly linked the Personality Study Office to the juvenile court, considering it a part of the court itself, rather than making it an independent entity or attaching it to an external institution. This arrangement can yield numerous benefits (Al-Qaisi, n.d.). When the juvenile court issues a ruling, it must consider the juvenile's circumstances and take into account the report issued by the Personality Study Office. This is outlined in Article 62 of the Juvenile Care Law, which states: "The juvenile court shall issue its ruling in the case by considering the circumstances of the juvenile in light of the report from the Personality Study Office."

In this context, the Ninawa Juvenile Court, in its capacity as a court of cassation, ruled as follows: "Upon examination and deliberation, it was found that the decision of the Ninawa Investigative Court for juvenile cases related to terrorism, which required cassation intervention, was incorrect and contrary to the law. The report from the Personality Study Office must include all data concerning the juvenile defendant and must be signed by the specialist physician named in the statement from the Supreme Judicial Council, not by another physician, following the provisions of Article 14 of the Juvenile Care Law. Therefore, the cassation court intervened by deciding based on the referral decision to annul it, and return the case file to its court for following this procedure." The decision was issued unanimously based on the provisions of

Article 54 of the amended Juvenile Care Law of 1983 on 13/11/2018 (Decision of the Nineveh Juvenile Court in its capacity as the Court of Cassation, No. 463/T/2018, dated 11/13/2018, [unpublished]).

5. Juvenile's Right to Self-Defense

According to general rules and specific agreements and laws regarding juveniles, the juvenile has the right to defend themselves as they are a party to the case and are mostly the ones aware of the circumstances surrounding the accusations against them (Al-Billeh & Al-Hammouri, 2023, pp. 2, 9). This is in line with Article 40 of the UN Convention on the Rights of the Child which provides that: "The right of every child accused of violating the law to be treated in a manner consistent with enhancing his sense of dignity and worth, taking into account the age of the child and aiming at his reintegration into society, and he also has the right for the basic guarantees, legal advice and other assistance necessary to defend him, avoid judicial proceedings and refer him to reform institutions".

The court does not always hear the juvenile's defense, especially if it deems them unfit to represent themselves (Arteaga, 2002). Unless it senses some maturity in their response, allowing them to be the last to speak in court so they can address all allegations made by the prosecution. If the court permits the juvenile to defend themselves, it must provide certain accommodations, such as asking questions clearly and simply, ensuring the juvenile has the freedom to speak without interruption, and avoiding repetition in their statements (Al-Machtomi et al., 2020). The judge should not overwhelm the juvenile with excessive questioning or provoke them, especially if they resort to insults regarding other parties or witnesses, whether verbally or in writing. However, the judge should gently remind the juvenile to stay on track and allow them to finish their thoughts (Polizzi, 2017, pp. 9–12).

Additionally, the juvenile must be made aware not to withhold any information from the court, as this might be their last opportunity before the case is closed and a ruling is made (Al-Machtomi et al., 2020). If the juvenile does not speak the language of the court, the court must provide a translator to maintain the fairness of the proceedings.

The judge should refrain from any form of manipulation or deception with the juvenile, such as implying that there is evidence or arguments to coerce a confession of guilt. Such tactics could instill fear in the juvenile, impair their ability to defend themselves, and potentially lead them not to speak truthfully.

6. Appointment or Delegation of a Lawyer

The right to defense is a sacred right guaranteed by all legislation. It is enshrined in the Iraqi Constitution under Article 19, Paragraph 11 of the 2005 Constitution of the Republic of Iraq, which states: "The court shall appoint a lawyer to defend the accused who does not have a lawyer at the state's expense."

The right to defense is based on the principle of allowing individuals to present their case before the judiciary to refute accusations and provide evidence of their innocence. Therefore, the lawyer must possess skills and expertise in adjudicating juvenile cases to succeed in this role (Zampini, 2023).

The right to seek assistance from a lawyer is one of the most essential rights enjoyed by the accused (the juvenile). The presence of a lawyer helps to enhance the accused's confidence and ensures the legality of the proceedings, as well as aids in understanding legal terms that may be unfamiliar to the juvenile, such as crime, eyewitnesses, or denial, among others (Al-Machtomi et al., 2020). Additionally, a lawyer assists the court in understanding the

juvenile's personality and reaching the truth. The lawyer also acts as a monitor of the proceedings, especially in cases of absentia.

If the accused (the juvenile) is unable to appoint a lawyer due to financial constraints, the court shall appoint a lawyer without charging the accused for the fees. This is stipulated in Article 144 of the Iraqi Code of Criminal Procedure No. 23 of 1971, which states:

“The President of the Criminal Court shall appoint a lawyer for the accused if they have not appointed one. The court shall determine the lawyer's fees upon concluding the case, and the appointment decision is considered a power of attorney. If the lawyer provides a legitimate excuse for refusing the appointment, the president shall appoint another one.”

7. Right to Legal Counsel

It is noteworthy that the right to seek the assistance of a lawyer is constitutional and legal, especially when the accused is a juvenile. Often, accusations can cause psychological distress in the juvenile, which may impair their ability to defend themselves or may leave them lacking the courage to confront what is presented in court or to question witnesses (Al-Machtomi et al., 2020).

The Iraqi legislator, in the Juvenile Care Law, allows for the defense of the juvenile (the accused) by individuals other than lawyers, such as their guardian, relatives, or representatives from social institutions (Nammur, 2013). Article 60 of the Juvenile Care Law, provides that: “The juvenile court may accept the defense of the juvenile by their guardian, a relative, or a representative from social institutions without the need for a written power of attorney while observing the provisions of Article 144 of the Code of Criminal Procedure.”

The presence of a lawyer to defend the juvenile is mandatory, whether in felony or misdemeanor cases or during the

recording of their statements while confessing at the investigation stage, according to Coalition Provisional Authority Order No. 13 of 2004. If a lawyer is not present and this is documented by signature, the court's decision may be subject to annulment (Al-Machtomi et al., 2020, pp. 724–728). The presence of a public prosecutor is also required; if absent, the court's decision may likewise be annulled. As revealed in a recent decision of the Ninawa Juvenile Court. In that case, the Ninawa Juvenile Court, in its capacity as a court of cassation, ruled as follows: “Upon examination and deliberation, it was found that the cassation appeal was filed within the legal time frame; thus, it was decided to accept it formally. Upon reviewing the contested decision, which involved referring the accused (S) to this court for trial in a non-summary case according to the provisions of Article 4/1 of the Anti-Terrorism Law No. 13 of 2005, the court found it to be incorrect and contrary to the law, and premature for the following reasons: it was noted that the Deputy Public Prosecutor had not signed the statement of the accused recorded by the investigating judge during their presence on 25/6/2018. Therefore, the decision to refer the case was annulled, and the case file was returned to its court for further proceedings. The decision was issued unanimously based on the provisions of Article 54 of the Juvenile Care Law of 1983 on 14/11/2018.

CONSIDERATION OF MULTIPLE CRIMES IN A SINGLE CASE

The Juvenile Care Law grants special provisions for juvenile defendants, allowing the court to consider multiple crimes committed by a juvenile in a single case, regardless of the number of offenses, provided they fall under the same section of the law. The court consolidates all charges against the juvenile and, if the juvenile is found guilty of each crime, it executes the most severe penalty. As provided in Article 67 of the Iraqi Juvenile Welfare Law, which states that: “If a juvenile is accused of

committing more than one crime under the same section of the Penal Code, they may be tried in a single case and sentenced according to the measures prescribed for each crime, ordering the execution of the most severe measure exclusively.”

This provision represents a departure from the general rule established by the Code of Criminal Procedure in Article 132(4) which stipulates that: “If the crimes are of the same type and occurred within one year against multiple victims, provided that the number does not exceed three in each case, b) The crimes are considered of the same type if they are punishable by the same type of penalty under a single article of the same law.” The legislators in the Code of Criminal Procedure have mandated that the multiple crimes considered in a single case should not exceed three. In contrast, the legislators in the Juvenile Care Law have diverged from this rule by allowing for multiple crimes to be addressed in one case, as long as they fall under the same section. This is evident in the review of another recent decision of the Anbar Juvenile Court.

In that case, upon review and deliberation, it was found that the Anbar Juvenile Court erred in its application of the law regarding the case of the juvenile (A). The juvenile confessed during the investigation that he had legal guarantees regarding his involvement in crimes committed in 2015, including the kidnapping of an Iraqi army soldier during an attack on the Al-Sajariya area with his terrorist group, as well as killing the soldier with a pistol. Additionally, he admitted to transporting explosives and weapons via boats and engaging in clashes with security forces, resulting in the death of an Iraqi soldier. These statements were supported by the juvenile's testimony as a witness and reinforced by the evidence presented, which constitutes sufficient and convincing grounds for convicting juvenile (A) of a single crime, as it forms one terrorist project due to the events occurring concurrently

within the same year amidst ongoing battles in Anbar province.

Since the court ruled otherwise, its decisions were deemed incorrect and contrary to the law. It was decided to annul all decisions issued in this case and return it to its court for a new trial, directing a single charge against the juvenile and convicting him accordingly, imposing the appropriate measures under the law. The decision was issued unanimously based on the provisions of Article 259/A/7 of the Code of Criminal Procedure on 24/10/2017.

The Anbar Juvenile Court had previously decided the following:

1. Commitment to a Juvenile rehabilitation facility for thirteen years for the crime of killing two Iraqi army soldiers.
2. Commitment to a Juvenile rehabilitation facility for twelve years for the crime of kidnapping an Iraqi army soldier.
3. Commitment to a Juvenile rehabilitation facility for six years for his involvement in the attack on Al-Sajariya and for transporting explosives and weapons, with the most severe measure from point (1) above being enforced without exception (Federal Court of Cassation Decision No. 1386/Criminal Authority/Juveniles/2017 dated 10/24/2017 [unpublished]).

JUVENILE GUARANTEES, POSITIVE REFORMS AND PROCEDURAL REQUIREMENTS FROM THE ISLAMIC PERSPECTIVE

According to Shariah, juveniles' rights, particularly in legal and judicial matters, are profoundly based on justice, protection, and rehabilitation. Islamic law prioritizes the well-being of juveniles (*maslahah al-atfal*) and acknowledges that juveniles are not responsible for their actions until they achieve adulthood (*bulugh*). The Qur'an and Hadith, as the primary sources of Islamic principles, provide guidance on justice for

juvenile offenders. It states that Allah (S.W.T) says “And when the children among you come of age (puberty), then let them (also) ask for permission, as do those senior to them (in age): Thus, Allah makes clear His signs to you (commandments and legal obligations): for Allah is full of knowledge and wisdom” (Quran 24:29).

Similarly, the Holy Prophet (peace be upon him) also said, “Three persons are not accountable, a child until he reaches the age of puberty, a sleeping person until he awakens, and an insane person until he comes sane” (Hambal, 1999). This reveals the fact that both the Qur’an and Hadith do not make Juvenile, sleeping persons, and insane persons criminally responsible for their actions. Therefore, when dealing with juvenile offenders, their criminal capacity must be determined, and they should not be considered criminally accountable for their actions until they reach puberty.

1. Positive alignment with Shariah Principles

- i. Confidential Trials and Protection for Juveniles: Shariah prioritizes Juvenile’s dignity and privacy, which is consistent with Iraq’s Juvenile Welfare Law No. 76 of 1983, which provides for confidential juvenile proceedings. The STRIVE Juvenile project, which seeks to provide legal safeguards and rehabilitation for juvenile offenders, is consistent with the Islamic ideals of justice (*adl*) and mercy (*rahma*) enjoyed by all Muslim faithful, including Juvenile. The Prophet (peace be upon him) treated Juvenile with mercy, love, and compassion. He said, “He is not one of us who does not have mercy on our young and does not respect our elders” (Hadith No. 1919 and 1920). In Islamic jurisprudence, a juvenile should not be treated as an adult criminal, (Jauhari et al., 2023) but

rather given the opportunity to rehabilitate (*islah*) and reintegrate into society.

- ii. Rehabilitation above Punishment: Shariah prioritizes reform over revenge for juveniles. The Prophet Muhammad (peace be upon him) advocated treating juveniles with compassion and patience rather than harsh punishments (Chughtai et al., 2021, p. 2028). The latest initiatives to reform juvenile prison centres in Iraq in 2023 reflect the Islamic principle of restorative justice. Some schools of Islamic philosophy (e.g., Hanafi, Maliki) believe that juvenile offenders should be educated and reformed rather than punished as adults, a viewpoint supported by modern juvenile justice reforms.

2. Conflicts with Shariah Principles:

- i. Lowering the Age of Legal Responsibility and Marriage (2024 Proposal):

A contentious legislative proposal in Iraq (2024) considers decreasing the legal age of consent to nine years old, potentially permitting child marriage. Islamic jurisprudence typically defines maturity (*bulugh*) as a prerequisite for responsibility, but most scholars emphasize both physical and mental maturity (*rushd*), which is not age-dependent. While some classical scholars allowed marriage at a young age, modern Islamic scholars say that legal and societal elements must be examined to avert harm (*darar*) and secure justice for Juvenile. In such a scenario, the legal responsibility (Taklif) in Islam must be determined by ascribing criminal responsibility to the child (Chughtai et al., 2021, pp. 2020–2030). This 2024 Marriage proposal has potential contradiction with Iraq’s international obligations under the CRC and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),

and inconsistency with modern Islamic reformist positions (Islam, 2015; Reyes, 2024).

Islamic law differentiates between a child (*sabi*) and an adult (*baligh*) based on maturity (*bulugh*) and intelligence (*aql*). Scholars disagree on identifying a fixed legal age for accountability. The Qur'an prioritizes mental and financial maturity (*rushd*) over full responsibility. Surah An-Nisa (4:6) reads: "Test the orphans until they reach marriageable age (*baligh*); if you find them to be mature (*rushd*), hand over their wealth to them." The Prophet Muhammad (peace be upon him) also stated, "The pen is lifted (i.e., no responsibility) for three: a sleeping person until they wake up, a child until they reach puberty, and an insane person until they regain their sanity." (Hadith: Sunan Abu Dawood 4402).

Furthermore, the Classical Hanafi and Shafi'i jurists set puberty markers at 12-15 for boys and 9-15 for girls. However, scholars emphasize that mental and emotional maturity is also important. Maliki and Hanbali schools require physical and intellectual maturity (*rushd*) to assume full legal responsibility (Islam, 2015, pp. 52–53). Contemporary Muslim scholars argue that legal responsibility should be based on mental competence and maturity rather than physical puberty.

Shariah-based legal systems (e.g., Egypt, Jordan, Morocco) have set the legal age for responsibility at 18 years old, considering modern psychological and social factors. Therefore, lowering the age to 9 contradicts (Reyes, 2024) this evolving consensus is because a child cannot fully comprehend the legal consequences.

Marriage in Islam is governed by three principles: consent, capability, and damage prevention (*darar*). Early marriages were permitted under classical Islamic jurisprudence, although they were not

encouraged as a general rule. The following criteria are significant.

- a) Puberty (*Bulugh*) against Maturity (*rushd*): Although some scholars historically permitted early marriages based on physical puberty, they also stressed that the kid be mentally and emotionally capable (*rushd*) of handling marriage. According to contemporary fatwas from Al-Azhar and other Islamic bodies, puberty is insufficient; emotional and intellectual maturity is also essential. According to Surah An-Nisa (4:6), marriage should only take place when both partners are capable of fulfilling their responsibilities.
- b) The example of Aisha: Some supporters of early marriage point to Aisha, who purportedly married the Prophet at a young age. However, modern researchers say that historical sources on Aisha's age are inconsistent and that marriage norms in 7th-century Arabia were different. Many contemporary scholars reject adopting this as a blanket explanation for child marriage today, especially because modern science has demonstrated the psychological and physical harm it may inflict.
- c) The Shariah principle of preventing harm (*Darar*): (Islam, 2015, pp. 53–54). The Prophet (PBUH) stated, "There should be neither harm nor reciprocating harm" (Hadith, Ibn Majah, 2340). Child marriage is associated with health hazards, maltreatment, and economic reliance, which go against Islamic beliefs of justice and well-being. Several Muslim-majority countries (e.g., Saudi Arabia, Egypt, Morocco, and Tunisia) have made 18 the minimum marriage age based on

Shariah principles of safeguarding juveniles from harm.

ii. Juvenile Trials in Terrorism-Related Cases

According to reports, certain adolescents convicted of terrorism in Iraq were tried publicly and without competent legal representation. Shariah requires fair trials (*al-huquq al-qada'iyyah*) and due process (*qada' wa shuhud*), particularly for vulnerable individuals like juveniles. If children are falsely accused, pressured, or unfairly tried, it breaches Islamic concepts of justice and the Qur'anic requirement to maintain fairness (Surah Al-Ma'idah 5:8: "Be just, for it is closest to righteousness").

According to Iraq's Juvenile Welfare Law No. 76 of 1983, juvenile trials should be kept confidential; nonetheless, many terrorism-related cases are handled publicly, exposing juveniles to humiliation and revenge. Islamic law requires privacy in circumstances involving vulnerable people, particularly juveniles.

Juveniles who violate the Counter-Terrorism Law face harsh penalties, including life imprisonment. The Juvenile Welfare Law provides for alternative sentencing and rehabilitation, but it is frequently disregarded in terrorism cases. Shariah prioritizes rehabilitation (*islah*) over punishment, particularly for adolescents who have been pushed into committing crimes.

Human rights organizations have reported cases of forced confessions, in which juveniles are pressured to admit their involvement with ISIS. Islamic law strictly prohibits coerced confessions, as declared in Surah Al-Baqarah (2:256): "There is no compulsion in religion."

Juveniles who have not acquired mental and emotional development are not held fully responsible under Islamic law.

The Prophet Muhammad (PBUH) stated, "The pen is lifted from three: the sleeping person, the child until he reaches puberty, and the insane person until he regains sanity." (Sunan Abu Dawood 4402). Sentencing adolescents to heavy punishments is against Islamic values of justice (*adl*) and kindness (*rahma*).

Many juveniles suspected of terrorism in Iraq were forced to join ISIS. Shariah does not hold anyone liable for conduct committed under coercion (*ikrah*). The Qur'an says in Surah An-Nahl (16:106): "Whoever disbelieves in Allah after having believed except for one who is forced while his heart remains assured in faith, then there is no sin upon him." This idea applies to juveniles coerced into committing acts of terrorism, which means they should not be punished as willing participants.

Islamic justice prioritizes rehabilitation above punishment for juveniles (Daharis, 2023). The Qur'an encourages restorative justice, as demonstrated in Surah Al-Ma'idah (5:39): "Whoever repents after his wrongdoing and reforms, Allah will turn to him in forgiveness." Several Muslim-majority countries (including Saudi Arabia, Morocco, and Indonesia) prioritize de-radicalization programs for minors over harsh sanctions.

Islamic law advocates for the protection of a child's dignity, including the implementation of confidential juvenile tribunals, particularly for juveniles accused of crimes. Any legal obligation should consider both physical and mental growth, rather than merely an arbitrary age. Instead of harsh punishment, the emphasis should be on reforming and educating juvenile offenders, as demonstrated by Islamic teachings and modern rehabilitation programs. Even if early marriages existed in history, Islamic doctrine requires preventing injury (*darar*), which ensures that young females are not forced to marry.

Iraq's juvenile justice reforms are consistent with Islamic concepts of fairness and rehabilitation; yet, some suggested modifications (such as decreasing the consent age) raise severe ethical and theological difficulties. Shariah prioritizes child protection, fair trials, and humane

treatment, which must remain important to any legal reforms.

In light of the preceding discussion, this study puts forth suggestions for enhancing the existing solutions as outlined in Table 1.

TABLE 1. Recommendations for policy and implications

MAIN ISSUE	SPECIFICS	DETAILS
Strengthen Legal and Policy Frameworks based on Maqasid al-Shariah	Suspend the implementation and appeal the 2025 law recently passed to reduce marriageable age and raise the minimum age of criminal responsibility to at least 15 years, as obtainable in most Muslim jurisdictions. Encourage restorative justice, ensure confidentiality in juvenile trials, and limit the use of harsh treatment.	Iraq should set a clear and just age of legal responsibility, implement gradual accountability measures before full maturity, and expand mediation approaches. As well as strengthen the law preventing media publicity and reduce the use of incarceration for juveniles and its place, and prioritize rehabilitation.
Improve juvenile detention centers with Islamic ethics of care	Provide child-friendly detention facilities, provide Islamic counseling, and mental health support	Detention centers should have clean, safe conditions, proper nutrition, and access to Islamic education. Also, introduce faith-based counseling programs using Islamic psychology and Qur'anic therapy.
Build the capacity of judges, law enforcement officers, and social workers	Train judges and lawyers in handling juvenile cases and child-centered Shariah principles, promote kindness (<i>ma'ruf</i>) in law enforcement, and train and engage imams and scholars in juvenile justice cases	Train judges to use mercy and education over punishments. Implement alternative sentencing like community service, religious mentorship, and financial restitution. Train police officers. And establish Islamic restorative justice councils to mediate juvenile cases before trial.
Expand education, vocational training, and Islamic rehabilitation programs	Provide compulsory Islamic and secular education in detention centers, integrate faith-based de-radicalization programs, and teach financial responsibility and work skills	Detention centers should offer Quranic studies, ethics, and vocational training to help with reintegration. Islamic scholars should counter extremist ideologies through authentic Islamic teachings on peace and justice to help terrorist recruits on detention from recidivism. Similarly, practical skills like tailoring, carpentry, technology, and business management should be taught at detention centers.
Strengthen community integration based on Islamic social welfare (Takaful)	Promote family reconciliation and parental support. As well as using Islamic zakat and waqf for juvenile justice initiatives	Introduce parenting workshops for families of juvenile offenders to prevent reoffending, and counseling for families of detainees of terrorist recruitment to help in the reintegration

		process. Also, establish waqf endowments to fund scholarships and rehabilitation programs for at-risk juveniles.
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CONCLUSION

In conclusion, Iraq's juvenile justice system is undergoing considerable reforms, with an emphasis on legislative changes, infrastructure upgrades, rehabilitation programs, and judicial capacity development. However, obstacles persist in ensuring fair trials, protecting confidentiality, and incorporating international child protection norms into Iraq's legal and cultural frameworks. Islamic beliefs emphasize mercy, rehabilitation, and restorative justice, which are consistent with contemporary human rights initiatives. Iraq can develop a fair and effective juvenile justice system by combining Shariah-based ethical principles such as confidential trials, alternative sentencing, and community-based rehabilitation.

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CONFLICT OF INTEREST

The authors declare that they have no conflict of interest to this study.

AUTHORS' CONTRIBUTION

All authors contributed to the final version and approved the submission.

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