

Legal Safeguards for Juvenile Trials in the Legal Systems of Iraq, Egypt, and Sudan

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Abstract

This study analyzes the legal safeguards governing juvenile trials in Iraq, Egypt, and Sudan and assesses the extent to which the national legislation of these states conforms to international juvenile-justice standards, particularly the Convention on the Rights of the Child and the Beijing Rules. The importance of the study stems from the urgent need to protect minors within the criminal justice system and to ensure that they are not subjected to procedures that may infringe their rights or adversely affect their social and psychological future. The differences among the legal frameworks of the three states also warrant a comparative inquiry that identifies both strengths and deficiencies. The study adopts comparative and descriptive-analytical methods through an examination of relevant legislative and procedural provisions, juvenile courts, investigative mechanisms, and legal safeguards, with reference to judicial precedents and legislation in force in each state. The findings indicate a general convergence among the three states in recognizing the distinctive nature of juvenile proceedings and the confidentiality of procedures. Nevertheless, clear differences remain in legislative structure and in the extent to which advanced safeguards are provided, including access to social and psychological expertise, alternatives to detention, and the implementation of educational measures. The Egyptian system shows comparatively greater development in procedural classification, Sudan places greater emphasis on the care-oriented function of juvenile justice, while the Iraqi system appears to be in a transitional phase aimed at modernizing its juvenile justice framework.

Keywords: juvenile trials; legal safeguards; Iraqi law; Egyptian law; Sudanese law.

Introduction

Legal safeguards for juvenile trials are among the most sensitive issues in modern legal systems because juveniles constitute an age group characterized by psychological and social vulnerability, requiring enhanced protection throughout judicial proceedings. This issue is particularly significant in Iraq, Egypt, and Sudan because of the legal and social challenges facing these states and the pressures placed on their justice systems to modernize legislation and develop adjudicatory mechanisms that

promote restorative, rather than merely punitive, justice while treating the best interests of the child as the central consideration of the judicial process.

The research problem lies in the disparity between legal texts and the practical implementation of the procedural and substantive safeguards that should be guaranteed to juveniles during trial. Although the legislation of all three states provides special protection for juveniles, implementation may remain deficient because of limited resources, ambiguity in certain provisions, or a shortage of specialists in juvenile justice. This gives rise to the central question: to what extent do the legal systems of Iraq, Egypt, and Sudan guarantee fair and effective safeguards for juvenile trials, and what gaps remain?

The significance of this study derives from its examination of a particularly delicate aspect of the justice system. It contributes to identifying the extent to which the three states comply with international and regional standards and highlights areas requiring legislative or procedural development, thereby potentially improving the quality of justice afforded to juveniles. The study also provides a comprehensive comparative analysis that may assist researchers, judicial practitioners, and policymakers concerned with juvenile protection.

The study aims to analyze the legal provisions regulating juvenile trials in the three states, assess their consistency with international principles, identify similarities and differences, identify deficiencies in implementation, and propose measures capable of strengthening fair-trial safeguards. It further seeks to demonstrate how the social and political circumstances of each state affect the effectiveness of these safeguards.

The study relies primarily on the comparative method as the most appropriate approach to the subject, allowing comparison among the legal systems of Iraq, Egypt, and Sudan. It also employs a descriptive-analytical method to examine and interpret legal provisions and to derive the principles and applications they embody. This methodological combination enables a comprehensive academic assessment of the strengths and weaknesses of juvenile-trial systems in the three states.

Section One: The Safeguard of Confidentiality in Trial Proceedings

Trial is generally the final stage of criminal proceedings. Its purpose is to scrutinize and finally evaluate the evidence in order to establish the factual and legal truth and resolve the case by acquittal or conviction. Because juvenile cases are more strongly characterized by social considerations than ordinary criminal cases, juvenile-trial policy must rest on foundations and principles different from those governing the trial of adults. This section therefore examines confidentiality of trial proceedings as a fundamental safeguard for protecting the rights of accused juveniles and ensuring justice, and compares its application in Iraq, Egypt, and Sudan. Confidentiality is one of the principal features distinguishing juvenile trials from ordinary adult proceedings. In adult criminal proceedings, the publicity of hearings is a well-established principle under criminal procedure laws and requires court sessions to be held in a place accessible to members of the public, subject only to requirements for maintaining order. By contrast, Iraqi juvenile legislation expressly adopts the principle of confidentiality in Article (58), which provides that a juvenile shall be tried in a closed session

attended by his or her guardian or a relative, if available, and by such persons concerned with juvenile affairs as the court deems appropriate. ⁽¹⁾ ⁽²⁾

First Subsection: Persons Permitted to Attend the Trial

The general rules governing criminal proceedings require public hearings and the conduct of proceedings in the presence of the parties. Publicity of hearings means that the court session is held in a place that any person may enter and observe, subject only to requirements necessary to preserve order. This principle offers several advantages: it allows the public to observe the proper administration of justice and promotes general deterrence; it also protects the judge from doubts regarding impartiality and transparency and from external influence. Restricted publicity, however, permits attendance by persons who have a legitimate concern for the juvenile, such as parents, relatives, persons involved in juvenile affairs, or any other person authorized by the court. Whether such attendance is discretionary or mandatory, the person attending should perform a role connected with the care and protection of the juvenile.

The importance of attendance at juvenile-trial hearings and of clearly identifying those entitled to attend follows directly from the principle of confidentiality and the factors necessary for its effectiveness. Confidentiality requires limiting the circle of persons present. Accordingly, attendance should be confined to members and relevant staff of the court, the juvenile, relatives, defence counsel, witnesses, social workers, and representatives of associations concerned with juvenile affairs, unless the court excludes any of them. Although the compared legal systems agree on confidentiality as a principle, they differ as to the particular persons who may attend juvenile-trial hearings. ⁽³⁾ ⁽⁴⁾

In Egypt, Article (126) of the Child Law provides that a child's trial may be attended only by relatives, witnesses, lawyers, social workers, and persons specially authorized by the court. In Iraq, Article (58) of the Juvenile Welfare Law identifies those permitted to attend by providing that the juvenile shall be tried in a closed session in the presence of a guardian or one relative, if available, and such persons concerned with juvenile affairs as the court considers appropriate. This provision is incomplete because it omits persons whose attendance should expressly be addressed, such as a custodian where no guardian exists, the juvenile's lawyer, the representative of the Personality Assessment Office whose attendance is required under Article (61), and persons directly connected with the case, such as witnesses. In Sudan, Article (65/2) of the Child Act 2010 affirms fair-trial principles for a delinquent child: the child is to appear before the lawful judge, namely the Child Court; the trial must take place in the presence of a representative of the Social Service Office; every

¹Muhaysin, Ibrahim Harb. (1999). Procedures for Prosecuting Juvenile Offenders. 1st ed. Amman: Dar Al-Thaqafa for Publishing and Distribution, pp. 26-27.

²Article (352) of the Egyptian Code of Criminal Procedure; Article (126) of the Egyptian Child Law; Article (17) of the Sudanese Juvenile Law; and Article (79) of the Sudanese Child Act 2010.

³Musa, Saba Muhammad. (2003). Safeguards of the Juvenile Accused at the Trial Stage. Master's thesis, College of Law, University of Mosul, p. 28.

⁴Rabie, Hassan Muhammad. (1992). Procedural Aspects of the Treatment of Delinquent Juveniles and Juveniles at Risk, paper presented at the Fifth Conference of the Egyptian Society of Criminal Law, in New Horizons of Criminal Justice in the Field of Juveniles. Cairo: Dar Al-Nahda Al-Arabiya, pp. 538-539.

effort must be made to ensure the presence of the child's guardian; and a lawyer must attend with the child to conduct the defence. ⁽⁵⁾

Review of these provisions shows that the legislation allowing relatives to attend does not specify the degree of kinship required. This approach is open to criticism because it expands the circle of persons present and therefore the number of persons aware of the juvenile's offence, even though not every relative necessarily has a genuine interest in the juvenile's welfare. Legislatures should therefore specify precisely the degree of kinship that permits attendance and should restrict such attendance. One relative should be allowed to attend only where neither parent nor a custodian is present; where a parent or custodian is present, other relatives should not be admitted. Restricting attendance is inherent in the confidentiality of juvenile proceedings. In our view, the use of the conjunction 'or' in certain legislative provisions requires the court to follow the sequence stated in the provision progressively, as reflected in the Iraqi approach: if the guardian is present, there is no need for the custodian; if neither is available, the person to whom the juvenile has been entrusted may attend. Legally, it is sufficient for the judge to summon one of these persons in that order. ⁽⁶⁾ ⁽⁷⁾ ⁽⁸⁾

It follows that when the Juvenile Court complies with the confidentiality requirement, its proceedings are lawful and its judgment may be affirmed by the Federal Court of Cassation. In one decision, the Juvenile Court was duly constituted, conducted a closed trial in the presence of the accused, convicted the accused under Article (440/1), imposed the corresponding measure on the basis of sufficient evidence, and issued an in-person judgment subject to mandatory cassation review, which was pronounced in private on 2 February 2013. ⁽⁹⁾

Second Subsection: Exempting the Juvenile from Attending the Trial

Although the accused's presence at trial is a basic procedural rule in adult courts, the same rule does not operate with equal force in juvenile courts. Juvenile laws depart from the general rule by permitting the juvenile accused not to attend a hearing, to be prevented from attending, or to be removed after attendance. The reasons may relate to the juvenile's interests, for example where the charge concerns an offence against morality or public decency; they may instead concern the interests of justice, such as charges involving internal or external state security. Removal may also be intended to maintain order and calm where the juvenile disrupts the hearing. ⁽¹⁰⁾

This measure constitutes a safeguard because it takes account of the juvenile's psychological condition and interests and is consistent with the purpose of juvenile proceedings, whose objectives cannot be achieved without regard to the juvenile's psychological and moral circumstances. Before exempting the juvenile from attendance, the court should first hear the juvenile, ask about the charge, and verify the presence of a guardian, custodian, or lawyer. If proceedings continue in the juvenile's

⁵Owein, Zainab Ahmed. (2003). Juvenile Justice. 1st ed. Amman: Dar Al-Thaqafa for Publishing and Distribution, p. 107.

⁶Farman, Abbas Hikmat. (2009). Investigation and Trial in Juvenile Delinquency. Al-Ghari Journal of Economic Sciences, 1(4), p. 330.

⁷Abdullah, Othman Mustafa. (2024). Juvenile Delinquency: Procedures and Responses in Iraqi Criminal Legislation (An Analytical Study). Qalaai Zanist Scientific Journal, 9(4), p. 846.

⁸Al-Joukhadar, Hassan. (1992). Juvenile Delinquency Law. 1st ed. Dar Al-Thaqafa for Publishing, p. 163.

⁹Iraqi Federal Court of Cassation, Decision No. 26/Juveniles/2013, 8 January 2013, unpublished.

¹⁰Amin, Kosrat Hussein Amin. (2016). Criminal Responsibility of Juveniles. 1st ed. Beirut: Al-Halabi Legal Publications, p. 102.

absence, an indispensable safeguard is that the juvenile remain represented by a guardian, custodian, or lawyer, as recognized by most international instruments and national juvenile laws. The juvenile must also be informed of the procedures undertaken in his or her absence. ⁽¹¹⁾

Arab juvenile laws have adopted this safeguard in differing formulations, with the exception of Sudanese legislation, which contains no corresponding provision. The differences concern the rationale for excluding the juvenile wholly or partially from the proceedings. While most legislation treats the juvenile's best interests as the basis for exclusion, other legislation links exclusion to a specified circumstance or condition. ⁽¹²⁾ ⁽¹³⁾

The Iraqi Juvenile Welfare Law confines exclusion of the juvenile from trial to one situation: where the juvenile is accused of an offence against morality or public decency. Article (59) authorizes the Juvenile Court to conduct proceedings without the juvenile facing the court in such offences, provided that a person entitled to defend the juvenile attends and that the court later brings the juvenile before it to be informed of the measure taken. Under the Penal Code, offences against morality and public decency are those prescribed in Articles (393-403). Article (59) concerns trial outside the juvenile's presence in the courtroom, not trial in absentia. The juvenile remains available but is removed from the hearing room, as demonstrated by the requirement that the court bring the juvenile back after the proceedings to communicate the action taken. Where the juvenile is a fugitive—and an accused person is treated as a fugitive only after notification in accordance with Article (143) of the Code of Criminal Procedure—there is no basis for a trial in absentia, because the juvenile's flight does not justify application of Article (143/First), which regulates notification of fugitive accused persons.

This is because such notification would conflict with Article (63/First) of the Juvenile Welfare Law, which prohibits publication of the juvenile's name, address, school, photograph, or any information capable of revealing identity. Consequently, a juvenile may not be tried in absentia. The Court of Cassation has consistently held that a juvenile may not be tried in absentia except in the situation specified in Article (59). In one decision, the Federal Court of Cassation stated in substance that Juvenile Welfare Law No. (76) of 1983 was enacted to reduce juvenile delinquency and provide care through an integrated system based on scientific and educational foundations; it therefore established special rules for trial and for the imposition of measures consistent with juvenile criminal policy. The Law contains no provision permitting trial outside the juvenile's presence except Article (59), and otherwise does not authorize trial in absentia. Decisions rendered against an absent juvenile accused and convicted in absentia are therefore unlawful and contrary to the governing legislation. ⁽¹⁴⁾ ⁽¹⁵⁾

¹¹ Al-Saadi, Al-Zahraa Ali Muhammad. (2024). Criminal Responsibility of Juveniles in Iraqi Legislation. *Al-Qarar Journal for Scientific Research*, 2(5), p. 298.

¹² Owein, Zainab Ahmed, Juvenile Justice, previously cited, p. 201.

¹³ Bandarouli, Nihad. (2024). Juvenile Delinquency and the Justice of Punishment. *Journal of Al-Iraqia University*, 71(4), September, p. 12.

¹⁴ Jabbar, Kazim Radi. (2018). Safeguards of the Juvenile Accused in Iraqi Legislation: A Comparative Study. Master's thesis, Al-Alamein Institute for Postgraduate Studies, Najaf, p. 66.

¹⁵ Federal Court of Cassation, Expanded Second Panel, Decision No. 74/1984-1985, 13 December 1985, published in the Collection of Judicial Decisions, Issues 1-2, 1985, pp. 93-94.

The Egyptian Child Law likewise authorizes the court to order the child removed from the hearing where necessary. In that event, the lawyer or social worker may not be removed, and the court may not convict until the child has been informed of the procedures conducted in his or her absence. The court may also exempt the child from personal attendance where the child's interests so require, in which case attendance by a guardian or custodian is sufficient. ⁽¹⁶⁾

Section Two: Safeguards Relating to Pre-Sentencing Assessment

Examination and assessment before judgment are among the most important procedural safeguards for preserving the integrity of the judicial process and preventing judgments based on deficient or doubtful material. The principle requires the court to verify the soundness of the information and evidence, its consistency with the facts, and its freedom from contradiction, manipulation, or violation of the parties' rights. This safeguard is a cornerstone of criminal justice because it enables the judge to undertake an objective assessment in accordance with sound principles of reasoning.

First Subsection: The Legal Basis for Pre-Sentencing Assessment

There is broad agreement, if not consensus, on the need for a pre-sentencing assessment as a safeguard for juveniles during criminal proceedings. The competent court should review a social report concerning the juvenile's social, environmental, and health circumstances and hear the social worker regarding the factors that led to the offence. This is an essential procedure without which the trial is defective, because it is intended to ensure proper individualization of the measures or penalties imposed on juveniles. ⁽¹⁷⁾

Pre-judgment assessment has become an established pillar of modern criminal policy toward juveniles. It has been recognized in international instruments and conferences and adopted by domestic legislation as a principle and safeguard for juveniles in conflict with the law. Several benefits and practical necessities justify this principle, the most important of which are set out below.

First, assessment plays an important role in identifying the reasons that led the juvenile to delinquency or placed the juvenile at risk of delinquency, whether those reasons are personal or arise from the juvenile's environment. This assists the competent court in determining the appropriate judicial response and in selecting measures or penalties suited to the juvenile's condition, including consideration of statutory excuses, judicial mitigating or aggravating circumstances, the maximum or minimum measure or penalty, and suspension of execution, consistently with the principle of individualized treatment. ⁽¹⁸⁾

Second, pre-sentencing assessment may in many cases facilitate the juvenile's acknowledgment of the attributed conduct or clarify the juvenile's situation of exposure to delinquency, especially where the assessment is conducted by specialists using a scientifically sound but non-complex method. This can

¹⁶Article (126) of the Egyptian Child Law.

¹⁷Explanatory Memorandum to Egyptian Juvenile Law Draft No. 31 of 1974.

¹⁸Hamza, Dhahir Salman. (1985). Procedures and Measures Prescribed in the Juvenile Welfare Law, paper submitted to the Judicial Institute, p. 61.

reduce the efforts required from the juvenile's family and from the court before which the juvenile appears. ⁽¹⁹⁾

Third, through pre-sentencing assessment, the judge or competent court can determine whether the juvenile bears criminal responsibility for the offence by examining the existence of discernment and freedom of choice at the time of the conduct and by identifying any impediment to criminal responsibility. Establishing such an impediment may affect the juvenile's capacity for perception or choice; the assessment therefore enables these matters to be examined, particularly in relation to minority. ⁽²⁰⁾

Fourth, pre-sentencing assessment provides the basis for selecting juveniles who may appropriately be placed under behavioural supervision or judicial probation. Courts do not subject every delinquent juvenile or juvenile at risk to such measures because of their cost and because they may not be appropriate in every case. Assessment identifies those juveniles for whom reform and rehabilitation appear feasible. The more accurate the assessment, the more appropriate the selection and the greater the prospect that the supervision system will achieve its objectives. ⁽²¹⁾ ⁽²²⁾

Second Subsection: Elements of Pre-Sentencing Assessment

In summary, pre-sentencing assessment seeks to identify the juvenile's personality and circumstances so that an appropriate rehabilitative measure can be selected. It relies on social inquiry and medical and psychological assessment. Its principal elements may therefore be identified as follows. ⁽²³⁾

First, physical (biological) assessment. Physical illness or impairment may contribute to juvenile delinquency because dysfunction of the body can affect behaviour. A juvenile who experiences a physical deficiency or illness may perceive both self and social treatment differently from a healthy juvenile. Medical examination of the accused juvenile is therefore important because it may reveal a physical condition capable of affecting behaviour and contributing to delinquency. One reported example involved a juvenile girl found on physical examination to suffer from intestinal ascaris worms, which caused hunger and led her to steal food; after treatment, she ceased stealing. ⁽²⁴⁾ ⁽²⁵⁾

The results of physical assessment may therefore influence the judicial response appropriate to the juvenile. If an organ or bodily system is affected by disease, or if a glandular disorder materially contributes to delinquent behaviour, placement in a specialized medical facility for the period

¹⁹Zangana, Sohaib Salim. (2024). The Age of Criminal Responsibility of Juveniles in Iraq, Iran, and Islamic Sharia. *Journal of Al-Iraqia University*, 69(3), p. 602.

²⁰Al-Qaisi, Abdul-Qadir Muhammad. *The Juvenile Accused's Right to a Fair Trial*. Cairo: Al-Atak Book Industry, p. 151.

²¹Article (87) of the Iraqi Juvenile Welfare Law defines behavioural supervision as a therapeutic measure intended to place the juvenile in the natural family environment, or in an alternative family where the original family is unsuitable, under the supervision of a behavioural supervisor for the purpose of reform. Judicial probation is a therapeutic measure aimed at rehabilitation and social adjustment in the community and natural environment while the offender remains at liberty under the care and supervision of a court officer known as a probation officer. See Jaafar, Ali Muhammad. (2004). *Protection of Juveniles in Conflict with the Law and Those at Risk of Delinquency*. Beirut: University Institution for Studies, Publishing and Distribution, p. 265.

²²Hamo, Nidal Yasin. (1987). *Judicial Probation*. Master's thesis, College of Law, University of Baghdad, p. 184.

²³Al-Ammari, Zakia Abdul-Fattah. (1985). *The Role of Social Research in Juvenile Courts in Iraq*. Baghdad: Ministry of Justice, p. 26.

²⁴Abd Al-Latif, Baraa Munther. (2009). *Criminal Policy in the Juvenile Welfare Law*. 1st ed. Amman: Dar Al-Hamed for Publishing and Distribution, p. 89.

²⁵Al-Trabulsi, Muhammad Nabih. *Juvenile Offenders*. Dar Al-Fikr Al-Arabi, p. 251.

necessary for treatment and care may be more appropriate than proceeding directly to punitive treatment. If the juvenile is free from such conditions, or suffers only a minor condition that does not affect volition, proceedings may continue; however, even minor conditions should be treated early because they may develop into more serious and less treatable disorders. ⁽²⁶⁾

Second, psychological assessment. Like physical examination, psychological assessment is entrusted to specialists with appropriate technical expertise, including psychologists and mental-health professionals. It may complement physical assessment where juveniles display unusual behavioural or personal characteristics, including serious behavioural deviations, mood disturbance, or mental disorder, and it may also be used where the causes or motives of delinquency are unknown. Psychological assessment addresses core aspects of the juvenile's mental functioning, including intelligence, awareness and perception, thinking and imagination, emotional and instinctive responses, the capacity to manage provocative or emotionally charged situations, and the volitional dimension of abnormal conduct. It may involve interviews, personality tests, review of the juvenile's personal history, and analysis of the resulting findings. Several sessions may be required, during which the specialist asks carefully selected oral or written questions appropriate to the juvenile's age, circumstances, and charge. Specialists should avoid excessive caseloads because this can diminish the quality of the assessment. Article (127) of Egyptian Child Law No. (12) of 1996, as amended, and Article (65/2) of the Sudanese Child Act 2010 reflect this principle. In Iraq, Article (51) of Juvenile Welfare Law No. (76) of 1983 adopts the principle, while Chapter Three of Part Two regulates the Personality Assessment Office, its composition, and duties in Articles (12-15). ⁽²⁷⁾ ⁽²⁸⁾ ⁽²⁹⁾ ⁽³⁰⁾

Third, social assessment. Social and external factors associated with the environment in which the juvenile lives are among the principal causes of delinquency because they influence and contribute to personality formation. Family or school dysfunction, harmful peer associations, and adverse economic circumstances may be decisive. A juvenile's offending or exposure to delinquency may therefore indicate inability to adapt to the social environment. Examination of the family, educational, peer, and economic environment often reveals causes that are not psychological or physical, showing that external factors played the primary role. In Egypt and Sudan the relevant officer is referred to as a social worker. Articles (8-10) of the Sudanese Juvenile Welfare legislation of 1983 provided for a social supervision service attached to each court and composed of a sufficient number of social workers; Article (9) addressed appointment by the Minister or State Governor as required, and Article (10) enumerated the observer's functions. Article (87) of Iraqi Juvenile Welfare Law No. (76) of 1983 uses the term behavioural supervisor. ⁽³¹⁾

Accordingly, the purpose of social assessment is to provide the court with the information necessary to understand the juvenile's general condition and personal, family, educational, and occupational

²⁶Musa, Saba Muhammad, Safeguards of the Juvenile Accused at the Trial Stage, previously cited, p. 176.

²⁷Al-Hannis, Abdul-Jabbar. (2003). Pre-Trial Detention and Juvenile Rehabilitation. Damascus University Journal, 19(1), p. 525.

²⁸Al-Munji, Muhammad. (1982). Judicial Probation. 1st ed. Alexandria: Mansha'at Al-Ma'arif, p. 313.

²⁹Al-Hannis, Abdul-Jabbar, Pre-Trial Detention and Juvenile Rehabilitation, previously cited, p. 525.

³⁰Al-Qaisi, Abdul-Qadir Muhammad, The Juvenile Accused's Right to a Fair Trial, previously cited, p. 151.

³¹Obaid, Abdul-Rahman. (1998). Reform of Delinquent Juveniles in Yemeni Criminal Law. Doctoral dissertation, College of Law, University of Baghdad, p. 84.

environment so that an appropriate measure can be selected. Iraqi law regulates behavioural supervision in Articles (87-98) of Juvenile Welfare Law No. (76) of 1983. The Law requires both specialization and experience for behavioural supervisors, recognizing their role in rehabilitation. Scientific training is necessary to understand the report of the Personality Assessment Office, while practical expertise is required to formulate a detailed treatment plan capable of restoring the juvenile's social adjustment. ⁽³²⁾ ⁽³³⁾

A judicial application of Article (88), concerning the expertise and academic specialization required of a behavioural supervisor, appears in a decision of the Anbar Court of Appeal acting in its cassation capacity. The Court held that Article (88) of Juvenile Welfare Law No. (76) of 1983 requires a behavioural supervisor to hold a bachelor's degree in sociology, social work, or another discipline related to juvenile affairs. A judicial investigator assigned by the Juvenile Court did not satisfy that description. The court therefore accepted the correction request, quashed the challenged decision, and returned the case file so that a behavioural supervisor meeting Article (88) could be appointed. The decision was issued unanimously on 16 Muharram 1423 AH, corresponding to 30 March 2002. ⁽³⁴⁾

Section Three: Safeguards Relating to the Juvenile's Right to a Fair Trial

The right to a fair trial is a fundamental human right and consists of procedural guarantees through which criminal litigation is conducted within a framework that protects personal liberty and related human rights. Respect for the right to a fair trial, as recognized in international human-rights instruments, is an indicator of the soundness of a state's criminal justice system and of its level of respect for human rights. Failure to respect that right may produce injustice within the criminal justice system. In its broad sense, a fair trial encompasses every procedural stage of a case and may extend through appellate and cassation review. ⁽³⁵⁾ ⁽³⁶⁾

Because juveniles differ fundamentally from adults, it is unreasonable to subject them to identical treatment. Legal systems accordingly recognize the need for rules specific to juveniles and for measures applied when a juvenile engages in unlawful conduct. Although these measures vary, they should be proportionate to the juvenile's personal, intellectual, psychological, and social capacities and to the juvenile's age at the time of the unlawful act.

First Subsection: The Juvenile's Right to Defence and the Suspension of Execution

The right to defence in criminal cases is of exceptional importance because of the seriousness of such proceedings and their consequences. It is a central pillar of a fair trial and a fundamental criterion of the rule of law and its protection of litigants' rights. Legal scholarship has offered differing

³²Al-Adwan, Thaer Saud. (2012). Juvenile Criminal Justice: A Comparative Study. 1st ed. Amman: Dar Al-Thaqafa for Publishing and Distribution, p. 183.

³³Al-Hadithi, Ahmed Muhammad Ali. (2010). Juvenile Justice Between Reality and Law: The Juvenile Court in Nineveh. Journal of Law and Judiciary, Baghdad, p. 104.

³⁴Anbar Court of Appeal, acting in its cassation capacity, Decision No. 9/Correction/2002, 30 March 2002, published in Al-Adala Journal, Issue 2, April-May-June 2002, pp. 94-95.

³⁵Qasim, Tariq Abdul-Latif. (1985). Functions of Juvenile Courts under the Juvenile Welfare Law: A Comparative Study. Baghdad, p. 63.

³⁶Hisham, Farija Muhammad. (2014). Guarantees of the Right to a Fair Trial in International Instruments. Al-Mufakkir Journal, Faculty of Law and Political Science, Mohamed Khider University of Biskra, 10, pp. 428-429.

formulations of this right. One view defines it as the accused's right to a fair trial based on lawful procedures; another understands it as enabling the accused to present to the judge the truth as the accused perceives it in relation to the charge, whether denying or admitting the accusation. ⁽³⁷⁾ ⁽³⁸⁾

At the national level, constitutions commonly guarantee the right to defence. Article (19/Fourth) of the Iraqi Constitution of 2005 provides that the right to defence is sacred and guaranteed at all stages of investigation and trial. Criminal legislation likewise regulates procedural rules that protect this right, including proper summons, appearance before the court, access by the parties to case papers after notification, attendance of the accused and defence counsel, and the court's duty to decide defence applications such as requests for adjournment to inspect the file, prepare the defence, or submit documents. Sudanese legislation also recognizes the right in Article (134) of the Criminal Procedure Act 1991, and Egyptian legislation does so in Article (125) of the Child Law. ⁽³⁹⁾

Defence of a juvenile by a social defender is a distinctive feature of juvenile proceedings and may itself be treated as a safeguard. Some legislation permits the juvenile's guardian, a relative, or a representative of a social institution concerned with juveniles to undertake a defensive role. Such legislation expressly or implicitly allows persons who have an interest in the juvenile's welfare and a personal connection with the juvenile, the offence, homelessness, or exposure to delinquency to participate in the defence, including a guardian, custodian, relative, or representative of a social institution. This departs from the general rule that defence of an accused person is undertaken by a lawyer. ⁽⁴⁰⁾ ⁽⁴¹⁾

Iraqi, Egyptian, and Sudanese juvenile legislation has adopted the concept of the social defender, expressly or implicitly. Iraqi law adopts it expressly but leaves acceptance of such defence to the discretion of the Juvenile Court. The court may accept or reject defence by the juvenile's guardian, relative, or representative of a social institution. If such participation serves the juvenile's interests, it may be allowed; if the proposed defender is unsuitable—for example, because of a notorious record of misconduct or prior conviction—the court may reject the participation but should state the reason in its judgment. Some commentators support the Iraqi approach while arguing that acceptance should be mandatory rather than discretionary where the requirements are satisfied. ⁽⁴²⁾ ⁽⁴³⁾

³⁷Al-Obaidi, Awad Hussein Yasin. (2012). Commentary on Juvenile Welfare Law No. 76 of 1983. Mosul, Iraq: Dar Al-Jeel Al-Arabi, p. 87.

³⁸Al-Kubaisi, Abdul-Sattar Salim. (2013). Safeguards of the Accused Before and During Trial. Beirut: Al-Halabi Legal Publications, p. 160.

³⁹Al-Qadi, Muhammad Muhammad Misbah. (1998). Criminal Protection of Childhood. Cairo: Dar Al-Nahda Al-Arabiya, p. 100.

⁴⁰Huwain, Sima Naim. (2011). Safeguards of the Juvenile Accused at the Investigation and Trial Stages. Judicial Institute, Baghdad, p. 44.

⁴¹Al-Awji, Mustafa. (2015). The Delinquent Juvenile or Juvenile at Risk of Delinquency in Arab Legislation. 1st ed. Beirut: Al-Halabi Legal Publications, p. 201.

⁴²Article (60) of the Iraqi Juvenile Welfare Law.

⁴³Karami, Fahmi. (2007). The Right to a Fair Defence: Reality and Means of Protection. Beirut: Social Movement Association Publications, p. 12.

A contrary view maintains that the legislative approach requires reconsideration because sound legal reasoning dictates that juvenile defence be entrusted to qualified lawyers by reason of their legal knowledge, experience, and professional expertise. ⁽⁴⁴⁾

Suspension of execution is a method of enforcement that restricts liberty without immediately depriving the convicted person of it. It therefore falls within the trial court's discretion to determine the appropriate sanction in light of the circumstances of the offence and offender. Because suspension is part of sentencing discretion, a court ordering suspension should state its reasons; where it declines to suspend execution, it need not explain that refusal because judgments are ordinarily enforceable. This mechanism is examined here as an important safeguard for juveniles sentenced to short custodial measures or penalties, on the premise that treatment in the community may be more beneficial than placement in a reformatory institution. ⁽⁴⁵⁾

If suspension of execution is important for adult offenders, its value is even greater for juveniles, especially first-time offenders who have not developed a pattern of criminal behaviour and whose conduct may have resulted from temporary circumstances capable of correction. Imprisoning such juveniles may expose them to serious criminal influences. Subject to appropriate conditions, applying suspension to juveniles sentenced to short terms of deprivation of liberty therefore constitutes a safeguard that should be available when they appear before the court. ⁽⁴⁶⁾

Under the Iraqi Juvenile Welfare Law, execution of juvenile measures may be suspended under specified conditions, including a special situation where the juvenile has reached eighteen years of age by the time judgment is rendered. Article (80/First) permits the Juvenile Court, when imposing a custodial measure not exceeding one year for a felony or misdemeanor, to suspend execution for two years from the date of judgment if the juvenile's character, personality-study report, and the circumstances of the offence support the belief that no new offence will be committed. The guardian or a relative may be required to execute an undertaking concerning proper upbringing and discipline during the suspension period and to deposit an amount determined by the court in light of financial circumstances, with Articles (147-149) of the Penal Code taken into account. Article (80/Second) addresses a juvenile who has completed eighteen years of age at the date of judgment and permits suspension of a custodial measure not exceeding one year, again subject to Articles (147-149) of the Penal Code. Thus, where the juvenile's personality and the offence circumstances justify it, the Juvenile Court may suspend a custodial measure. In one decision concerning Baghdad Juvenile Court Case No. 91/J/2010, dated 25 July 2010, the Federal Court of Cassation found that the lower court had correctly applied the law and relied on sufficient evidence disclosed by the investigation and trial. It affirmed the decisions with a modification making the suspension period three years pursuant to Article (80/Second) because the juvenile had reached the age of majority, applying Article (259/1-1) of the Code of Criminal Procedure. The decision was issued unanimously on 7 November 2010. ⁽⁴⁷⁾ ⁽⁴⁸⁾

⁴⁴Al-Obaidi, Awad Hussein Yasin, Commentary on Juvenile Welfare Law No. 76 of 1983, previously cited, p. 164.

⁴⁵Nughaymish, Muhammad Aboudi. (1979). Suspension of Sentence under Iraqi and Comparative Penal Law. Master's thesis, College of Law and Politics, University of Baghdad, p. 121.

⁴⁶Abdel-Sattar, Fawzia. (1977). Commentary on the Code of Criminal Procedure, Part I. Cairo: Dar Al-Nahda Al-Arabiya, p. 239.

⁴⁷Corresponding provision: Article (130) of the Egyptian Child Law.

Second Subsection: Simplification of Trial Procedures and the Prohibition of the Death Penalty for Juveniles

Prompt disposition of proceedings is one of the safeguards inherent in the accused's right to a fair trial. Numerous international conventions and instruments recognize this principle in different formulations, including the International Covenant on Civil and Political Rights. ⁽⁴⁹⁾

Several Arab juvenile laws have responded to the principle of speedy adjudication by treating juvenile criminal cases as urgent. In Egypt, the principle is adopted implicitly through Article (124) of the Child Law, which requires application of the rules and procedures governing misdemeanors before the Juvenile Court unless the Law provides otherwise. In Sudan, juvenile trials are characterized by simplified and uncomplicated summary procedures under which the court records concise particulars. ⁽⁵⁰⁾

In Iraq, the Juvenile Welfare Law contains no express provision on speedy adjudication, and the Code of Criminal Procedure likewise does not expressly formulate the principle. This legislative gap was addressed by the former Revolutionary Command Council through Decision No. (669) of 1987, which established time limits for disposal of cases in accordance with instructions issued by the Ministry of Justice. The Decision required civil and criminal courts to decide cases within the prescribed time limits unless the nature of the case required special procedures or delay resulted from a cause beyond the court's control, in which event the reason had to be recorded in the hearing minutes. The time limit begins after service is completed in cases requiring notification of the litigants, and the Judicial Supervision Authority is responsible for monitoring compliance. The Federal Najaf Court of Appeal, acting in its cassation capacity, likewise noted that Article (58) of the Juvenile Welfare Law requires a closed juvenile hearing, while pronouncement of the judgment itself must be public. ⁽⁵¹⁾ ⁽⁵²⁾ ⁽⁵³⁾

Another manifestation of simplified juvenile procedure is the exclusion, in some legislation, of civil claims and direct private prosecution before juvenile courts in order to prevent juvenile proceedings from becoming protracted. This distinguishes juvenile proceedings from adult criminal trials, in which criminal courts may ordinarily determine a civil claim arising from the offence together with the criminal case.

Iraqi juvenile legislation does not expressly address civil claims before juvenile courts. Nevertheless, Iraqi Juvenile Courts entertain such claims pursuant to Article (10) of the Code of Criminal Procedure, which allows a person who has suffered direct material or moral damage from an offence to bring a civil claim against the accused and the person civilly responsible, by written petition or oral request recorded in the minutes, during evidence gathering, preliminary investigation, or before the criminal court until judgment is issued; the claim may not be raised for the first time on cassation.

⁴⁸Court of Cassation, Juvenile Panel, Decision No. 1450/2010, 7 November 2010.

⁴⁹See Articles (9/3-4) and (14/3(c)) of the International Covenant on Civil and Political Rights.

⁵⁰Article (1348) of the Instructions of the Egyptian Public Prosecution states this principle expressly: juvenile cases must be disposed of expeditiously. Compare Articles (176-177) of the Sudanese Criminal Procedure Act 1991.

⁵¹Paragraph (1) of Decision No. (669) of 1987.

⁵²Paragraph (2) of Decision No. (669) of 1987.

⁵³Federal Najaf Court of Appeal, acting in its cassation capacity, Decision No. 94 T.J./2013, 28 March 2013, unpublished.

Article (108) of the Juvenile Welfare Law applies the Penal Code and Code of Criminal Procedure to matters not specifically regulated by the Juvenile Welfare Law insofar as consistent with its nature, foundations, and objectives. Egypt, by contrast, prohibits civil claims before juvenile courts. Sudanese law recognizes a minor's civil liability in relation to compensation borne by the 'aqila'; this approach was subsequently followed by the Supreme Court and confirmed by the Sudanese Criminal Act 1991, which requires payment of diyah in cases of homicide and injury involving a non-pubescent minor or a person lacking discernment. ⁽⁵⁴⁾ ⁽⁵⁵⁾

A major contribution of criminology has been the distinction between adult criminality and juvenile delinquency. Adult offending may be attributed to more entrenched criminal tendencies, whereas juvenile delinquency is often associated with social and environmental factors, making the juvenile in some circumstances more victim than perpetrator. This distinction justifies different treatment and a different social response. Legal scholarship therefore recognizes the use of protective and rehabilitative measures for juveniles before the age of full criminal responsibility. At that stage, the juvenile's dangerousness remains limited; even where discernment has developed and criminal tendencies have begun to emerge, physical and psychological immaturity makes rehabilitative measures selected by the judge more appropriate than ordinary sanctions where such sanctions would harm the juvenile or obstruct the objectives of modern criminal policy. Legislation may nevertheless permit ordinary sanctions before the age of criminal majority where the judge considers them necessary because of increased dangerousness or entrenched criminal intent, while excluding especially severe penalties such as death or life penal servitude. Juvenile justice thus allows the judge to choose between penalties and measures in accordance with the case, recognizing that in some circumstances a rehabilitative measure may be the better means of reform and treatment. ⁽⁵⁶⁾ ⁽⁵⁷⁾

Accordingly, juvenile legislation generally prohibits the death penalty and life imprisonment for juveniles regardless of the seriousness of the offence. This approach accords with modern juvenile criminal policy, which treats juvenile delinquency as a phenomenon for which society bears substantial responsibility and which should be addressed through humane measures directed toward care, correction, reform, and social rehabilitation. Most Arab legislation excludes the death penalty and even life imprisonment for juveniles, either expressly or implicitly by omitting death from the sanctions available to the juvenile judge. Article (112) of the Egyptian Child Law is relevant in this respect. Some Arab penal legislation expressly prohibits the juvenile death penalty; Article (27) of the Sudanese Criminal Act, for example, provides that, apart from hudud and qisas offences, the death penalty may not be imposed on a person under eighteen or over seventy years of age.

In Iraq, the Juvenile Welfare Law implicitly prohibits imposition of the death penalty on juveniles. Where a child or young person commits a felony otherwise punishable by death, the Law substitutes institutional rehabilitation. A child is placed in a boys' rehabilitation school for a period of not less

⁵⁴Compare Article (129) of the Egyptian Child Law.

⁵⁵Article (43)(d) of the Sudanese Criminal Act 1991.

⁵⁶Abdullah, Zaid Salam, & Al-Alili, Amir Majid Dahdouh. (2025). Juvenile Delinquency. *Al-Nahrain Journal of Legal Sciences*, 27(3), p. 374.

⁵⁷Zawash, Rabia. (2016). Criminal Policy Toward Juveniles. Lectures delivered to second-year master's students, University of the Brothers Mentouri Constantine, Faculty of Law, p. 46.

than one year and not more than ten years; where the offender falls within the older juvenile category, placement in a youth rehabilitation school is for not less than five and not more than fifteen years. This reflects the legislature's general policy of replacing ordinary penalties with juvenile measures.⁽⁵⁸⁾

Conclusion

The analysis demonstrates that confidentiality of trial proceedings and pre-sentencing assessment are two fundamental pillars of juvenile justice. Confidentiality protects the juvenile from social stigma and preserves privacy, while pre-sentencing assessment enables the court to evaluate the juvenile's personality and environmental, psychological, and health circumstances and to select the measure most consistent with rehabilitative objectives. Differences remain among the three legal systems concerning who may attend proceedings, the circumstances in which a juvenile may be exempted from attendance, and the degree of detail with which assessment procedures and their components are regulated. Effective juvenile protection therefore requires these safeguards to operate in an integrated manner and to continue developing in line with modern criminal policy and international justice standards.

First: Findings

1. The Iraqi, Egyptian, and Sudanese legal systems agree that confidentiality of juvenile proceedings is a fundamental rule intended to protect juveniles from social stigma. Practical application nevertheless differs: Iraq tends toward stringent confidentiality, Egypt permits certain statutory exceptions, while Sudan combines required confidentiality with limited exceptions connected with the nature of the offence or public-interest considerations.
2. All three systems recognize that juvenile trials should not be open to the general public, but the permissible scope of attendance differs. Iraq limits attendance primarily to the parties, guardians, and the social specialist; Egypt allows a broader range of specialists and official bodies in certain circumstances; and Sudan leaves comparatively greater room for judicial assessment according to the circumstances of the case.
3. Pre-judgment assessment is an integral component of juvenile proceedings in all three states, but its regulation differs. Iraqi law relies mandatorily on the social report, Egyptian legislation permits the court greater flexibility in requesting appropriate reports, and Sudanese procedures are less detailed, potentially affecting the precision of assessment.
4. Iraq adopts a comparatively clear rehabilitative approach to the social and psychological study of juveniles before judgment through specialized structures. Egypt relies significantly on social specialists within juvenile-care institutions, while Sudan continues to develop the institutional tools required for comprehensive assessment.
5. The comparison indicates that Egypt has a more extensive procedural framework for the use of technical and psychological experts where necessary. In Iraq, assessment is more frequently centered

⁵⁸See Articles (76/Second) and (77/Second) of the Iraqi Juvenile Welfare Law.

on social reports, while in Sudan expert assistance is used as needed without an equally clear statutory obligation.

6. Iraq and Egypt are comparatively more advanced in providing specialized juvenile centers and institutions that contribute to assessment and social study. Sudan has more limited institutional capacity, which may affect the quality of reports presented to the courts and, consequently, the accuracy of final decisions.

7. Confidentiality in Egypt is closely connected with defence rights and judicial information practices and in some circumstances permits limited exchange of information with official bodies. Iraq maintains stricter confidentiality and allows only minimal circulation of information, whereas Sudan seeks to reconcile confidentiality with the requirements of its traditional criminal justice framework.

8. The three states share the objective of securing a fair trial consistent with the best interests of the child, but implementation faces different challenges, including shortages of specialized personnel in Sudan, variation in the quality of social reports in Iraq, and institutional duality in Egypt. Continued legislative and procedural development is therefore required.

Second: Recommendations

1. The three states should strengthen the legislative framework governing confidentiality of juvenile trials by adopting more precise provisions defining the scope of confidentiality and its exceptions, thereby reducing inconsistent application and protecting juveniles from social stigma. Legislation should also require judges not to disclose juvenile-related information except within the narrow limits required by justice.

2. The assessment system should be strengthened by requiring courts to engage qualified psychological and social experts and by modernizing the preparation of social reports so that they are deeper and more comprehensive, particularly in Sudan where shortages of specialized personnel may adversely affect the quality of court assessments.

3. The three states should establish or activate specialized social-research institutions and juvenile centers staffed by trained professionals with expertise in assessing juveniles' psychological, behavioural, and family circumstances. Developing such institutions is essential to ensuring judgments based on reliable information.

4. Training programs for judges, prosecutors, and lawyers working in juvenile cases should be intensified, with particular emphasis on international restorative-justice standards, appropriate methods of dealing with juveniles, and the special nature of juvenile proceedings. This would bring practice into closer alignment with modern legislation and strengthen juvenile protection in Iraq, Egypt, and Sudan.

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2. Legislation, International Instruments, and Judicial Decisions

2.1 Legislation and Legal Instruments

Egyptian Child Law No. 12 of 1996, as amended. Articles 112, 124, 125, 126, and 127.

Egyptian Code of Criminal Procedure. Cited generally in the manuscript; no specific article number is stated.

Explanatory Memorandum to Egyptian Juvenile Law Draft No. 31 of 1974. Cited as an explanatory legislative source; no specific article number applies.

Instructions of the Egyptian Public Prosecution. Cited generally in the manuscript; no specific provision number is stated.

International Covenant on Civil and Political Rights. Cited generally in relation to prompt adjudication; no specific article number is stated in the manuscript.

Iraqi Constitution of 2005. Article 19/Fourth.

Iraqi Juvenile Welfare Law No. 76 of 1983. Articles 12–15, 51, 58, 59, 61, 63/First, 80/First, 80/Second, 87–98, 88, and 108.

Iraqi Penal Code. Articles 147–149, 393–403, and 440/1.

Iraqi Code of Criminal Procedure. Articles 10, 143, 143/First, and 259/1-1.

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Sudanese Criminal Act 1991. Article 27; the Act is also cited generally in relation to civil liability and diyah.

Sudanese Criminal Procedure Act 1991. Article 134.

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2.2 Judicial Decisions

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