

Legal and contractual protection mechanisms for the child

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Abstract---This study examines the protection of children's rights within Algerian legislation, tracing the historical trajectory from the marginalization of children—who were once prosecuted as adults without regard for their developmental vulnerability—to their contemporary constitutional and statutory recognition. The analysis demonstrates that Algeria has progressively aligned its domestic legal framework with international standards, particularly through ratification of the 1989 Convention on the Rights of the Child and the constitutional entrenchment of child protection in both the 1996 and 2020 Constitutions. The study identifies Law No. 15-12 of 2015 as a pivotal legislative instrument that consolidated previously dispersed provisions into a unified framework addressing children in dangerous situations, juvenile offenders, and victims. However, the research reveals a significant structural deficiency: the absence of a uniform legal age definition across offenses, with statutory thresholds varying between 13, 16, and 18 years. This legislative inconsistency undermines the coherence of protective mechanisms and may compromise the efficacy of safeguards depending on the child's age. The study concludes that while Algeria has established a comprehensive protection continuum from prenatal life to legal majority, harmonizing the age-based criteria remains imperative to ensure the uniform application of the best interests of the child principle.

Keywords---Child protection, Algerian legislation, Law 15-12, Best interests of the child, Legislative inconsistency.

Introduction

The child is inherently a vulnerable being, lacking sufficient capacity to defend themselves—whether psychologically, physically, or intellectually—which has rendered them, throughout the ages, the segment of society most susceptible to neglect, violation, and abuse. In the past, for instance, children were marginalized and even tried as adults without any consideration for their tender age or the circumstances of their childhood. However, with the advancement of human civilization and the elevation of human consciousness, the legal status of the child gradually began to change, particularly following the advent of divine religions, which accorded children significant attention and emphasized their rights and the necessity of their care.

Given that the child is among the most fragile categories in society due to their incomplete physical and mental maturity, various divine laws and legal systems have devoted considerable attention to affirming the child's status and the obligation to provide care. This was subsequently followed by international conventions, foremost among them the Convention on the Rights of the Child of 1989. Algeria, in this regard, was not removed from this evolving reality; rather, it kept pace with and integrated into this trajectory through its ratification of the Convention on the Rights of the Child in 1992 by virtue of Presidential Decree No. 93-481. It also issued a series of laws aimed at protecting the child, such as Order No. 103-72 concerning the

protection of childhood and adolescence, and Decree No. 83-80 concerning the establishment and organization of childcare centers.

Furthermore, Algeria worked to incorporate explicit provisions for the protection of children's rights into its Constitution, particularly in the 1996 Constitution and the 2020 Constitution, where Article 71 of the latest constitutional amendment stipulates that **"the rights of the child are protected by the State and the family, with due consideration for the best interests of the child."** This was not limited to the preamble alone; rather, the entire second section was dedicated to the subject of rights and freedoms, reflecting a strong will to make child protection an original constitutional principle.

In 2015, Law No. 15-12 dated 15 July 2015 concerning the protection of the child was enacted. This law consolidated all previously scattered legislative texts and provided comprehensive protection for the child, whether as a victim, a juvenile offender, or a child in a dangerous situation. The protection even extended to foreign national children. The Algerian legislature also devoted attention to organizing judicial procedures concerning children, enacting stringent provisions that criminalize child abduction and assault.

Despite all these legislative efforts, certain criticisms of Algerian legislation in the field of child protection remain, particularly regarding the variation in the legal age of the child depending on the type of offense committed against them. Some texts set the age at 18 years, others at 16, and yet others at 13, reflecting a degree of inconsistency in legislative policy that may lead to inadequate protection depending on the child's age. This makes the study of child rights protection in Algerian legislation a matter of paramount importance, in order to identify the strengths and weaknesses of this legal system.

By virtue of their nature, the child is a weak being who does not possess adequate capacity to defend themselves—whether physically, mentally, or psychologically—which has made them, throughout history, the group most exposed to neglect, violation, and assault. In the past, children were marginalized and even prosecuted as adults without any regard for their young age or the conditions of their childhood. But with human progress and the evolution of consciousness, the perception of childhood gradually changed, particularly thanks to divine religions, which took great interest in the child and emphasized their rights and the necessity of their care, foremost among them Islamic Sharia, which considered children the **"apple of their parents' eye"** and a true treasure for society.

As the child is one of the most fragile groups in society due to their incomplete physical and mental maturity, they require special care and protection at all levels:

religious, legal, psychological, social, and economic. In recognition of the importance of this group, various divine laws and legal systems have accorded them substantial attention. Islam came to affirm the status of the child and the obligation to care for them, followed by international conventions, foremost among them the Convention on the Rights of the Child of 1989.

As for Algeria, it did not remain distant from this development but moved at the same pace. It ratified the Convention on the Rights of the Child in 1992 under Presidential Decree No. 481/92, and issued a number of laws aimed at protecting the child, such as Order No. 103/72 concerning the protection of childhood and adolescence, and Decree No. 83/80 concerning the establishment and organization of childcare centers. It also worked to include explicit texts in the Algerian Constitution for the protection of children's rights, particularly in the 1996 Constitution and then the 2020 Constitution, where Article 71 of the latest constitutional amendment states that the rights of the child are protected by the State and the family, with due consideration for the best interests of the child. This was not limited to the preamble alone; rather, the entire second section was devoted to the subject of rights and freedoms, reflecting a strong will to make child protection an original constitutional principle.

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Despite all these legislative efforts, certain criticisms directed at Algerian legislation in the field of child protection and care persist, particularly regarding the variation in the legal age of the child depending on the type of crime committed against them, where we find texts setting the age at 18 years, others at 16, and others at 13, reflecting a kind of fluctuation in legislative policy that may lead to inadequate protection depending on the child's age. This affects, both legally and judicially, the strengthening and promotion of child rights protection, ensuring the activation of the entire legal system in this regard.

1. The Child in Algerian Legislation

Defining the nature of the child is a fundamental step for understanding the scope of the legal and criminal protection they enjoy, both procedurally and substantively, according to their legal status. The child is not merely an individual in a stage of growth; rather, they are a legal entity possessing a set of rights that impose upon

society and the State the obligation to provide the necessary protection for these rights.

1.1. Legal Protection of the Child in Algerian Legislation

Legislations have differed in their definition of the child, particularly with regard to determining the age of discernment and the age of majority. This difference originally stems from the diversity of political, social, and cultural systems, as well as the nature of the environment in which the child lives.

The Algerian legislature determines the age of majority according to the person's legal status. Most legal determinations of the age of majority can be extracted as follows:

- Age of Majority under Article 40 of the Civil Code: The age of majority is attained when a person reaches 19 years of age.
- Age of Majority under Article 07 of the Family Code: The age of majority for marriage is set at 19 full years of age.

The Algerian legislature has linked the concept of the minor to legal capacity, as minority is the state of a person who has not attained the civil capacity specified at 19 years. It has also linked the age of criminal responsibility to the penal concept, set at 18 years for criminal accountability under Article 442 of the Code of Criminal Procedure, which expressed this as the **"age of penal majority"**: **"The age of penal majority shall be attained at the completion of eighteen years."**¹

The Algerian legislature also stipulated in Article 1 of the Law on the Protection of Childhood and Adolescence that **"minors who have not completed twenty-one years of age, whose health, morals, or upbringing are exposed to danger, may be subject to protective measures,"** meaning that a child is one who has not reached twenty-one years of age².

It is noticeable that the age of majority in Algerian law is not uniform; it differs from one law to another. The resolution of this issue was achieved through Algeria's ratification of the Convention on the Rights of the Child of 1989, which defined the child in its Article 1. This means that, under Algerian law, the child is a human being who has not attained the age of eighteen.

Prior to the enactment of Law 15/12 concerning the protection of the child, the Algerian legislature did not provide a comprehensive and definitive definition of the juvenile or child in the Code of Criminal Procedure; rather, it limited itself to

¹ Madani Hajira Nashida. *Child Rights Between Sharia and Law*. Master's Thesis, University of Ben Aknoun, Algeria, 2012, p. 20.

² Raybar Sabir Muhammad. *Child Rights in Algerian Legislation and the International Convention*. Al-Wafa Legal Library, 1st ed., 2015, p. 15.

determining the age of majority in Article 442 of the Code of Criminal Procedure, which states: **"The age of penal majority shall be attained at the completion of eighteen years."**

With the enactment of Law 15/12 concerning the protection of the child, we find that it links the definition of the child to the attainment of the age of majority, stipulating in its Article 2: **"The child: every person who has not attained the age of eighteen (18) full years; the term 'juvenile' carries the same meaning."**

It is noteworthy that this definition came close to the definitions provided by various legislations and international conventions, which in their entirety define the child as every human being who has not exceeded 18 years of age. Referring to Article 1 of the Convention on the Rights of the Child of 1989, we find it defines the child by stating: **"For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."**

We also find that the African Charter on the Rights and Welfare of the Child defines the child as every human being below the age of eighteen years.³

The legislature, in Article 2 of Law 15/12, clarifies that the term 'juvenile' carries the same meaning as the term 'child' provided by this article. Referring to the various laws issued prior to this law, we find that the legislature expressed young age by the terms 'child,' 'juvenile,' or 'minor,' referring to one who is below the age of majority. The term 'minor' was used in Article 493 of the Code of Criminal Procedure and Article 49 of the Criminal Code, as well as in the texts of Order 72-03 concerning childhood and adolescence before its repeal. The term 'juvenile' was also used in Article 494 of the Code of Criminal Procedure and in most texts of Order 75-64 before its repeal, which concerned the establishment of institutions and services responsible for the protection of childhood and adolescence.

1.2. Criminal Protection of the Child in Algerian Legislation

Criminal protection of the child refers to the set of means established by the criminal legislature to protect the rights of the child as a victim (the aggrieved party) on one hand, and the rights of the juvenile offender or the child exposed to moral danger on the other hand.

As for the first category, it pertains to the enactment of special provisions for the punishment of acts that harm the child, endanger their life, bodily integrity, or morals, or the aggravation of punishment for certain crimes stipulated in the Algerian Penal Code or its complementary laws when the victim is a child. These provisions

³ Boulahia chahira. *Child Rights Between International Conventions and Algerian Penal Code: A Comparative Study*. Alexandria: Dar al-Jami'a al-Jadida, n.d, p. 14.

protect the child as a victim of the crime. Although this protection is generally of an objective nature, some legislations also establish procedural rules to protect child victims in certain crimes.

It should also be noted that there are direct costs associated with appearing before the judgment court for the offense of leaving the family home and failing to surrender the child, in accordance with Article 337 of the Criminal Code.⁴

As for the second category, concerning the means of protecting children criminally, it includes the special criminal treatment of the juvenile offender who has committed a crime or is susceptible to deviance. The substantive criminal protection of the child is manifested in the substantive rules for addressing juvenile delinquency, which consist of the penalties imposed upon the juvenile upon proof of their delinquency. Its distinguishing features include the mitigation of penalties imposed on them, with an emphasis on the rehabilitative character according to the juvenile's age stage, taking into account the best interests of the juvenile and their status as a victim of the surrounding social circumstances that served as an impetus for the commission of the crime, and the application of the principle that deprivation of liberty is a last resort to which recourse is only had in cases of extreme necessity.⁵

From this perspective, most contemporary criminal legislations have adopted a special procedural treatment for this category, distinct from that applied to adults, differing in its scope and extent, whether with regard to criminal responsibility in all its aspects or with regard to the special procedural rules for their prosecution and trial.⁶

From the foregoing, it can be said that the essence of criminal protection, in general, lies in criminal law, which is distinguished by two fundamental characteristics: the first relates to the nature of the prescribed penalty, and the second is linked to the nature of the interest protected by law.

2. International Criminal Protection of the Child

The international community has long sought to protect the child through contractual and conventional mechanisms, all of which have acquired a binding character, calling upon States to abide by their provisions under the threat of punishment and all forms of international accountability.

⁴ Mahmoud Ahmad Taha, *Criminal Protection of the Child Victim* (Riyadh: Naif Arab Academy for Security Sciences, 1999), p. 10.

⁵ Muhammad Azouzi, *Criminal Protection of the Child Victim of Abuse*, Specialized Graduate Diploma in Private Law, Faculty of Law, Fes, Morocco, 2006, p. 6.

⁶ Hajj Ibrahim Abd al-Rahman, *Investigation and Inquiry Procedures in Juvenile Crimes: A Comparative Study Between Algerian and Egyptian Legislation*, Master's Thesis, Cairo University, Faculty of Law, 2008, p. 115.

2.1. General International Conventions

Numerous international organizations have undertaken to establish legal texts, both general and specifically related to the child, to provide special protection for them—on one hand, due to their physical and mental immaturity, and on the other hand, because children are among the segments of society most exposed to killing, destruction, and displacement due to wars.

Among these texts, we mention the *Geneva Declaration of the Rights of the Child*, issued by the League of Nations in 1924; the *Universal Declaration of Human Rights* of 1948;⁷ the two *International Covenants* of 1966;⁸ the *Declaration of the Rights of the Child* issued on 20 November 1959;⁹ the *United Nations General Assembly Declaration on the Protection of Women and Children in Emergency and Armed Conflict* of 1974; and ultimately, the *Convention on the Rights of the Child*, adopted by the United Nations General Assembly in its Resolution 44/24 dated 20 November 1989—the most important convention in this field. Algeria acceded to this convention and supported it with a legislative system.

2.1.1. Protection of the Child Under the International Covenant on Economic, Social and Cultural Rights

The United Nations General Assembly adopted the *International Covenant* on 16 December 1966, and it entered into force on 3 January 1976 upon the deposit of the instrument of ratification or accession in accordance with Article 27 of the *Covenant*. It came to affirm the importance of this type of rights for the actual enjoyment of all human rights. Article 10 of the *Covenant* affirmed the obligation to provide the family with protection and assistance throughout its fulfillment of its responsibility towards the care and upbringing of dependent children, and required the provision of protection for mothers before and after childbirth.

Paragraph 3 of Article 10 required the adoption of special protective and assistance measures for all children and adolescents without any discrimination, prohibited their economic and social exploitation, and stipulated that laws should punish the employment of children in any work that is likely to corrupt their morals or harm their health or endanger their lives or impede their normal development. Article 11 of the *Covenant* also implicitly recognized the child's right to an adequate standard of living

⁷ *Universal Declaration of Human Rights*, adopted by the United Nations General Assembly on 10 December 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948). Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁸ *International Covenant on Civil and Political Rights*, adopted by U.N. G.A. Res. 2200A (XXI) of 16 December 1966, entered into force 23 March 1976; *International Covenant on Economic, Social and Cultural Rights*, adopted by U.N. G.A. Res. 2200A (XXI) of 16 December 1966, entered into force 3 January 1976.

⁹ *Declaration of the Rights of the Child*, adopted by the United Nations General Assembly on 20 November 1959, G.A. Res. 1386 (XIV).

for their family, providing for their needs of food, clothing, and housing, and to enjoy the highest attainable standard of physical and mental health. Article 13 made primary education compulsory and free for all.

Although the Committee on Economic, Social and Cultural Rights was established to monitor the implementation of the Covenant by States through the reports it receives, it cannot compel those concerned with children's rights or hold them accountable, as it can only issue observations and recommendations. Nevertheless, the Covenant remains more effective in its implementation than the Universal Declaration of Human Rights, which lacked guarantees.¹⁰

2.1.2. Protection of the Child Under the International Covenant on Civil and Political Rights

The Covenant, which entered into force on 23 March 1976 and to which Algeria acceded by Presidential Decree No. 99/67 dated 16 May 1989 with reservations, contained numerous provisions establishing the protection of the child. Its preamble affirmed that the States Parties to the Covenant, recognizing that these rights derive from the inherent dignity of the human person, are essential for the promotion of freedom, justice, and peace in the world. Article 14 of the Covenant further reinforced the rights of the child.¹¹

2.2. Special International Conventions

In this section, we address the most important international texts related to the child, focusing primarily on the Declaration of the Rights of the Child of 1959 and the Convention on the Rights of the Child of 1989.

2.2.1. Declaration of the Rights of the Child, November 1959

This declaration, consisting of ten principles, affirmed that every child shall enjoy the rights set forth therein without discrimination, and recognized that the child, due to their physical and mental immaturity, needs special protection. Principle Two made the enjoyment of special protection a necessity, and required that the best interests of the child be a primary consideration in enacting laws. It also recognized the child's right to a name and nationality, healthcare before and after birth, the right to education, and even its compulsory nature at the primary level. Furthermore, it afforded every child the opportunity to play and enjoy recreation. Principle Eight required that the child be among the first to receive protection and relief in all circumstances.

¹⁰ Jaber Ibrahim al-Rawi, *Human Rights and Freedoms in International Law and Islamic Sharia* (Amman: Dar Wael Publishing, 1999), pp. 229-230.

¹¹ Article 14, Charter of the United Nations, adopted on 26 June 1945, entered into force 24 October 1945, 1 U.N.T.S. XVI.

In this context, the International Association of Penal Law and the International Institute of Higher Studies in Criminal Sciences organized a conference in Siracusa, the proceedings of which were published in the *International Review of Penal Law* in the third and fourth issues of 1979. The participants in this conference submitted to the United Nations a set of recommendations to serve as the foundation for the preparation of the Convention on the Rights of the Child.¹²

2.2.2. Convention on the Rights of the Child, 1989

The United Nations General Assembly adopted the Convention on the Rights of the Child by its Resolution 44/25 dated November 1989. This Convention was based on a fundamental principle: "**the child first**," affirming the necessity of prioritizing the child's interests and protection. The Convention came in 54 articles divided into three parts. The first part included, for the first time, a legal definition of the concept of the child as every human being below the age of eighteen years, as stipulated in Article 1.

The Convention also obligated States Parties to respect and ensure the rights of the child, undertaking to provide the necessary protection and care to ensure their well-being. It included a set of fundamental rights that children must enjoy, including the right to life, the right to preservation of identity, the right to education, freedom of thought, as well as the right to healthcare and social security, and the right to rest and leisure. The Convention also paid special attention to children with disabilities, emphasizing the necessity of providing them with the necessary care to ensure their integration and effective protection.

As for the second part of the Convention on the Rights of the Child (Articles 42-45), it includes the identification of the competent bodies for follow-up and supervision, the most important of which is the International Committee on the Rights of the Child, composed of ten experts elected from among specialists, which holds three sessions per year and aims to:

- Receive periodic reports from States on the status of children's rights and their development.
- Submit reports to the United Nations General Assembly through the Economic and Social Council.
- Conduct studies and present observations, recommendations, and proposals to member States of the United Nations.

While the third part (Articles 46-54) is devoted to final provisions, it is noteworthy that reservations to this Convention are permissible, as is withdrawal from it. For this

¹² Mahmoud Sharif Basyouni, *Child Protection Without Protection of Their Rights: New Horizons of Criminal Justice in the Field of Juveniles* (N.P., N.D., 1992), p. 48.

reason, a number of Islamic States entered reservations on the text of Article 21 concerning adoption.¹³

2.3. Conventions of Specialized International Organizations

In this matter, we shall attempt to examine the efforts made by some specialized agencies and the endeavors of some international regional organizations.

2.3.1. The Role of UNICEF: The United Nations Children's Fund in Child Protection

UNICEF has worked since its establishment in 1946 as an agency for the relief of children in war-torn Europe and their protection throughout the world. It operates in 162 countries, guided by the Convention on the Rights of the Child.¹⁴

In this context, the Organization has endeavored, in cooperation with governments, international organizations, and civil society movements, to convene two World Summits for Children: the first in 1990 and the second in 2002, in which States affirmed the necessity of activating the implementation of the Convention on the Rights of the Child.

UNICEF is also one of the founding partners of the *Global Movement for Children*, a coalition of organizations and individuals from all walks of life and from all over the world who have dedicated their efforts to promoting children's rights and changing the world with children. This movement produced a campaign bearing the slogan "**Say Yes for Children.**"¹⁵

2.3.2. The Role of UNESCO: The United Nations Educational, Scientific and Cultural Organization in Child Protection

UNESCO, within the framework of the United Nations family, specializes primarily in education, culture, and science. It undertakes the activation of education and the dissemination of culture and learning, without discrimination based on sex, race, or economic or social status. It works to propose appropriate educational methods to prepare children throughout the world to assume the responsibilities of free human beings.¹⁶

¹³ Article 21 of the Convention on the Rights of the Child, 1989. Available at: <https://www.unicef.org/sop/convention-rights-child-text>.

¹⁴ UNICEF Official Website. Available at: <https://www.unicef.org>.

¹⁵ Ahmad Abu al-Wafa, *International Protection of Human Rights Within the Framework of the United Nations and Specialized Agencies* (Alexandria: Dar al-Nahda al-Arabiyya, 2000), p. 209.

¹⁶ *Ibid.*, p. 209.

2.3.3. The Role of the International Labour Organization in Child Protection

Pursuant to Article 3 of the International Covenant on Economic, Social and Cultural Rights and Article 32 of the Convention on the Rights of the Child of 1989, the International Labour Organization has taken interest in child labour through the issuance of numerous international conventions, including:

- The International Convention concerning the Minimum Age for Admission of Children to Industrial Employment of 1937, which set the age at 15 years.
- The Convention concerning Medical Examination of Children and Young Persons for Fitness for Employment at Sea.
- The Convention concerning Night Work of Children.
- The Minimum Age Convention of 1973 (No. 138), which set the age at 15 and 18 years for work that exposes the child to danger.

2.3.4. The Role of the Food and Agriculture Organization in Child Protection

The Organization undertakes to raise the levels of nutrition and standards of living of the populations of member States and to improve general welfare for the purpose of liberating humanity from hunger. Perhaps the most important instrument issued by the Organization is the Universal Declaration on the Eradication of Hunger and Malnutrition of 1974, which recognized for every human being, woman, and child an inalienable right to be free from hunger and malnutrition; for hunger constitutes an affront to human dignity.

The World Health Assembly adopted Resolution No. 10/47, which urged States to prevent harmful traditional practices affecting the health of women and children, in addition to the assistance provided directly to children, whether independently or with the help of other international agencies such as the International Bank for Reconstruction and Development and the International Development Association.¹⁷

2.4. Criminal Protection of the Child at the Regional Level

This section shall focus on the regional texts concluded in the field of criminal protection of the child, which we shall address in terms of their importance, particularly those of the European Union, which has taken and continues to take the lead in providing protection for children not only in its region but throughout the world. The European Union's conviction that the rights and best interests of children must be promoted was manifested in the European Convention on the Exercise of Children's Rights of 1996, which entered into force on 7 January 2000. Given that the rights of the child are contained in numerous United Nations conventions, the European Convention focused on the procedural rights of the child and enabling them to express their opinion, with due importance given to these views. In this context, the judicial authority must act speedily and confidentially when necessary.

¹⁷ Aqila Kharbashi, *Child Protection Between Universality and Particularity*, Legal Studies, Basira Center for Research, Consultation, and Educational Services, Issue No. 5, Algeria, 2009, p. 57.

Article 13 of the Convention encouraged mediation and other means of resolving disputes involving children. The Convention also provided for the establishment of a standing committee to examine matters related to the implementation of the Convention, which may adopt recommendations by a two-thirds majority vote of the member States. What is particularly noteworthy is that Article 24 of the Convention prohibited reservations, indicating the importance accorded to the child and the strong desire to unify the positions of European States regarding the child. This type of protection has been termed international contractual protection or international conventional protection.

Conclusion

The protection of the child in Algerian legislation is an endeavor emanating from society's concern to protect this group from all negative patterns of life, so that they may enjoy better legal status than all other segments of society due to the vulnerability they possess—biologically, socially, and economically. The Algerian legislature has followed in this regard the approach of all international legal systems, regardless of the diversity of their protective sources for this group, whether from religion, custom, international conventions, or other rules of social conduct. This has not prevented it, in any way, from working to activate all forms of protection mechanisms, from the time the child is a fetus in their mother's womb to their birth, and so on until they reach the legal age that enables them to bear their moral and legal responsibilities.

This was evident, for example, through Law 15-12 of 2015, which brought about a qualitative leap in civil and criminal protection procedures. This law consolidated the legislative and conventional texts related to the protection of the child into a single law, whether the child is in a dangerous situation, a juvenile offender, or a victim.

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