

PalArch's Journal of Archaeology
of Egypt / Egyptology

**LEGAL ADAPTATION OF ISIS WOMEN AND CHILDREN IN
LIGHT OF THE PROVISIONS OF IRAQI LAW AND
INTERNATIONAL AGREEMENTS**

¹Assist prof Dr.Maysoon Ali Abd Al-Hadi

University of Baghdad – Women Studies Center

²Lecture Dr. LAITH RAFA KHLAF

University of AL-Turath

Assist prof Dr.Maysoon Ali Abd Al-Hadi, Lecture Dr. LAITH RAFA KHLAF, Legal Adaptation Of Isis Women And Children In Light Of The Provisions Of Iraqi Law And International Agreements , Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(6). ISSN 1567-214x.

Abstract:

Iraq witnessed a terrorist attack against some safe provinces, but Iraqis, in all their different sects, have contributed to confront this terrorist attack. They sacrificed their lives and money to get rid of it towards liberation. During the of liberation from ISIS Terrorist Organization, there have been participations of women and children within the ranks of this World's terrorist act, as the use of recruiting of women and children in their ranks. Some of them have recruited coercively, some volunteered and participated in their terrorist operations without forcing. Others didn't participate, however, the participation of one of their family members in the Terrorist Organization has charged the community to take a position towards them. Thus, in this research we have highlighted those cases and tried to deal with them in accordance with Iraqi Law provisions in addition to the position statement of International Humanitarian Law.

Summary :

Iraq has witnessed a terrorist attack on some of its provinces, and the people of Iraq in all their sects have contributed to countering this terrorist attack, and they have given lives and funds to dispose of them to liberation.

The problem of women and children associated with the organization appeared during the end of the liberation operations, as the organization used the recruitment of women and children in its ranks, some of whom were forcibly recruited and some of them volunteered and participated in terrorist operations without coercion, and some of them did not participate, but the participation of a family member in the organization The terrorist pushed the society to take a stand against them, and we have shed light in this research on these cases and we have tried to address them according to the provisions of Iraqi law while clarifying the position of international humanitarian law regarding them.

Introduction:

After the end of the liberation operations and Iraq got rid of the ISIS terrorist organization and the extensive destruction that affected civilians, including women and children, it was necessary to shed light on the other side of the women and children who participated in the terrorist organization. The basic principle is that women and children are victims of armed operations and receive due protection under custom and treaties International, however, what happened in Iraq to the contrary, as battalions of women in Iraq and in the city of Mosul specifically from foreign women and Iraqi women and their children contributed directly and indirectly to support the terrorist organization, so the organization used them to fill Because of the shortage in the number of his fighters, as well as their use to implement sanctions against women outside the organization through their inhuman treatment and their choice of wives of the terrorist organization.

Research importance :

The research attempts to shed light on the position of Iraqi law on women and children associated with the terrorist organization ISIS and any Iraqi laws applicable to them issued in accordance with the provisions of the Iraqi constitution. The research will address the situation of women associated with the Iraqi and non-Iraqi organization and whether they are directly involved or not involved in terrorist acts.

Research problem :

The research problem is that women and children, including foreign and other Iraqi women, including those who married members of the organization and gave birth to children from members of the terrorist organization, and therefore we will try through the research to clarify the legal status of these women and children, whether they are foreigners or Iraqis, whether they are contributing or not contributing to the activities of the terrorist organization.

Research Methodology :

The research methodology relies on scientific analysis of the texts of Iraqi law and their conformity to the cases under discussion, as well as an indication of the international position on the subject.

Search Plan :

We will address the topic through two studies, the first deals with the situation of terrorist women of ISIS in the light of the provisions of Iraqi law and the penalties imposed on them, while the second topic will address the situation of children under

ISIS operations and how to treat child soldiers and suspects, then we concluded this research with the most important findings and recommendations.

The first topic:

Adapt the status of ISIS women in light of the provisions of Iraqi law

Those who follow the practical reality in the areas where ISIS was ruling its control find that the position of women varies according to their nationalities, so we will address this topic in two requirements: The first is to explain the legal adaptation of ISIS women from foreign and Iraqi women, and the second requirement, in which we will deal with the rule of actions assigned to ISIS women from foreign and Iraqi women according to the following:

The first requirement - The legal adaptation of ISIS women:

The women who assisted ISIS in every way and joined him in full knowledge of his terrorist penitential approach were foreign and Iraqi, so it was necessary to explain the status of each of them separately:

Section I - Legal Adaptation of Foreign ISIS Women:

A foreigner in general is a person who does not have the national citizenship of a country (), and a foreigner in Iraq is every person who is on Iraqi soil and does not have her nationality ().

The concept of a foreigner contradicts the concept of a citizen who enjoys the nationality of the state, so whoever does not hold national citizenship and holds the nationality of another country is a foreigner.

Also, he is considered a stateless foreigner, as he is deemed to be national, as nationality is the criterion that distinguishes a patriot from a foreigner ().

A political refugee is also considered a foreigner, even if his presence in the territory of a state arranges an obligation for him to provide him with internal and diplomatic protection. ()

An opinion on jurisprudence went on to say that the foreigner's position is ("the legal status of a foreigner in a country to which he does not belong to a nationality and who is protected by a set of legal rules to determine his money from rights and obligations") ().

Here, the question arises: What is the legal status of non-Iraqi women associated with ISIS?

The requirements of justice and human rights principles require the treatment of the foreigner in general in a manner that preserves his human dignity and helps him to integrate into the society of the country in which he lives ().

Legally, the state has the authority to determine the status of foreigners, and this is done through its internal legislation. It has the right to territorial sovereignty and has authority over its territory and exercises the right to regulate this for certain considerations, but this authority is bound by international conventions and norms ().

The state cannot override private security considerations as well as political, economic, and even population considerations. On the other hand, we find that the state is constrained in accordance with an international agreement to treat foreigners residing in its territory with the agreements and treaties it has attached to it in this regard, or international custom may require that, i.e. the state adheres to the granting of the minimum Of the rights of foreigners on its territory and under treatment in all and other international customs ().

The answer to the question is that foreign women of ISIS are terrorists and their presence poses a threat to the security, political, economic and social system in Iraq because they committed crimes and this is due to the competent authorities in accordance with the Iraqi Penal Code and the anti-terrorism law No. (13) for the year 2005 in force and the anti-terrorism law in Iraqi Kurdistan No. 3 of 2006, as their entry into Iraq was against the law, and their residency there was not also legal, and therefore Iraq has the right to try them as perpetrators of crimes (), and according to the regional jurisdiction that applies the provisions of Penal Code No. 11 1 for the year 1969, the rate applicable to all crimes committed in Iraq, and the crime is considered committed in Iraq if one of the acts constituting it occurred, or if its outcome is achieved or it was intended to be investigated, and in all cases the law applies to everyone who participated in a crime that occurred all or Some of them are in Iraq even if their contribution is abroad, whether it is an actor or a partner ().

As long as the crimes committed by foreign ISIS women, Iraqi law applies to them in imposing the punishment, as the anti-terrorism law stipulated that terrorism is ((every criminal act by an individual or an organized group that targets an individual or group of individuals or groups or official institutions or other Official or damage to public or private property in order to disturb the security situation or stability or national unity or the introduction of terror, fear or dismay among people or create chaos in order to achieve terrorist goals)) (). The Penal Code applies to cases where there is no provision in it and its provisions are not exempted except in the case of a text in an agreement or treaty to which Iraq was a party providing for extradition ().

In the light of the Kurdistan region of Iraq, Law No. (3) of 2006 on combating terrorism in the Kurdistan Region of Iraq was issued, and in the first article of it stipulated that “(the terrorist act is every organized use of violence, threatening it, inciting it, glorifying it and resorting to the perpetrator in implementation of a project.” Criminal, individual, collective, or random intended to inflict terror, fear, dismay, and chaos to disturb public order or endanger the security and safety of society and the region and the lives of citizens, their freedoms and their sanctities at risk or harm individuals or harm the environment or one of the natural resources or public or private property to achieve political or intellectual goals or Religious, sectarian or racist)). ()

However, this law was issued by a decision of the Parliament of the Kurdistan Region and it was re-voted in Parliament three times until now, as it is valid for two years at a time and the last time it was voted on on 16/6/2014 has expired again on 6/16/ 2016, and therefore the region will work to implement the provisions of the Iraqi Penal Code until a renewed vote on the law by the Kurdistan Parliament () ↯.

The existence of Article (17) of the law, which indicated that the period of validity of the law is two years from the date of its publication in the Official Gazette (Kurdistan

Fact Sheet) leaves a legislative vacuum for its end, and therefore the provisions of the Penal Code must be applied to terrorist acts committed by ISIS, and that the suspects in The Kurdistan Region has been accused of committing the crime of belonging to ISIS before the law expired and this is what has been reported by some judges concerned with fighting terrorism in Erbil. As for more recent cases, there are a number of other criminal charges that can be used to detain suspects, including the law on possession And the use of explosives (No. 8 of 1992), which allows the death penalty to be imposed on adults.

From the foregoing, we find that the mechanism applied to ISIS crimes is:

- 1- Implementation of the provisions of the anti-terrorism law No. 13 of 2005 in force.
- 2- Applying the provisions of the anti-terrorism law in the Kurdistan Region of Iraq No. 3 of 2006.
- 3- The provisions of the Iraqi Penal Code No. 111 of 1969 amending are applied to crimes committed by ISIS in the absence of a provision in the anti-terrorism law. ()

Section Two - The Legal Adaptation of Iraqi Women from ISIS:

Iraqi women joined the terrorist organization, who played a fundamental role in the organization's seizure of many areas, including the Qayyarah district in Mosul, and they contributed to their work as elements of terrorist cells. Iraqi and officers have given their home addresses to arrest, execute and torture them as they pose a threat to the organization ().

The criminalization of the actions of Iraqi ISIS women is carried out in accordance with the Iraqi Anti-Terrorism Law in force No. 13 of 2005, which decides to impose the death penalty against anyone who carried out a terrorist act. Refer to the penal law in the absence of a provision in the aforementioned law that requires the punishment to be imposed.

Another group of women who represent ISIS families without their participation in terrorist acts also show us, as the media show that, according to UNICEF reports, there are numbers of ISIS families that include their women and children. Local governments in governorates that were under the control of the terrorist organization have placed them in camps for themselves and their children. The camps are located in the governorates of Tikrit and Anbar, and the families of ISIS have lived since 2016 until now in it. The status of these camps has met with supporters and opponents, as those who were exposed to terrorist acts support their exit from the liberation and exhibition areas and see their situation as contrary to international human rights standards. These camps lack the most important elements of life, according to reports submitted by international organizations (). We believe that the current situation will not continue and that these families are proven to be legally accountable, but in the absence of legal impediments and a danger to their lives is achieved, they are returned to their areas of origin.

The second requirement - the ruling on verbs assigned to ISIS women (foreign and Iraqi).

We will address this requirement in three branches: The first will address the measures taken in the arrest of the women of the organization and the suspects. As for

the second branch, we will deal with the penalties imposed on them and the third branch on the extent of their coverage of the amnesty law.

The first branch: The measures taken by the Iraqi authorities regarding ISIS women and suspects

The Iraqi Code of Criminal Procedure Law No. 23 of 1971 in force stipulates that the filing of a complaint includes a lawsuit against the criminal right, which is a request to take criminal measures against the perpetrator of the crime and impose a penalty on it. () The law also indicated that the investigation is carried out by writing the testimony of the complainant or the informant, then the testimony of the victim and other witnesses of evidence, and whoever requests the litigants to hear their testimonies, as well as the testimony of a person who applies on his own to provide his information if it benefits the investigation and the testimony of persons who reach the knowledge of the ruler or investigator that they have information related to the accident. () The United Nations believes that arrests of members of the organization and suspects are widespread based on wanted lists or statements by individuals from local communities without additional evidence and that this leads to sometimes wrong information and the detention of boys and men and women who have no real relationship with ISIS or on the most against their will carried out civil activities in support of the organization and that their arrest may be due to their reporting due to tribal, family, or personal differences. () The organization considers that the arrest of the suspect should be carried out in accordance with the Iraqi Criminal Procedure Law.

Returning to the Iraqi Code of Criminal Procedure, we find that the principle in detention is that there should be an arrest warrant from the court, and this was confirmed by the Iraqi authorities, as it issued two decisions reminding the security forces to obtain an order before arrest in a clear acknowledgment of this matter and that individuals are detained according to the Code of Criminal Procedure This was confirmed by the Iraqi Ministry of the Interior, especially in the issue of similarity of names, as it issued a circular in which it obligated the workers in the ministry to adopt complete and accurate information to implement arrest warrants. () In response to this report, we find that the Code of Criminal Procedure Qiyya generally gave individuals the right to arrest any person accused of a felony or misdemeanor in the event that the crime was witnessed or if he fled after his arrest legally or had been sentenced in absentia to a freedom-restricting punishment. The law also required every police member or member of the judicial police to Any person against whom an arrest warrant was issued by a competent authority, or who was carrying a visible weapon or hidden in contravention of the provisions of the law or prevailed over suspicion and for reasonable reasons that he committed a felony or intentional misdemeanor and did not have a specific residence, and these two texts clarify the arrest of the perpetrators without arrest warrants. In ordinary crimes we see that it is applied from BA The first in terrorist crimes. ()

As for the procedures followed against the suspects in the Kurdistan Region of Iraq, we find that the provincial government has amended Articles (109) and (123) of the Criminal Procedure Law that obligated the region's authorities to refer detainees to a judge within (24) hours of arrest, after which it is possible The judge may issue orders

to renew detention for periods of up to (6) months. Asayish forces can detain and interrogate individuals while preparing the case for presentation to the investigating judge, and after 6 months the case must be transferred to trial. ()

Section Two - Sanctions against ISIS Women (Foreign and Iraqi Women):

The penalties imposed on them are according to the crimes committed against them and according to the following:

First: The death penalty:

1- In the event that the foreign ISIS is an original actor or a partner. Islamic women are responsible for terrorist acts that involve violence or threats aimed at throwing terror among people, endangering their lives, freedoms, and security, or endangering their money and property, whatever their causes and purposes, in implementation of an organized or individual terrorist project ().

2- Knowing about violence and threatening to sabotage, demolish, destroy, or intentionally damage buildings, public properties, governmental interests, governmental institutions, bodies, state departments, the private sector, public facilities, and public places intended for public use or public meetings to use the public or public money and try to occupy it Or seizing it, endangering it, or preventing it from being used for its intended purpose as a source of destabilization of security and stability ().

3- In the event that they organize or support the leadership of the ISIS terrorist gangs and plan to do so and contribute or participate in this work ().

4- Their work with violence and threats to provoke sectarian strife, civil war or sectarian fighting by arming citizens or forcing them to arm each other with incitement and financing.

5- Assault with firearms on the military, police, volunteering centers, or security departments, or attacks on national military sectors, their supplies, communication lines, camps, or bases for terrorist motives, and their example (female suicide bombers).

6- Kidnapping ().

7- Every act motivated by terrorism threatens national unity and the safety of society, and every action that involves the initiation of force or violence at the center of the regime and the form of the state established in the constitution or inciting civil disobedience ().

8- ISIS women are instigators, planners, and financiers who enabled the terrorists to carry out the crimes mentioned in the law ().

Second - life imprisonment:

If they intentionally conceal any terrorist act or harbor a terrorist person with the aim of covering up ().

Third - The prison sentence:

If they voluntarily provide information to the competent authorities after the crime has occurred or been discovered by the authorities and before their arrest, the information will enable the arrest of other shareholders ().

Exemption from the penalties mentioned in this law is carried out in the event that they inform the competent authorities before the crime is discovered or when planning it, and their reporting contributes to the arrest of the perpetrators or prevents the execution of the work ().

The provisions of the penal code in force shall be applied in the absence of any provision in the applicable anti-terrorism law. It should be noted that if the death sentence is pronounced against the accused accused of the crime and she was pregnant upon receiving the execution order, the prison administration must inform the Chief Public Prosecutor to submit his reading to the Minister of Justice to postpone or reduce the execution of the sentence. From the Minister based on what the President of the Republic decides, and if the renewed order requires the death penalty to be executed, it will not be implemented until four months after the date of her pregnancy, whether she was placed before the order was received or after it. By execution, four months have not passed since the date of its establishment, and the penalty has not been carried out before four months have passed since its date of birth, even if the order is received again for execution. ()

As for the penalties imposed on the suspects under the anti-terrorism law in the Kurdistan Region, the law indicated that the penalties are execution, temporary imprisonment, and severe imprisonment for everyone who carried out a terrorist act in accordance with the provisions contained in it. ()

Section Three - Punishment Strategy and Amnesty Law:

Despite the existence of the Iraqi Anti-Terrorism Law and the Anti-Terror Law in the Kurdistan Region of Iraq to hold ISIS members accountable, the Human Rights Organization believes that there is no national strategy for ISIS trials, and has reached the following:

1 - Not to include a wide range of crimes through the charges against the suspected members of the organization, as there is no national plan to coordinate these trials and give priority to the prosecution of those involved in the most serious crimes, and there is no priority to distinguish the most serious crimes committed by ISIS.

2- The suspects appear before the courts for violating the anti-terrorism law without being charged with other charges contained in the Iraqi Penal Code and therefore are not given priority to more serious crimes such as genocide, kidnapping, forced expulsion and torture.

3- Not to allow the families of the victims and witnesses who are most in need of justice in their participation in the trials to present their accounts or ask questions to the suspects and therefore the crimes committed against countless Iraqi citizens are not known, as the matter is limited to focusing on giving victims compensation in relation to the crimes against the Yezidis An ad hoc committee was formed to audit these crimes. ()

The report of the Human Rights Organization confirmed the absence of the national strategy in the trial of the organization and that what raised the organization's

concerns was the issuance of the Iraqi Amnesty Law No. (27) for the year 2016, as this law permitted amnesty for any person who appears to have joined the terrorist organization without his will, provided that he is not a perpetrator For terrorist crimes represented by killing, maiming, or attacks against state institutions or forces, and those who did not commit kidnapping, rape, and trafficking in persons, as the perpetrators of these crimes do not benefit from this law. ()

As for the position of the Iraqi judiciary, the Iraqi Supreme Judicial Council affirmed that judges can assess whether the defendants meet the standards of the law and if they should be released and did not explain the numbers of those facing charges under the amnesty law. ()

The report of the Human Rights Organization has indicated that it is necessary to give priority to the most serious crimes and not to include those who have carried out secondary work to serve the organization in the anti-terrorism law and we believe that this matter cannot be taken as the judiciary determines the degree of seriousness and gravity of the act by the suspect and we emphasize the need Giving priority to the most serious crimes, but it does not mean that those who joined the organization are not held accountable by providing aid or subsidies by various means, and we see that the failure of the families of the victims to participate in the trials is due to the security situation and the availability of appropriate conditions to achieve trial conditions in the presence of the families of the victims and there is an important point is that the law All judges in investigation, trial, and appeal consider the application of the amnesty law to each of the defendants, whether before or after the conviction, and this leads to a delay in resolving the most serious cases, as the failure of judges to choose not to apply the amnesty law enables the defendant to submit a request to transfer his case to the amnesty committee In the Supreme Judicial Council, either to request the application of a pardon or to retry, and this in turn leads to a delay in resolving cases related to crimes committed by ISIS. ()

As for the Kurdistan Region of Iraq, the Kurdistan Regional Government did not work to issue a law on amnesty, and the provisions of the region's anti-terrorism law are applied to pursue ISIS suspects all of them. So it requires the following:

- 1- That the most serious perpetrators, ISIS officials and leaders are held accountable. And then to refer to the perpetrators of the least serious crimes, which include providing support and support for the elements of the organization.
- 2- That the range of terrorist crimes that include, in addition to the excluded crimes, include genocide, rape and kidnapping by the cells of the organization against civilians.
- 3- Speedy resolution of cases related to terrorist operations.
- 4- Listen to the statements of witnesses and victims to ensure full justice.
- 5- Documenting the numbers of criminals and their crimes committed in the liberated provinces.

The second topic

The situation of children in the shadow of ISIS terrorist operations

A child is every person under the age of eighteen unless he reaches the age of majority before that, according to the law applicable to him. () Therefore, we will address this topic through two requirements: The first is the legal status established for children in the shadow of ISIS terrorist operations. As for the second requirement, we will address children who are recruited and suspected of belonging to ISIS during and after the liberation operations.

The first requirement: The legal status established for the benefit of children in light of the ISIS terrorist operations:

The phenomenon of recruitment of children and women into armed terrorist forces and groups has become one of the most dangerous phenomena that constitute a clear violation of international, legal and moral rules that urge respect for the rights of children and women, their care and the protection of them. The exacerbation of this phenomenon and its increase was represented by their participation in hostilities in many parts of the world and their recruitment into the armed forces, and this is what happened in Iraq in light of the terrorist acts carried out by the organization. Therefore, he called on the international community to address the phenomenon of the participation of children and women in hostilities as follows:

Section I - Legal texts on the development and effective provision of special protection rules for children within the first protocol submitted by the International Committee of the Red Cross in 1971 ().

These texts obligated the parties to the conflict not to involve children under the age of fifteen years in hostilities, to serve their armed forces, to accept their volunteering or use them for military purposes, and their proposals were:

- 1- Preventing the recruitment of children under the age of fifteen.
- 2- Preventing their volunteering in the regular and irregular armed forces.
- 3- Not providing assistance to the armed forces or using them to transfer or conceal weapons and ammunition ().

Section Two - Prohibition of the recruitment of children before the age of fifteen, and this is included in the draft Protocol II of 1973

Section III - Prohibition of attacks and bombings against the civilian population, which children and women suffer more than others, and such acts must be condemned ().

Section IV - The total and total ban on the participation and use of children in international and non-international armed conflicts established in Geneva within the diplomatic conference in 1977 ().

Section V - The International Convention on the Rights of the Child in 1989, which was adopted by the United Nations General Assembly in its Resolution No. (44/25), issued in 1989 ().

Section VI - International efforts by the International Committee of the Red Cross in accordance with the Optional Protocol that entered into force in 2002 to raise the minimum age for participation in hostilities to eighteen, as the second option

stipulated in the protocol that no armed group distinct from The armed forces of any country in any circumstance use persons under the age of eighteen in hostilities and urged states parties to take feasible measures to prevent such recruitment by using legal measures to prohibit and criminalize these practices ().

The second requirement is that children recruited and suspected of belonging to ISIS during and after the liberation operations

International humanitarian law granted children and women in the event of armed conflict the protection of states 'obligation to provide special protection and respect for them in the context of armed conflict. Paragraph (b) of Article (29) stipulated first of the Constitution of the Republic of Iraq for the year 2005: ((The State shall guarantee the protection of motherhood, childhood and old age and shall care for the young and the young and provide them with the appropriate conditions for the development of their property and capabilities)) (), and the Constitution also prohibited the economic exploitation of children The state takes the necessary measures to protect them and prevents all forms of violence and abuse in the family, school and society. The state also guarantees social and health security, especially for the child, as well as the basic foundations for living in a free and dignified life. () The Iraqi laws stipulated the responsibility of children as follows:

The first branch: The Penal Code:

It stipulated that the criminal case shall not be brought against a person who was not at the time of the commission of the crime having completed the seventh. () The law also stipulated the responsibility of juveniles and defined the juvenile (he who completed seven years of age and did not complete eighteen years). If the juvenile at the time of the crime was committed did not complete fifteen years, he is considered a boy. Taken for juveniles, they are as follows:

1- If the juvenile committed a violation, he shall be judged in lieu of the punishment prescribed to him in law by warning him at the session or by handing him over to one of his parents or whoever has the right to guardianship over himself or the educator. ()

2- If the child commits a misdemeanor, he shall rule in lieu of the punishment prescribed to him by law by handing him over to one of his parents, or to him who has the right to guard against himself or the educator. If he undertakes in writing to preserve his good behavior and his life for a period of no less than (6) months and not exceeding three years starting from the date of the judgment, or that he be sentenced to confinement to a correctional school for a period of no less than six months and not exceeding three years, or to be sentenced to a fine no matter what Punishment for misdemeanor in law. () The same applies to the boy.

3- If the juvenile commits a felony or misdemeanor after handing it over to one of his parents, the person responsible for him, or the educator during the period of the undertaking, he who commits a pledge of good behavior or his life to a guarantee of no more than one hundred dinars if the crime committed is a felony and not more than fifty dinars if the crime committed is a misdemeanor. ()

Those who follow the provisions of the Iraqi Penal Code will find it stipulated that the boy and the boy be detained in schools for delinquent and corrective boys, and

stipulated that the provisions of the offense will not apply to the juvenile and shall not be subject to subordinate and complementary penalties and precautionary measures other than confiscation, closing the store, and prohibiting access to bars (). At the time of the commission of the crime, he has completed eighteen years of age, has not completed twenty years of life, and life imprisonment shall replace the death penalty. ()

The second branch: Juvenile Welfare Law No. 76 of 1983:

The law stipulated the necessary measures against (the boy, the boy and the juvenile) when committing a violation, misdemeanor or felony (), as well as stipulating the application of the provisions of the Penal Code and the Code of Criminal Procedure, provided that no provision was made in this law. ()

The third branch: Code of Criminal Procedure No. 23 of 1971:

The law indicated that the court hearing the juvenile's case should seek the assistance of misdemeanors and felonies in official and other social and health service organizations and experts and doctors to investigate the social, health, mental, psychological and environmental situation in which it arose and the reasons that prompted him to commit the crime, taking into account the provisions contained in other laws that require Referral of the juvenile to specific bodies for examination, a measure is issued to the juvenile and prevents his arrest and mixing it with the detainees of adulthood (). The juvenile is exempted from taking his fingerprint for the purpose of the investigation () and if the foregoing represents an interest in Iraqi internal law actively Children criminal does that apply in the event of terrorist activity?

The Iraqi constitution and the laws issued in Iraq regarding children (boy, boy, juvenile) singled out very special care and attention as they were in compliance with international covenants that ensured special care for children, and criminal activity in terrorism was not touched, and the Human Rights Organization confirmed in its report on children Those suspected of belonging to ISIS in Iraq, considering that children who were recruited by ISIS are victims of the organization and that they should not be detained in illegal facilities or detained without accusations or accused of committing terrorist acts without support with the need to inform their families of this detention and the need to present them to the juvenile justice according to Issued by the Iraqi government and the government of the Kurdistan region laws and are not detained with adults as the international conventions and standards applicable to children in any criminal activity applicable to the situation of children's alleged involvement in terrorism-related activities and that the recent detention of children solution be taken by the authority ().

What is stated in the report is consistent with the approach of Iraqi law and the texts contained therein, which devoted special care to children and prevented the taking of measures against them except in specific cases. However, what was stated in the report of the Human Rights Organization requires a long pause and scrutiny of the situation of children mentioned in it, as it is not permissible In all cases, the detention of children with adults who are adults, just as the Constitution and the law require their own care and care with regard to indictment, detention and trial, and that the death penalty cannot be imposed on them in all cases, and this is what is required by

international standards and the Convention on the Rights of the Child to which Iraq joined ().

In addition to children recruited and suspected of belonging to ISIS, another problem arose from the children born to the members of the organization. Do they obtain legal protection and enjoy the civil rights of the Iraqi child?

By referring to the Iraqi Nationality Law, we find it stipulated in Article (3) ((considered an Iraqi: a) whoever was born to an Iraqi father or an Iraqi mother. B- whoever was born in Iraq from unknown parents and a foundling found in Iraq is there unless the evidence exists Otherwise))().

Therefore, we find children born to an Iraqi father or an Iraqi mother who holds Iraqi citizenship, and the same applies to the found found in Iraq.

Likewise, the text of Article (44) of the Juvenile Law No. 76 of 1983, which indicated that “(the proportions of unknown lineage are admitted before the Juvenile Court in accordance with the Personal Status Law)” also stated in Article (45) of it that (“the unknown minor is considered an ethnic Muslim” Unless otherwise established)) ().

But the question arises about the possibility of applying these texts to the children of ISIS?

We see that the practical reality requires legislative intervention in resolving the legal status of children born to members of the ISIS organization, as their presence in Iraq requires the issuance of a law or text that resolves their conditions ().

Conclusion:

At the conclusion of our research, we reached:

Results:

1- Many foreign women join the terrorist organization as well as Iraqi women who have participated in providing support to the terrorist organization, which requires them to be tried in accordance with the provisions of Iraqi law based on the regional competence of the Iraqi Penal Code No. 111 of 1969, the effective amendment that requires its provisions to apply to all crimes committed in Iraq The occurrence of the acts constituting the crimes in it, as well as the achievement of its outcome or was intended to be investigated.

2- The Anti-Terrorism Law No. (13 of 2005) amending applies to the crimes committed by women of the terrorist organization, whether I am a foreigner or an Iraqi. In the event that it is devoid of a text to address crimes, reference is made to the provisions of the Iraqi Penal Code No. 111 of 1969 as amended and consideration is given to the agreements Concluded by Iraq for the extradition of criminals in relation to women of the terrorist organization of foreign women.

3- The Iraqi law singled out texts to protect children of their ages from (a boy, a boy and a juvenile) in the event of criminal activity. This protection was represented by taking the necessary measures to legally question them, in addition to the inadmissibility of public trial or detention with adults of adulthood and preventing the death penalty against them categorically and preventing Take their fingerprints or

detain them for long periods, except in accordance with the provisions specified in the law.

Recommendations:

- 1- The necessity to prosecute and punish the perpetrators of serious crimes, who are members of the organization, for committing violations and crimes against innocent civilians and expedite their trial.
- 2- Including a greater number of crimes excluded from the amnesty law to prevent the release of perpetrators of crimes that were not mentioned in the anti-terrorism law and were received under the Iraqi Penal Code or under international conventions that are crimes against humanity.
- 3- Documenting crimes and their perpetrators, as the rules of justice require that the size of crimes committed by ISIS terrorist elements be clarified, along with an indication of the number of women associated with the organization, Iraqi and non-Iraqi, who commit these crimes.
- 4- Allowing the families of the victims and witnesses to attend the trials of the organization members.
- 5- The necessity of emphasizing the application of the provisions of the legal texts contained in the Iraqi constitution and Iraqi laws that have taken care of children at all their age levels and given them special attention in all stages of their accountability in terms of indictment, punishment and trial.
- 6- The necessity of stressing that children should not be detained with adults of age, as this develops a criminal feeling and leads to the creation of another terrorist generation after the end of detention.
- 7- Ensure that the affected and victims' families are given the necessary compensation and that they return to their areas in the absence of any risks to their lives.
- 8- The necessity of taking the necessary measures that encourage the physical and psychological rehabilitation and social reintegration of women and civilian children in the liberated areas. This rehabilitation and reintegration takes place in an environment that promotes the health, self-esteem and dignity of the child, and this is confirmed by the rules of international humanitarian law and the child rights agreements that Iraq joined.
- 9- The need for the legislator to take measures to ensure that the issue of ISIS children born of foreign or Iraqi women is resolved, whether by applying the provisions of Iraqi law or members of a special legislative text that addresses this case for the purpose of avoiding the reasons leading to the existence of this phenomenon and repeating it again.

Sources:

First - Legal books:

- 1) Dr. Ahmad Qasim Al-Jeddawi, Al-Wajeez in Private International Law, Dar Al-Nahda Al-Arabiya, Part One, 1977.

- 2) Dr. Hasan al-Hadaawi, Nationality and the Status of Foreigners and its Provisions in Iraqi Law, Fourth Edition, University of Baghdad (without a year of printing).
- 3) Dr. Shams Al-Din Al-Wakeel, Abstract in Nationality and the Status of Foreigners, First Edition, Monshaat Al-Maarif, 1694
- 4) Dr. Abdel Moneim Zamzam, Center for Foreigners in International and Comparative Egyptian Law, Second Edition, Dar Al-Nahda, Cairo, 2005.
- 5) D. Fouad February, Legal Center for Foreigners in Syria, Damascus, 1965.
- 6) Karar Saleh Hammoudi, International Protection of Children and Women in the Event of Armed Conflict, First Edition, Zain Human Rights Library, Beirut, 2015.
- 7) Dr. Mahmoud Said Mahmoud Said, International Protection of Children in Times of Armed Conflict, Arab Renaissance House, Cairo, without a year printed.
- 8) D. Yassin Al-Yasiri, The Center for Foreigner in Iraqi Law, Second Edition, 2011.

Second - Theses and Research:

- 1) Dr. Ahmad Abu Al-Wafa, Categories covered by the protection of international humanitarian law, research published in a guide to international humanitarian law for application at the national level, Dar Al-Mustaqbal Al-Arabi, first edition, 2003.
- 2) Haider Khalaf Joudeh, Recruitment of Children in Armed Conflict - Master Thesis submitted to the College of Law, University of Baghdad, 2000.
- 3) Khalid bin Ali Al Khalifa, Child Protection in Armed Conflict, Childhood and Development Magazine, Fourth Issue, Volume 1, 2001.
- 4) Rashad El-Sayed, Forced Deportation of Civilians in the Light of International Humanitarian Law, research published in the Egyptian Journal of International Humanitarian Law, Volume (51) of 1995.

Three - Articles and Reports:

- 1) An article for children who are victims of armed conflict. The news network is published on the website <http://www.annabaa.orgarbic.Rights>.
- 2) An article about the expiration of the anti-terrorism law in the Kurdistan Region of Iraq on July 16, 2017 at the link:

www.rudaw.net/arabickurdistan/160720161

- 3) Human Rights Watch research, Adalah lacked accountability for ISIS crimes in Iraq, published on December 2017 at (Iraq1217ar.web.pdf).
- 4) Confessions of the most dangerous ISIS women in Mosul, article published on the website on July 16, 2017 at www.alalam.ir.news.

Fourth - International laws and charters:

- A) The Constitution of the Republic of Iraq for the year 2005.
- B) 1- Iraqi Penal Code No. 111 of 1969.

- 2- Iraqi Criminal Procedure Law No. 23 of 1971.
 - 3- Iraqi Juvenile Care Law No. 76 of 1973.
 - 4- The Aliens Residence Law No. 118 of 1978 repealed.
 - 5- The Law of Ratification of the Convention on the Rights of the Child No. (3) of 1994.
 - 6- Anti-terrorism Law No. 13 of 2005.
 - 7- The Iraqi Nationality Law No. 26 of 2006.
 - 8- Anti-terrorism law in the Kurdistan Region of Iraq No. 3 of 2006.
- C) International instruments:
- 1- Fourth Geneva Convention of 1949.
 - 2- The first protocol to the Geneva Convention in 1977.
 - 3- The Convention on the Rights of the Child No. 3 of 1994.