

International Guarantees for the Protection of the Family between the Universality of Legal Texts and the Specificity of Their Application

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Abstract:

The international normative entrenchment of family protection constitutes a structural cornerstone of the human rights system. However, its enforcement is constrained by the tension inherent in reconciling the universality of legal texts with the specificity of national contexts. This paper seeks to elucidate the substantive and procedural guarantees established by the International Bill of Human Rights and specialised conventions, particularly those relating to women and children, while also analysing the supervisory role of treaty bodies in ensuring normative compliance. This study further examines the Algerian legislature's experience in harmonising international obligations with identity-based particularities, particularly through the mechanism of legal reservations. The research concludes that the effectiveness of international protection remains contingent upon the establishment of a finely calibrated balance that safeguards the universality of rights without undermining the value frameworks and family-related public order of states.

Keywords: international guarantees; protection of the family; universality of legal texts; specificity of application; Algerian legislation

1. INTRODUCTION

The family is regarded as the primary structural unit within the social fabric and the fundamental pillar upon which the stability of states and the soundness of their construction depend. Thus, the issue of its protection is no longer confined to purely national frameworks; rather, it has come to occupy a central place in international human rights law. This rights-based momentum has generated an integrated normative framework aimed at conferring a characteristic of “universality” upon the rights of the family through the establishment of a set of legal guarantees varying in nature between substantive rules that articulate rights and procedural supervisory mechanisms that ensure compliance. However, this universal normative

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aspiration encounters, at the threshold of actual implementation, the diversity of legal systems and the multiplicity of states' cultural and religious reference frameworks, thereby necessitating an examination of the dialectic of reconciling the universality of the legal text with the specificity of the national environment and a clarification of the boundaries separating treaty obligation from legislative sovereignty.

The scholarly significance of this research lies in tracing the contemporary transformations affecting the legal status of the family in light of the “internationalisation” of its governing rules, as well as in enriching legal scholarship on the extent to which international standards are binding in family matters marked by identity-based sensitivity. Its practical significance, meanwhile, is manifested in offering an evaluative approach to the extent to which national legislation responds to its international obligations and in identifying the instruments through which balance may be maintained between universal requirements and internal particularities. Despite the abundance of studies addressing the family, the research gap lies in the scarcity of studies that analytically link the robustness of international text to the obstacles impeding its application in societies marked by particularity; thus, a study that combines normative theory and applied practice is needed.

On this basis, the central problem of the study crystallises in the following fundamental question: To what extent do the international guarantees established for the protection of the family achieve an effective balance between the universality of legal texts and the specificity of their application at the national level? What are the principal challenges that impede the optimal activation of these guarantees?

To address this problem, the descriptive-analytical method was adopted to examine international legal texts and conventions and analyse their content, with a recourse to the comparative method to identify points of divergence in the application of these guarantees across different legal systems and within Algerian legislation. Hence, this article is divided into two principal sections: The first addresses the international guarantees established for the protection of the family. In contrast, the second examines the limits to their application.

Section One: International Guarantees Established for the Protection of the Family

From the perspective of contemporary international law, the family is regarded as the primary social structure upon which the various forms of social organisation are founded and as the natural framework within which shared human values are embodied. This explains the growing international concern about it as a legal entity that transcends purely national jurisdiction.¹ This orientation took shape through the entrenchment of family protection within the international framework, as the international will, from the second half of the twentieth century onwards, moved toward conferring the character of *jus cogens* upon the status of the family as “the natural and fundamental group unit of society,” in accordance with article 16 of the Universal Declaration of Human Rights and article 23 of the International Covenant on Civil and Political Rights.² This entrenchment was not confined to axiological recognition;

¹ Benmelha El Ghouthi, *International Law and Human Rights: A Comparative Study*, 2nd ed. (Algiers: Office des Publications Universitaires, 2010), 45.

² See article 16(3) of the Universal Declaration of Human Rights, issued pursuant to General Assembly Resolution 217 A (III) at its third session on 10 December 1948, expressly approved by Algeria under article 11 of the 1963 Constitution, *Official Gazette of the Algerian Republic*, no. 64, 10 September 1963; article 23 of the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification, and accession by United Nations General Assembly Resolution 2200 A (XXI) of 16 December 1966, entered into force in 1976, and

rather, it imposed positive obligations requiring states to provide the legal and economic protection necessary to guarantee the right to establish and maintain a family in a manner consistent with the requirements of human dignity.¹

However, the effectiveness of this normative framework remains contingent upon the efficiency of the mechanisms and the guarantees of international protection for the family, which serve to transform legal texts from the realm of declaratory stillness into that of procedural enforceability. The supervisory framework founded upon the system of periodic reports, together with the quasijudicial mechanisms competent to examine individual communications, constitutes essential tools for uncovering violations and ensuring normative compliance.² However, the problem of the “universality of legal texts” as opposed to the “specificity of application” necessitates a careful reading of the extent to which these guarantees are capable of adapting to the legal and cultural plurality of states, particularly in light of the adherence of national systems to their doctrinal and social reference frameworks. This places national sovereignty and international obligations within a delicate balance aimed at safeguarding the family without compromising the identity-based particularity of societies.³

First, the Entrenchment of Family Protection within the International Framework:

International concern for the family constitutes one of the most salient manifestations of the development of rights-based thought, as it has been recognised as a legal entity with an international dimension, subject to rules that ensure its cohesion.⁴ This transformation was embodied in the treatment of the family as “the natural and fundamental group unit of society” under the Universal Declaration and the two International Covenants of 1966, thereby giving rise to positive obligations linking its rights to the civil and social order.⁵ With the growing number of challenges, the international community will move toward “targeted protection” through specialised conventions such as CEDAW and the CRC to achieve balance in family relationships.⁶ However, this normative accumulation encounters the problem of “harmonisation” with environments characterised by diverse cultural and religious reference frameworks, thereby raising the dialectic of reconciling the universality of legal texts with their specific application.⁷ As a result, the study of this entrenchment requires an analytical approach

acceded to by Algeria pursuant to Presidential Decree No. 89-68 of 16 May 1989, *Official Gazette of the Algerian Republic*, no. 20 (1989), with reservations to articles 1, 22, and 23; as well as article 10 of the International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification, and accession by United Nations General Assembly Resolution 2200 A (XXI) of 16 December 1966, entered into force in 1976, and acceded to by Algeria pursuant to Presidential Decrees Nos. 89-67 and 89-68 of 16 May 1989, *Official Gazette of the Algerian Republic*, no. 20 (1989), with reservations to articles 1, 8, 13, and 23.

¹ Ammar Boudiaf, *A Concise Treatise on Human Rights*, 2nd ed. (Algiers: Jousour for Publishing and Distribution, 2011), 134. See also article 71 of the 2020 Constitution.

² Boudiaf Ilham, *International and National Mechanisms for the Protection of Human Rights*, 3rd ed. (Algiers: Dar El Houda, 2018), 89.

³ Boughazala Mohamed Nacer, *Human Rights in International Law and Islamic Sharia*, 1st ed. (Cairo: Dar Al Fajr for Publishing and Distribution, 2014), 112.

⁴ El Ghouthi Benmelha, *International Law and Human Rights: A Comparative Study*, 2nd ed. (Algiers: Office des Publications Universitaires, 2010), 72.

⁵ See, on the entrenchment of the fundamental rights of the family, article 16 of the Universal Declaration of Human Rights, article 23 of the International Covenant on Civil and Political Rights, and article 10 of the International Covenant on Economic, Social and Cultural Rights.

⁶ Boudiaf Ilham, *International and National Mechanisms for the Protection of Human Rights*, 3rd ed. (Algiers: Dar El Houda, 2018), 105.

⁷ Ammar Boudiaf, *A Concise Treatise on Human Rights*, 2nd ed. (Algiers: Jousour for Publishing and Distribution, 2011), 158. See also Benmelha El Ghouthi, *Family Law within the Framework of Comparative Law and International Conventions* (Algiers: Dar Houma, 2021), 42.

that evaluates the effectiveness of these texts within an international system marked by multiple reference frameworks, ensuring integrated protection adapted to reality.¹

1. Recognition of the Family as a Legal Entity with an International Dimension:

International human rights instruments have affirmed the principle of family protection through explicit provisions conferring upon it the description of the “natural and fundamental group unit of society”; this constitutes the normative entrenchment of the family in the general universal charters. Article 16(3) of the Universal Declaration of Human Rights (1948) provides that the family is entitled to protection by society and the state.² International treaties of a binding nature have reaffirmed this legal effect: article 23 of the International Covenant on Civil and Political Rights and article 10 of the International Covenant on Economic, Social and Cultural Rights (1966) require that the family be accorded “the widest possible protection and assistance” during its establishment and while discharging its responsibilities, thus shifting protection from the declaratory framework into the sphere of treaty obligation.³

This recognition does not stop at the level of characterisation; rather, it extends to the imposition of positive obligations through specialised international conventions.⁴ Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (1979) obliges states to take measures to eliminate discrimination in family relations, whereas the Convention on the Rights of the Child (1989), in articles 5, 9, and 18, enshrined the principle of protecting the child within the family environment in accordance with the requirements of the child's best interests. This legal framework is further reinforced through the integration of family protection mechanisms at the regional and national levels. At the regional level, article 18 of the African Charter on Human and Peoples' Rights (1981) affirmed the family as “the natural unit and basis of society.”⁵ At the national level, these obligations were incorporated into the Algerian Constitution of 2020, which, in article 71, provides for the state and society to protect the family, a principle embodied in the Family Code in its provisions governing its formation and effects.⁶

¹ Boughazala Mohamed Nacer, *Human Rights in International Law and Islamic Sharia*, 1st ed. (Cairo: Dar Al Fajr for Publishing and Distribution, 2014), 210.

² See, on the normative characterisation, article 16(3) of the Universal Declaration of Human Rights.

³ See, on treaty obligation, article 23 of the International Covenant on Civil and Political Rights and article 10 of the International Covenant on Economic, Social and Cultural Rights.

⁴ See, on specialised protection, article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted and opened for signature, ratification, and accession by United Nations General Assembly Resolution 34/180 of 18 December 1979, entered into force on 3 September 1981, in accordance with article 27(1), and acceded to by Algeria with reservations pursuant to Presidential Decree No. 96-51 of 22 January 1996, *Official Gazette of the Algerian Republic*, no. 6, 24 January 1996; and articles 5, 9, and 18 of the Convention on the Rights of the Child, adopted and opened for signature, ratification, and accession by United Nations General Assembly Resolution 44/25 of 20 November 1989, entered into force on 2 September 1990, and ratified by Algeria pursuant to Presidential Decree No. 92-461 of 19 December 1992 containing ratification, with interpretative declarations, of the Convention on the Rights of the Child approved by the Assembly, *Official Gazette of the Algerian Republic*, no. 91, 23 December 1992. This was followed by Presidential Decree No. 97-102, signed on 5 April 1997, containing ratification of the amendment to article 43(2) of the Convention on the Rights of the Child, adopted at the Conference of States Parties on 12 December 1995, *Official Gazette of the Algerian Republic*, no. 20 (1997).

⁵ Article 18 of the African Charter on Human and Peoples' Rights (1981), acceded to pursuant to Decree No. 87-37 of 3 February 1987, published in the *Official Gazette of the Algerian Republic*, no. 6, 4 February 1987.

⁶ Article 71 of Presidential Decree No. 20-442 of 30 December 2020 containing the constitutional amendment, *Official Gazette of the Algerian Republic*, no. 82. See also Benmelha El Ghouthi, *Algerian Family Law in the Light of Jurisprudence and Case Law*, 5th ed. (Algiers: Office National des Travaux Éducatifs, 2008), 14.

For this reason, the recognition of the family as an international legal entity is founded on a legislative and institutional framework that requires reconciling the “universality of legal texts” with the “specificity of application” in national contexts.¹

2. The Incorporation of Its Rights within the General Human Rights Texts: International instruments have incorporated the family entity within the general framework of indivisible rights, thereby establishing an organic connection between the protection of the family and civil guarantees. Articles 17 and 23 of the International Covenant on Civil and Political Rights protect the family from arbitrary interference and enshrine equality between spouses, thereby placing protection at the heart of rights associated with dignity.² In the same context, economic and social dimensions were incorporated under Article 10 of the corresponding Constitution, which obliges states to grant the family “the widest possible protection and assistance,” particularly to mothers and children, while giving effect to the principle of nondiscrimination as a structural guarantee.³ At the national level, this incorporation was reflected in the 2020 Constitution, which enshrined the inviolability of private life (article 47) and required state protection of the family (article 71), thereby achieving harmonisation between international obligation and constitutional norm.⁴ Therefore, incorporating family rights into general texts affords them comprehensive protection that combines the preservation of their autonomous entity with the protection of their members' functional rights.⁵

3. Strengthening Protection through Specialised Conventions (Women and Children): The international community has moved toward the “specialisation of protection” to ensure the effectiveness of family rights and to overcome the gaps that the universality of legal texts may produce when confronted with the particularities of national application.⁶ The Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child constitute the two pillars that have shifted protection from the sphere of “theoretical abstraction” to that of “specialised obligation.”⁷ Article 16 of CEDAW requires the adoption of the necessary measures to eliminate discrimination in all matters related to marriage and family relations, thereby guaranteeing that women “full legal capacity” as a safeguard for family stability, notwithstanding the tension that the “system of reservations” gives rise to between the universality of the legal text and national legislative sovereignty.⁸

In the same context, the Convention on the Rights of the Child moved from the logic of “guardianship” to that of the “right-duty,” enshrining, under article 3, the principle of the “best interests of the child” as an objective standard binding upon the judiciary and domestic

¹ Benmelha El Ghouthi, *International Law and Human Rights*, cited above, 72.

² See articles 17 and 23 of the International Covenant on Civil and Political Rights.

³ See, on the prohibition of discrimination, article 2 of the Universal Declaration and article 2 of the two International Covenants of 1966. See also El Ghouthi Benmelha, *International Law and Human Rights*, cited above, 80.

⁴ Articles 47, 59, and 71 of the 2020 constitutional amendment.

⁵ Boudiaf Ilham, *International and National Mechanisms for the Protection of Human Rights*, cited above, 112.

⁶ Ahmed Al-Rashidi, *Human Rights: A Foundational Study in Theory and Practice* (Cairo: Dar al-Nahda al-Arabiyya, 2015), 214.

⁷ Samia Ben Abbas, “Mechanisms for the Protection of the Rights of Women and Children under International Conventions and Algerian Legislation,” *Journal of Legal and Political Studies*, University of El Oued, vol. 6, no. 2 (2021): 412.

⁸ Benmelha El Ghouthi, *Algerian Family Law in the Light of Jurisprudence and Case Law*, cited above, 18.

legislation.¹ Articles 7 and 9 likewise imposed an international obligation prohibiting the separation of the child from his or her parents save in cases of utmost necessity, thereby consolidating the “right to family identity.”² Applied to Algerian legislation, Law No. 15-12 on child protection may be seen to have drawn inspiration from this international orientation through procedural mechanisms such as the introduction of the “juvenile court judge” and the system of the “open environment.”³ This reflects the legislature’s intention to transform universal principles into national guarantees protecting the child from family disintegration.⁴

Second, the Mechanisms and Guarantees of International Protection for the Family: The effectiveness of the international framework concerning the family is not measured by the abundance of texts but by the strength of the guarantees that protect its unity. These guarantees are articulated on two complementary levels: substantive guarantees, which establish peremptory norms on the basis of article 16 of the Universal Declaration and article 23 of the International Covenant on Civil and Political Rights, while ensuring equality, preventing arbitrary interference, and giving precedence to the best interests of the child under article 3 of the Convention on the Rights of the Child. The second level consists of procedural guarantees, which move the text into the sphere of implementation through the system of periodic reports (articles 40–45 of the International Covenant) and the supervisory mechanisms exercised by the treaty bodies.⁵ This framework is completed by complaint mechanisms and individual communications as quasijudicial remedies that reinforce the effectiveness of family rights.⁶ In this context, the importance of international bodies, the Human Rights Committee, the Committee on the Rights of the Child, and the CEDAW Committee emerges in harmonising the “universality of standards” with the “national particularity” constitutionally enshrined in article 154 to ensure the enforcement of international protection without disregarding legal sovereignty.

1. Substantive Guarantees for the Protection of the Family Entity: International protection of the family is founded upon peremptory rules constituting positive obligations, foremost among which is the principle of equality as a structural pillar. Article 16 of the Universal Declaration and Article 23 of the International Covenant on Civil and Political Rights affirm the equality of spouses at all stages of the marital bond to ensure legal parity. The obligation does not stop at this point; rather, it extends to safeguarding family ties against arbitrary interference, in accordance with Article 12 of the Universal Declaration and General Comment No. 19 of the Human Rights Committee, which restricts the state's ability to interfere with the unity of the family. This framework is completed by the recognition of the principle of the best interests of the child under Article 3 of the 1989 Convention as a governing standard requiring

¹ Messika Mohamed Seghir, “Protection of Children in International Conventions,” *Journal of International Law and Development* 9, no. 2 (2021): 466. See also Fodil Nacer, “The Principle of the Best Interests of the Child in International Conventions and Algerian Legislation,” *Al-Mufakkir Journal*, Mohamed Khider University of Biskra, no. 12 (2016): 88.

² Montaser Saeed Hammouda, *The Protection of Children’s Rights in Public International and Islamic Law* (Alexandria, Egypt: Dar al-Jami’a al-Jadida, 2007), 70.

³ Law No. 15-12 of 15 July 2015 relating to child protection, promulgated on 19 July 2015, *Official Gazette of the Algerian Republic*, no. 39.

⁴ Hafidha Siad, *The Constitutional and Legal Regulation of Fundamental Rights and Freedoms in Algeria and the Mechanisms Guaranteeing Them*, 1st ed. (Algiers: Dar Houma for Printing, Publishing, and Distribution, 2018), 193 ff.

⁵ Benmelha El Ghouthi, *Family Law within the Framework of Comparative Law and International Conventions* (Algiers: Dar Houma, 2021), 162. See also Bettaher El Hacene, *Lectures on International Conventions Relating to Human Rights and the Family* (University of Algiers 1, 2023), 142.

⁶ Samia Ben Abbas, “International Monitoring Mechanisms for the Implementation of Human Rights Conventions,” *Journal of Law and Human Sciences*, University of Djelfa, no. 31 (2021): 145.

the formulation of preventive policies to protect the more vulnerable party.¹ This orientation is clearly manifested in Article 71 of the Algerian Constitution of 2020, which enshrined the state's obligation to protect the family,² thereby reflecting the legislature's intention to harmonise the "universality of legal texts" with the "specificity of application" to preserve the family entity from disintegration and safeguard the dignity of its members.³

2. Procedural Guarantees for Activating the International Protection of the Family: Substantive guarantees derive their effectiveness from procedural mechanisms that transform international obligation into a tangible reality, foremost the "system of periodic reports." Articles 40–45 of the International Covenant on Civil and Political Rights require states to submit evaluative reports, a course followed by the Algerian legislature before the United Nations committees in accordance with the governing guidelines.⁴ Protection does not end with the reporting role; rather, it extends to include "mechanisms of supervision and oversight," since concluding observations and general comments constitute an interpretive framework guiding states toward harmonising their national legislation with the international standards safeguarding the family.⁵

This framework reaches its highest level of enforceability through "individual communications," which grant individuals the right to have recourse to international bodies upon exhaustion of domestic remedies, in accordance with the First Optional Protocol to the International Covenant.⁶ and the Third Optional Protocol to the Convention on the Rights of the Child.⁷ The activation of these instruments consolidates the quasijudicial character of international protection. It compels the national system to develop its own instruments to achieve a balance between international compliance and sovereignty.⁸ Thus, integrating reporting, supervision, and complaints constitutes the ultimate guarantee for narrowing the gap between the "universality of legal texts" and the "specificity of application," thereby reinforcing the status of the family as a legally protected entity.⁹

¹ Benmelha El Ghouthi, *Family Law within the Framework of Comparative Law and International Conventions* (Algiers: Dar Houma, 2021), 14.

² Mohamed Saeed Roshdy, *Constitutional and Legal Guarantees for the Protection of the Family* (Cairo: Dar al-Nahda al-'Arabiyya, 2012), 44.

³ Samia Ben Abbas, "Legal Protection of the Family in Light of International Transformations," *Journal of Legal Studies*, University of Setif 2, no. 15 (2019): 102.

⁴ See Committee on the Rights of the Child, *Guidelines regarding Periodic Reports*, document no. CRC/C/58/Rev.3 (United Nations, 2015). See also Amara Amara, "The Legal Protection of the Child's Right to Nationality under Ordinance No. 05-01 Amending and Supplementing Ordinance No. 70-86 Containing the Nationality Code," *Journal of Legal Studies and Research*, Faculty of Law and Political Science, Mohamed Boudiaf University of M'sila, Algeria, vol. 6, no. 2 (2021): 78.

⁵ Ahmed Abou El Wafa, *International Treaties in International Law and Egyptian Law* (Cairo: Dar al-Nahda al-'Arabiyya, 2017), 215.

⁶ Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, adopted by General Assembly Resolution 66/138 on 19 December 2011.

⁷ Mouloud Ben Nassif, "International Mechanisms for the Protection of Human Rights and the Extent of Their Effectiveness in the Algerian Legal System," *Journal of Legal and Political Thought*, University of Laghouat, no. 4 (2020): 72.

⁸ Samia Ben Abbas, "International Monitoring Mechanisms for the Implementation of Human Rights Conventions," cited above, 145.

⁹ See, on the functions of the committees, article 43 of the Convention on the Rights of the Child (1989) and article 17 of CEDAW (1979).

3. The Role of International Bodies in Monitoring the Implementation of Guarantees for the Protection of the Family: The procedural effectiveness of international guarantees depends upon the efficiency of supervisory mechanisms. This role is manifested, first, in the “system of periodic reports” under article 40 of the International Covenant, article 43 of the Convention on the Rights of the Child, and article 17 of CEDAW, obligations under which Algeria is required to submit periodic reports that strike a balance between the protection of the family and sovereign reservations.¹ The matter is not confined to the reporting dimension; rather, it extends to “quasijudicial jurisdiction” through the examination of individual communications, which functionally intersects with the supervisory role of the International Labour Organisation in giving effect to Conventions Nos. 182, 138, and 183² to ensure maternity protection and prevent the exploitation of children in practice.³

Finally, the “guiding role” of international bodies emerges from conclusions, which direct the national legislature toward compliance with Article 154 of the 2020 Constitution.⁴ This interaction is intended to strengthen dialogue with national institutions, particularly the National Council for the Family and Women, to transform international recommendations into public policies that preserve family public order as constitutionally and legally enshrined, thereby achieving a balance between the universality of the legal text and the specificity of application.⁵

Section Two: Limits of the Application of International Guarantees for the Family

The universality of international legal texts comes into conflict with the realities of national sovereignty, as the influence of national particularity upon the application of international standards becomes apparent through states' activation of the “right of reservation” guaranteed under article 19 of the Vienna Convention on the Law of Treaties of 1969, particularly with respect to provisions that conflict with value-based public order or definitive rules in national legislation.⁶ This influence clearly manifested in the position of the Algerian legislature upon its accession to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as Algeria entered substantive reservations to

¹ See, on quasijudicial jurisdiction, the First Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to CEDAW. See also Boudiaf Ilham, *International and National Mechanisms for the Protection of Human Rights*, cited above, 142.

² See, on labour-related monitoring mechanisms, Maternity Protection Convention No. 183 (2000). See also Belhadj Belkheir and Laidi Abdelkader, “The Worst Forms of Child Labour between Reality and Solutions in Light of Convention No. 182,” *Journal of Human Rights and Public Freedoms* 7, no. 2 (December 2022): 122.

³ Bettaher El Hacene, *Lectures on International Conventions Relating to Human Rights and the Family* (University of Algiers 1, 2023), 160.

⁴ See, on coordination functions, Executive Decree No. 15-81 of 8 March 2015 establishing the National Council for the Family and Women. See also Fetissia Fawzia, “Protection of the Family within the Framework of the Rules of International Human Rights Law,” *Voice of Law Journal*, University of Khemis Miliana, vol. 9, no. 2 (April 2023): 22.

⁵ *Vienna Convention on the Law of Treaties* (1969), adopted by the United Nations Conference on the Law of Treaties convened pursuant to United Nations General Assembly Resolutions 2166 of 5 December 1966 and 2287 of 6 December 1967. The Conference was held in two sessions in Vienna, from 26 March to 24 May 1968 and from 9 April to 22 May 1969. The Convention was adopted at the close of the Conference on 22 May 1969, opened for signature on 23 May 1969, and entered into force on 27 January 1980. *United Nations Treaty Series* 1155:331. Algeria acceded to it with a reservation pursuant to Decree No. 87-222 of 13 October 1987, *Official Gazette of the Algerian Republic*, no. 42, 14 October 1987.

⁶ See Presidential Decree No. 96-51 of 22 January 1996, concerning the accession of the People’s Democratic Republic of Algeria to the Convention on the Elimination of All Forms of Discrimination against Women, *Official Gazette of the Algerian Republic*, no. 6, 24 January 1996, 7 (as amended by Presidential Decree No. 05-241 providing for the withdrawal of the reservation to article 9).

articles 2, 9(2), 15(4), 16, and 29 to ensure that the international text did not affect provisions derived from Islamic law and enshrined in the Family Code.¹ This reflects a sovereign practice that protects “particularity” from dissolution into absolute “universality.”

Recognising the international community's awareness of the need to preserve a minimum level of protection without disregarding cultural diversity, the means to achieve a balance between universality and particularity emerge as imperative to avoid legal conflict. This balance is achieved through the application of the principle of the “margin of national appreciation,” which grants states the authority to harmonise international obligations with their national environment, provided that the international text is not deprived of its substance.² This requires the national legislature to adopt an approach of “evolving interpretation” of domestic texts so that they can accommodate international guarantees while maintaining adherence to the constants set out in the preamble to the 2020 Algerian constitutional amendment and in article 2 thereof, which considers Islam the religion of the state and the principal source of family values. In this way, a hybrid legal system is established, combining the flexibility of international conventions with the solidity of national particularities.³

First, the impact of national particularity on the application of international standards:

The problem of enforcing international guarantees for the family manifests as a normative conflict arising from differences in the concept of the family across cultural and religious systems. While international instruments tend to formulate flexible, expansive definitions, the national legislature adheres to a traditional definition derived from the state's doctrinal reference framework, as enshrined in Article 2 of the Algerian Family Code, which confines the formation of the family to a lawful marriage contract.⁴ This conceptual divergence necessarily led to the activation of the mechanism of reservations to international conventions as a legal instrument provided for in Article 19 of the 1969 Vienna Convention on the Law of Treaties, whereby the Algerian state relied on its legal sovereignty to enter substantive reservations.⁵ to articles 2, 9(2), 15(4), 16, and 29 of CEDAW, considering them contrary to domestic public order and the rules governing inheritance and guardianship.

This normative conflict restores significance to the concept of the state's authority to regulate family matters, as an exclusive competence arising from the very core of national sovereignty, since international law may not override the societal particularities protected by national constitutions. In article 71 of the Algerian Constitution of 2020, the family enjoys the protection of the state and society in accordance with its values and constants. Hence, the application of international guarantees remains contingent upon the extent to which they are harmonised with this national context, making “particularity” a legitimate legal constraint that

¹ Boudiaf Ilham, *International and National Mechanisms for the Protection of Human Rights*, cited above, 162.

² Benmelha El Ghouthi, *International Law and Human Rights*, cited above, 110.

³ Ammar Boudiaf, *A Concise Treatise on Human Rights*, cited above, 201.

⁴ Law No. 84-11 of 9 June 1984 containing the Family Code, as amended and supplemented by Ordinance No. 05-02 of 27 February 2005, *Official Gazette of the Algerian Republic*, no. 15, 27 February 2005.

⁵ Mebarki Brahim, “The Extent of Algeria's Compliance with CEDAW in Light of Its Reservations to Certain Provisions,” published in *Journal of Law and Human Sciences*, an international peer-reviewed quarterly journal issued by the Faculty of Law and Political Science, University of Djelfa, vol. 15, no. 3 (8 October 2022): 985 ff.

prevents the mechanical imposition of universal texts upon legislative environments grounded in different value-based reference frameworks.¹

1. The Divergence in the Concept of the Family across Cultural and Religious Systems:

The nature of the family constitutes a fundamental problem owing to the conceptual divergence between international approaches, which left the concept open in Article 16 of the Universal Declaration, and national legislation, which has adopted the “narrow and lawful concept”. Article 2 of the Algerian Family Code provides that the family is a unit founded upon the marital bond and kinship, thereby making the documented marriage contract the only recognised bond, as also affirmed by Article 71 of the Constitution.² In contrast, the modern international approach, particularly in General Comment No. 19 of the Human Rights Committee, tends to recognise family forms that go beyond the traditional framework.³ This divergence gives rise to differing legal consequences, as the Algerian legislature, under Article 222 of the Family Code, which refers to Islamic law as a supplementary source, refuses to confer any protection on relationships that do not accord with value-based public order.⁴ Thus, the concept of the family at the international level remains a “universal text” in search of a “particular application” that respects the legislative sovereignty of states founded upon Islamic reference frameworks.⁵

2. Reservations to International Conventions as a Mechanism for Protecting Legislative Particularity:

The mechanism of reservations finds its legal basis in international law under article 19 of the 1969 Vienna Convention on the Law of Treaties, to which Algeria acceded pursuant to Decree No. 87-222, as a legal instrument granting the state the capacity to harmonise its international obligations with the constants of its legislative sovereignty. An examination of Algeria's treaty practices reveals the adoption of a strategy of “framing reservations” to protect the family entity from dissolution into universal standards that conflict with the national reference framework. Presidential Decree No. 96-51 concerning CEDAW included substantive reservations affecting articles 2, 9(2), 15(4), 16, and 29 because of their incompatibility with family public order derived from Islamic law. This is the same sovereign approach followed by the legislature upon accession to the two International Covenants of 1966 under Presidential Decrees Nos. 89-67 and 89-68, by entering reservations to provisions affecting family ties⁶ and the values of Algerian society.

The protection of particularity is not confined to “exclusionary reservations”; rather, it extends to include “interpretative declarations” as a means of regulating the scope of application. This was manifested in the Convention on the Rights of the Child (Presidential Decree No. 92-461), where Algeria made the application of article 14 conditional upon consistency with article 2 of the Constitution and further subjected articles 13, 16, and 17 to the constraints of the Penal Code and Organic Law No. 23-14 relating to information, particularly

¹ Boudiaf Ilham, *International and National Mechanisms for the Protection of Human Rights*, 3rd ed. (Algiers: Dar El Houda, 2018), 175.

² Law No. 84-11 of 9 June 1984 containing the Family Code, as amended and supplemented by Ordinance No. 05-02 of 27 February 2005, *Official Gazette of the Algerian Republic*, no. 15, 27 February 2005.

³ Benmelha El Ghouthi, *International Law and Human Rights*, cited above, 156.

⁴ Boudiaf Ilham, *International and National Mechanisms for the Protection of Human Rights*, cited above, 188.

⁵ See Ammar Boudiaf, *A Concise Treatise on Human Rights*, cited above, 224; and Boughazala Mohamed Nacer, *Human Rights in International Law and Islamic Sharia*, 1st ed. (Cairo: Dar Al Fajr for Publishing and Distribution, 2014), 245.

⁶ See Presidential Decree No. 96-51 of 22 January 1996, concerning Algeria's accession to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), *Official Gazette of the Algerian Republic*, no. 6. See also Presidential Decrees Nos. 89-67 and 89-68 of 16 May 1989, *Official Gazette of the Algerian Republic*, no. 20 (1989).

articles 35 and 36 thereof, to preserve national values and Islamic morality.¹ An analysis of these limitations confirms that legislative sovereignty remains an obstacle to the operation of the “universality of legal texts” where such texts conflict with the doctrinal reference framework of society, thereby making the reservation a safety valve that guarantees the supremacy of treaties (Article 154 of the Constitution) without compromising national identity.² Accordingly, the Algerian legislature did not evade its international obligations so much as to achieve a balance between the requirements of legal universality and the particularity of national legislation, thereby affirming that the family remains governed by the constraints of “value-based public order.”³

3. The Authority of the State to Regulate Family Matters between Sovereignty and Obligation: The authority of the state to regulate family relations is founded upon the principle of “reserved domestic jurisdiction,” as article 71 of the 2020 Constitution enshrined the role of the state in protecting the family as a basic unit, thereby granting the legislature normative authority to regulate national particularity.⁴ This authority does not constitute an evasion of international obligation; rather, it is an exercise of sovereignty that recognises the supremacy of treaties (Article 154 of the Constitution), provided that they do not conflict with the national constants, as reflected in Ordinance No. 05-02, which made Islamic law a governing reference for any international interpretation affecting the family entity.⁵ In the face of “legal globalisation,” Algeria adheres to the 1966 international standards and to the Universal Declaration (article 16) through a sovereign reading that links rights to moral duties.⁶ This balance is further reinforced by the institutional role of the National Council for the Family and Women (Decree No. 15-81), which incorporates International Labour Organisation standards, such as Conventions Nos. 183 and 138, within a national framework that protects the family and the child from exploitation.⁷ Thus, the authority of the state remains the safety valve preventing complete dissolution into the international order, thereby achieving the equation of “responsible commitment,” which combines the exigencies of the age with the constants of origin.⁸

¹ Presidential Decree No. 92-461 of 19 December 1992, containing ratification, with interpretative declarations, of the Convention on the Rights of the Child. See also, on the restrictions set out in articles 35 and 36 of Organic Law No. 23-14 relating to information, dated 27 August 2023 and promulgated on 29 August 2023, *Official Gazette of the Algerian Republic*, no. 56; and Arzeki Bouarab, “Electronic Audiovisual Media Activity between Entrenchment and Restriction under the Provisions of Organic Law No. 23-14 relating to Information,” *Critical Journal of Law and Political Science*, University of Tizi Ouzou, vol. 19, no. 2 (2024), dated 30 June 2024, 426.

² Mebarki Brahim, “The Extent of Algeria’s Compliance with CEDAW in Light of Its Reservations to Certain Provisions,” cited above, 984 ff.

³ Benmelha El Ghouthi, *Family Law within the Framework of Comparative Law and International Conventions*, cited above, 134.

⁴ Khaled Dou, “Foundations and Determinants of Family Legislation in Algeria,” *Journal of Family Research*, an international biannual peer-reviewed journal, Faculty of Law, University of Algiers 1, vol. 3, no. 1 (2023), dated 30 June 2023, 12 ff.

⁵ Benmelha El Ghouthi, *Family Law within the Framework of Comparative Law and International Conventions*, cited above, 142.

⁶ Cheikh Salah Bachir, “The Impact of International Conventions on Family Issues (the Non-Traditional Family as a Model),” *Ijtihad Journal for Legal and Economic Studies*, University of Tamanrasset, vol. 12, no. 1 (January 2023): 52.

⁷ Executive Decree No. 15-81 of 8 March 2015, amending and supplementing Decree No. 06-421 establishing the National Council for the Family and Women. See also Maternity Protection Convention No. 183 (2000) and Minimum Age Convention No. 138 (1973) (International Labour Organisation).

⁸ Fetissia Fawzia, “Protection of the Family within the Framework of the Rules of International Human Rights Law,” *Voice of Law Journal*, University of Khemis Miliana, vol. 9, no. 2 (April 2023): 18.

Second, the Means of Achieving a Balance between Universality and Particularity: Recognition of international guarantees does not require the dissolution of national systems; rather, it calls for seeking reconciliatory approaches that make “particularity” a factor of enrichment. This may be achieved through the flexible interpretation of international texts in accordance with Article 31 of the Vienna Convention (1969), which allows the use of “interpretative declarations” as in Decree No. 92-461 concerning the Convention on the Rights of the Child to accommodate doctrinal particularities without undermining the essence of protection or conflicting with constitutional constants. In addition, the necessity of harmonising national legislation as a procedural obligation incumbent upon the legislature arises in the implementation of Article 154 of the 2020 Constitution, which recognised the supremacy of treaties. This was reflected in the enactment of Law No. 15-12, relating to child protection as a process of normative “domestication” that harmonises treaty standards with the definitive provisions of the Family Code.¹

Finally, the activation of these guarantees requires the strengthening of institutional cooperation, particularly the role of the National Council for the Family and Women (under Executive Decree No. 15-81) as a link for implementing international recommendations in a manner that serves the best interests of the family.² In this way, the tension between the universality of the legal text and the specificity of its application is transformed into a structural complementarity that safeguards both international obligation and national identity.³

1. Flexible Interpretation of International Texts as a Mechanism for Normative Reconciliation: The process of flexible interpretation derives its legitimacy from Article 31 of the Vienna Convention (1969), which requires interpretation in good faith in accordance with the “context and purpose,” thereby opening the way for a teleological approach to reconciling the universal text with the national environment.⁴ This is reflected in the reading of articles 13 and 14 of the Convention on the Rights of the Child (Decree No. 92-461) in light of the constitutional constraints (article 2) and the legal provisions (article 62 of the Family Code), which make the upbringing of the child dependent upon the father’s religion to avoid conflict with the public order.⁵ The importance of this approach lies in activating the interpretative role of national institutions such as the National Council for the Family and Women (Decree No. 15-81), as well as in establishing legislative interpretative frameworks, such as Information Law No. 23-14 (article 3), which prohibits content for children that is contrary to Islamic morality.⁶ Thus, flexible interpretation grants the legislature a “margin of national appreciation” that ensures the implementation of international guarantees in a national spirit,

¹ Aïcha Hamaidi, “The Extent to Which Algerian Legislation Relating to Children’s Rights Is Harmonised with the International Convention on the Rights of the Child,” *Comprehensive Journal of Rights*, University of Annaba, vol. 2, no. 2, 45.

² Bettaher El Hacene, *Lectures on International Conventions Relating to Human Rights and the Family* (University of Algiers 1, 2023), 115.

³ Benmelha El Ghouthi, *Family Law within the Framework of Comparative Law and International Conventions*, cited above, 188.

⁴ Mohamed Bousoltane, *Principles of Public International Law*, vol. 2, 2nd ed. (Oran: Dar al-Gharb for Publishing and Distribution, 2002), 252 ff.

⁵ In this regard, article 62 of the Algerian Family Code provides: “Custody consists in caring for the child, educating him or her, raising him or her in the religion of the father, and ensuring his or her protection and preservation in terms of health and morals. The custodian must be capable of fulfilling this responsibility.”

⁶ Arzeki Bouarab, “Electronic Audiovisual Media Activity between Entrenchment and Restriction under the Provisions of Organic Law No. 23-14 relating to Information,” cited above, 425 ff.

thereby achieving a balance between the “universality of legal texts” and the “specificity of application.”¹

2. Harmonising National Legislation with International Obligations: The harmonisation of national legislation constitutes a duty imposed by Article 27 of the Vienna Convention (1969), which prohibits reliance upon domestic law as a justification for failure to implement treaties, thereby requiring the establishment of mechanisms for incorporating international guarantees into the national order.² This process is manifested under the 2020 Constitution (Article 154), which recognised the supremacy of treaties and consequently required the legislature to achieve normative compatibility, as reflected in the amendment of the Family Code by Ordinance No. 05-02 to harmonise the provisions on custody and maintenance with standards of dignity and equality, while taking national reference frameworks into account in article 222.³ This harmonisation was also evident in the enactment of Law No. 15-12, which, as an instrument for aligning the national text with the 1989 Convention, enshrines the “best interests” principle.⁴ It likewise extended to the adaptation of the provisions of labour and social security law to conform with International Labour Organisation Conventions Nos 183 and 138 to ensure maternity protection.⁵ Hence, harmonisation from an Algerian perspective is a process of “legal filtering” that ensures the implementation of international guarantees within a framework that respects public order and preserves national identity.⁶

3. Strengthening Cooperation between International and National Systems: The effectiveness of international guarantees requires the building of sustainable bridges to activate institutional and supervisory coordination. This is based on Article 43 of the Convention on the Rights of the Child (Decrees Nos. 92-461 and 97-102), which imposes an obligation to submit periodic reports on the compliance of the domestic order with universal standards.⁷ At the national level, this cooperation is embodied in the leading role of the National Council for the Family and Women (Decree No. 15-81), which operates as a coordinating arm with United Nations bodies and the International Labour Organisation in implementing strategies for maternity protection and the prevention of child labour in accordance with Conventions Nos. 182 and 138.⁸ Advancing protection requires support for participatory dialogue between the national judiciary and international committees, drawing on the status of treaties under the current Constitution, to develop public policies that incorporate international recommendations

¹ Benmelha El Ghouthi, *Family Law within the Framework of Comparative Law and International Conventions*, cited above, 156; and Bekhadda Sofiane, “Legal Guarantees for the Protection of the Child in Light of International Law and National Legislation,” *Ma‘abir Journal*, University of Algiers 1, vol. 6, no. 1 (December 2021): 58.

² Mohamed Bousoltane, *Principles of Public International Law*, cited above, 232.

³ Benmelha El Ghouthi, *Family Law within the Framework of Comparative Law and International Conventions* (Algiers: Dar Houma, 2021), 162.

⁴ Amrouche Meriem, “The Position of the Convention on the Rights of the Child in the Algerian Constitutional System of 2020,” *Journal of Law and Human Sciences*, vol. 16, no. 1 (2023): 1617 ff.

⁵ Atallah Taj, *Working Women in Algerian Labour Legislation between Equality and Legal Protection* (Algiers: Office des Publications Universitaires, 2006), 44.

⁶ Aicha Hamaidi, “The Extent to Which Algerian Legislation Relating to Children’s Rights Is Harmonised with the International Convention on the Rights of the Child,” cited above, 31.

⁷ Salem Haoua, “Algeria’s Implementation of International Treaty Obligations Relating to Human Rights,” *Al-Manar Journal for Legal and Political Studies and Research*, Faculty of Law and Political Science, Yahia Fares University of Médéa, vol. 3, no. 2 (December 2019): 27 ff.

⁸ See, on the functions of institutional coordination, Executive Decree No. 15-81 of 8 March 2015, amending and supplementing Decree No. 06-421 establishing the National Council for the Family and Women. See also Belhadj Belkheir and Laidi Abdelkader, “The Worst Forms of Child Labour between Reality and Solutions in Light of Convention No. 182,” *Journal of Human Rights and Public Freedoms*, vol. 7, no. 2 (December 2022): 114.

in the fields of protecting children and combating violence.¹ Therefore, strengthening cooperation constitutes the essential guarantee for transforming the “universality of legal texts” into an “applied reality” that respects national particularity and achieves comprehensive protection for the family entity.²

CONCLUSION:

This study concludes that the effectiveness of international guarantees for the protection of the family lies not only in the abstraction and universality of legal texts but also in their capacity to be accommodated within national legal systems without rupturing their value-based identity. The principal findings indicate that the Algerian legislature has adopted an approach of “cautious reconciliation,” insofar as it has incorporated international procedural mechanisms, such as reporting and supervision, while maintaining substantive particularity derived from Islamic law through the activation of the system of legal reservations. On that basis, it is recommended that the National Council for the Family and Women be activated as a national monitoring mechanism to bridge the gap between the international text and local reality. It is further proposed that a “regional guiding code” be adopted, one that takes into account the cultural particularities of Arab and Islamic states and enhances the capacity of the national judge to draw upon the standard of the “best interests” as an interpretative tool that does not conflict with the state’s public order, thereby ensuring the stability of the family unit and safeguarding its entity against contemporary challenges.

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