

Legal protection of the child between international conventions and Algerian legislation

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Abstract :

Child protection has become a prominent topic at both the international and national levels. Numerous international agreements have been established to ensure the legal protection of children. This heightened focus reflects the unique needs of this vulnerable population, who require care, support, and safeguards.

The Algerian legislature acknowledges children as an integral part of the Algerian family and has enacted various national laws to provide them with special protection.

Keywords: Child, legal protection, childhood, child rights, family

Introduction:

Child rights have gained significant attention and care due to their importance in safeguarding human life. Various types of legislation have prioritized childhood, recognizing it as a vulnerable and unique group¹. This prioritization aims to preserve future generations and enable them to develop solid physical, mental, moral, and scientific foundations. This can be achieved by making childhood a top priority for society. Consequently, legislation has emphasized the importance of child rights and ensuring the necessary protection and care for children, as they are the foundation on which society is built.

The protection of child rights has become a prominent topic on the international stage, leading to the enactment of numerous international and regional conventions. These efforts have a long history, predating the establishment of the United Nations. Notably, the League of Nations adopted the Declaration of the Rights of the Child in 1924. This declaration enshrined several fundamental principles and rights that later served as a foundation for international instruments related to child protection.

Recognizing the importance of these principles, the Social Committee of the United Nations General Assembly recommended transforming the Declaration of Geneva into a UN document, emphasizing the importance of child rights within the organization's framework. This culminated in the adoption of the Declaration of the Rights of the Child on November 20, 1959. The declaration is built upon the principles enshrined in the Universal Declaration of Human Rights adopted on December 10, 1948, specifically highlighting the right to care and assistance for mothers and children.

Further international efforts led to the adoption of the Convention on the Rights of the Child in 1989, which entered into force in 1990. This comprehensive convention encompasses a wide range of civil, cultural, economic, and social rights for children. It has been ratified by a significant number of countries worldwide.

Algerian law reflects the international emphasis on childhood. The country ratified the Convention on the Rights of the Child in 1989 through Presidential Decree 92/461 of December 19, 1992, which included interpretative declarations². Algeria was one of the first countries to ratify this convention, demonstrating its commitment to protecting children's rights. This commitment is further evident in the constitutional protection granted to children, as well as in the enactment of numerous legal provisions that provide special protection for children within various laws, such as the Algerian Penal Code and Law No. 15/12 on the Rights of the Child³.

One of the most important goals of the international conventions on the rights of the child is to ensure that national legislation works to achieve the care and protection of the child in a way that complies with international standards. This is to unify the standards that concern the protection of childhood since this protection is granted to children from the day they are born until they reach the age of fifteen. International legislation has intervened and raised the age of childhood to eighteen, which is what most national legislation has settled on⁴.

Research Question:

In light of the above, we can pose the following problem:

To what extent have international and national legislation succeeded in providing legal protection for children?

Methodology:

The study adopts an analytical, descriptive, and comparative approach. It analyzes the topic of child protection and the rights granted to children at both the international and national levels. The study is divided into two sections:

- ❖ **Section 1:** Examines child rights in international conventions.
- ❖ **Section 2:** Explores the legal protection granted to children in Algerian law.

Section One: Child Rights in International Conventions

Subsection One: Child Rights in the Universal Declaration of Human Rights (1948)

This declaration aims to ensure the right to life, liberty, and personal security for all individuals. It prohibits slavery, servitude, torture, and cruel, inhuman, or degrading treatment or punishment. The declaration also emphasizes human dignity and the legal personality of all individuals, ensuring equality before the law and non-discrimination. Additionally, it protects the right to privacy, prohibiting interference in an individual's personal life, family, home, or correspondence, and preventing attacks on honor and reputation. The declaration encompasses a wide range of human rights that cannot be fully explored in this study⁵.

The Universal Declaration of Human Rights also addresses the issue of childhood, which is also covered by protection and certain rights. Children have the right to care and assistance, the right to social protection, and the right to free education, especially at the primary and intermediate levels. This is achieved by making primary education compulsory. Vocational and technical education, is available and accessible to all, while university and higher education is available to individuals based on their academic qualifications⁶.

Subsection Two: Child Rights in the International Covenant on Civil and Political Rights (1966)

In addition to the rights enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights grants additional rights to individuals under the age of 18. It prohibits the imposition of the death penalty on crimes committed by persons under 18 and the execution of pregnant women, emphasizing the protection of the unborn child's life. The covenant also emphasizes the separation of adults and children during detention and their prompt referral to the competent judicial authorities for the resolution of their cases. It calls for certain measures during the trial process to be taken into account due to their age, such as confidentiality⁷.

The covenant also places great importance on the family and emphasizes the need to protect children who are victims of separation, as they are more vulnerable to harm. It recommends that children should not be subjected to racial discrimination for any reason and guarantees every child the right to a name, nationality, and access to protective measures⁸.

Subsection Three: Child Rights in the Convention on the Rights of the Child (1989)⁹

The United Nations Convention on the Rights of the Child was adopted by the UN General Assembly on November 20, 1989. It comprises 54 articles divided into three parts and a preamble.

This convention guarantees the child's right to necessary protection and well-being¹⁰, as well as the provision of economic, social, and cultural rights and the state's measures to ensure them¹¹. Articles 5, 6, 7, and 8 of the convention refer to the child's right to life, survival, name, nationality, and preservation of identity.

The convention is committed to providing legal protection for children against all forms of violence and sexual exploitation and requires the state to take the necessary measures to prevent such occurrences¹². The state is also responsible for the unlawful detention of children¹³ and grants the child the right to an independent personality, enabling them to make their own decisions based on their age and intellectual maturity¹⁴.

The Convention on the Rights of the Child also guarantees the child the right to freedom of expression¹⁵ and freedom of thought and religion¹⁶. It obliges the state to encourage the media to disseminate information that is beneficial to the child's social and cultural development¹⁷.

The convention makes parental responsibility a shared responsibility for the protection of their children¹⁸. It also obliges the states parties to the convention to take legislative, administrative, social, and educational measures to protect children from all forms of violence¹⁹.

Section Two: Legal Protection of Children in Algerian Legislation

Algeria's accession to most international conventions and bodies for the protection of children's rights is one of the most important indicators of the Algerian legislature's interest in this category. Algeria joined the Convention on the Rights of the Child on December 19, 1992, which was adopted by the United Nations General Assembly on November 20, 1989. Algeria has also joined many other international conventions issued in this regard²⁰.

The Algerian legislator's interest in the issue of children is evident in its efforts to make the national legislative system consistent with the international conventions to which Algeria has acceded. The legislator has granted children constitutional protection, in addition to allocating a significant number of articles in the Penal Code that protect children. Furthermore, Law No. 15/12 on the Protection of the Rights of the Child was issued, which provides for the establishment of a National Authority for the Protection and Promotion of Childhood, which will be headed by a National Commissioner for the Protection of Childhood, with this committee being placed under the supervision of the Prime Minister.

Subsection One: Children's Rights in the Algerian Constitution

The Algerian Constituent Assembly has attached great importance to children, and this is evident in the various Algerian constitutions. Most Algerian constitutions have addressed the issue of protecting human rights, especially the 2020 Constitution in its second chapter, entitled: Fundamental Rights, Public Freedoms, and Duties.

The first chapter also addresses fundamental rights and public freedoms, which are rights that protect most age groups in society, including children. We will discuss some of these constitutionally guaranteed rights. The state has granted children the right to education and made it guaranteed. Article 65 of the Constitution states the most important points that guarantee education in society, which are:

- The right to education is guaranteed.
- Public education is free according to the conditions determined by law.
- Basic education is compulsory.
- The state organizes the national education system.
- The state ensures equality in access to education and vocational training.

The state has also guaranteed the right to health care for children and most groups in society²¹ and has granted the family the necessary protection. It has also prohibited violence against children, as stated in Article 72 of the Constitution:

- The family enjoys the protection of the state and society.
- The family, society, and the state protect the rights of the child.
- The state cares for abandoned or unknown children.
- The law punishes violence against children.

Subsection Two: Legal Protection of Children in the Algerian Penal Code

Ordinance No. 66-15 of June 8, 1966, containing the amended and supplemented Penal Code, includes many legislative texts that criminalize various types of assault and physical and psychological exploitation that target children. We will discuss these in the following points²²:

First: Criminalization of intentional acts of violence committed against minors, as stipulated in Article 269 of the Penal Code:

- ✓ Assault or injury against a minor under the age of sixteen.
- ✓ Depriving a minor of food or necessary care may endanger their health.

Second: Criminalization of acts that involve abandoning children and the disabled and exposing them to danger, by creating penal texts against anyone who exposes the life and health of a minor child to danger, either by abstaining from doing their duty towards them or by committing a prohibited act.

Article 314 of the Penal Code punishes anyone who abandons a child in a deserted place or forces or encourages others to do so. The punishment is increased to a criminal offense if the child dies or suffers a permanent disability. Article 317 also punishes any parent of the minor for committing the aforementioned acts.

The Algerian legislator also punishes anyone who incites the parents or one of them to abandon a child who has been born or will be born to obtain a benefit. The same applies to anyone who obtains a contract from the parents to give up the newborn or to use it, or who starts using it or acts as a mediator for the same purpose²³.

Third: Criminalization of acts that may prevent the verification of the child's identity and personality, which relate to the intentional transfer, concealment, or replacement of a child with another and presenting the latter

as having been born to a woman who did not give birth to him in circumstances that make it impossible to verify his identity.

In addition to the crimes of kidnapping minors and not handing them over, which is punishable under Articles 326, 327, 328, and 329 of the same law. These acts can be summarized in the following points:

- Removal of a Minor Under the Age of Eighteen
- Refusal to hand over a child under his care to persons who have the right to claim him.
- Whoever Willfully Refuses to Hand Over a Minor Child to Their Custodian According to a Final Judgment, a Judgment with Provisional Enforcement, or Kidnaps Them from Their Custodian.
- Whoever Deliberately Conceals a Minor Who Has Been Kidnapped, Removed, or Made to Flee and Does Not Notify the Public Authorities

Fourth: Criminalization of acts that may harm the family, especially those related to abandoning the family and neglecting it. These acts can be summarized in the following points²⁴:

- A parent who leaves their family home for more than two months and abandons all their obligations arising from their parental authority.
- A parent who exposes the health of their children or one of them to danger by mistreating them or setting a bad example for them by being addicted to alcohol or bad behavior.
- Anyone who refuses to pay the alimony awarded to their children for more than two months.

Fifth: Acts that are considered a violation of decency and that can be committed against children and minors, which are criminalized by Articles 334, 335 paragraph 02, 336 paragraph 02, 337, and 02/338. These articles relate to the conviction and punishment of anyone who commits the following acts:

- An indecent act without violence committed against a minor who has not become an adult by marriage and is over 16 years old.
- An indecent act without violence committed by a parent against a minor who has not become an adult by marriage, even if he is over 16 years old.
- Rape of a minor under the age of six.

Sixth: The Algerian legislature has made acts that incite minors to debauchery and prostitution criminal acts. It has created penal texts that punish anyone who commits the following acts:

- Anyone who incites minors who have not reached the age of nineteen to debauchery or moral corruption, or encourages or facilitates them to do so.
- Anyone who helps or protects the prostitution of minors or lives off its profits or shares these proceeds with another person, as well as the mediator in these acts, and anyone who obstructs the prevention, supervision, assistance, or rehabilitation work carried out by specialized organizations for minors who are victims of these practices.

Subsection Three: Legal Protection of Children in Law No. 15/12 on the Protection of the Child

The Algerian legislator has attached great importance to juvenile delinquency, as evidenced by the legal protection imposed in Law No. 15/12 on the Protection of the Child, dated 2015. The legislator has granted several legal guarantees to this category, adopting a position that emphasizes legal protection over the punitive and deterrent aspects. In doing so, it enshrines the legal principles outlined in the Convention on the Protection of the Child. This law includes several legal provisions that were previously scattered between the Code of Criminal Procedure and the Law on the Protection of Childhood and Adolescence. However, this law still needs some regulatory texts²⁵.

Children can be involved in some crimes. The judicial police are responsible for investigating and searching for crimes committed by juveniles before initiating public prosecution. They use all available means to receive complaints, collect data and evidence, and investigate the crime and all its circumstances²⁶. The Algerian legislator has granted the child a set of rights at this stage, which are listed in Articles 48 to 55 of Law No. 15/12²⁷.

This law grants the child the right to be assisted by a lawyer during the investigation and pre-trial detention stages. It also allows the child to receive the necessary care inside specialized centers, from a health, psychological, and educational perspective. It has also introduced the mediation procedure²⁸.

Mediation is a new procedure introduced by the legislator in the Child Law to provide protection for the child²⁹ and to keep them away from the courts and protect their legal background. This procedure involves an agreement between the child and the victim³⁰, in which they agree on a settlement, either in the form of a financial payment or in another way that satisfies both parties, such as not harassing the victim in the future. The child may also undertake, under the guarantee of his legal representative, to fulfill one or

more obligations, such as studying or staying away from the reasons that led him to commit the criminal act³¹.

It is important to note that mediation can be requested by the child, his lawyer, his legal representative, or the public prosecutor himself, because of the role he plays in protecting the interests of juveniles. This procedure can also be carried out at any time before the public prosecution is initiated. It can be carried out before the judicial police, on condition that the report is submitted to the public prosecutor. This procedure requires the presence of all parties involved in the mediation, to get their opinion. If the agreement is reached, a mediation report is drawn up and signed by all parties and endorsed by the public prosecutor. A copy is given to each party. This report is considered an enforceable document. The public prosecutor must also ensure that the child complies with his obligations. If the child fails to comply with these obligations, the public prosecutor will initiate public prosecution³².

Conclusion :

This study aligns the definition of a child with most international child rights conventions, including the UN's CRC (Convention on the Rights of the Child.), setting the age of majority at eighteen. Algerian Law No. 15/12 reflects this definition. However, the study argues this age might be outdated. While national and international law unifies the age of childhood as starting pre-birth and ending at eighteen, the study suggests eighteen falls outside true childhood, considering individuals at that age are unlikely to exhibit childish behavior and may not require specific protection.

The issue of children's rights has been addressed at the international level since the adoption of the Universal Declaration of Human Rights, which enshrined several fundamental rights for children. It is considered one of the first international texts to address the rights of this category. The Declaration guarantees children the right to care and assistance, as well as the right to social protection and free education, especially in the primary and middle stages, by making primary education compulsory.

At the international level, the International Covenant on Civil and Political Rights has added some rights for persons under the age of eighteen. It prohibits the imposition of the death penalty for crimes committed by persons under eighteen years of age, as well as the execution of pregnant women, to protect the fetus. It also prohibits the mixing of adults and children in detention, among other rights guaranteed to the child.

This study also concludes that the Convention on the Rights of the Child, established by the United Nations, is considered one of the most important pieces of legislation at the international level. This is due to the enormous number of rights guaranteed to the child in the texts of this Convention. It guarantees the child the right to protection and well-being, as well as social and cultural rights. It also protects the child from sexual exploitation, physical and psychological violence, and guarantees freedom of belief and religion, among other rights.

As for the Algerian legislature, it has also given great importance to children, as evidenced by the legislative texts that protect this age group. These texts begin with the provisions of the Constitution, pass through the provisions of the Penal Code, and reach the texts specific to the child, such as Law No. 15/12, which enshrines many rights for the child, especially the category of juvenile delinquents. It guarantees them the right to a fair trial, as well as many guarantees before and after the trial. The legislator has also introduced the mediation procedure to keep children away from the courtroom atmosphere, to resolve disputes that children may be involved in before the start of public prosecution, and to protect the interests of this vulnerable group.

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²) Fouad Mansour, "Legal Guarantees for the Protection of the Child at Risk and the Child Victim in Light of the Algerian Child Protection Law 15/12," *Journal of the Voice of Law*, vol. 07, no. 02, November 2020, p. 1103.

³) Law No. 15/12 on the Protection of the Child, dated 15/07/2015, Official Gazette, No. 39, dated 19/07/2015.

⁴) The United Nations Convention on the Rights of the Child defines the child as:

Any person under the age of majority, which is estimated at 18 years.

This is what the Algerian legislator went to, in Law No. 15/12 concerning the rights of the child; where he defined it as well as:

Any person who has not reached the full age of eighteen (18 years).

It appears from the two previous definitions that national and international legislations have agreed to unify the age of majority, in order to limit the age of childhood, that is, the latter begins before the birth of the child, and continues until he reaches the age of eighteen.

We consider this age to be somewhat outdated for the age of childhood, as the age of eighteen is far from the age of childhood; considering that the person at this age is as far as possible from the childish behaviors that require the provision of legal protection to the person who deserves it.

See also in this regard:

- Hajira blouhia, *The Rights of the Child between International Conventions and the Algerian Penal Code*, Dar al-Jamia al-Jadida, Alexandria, 2011, p. 13.
- Quoted from: Khadija Guerdaïne, *Protection of the Juvenile Delinquent in the New Child Protection Law*, *Mediterranean Journal of Law and Economics*, vol. 02, no. 01, 2017, p. 183.

⁵⁾ Khadidja Djaafar, "The Legal Protection of Children's Rights in Domestic Laws and International Conventions," *Journal of Law and Human Sciences*, vol. 15, no. 3, 2022, p. 268.

⁶⁾ Khadidja Djaafar, *op. cit.*, p. 268.

⁷⁾ Khadidja Djaafar, *op. cit.*, p. 268.

⁸⁾ Sofian Bekhada, "Legal Guarantees for the Protection of the Child in Light of International Human Rights Law and National Legislation," *Journal of Crossings*, vol. 06, no. 01, p. 15

⁹⁾ Sofian Bekhada, *op. cit.*, p. 159.

¹⁰⁾ Article 3 of the Convention on the Rights of the Child (1989).

¹¹⁾ Article 4 of the Convention on the Rights of the Child (1989).

¹²⁾ Articles 9 and 10 of the Convention on the Rights of the Child (1989).

¹³⁾ Article 11 of the Convention on the Rights of the Child (1989).

¹⁴⁾ Article 12 of the Convention on the Rights of the Child (1989).

¹⁵⁾ Article 13 of the Convention on the Rights of the Child (1989).

¹⁶⁾ Article 14 of the Convention on the Rights of the Child (1989).

¹⁷⁾ Article 17 of the Convention on the Rights of the Child (1989).

¹⁸⁾ Article 18 of the Convention on the Rights of the Child (1989).

¹⁹⁾ Article 19 of the Convention on the Rights of the Child (1989).

²⁰⁾ Sofian Bekhada, *op. cit.*, p. 161.

²¹⁾ Article 66 of the 2020 Constitution: Health care is a right for citizens.

²²⁾ Sofian Bekhada, *op. cit.*, pp. 163 et seq.

²³⁾ Article 320 of the Algerian Penal Code.

²⁴⁾ Articles 330 and 331 of the Algerian Penal Code. See for a detailed discussion: Ahsan Bousskia, *A Concise Guide to Special Criminal Law, Part One* (Dar Houma, Algiers, 2009), p. 158; and Zahra Dakkaichia, "The Criminal Protection of the Child in Light of the Algerian Penal Code," *Journal of Law and Political Science*, vol. 3, no. 2 (June 2016), p. 265.

²⁵⁾ Brahim El Khal and Abdelhak Morsli, "Protection of Children's Rights under Law No. 15/12," *Journal of Legal and Political Sciences*, vol. 10, no. 1, 2019, p. 65.

²⁶⁾ Ibrahim Harb Hassan, *Procedures for Prosecuting Juvenile Delinquents in the Pre-Trial Phase: An Inference and Investigation*, Dar Al Thaqa for Publishing and Distribution, Amman, Jordan, 2019, p. 25. Quoted in: Dhieb Imad Daman and Sabrina Djebaili, "Mechanisms for Protecting Juvenile Delinquents (A Study of the Algerian Child Protection Law No. 15/12)," *Journal of Law and Political Science*, vol. 8, no. 2, September 2021, p. 397.

²⁷⁾ Dhieb Imad Daman and Sabrina Djebali, *op. cit.*, p. 397.

²⁸⁾ Brahim El Khal and Abdelhak Morsli, *op. cit.*, p. 65.

²⁹⁾ Khadidja Guerdaine, *op. cit.*, p. 197.

³⁰⁾ The victim is considered a fundamental element in the mediation process, as it cannot be achieved without the actual presence of the victim, based on his/her connection to the issue of compensation. The victim is anyone whose protected interest has been affected by the law, whether the harm was caused by the child or the child put the victim at risk. See in this regard: Zaki Zaki Hussein Zidane, *The Right of the Victim to Compensation for Moral Damage*, Dar Al Fikr Al Jamia, Alexandria, 2004, p. 17. Quoted in: Mona Khair Meqlaty, "Criminal Mediation and Its Role in Protecting Juvenile Delinquents in Light of Law No. 15/12 on Child Protection," *Journal of Law and Political Science*, vol. 5, no. 1, January 2018, p. 127.

³¹⁾ Article 114 of the Child Protection Law No. 15/12.

³²⁾ Khadidja Guerdaine, *op. cit.*, p. 198.