

Legal Protection of Children with Disabilities from Bullying: Navigating Social Disorder and Legal Gaps

الحماية القانونية للطفل المعاق من التنمر: بين الانفلات الاجتماعي والقصور القانوني

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Date of submission:16/10/2025 Date of final acceptance29/03/2026 Date of publication :Mars2026

Abstract :

This study presents the problem of bullying children with special needs, which stands as a barrier to the integration policy decided by international conventions and the internal laws of countries. Accordingly, this study attempts to investigate whether bullying of a disabled child is merely an exacerbation of a social phenomenon for several circumstances, Or is this repercussion a matter of default of legal texts, And it was concluded that the prescribed protection is nothing more than general provisions, either pertaining to the child in general, or to the disabled person, regardless of his/ her age, And in many cases it lacks accuracy and clarity, which calls for the need to give the disabled child with special protection from bullying and distinguishing him from the rest of the other assaults similar to some legislations, such as the Egyptian legislation.

Keywords : bullying- Harassment- violence- abuse- disability- handicap

ملخص:

تعرض هذه الدراسة مشكلة التنمر على ذوي الاحتياجات الخاصة التي تقف حاجزا أمام سياسة الإدماج التي قررتها المواثيق الدولية والقوانين الداخلية للدول، وعليه، سيتم البحث في هذه الدراسة فيما إذا كان التنمر على الطفل المعاق هو مجرد استفحال لظاهرة اجتماعية لأسباب متعددة، أم أن هذا التداعي هو مسألة تقصير من قبل النصوص القانونية. وتم التوصل الى أن الحماية المقررة لا تعدو لأن تكون نصوصا عامة إما تخص الطفل عموما وإما الشخص المعاق مهما كان سنه، وفي أحيان كثيرة تعوزها الدقة والوضوح، ما يدعو الى ضرورة إفرااد المعاق الطفل بحماية خاصة من التنمر وتمييزه عن باقي الاعتداءات على غرار بعض التشريعات كالمصري.

الكلمات المفتاحية: تنمر - مضايقة - عنف - إساءة - عجز - إعاقة

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Introduction

All types of disabilities (whether sensory, motor or mental) mark out the person with a disability that singles him/her out from normal people. In contact with various obstacles and barriers, the disability hinders the person from fully and effectively participating in society on an equal basis with others, especially in light of the integration policy established by international covenants and domestic laws of both developed and developing nations to guarantee the disabled person's sense of belonging to society and its contribution to economic and human development. This policy also seeks to prevent discrimination against any person on the grounds of disability and deems it a violation of human dignity and an infringement of the human right to a decent life, on an equal basis with other normal people.

On the other hand, this integration may be deemed a curse for the child with a disability. The contact with normal people at schools, educational institutions, homes, over the internet, in public places or in other settings exposes the persons with disabilities to assault, abuse or bullying on the grounds of disability and triggers negative effects. Because of this interaction, some children with a disability sometimes commit suicide, not to mention the other psychological problems that may hinder the rehabilitation process.

Importance of the Study:

In light of the growing interest in human rights in general and childhood in particular, various forms of abuse and bullying have spread in different locations, which prompts curiosity about this issue and its related legal system on both domestic and international levels. It is therefore paramount to conduct a search in the most relevant texts in order to assess the position of the child in regards to this interest and evaluate the extent of protection he/she is granted. This is attributed to the fact that bullying will exacerbate the child's condition, especially in consideration of the importance of a sound upbringing of children in the growth and development of societies. Thus, relying on social studies to solve the issue is deemed insufficient and must be reinforced with the legal aspect and concerted efforts on all levels.

Aims of the Study:

- Understand the causes of bullying and attempt to limit its impacts in order to establish counter-measures and limit the violence perpetrated on this vulnerable category.
- Enable the person with a disability to access his/her rights without discrimination, on an equal basis with normal people, which is the objective set forth by international covenants and domestic laws, especially that eradicating bullying facilitates the implementation of rehabilitation programs and integration of this category and makes it easier to punish or reform the perpetrator of bullying.
- Call legal texts to protect this vulnerable category in society on both domestic and international levels.

- Assist human rights covenants and laws in identifying the interactions that could be deemed as abuse.

In light of the above, the **research question** is the following: How effective is the legal protection that is granted for children with disabilities from bullying?

In relation to the above-mentioned research question, the following sub-questions arise:

- How to distinguish between bullying and other terms, causes, types, impacts, ...?
- Is bullying children with a disability a psycho-social problem or an issue of legal protection failure?
- How adequate are domestic laws and international covenants in addressing the issue of bullying children with disabilities?
- How to limit the phenomenon of bullying children with disabilities?

Method of the Study:

This study follows a descriptive analytical method that proceeds to describe and analyze various studies about the danger of bullying children with disabilities after elucidating the key concepts, causes and impacts of this phenomenon as well as the stances of states and their role in its eradication, according to the following plan:

- I-** The Conceptual Framework of Bullying Children with Disabilities (Definition, Causes, Types and Impacts)
- II-** International and Domestic Protection of the Category of Children with Disabilities from Bullying (Efforts and Procedures)
- III-** Preventive and Therapeutic Mechanisms against Bullying (legal, psychological, social, ...)

I- The Conceptual Framework of Bullying Children with Disabilities

In this chapter, we will address the definition, causes, types and impacts of bullying.

1- Definition of Bullying Children with Disabilities:

According to the 2006 Convention on the Rights of Persons with Disabilities (CRPD), persons with disabilities are "those who have long-term physical, mental, intellectual, or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others."

¹

Law 02-09 defines a person with a disability as "any individual, irrespective of age or gender, who has one or more genetic, congenital, or acquired disabilities, resulting in a limited capacity to perform one or more fundamental activities of daily personal and social life due to an impairment in mental, motor, or organic-sensory functions."²

Bullying children with disabilities is a pathological phenomenon commonly prevalent amongst adolescents and defined as: "*Domination, mockery and*

*humiliation perpetrated by one person or a group of people against persons with special needs, which includes physical or verbal harm and takes place in various settings (school, family, society, ...) using various methods, repeatedly and persistently*³, it may even be deemed bullying without the aspect of persistency in the presence of the other defining characteristics of bullying.

Therefore, bullying is an undesired behavior that violates the disabled person's dignity, scares him/ her or creates a hostile, degrading or humiliating environment for him/ her.

Bullying is not accidental but intentional, involving unequal power and control in terms of strength, size, number, social status, economic resources and authority.⁴

2- Causes of Bullying:

The etiology of bullying is multifaceted, often rooted in perceived differences or stigmatized attributes. These can include an individual's physical appearance, beliefs, cultural or national identity, personality traits such as shyness, or socioeconomic circumstances—for instance, being adopted or receiving public assistance like free school meals. Individuals with disabilities are particularly vulnerable, as bullying frequently targets those who are perceived by their peers to be divergent or marginalized.⁵

A study conducted in France indicates that women with disabilities form the largest category that is subject to bullying, particularly in the form of physical or sexual assault, whether inside or outside the house (work, school, ...) at a rate of 9% compared to 5.8% of non-disabled women.⁶

Some consider⁷ that the desire for power is the motive behind bullying. This desire has been reinforced with the ideas and rumors that are spread about bullying and the roles of media institutions and movies that depict the abilities and high skills of the hero. In contrast, victims commonly share a set of characteristics, mainly the lack of social skills, guilt over problem solving, fear of school, having more domestic problems than others and that family makes decisions on their behalf in numerous matters. These traits are more visible within persons with disabilities.

Theories in social studies have differing views about the causes of bullying:

2.1-Behaviorism: according to behaviorism, the bully has acquired his/ her behavior from the people around him/ her (family, teacher, friend), therefore, he also seeks to reinforce his/ her behavior from the people around him/ her to feel special, in the absence or neglect of punishment.

2.2-The theory of Frustration: frustration theorists consider that the cause of bullying is the frustration which the bully has been subject to, accompanied by his/ her repetitive failures, which is why he opts for aggression to alter his/ her instinctive state.

3.2-The Analytical theory: pioneered by Freud, affirms that the cause of bullying is the patriarchal upbringing and the family's influence in shaping the individual's behavior.⁸

Continuous bullying of the disabled person- even if deemed "low-level" could make the victim snap, particularly for persons with autism spectrum disorder. Furthermore, bullying those with disabilities could be based on a hierarchy of skills. For instance, the sighted could bully the unsighted. It is noted that there are usually high levels of bullying among children with emotional and behavioral difficulties, in addition to them being bullied by other children. A recent survey revealed that out of ten children with learning impairments, eight have been subject to bullying and are afraid to go out, whereas six of them have been physically harmed because of it.⁹

Certain reports revealed that 80% of children with learning impairments, 70% of children with autism spectrum syndrome and 40% of children with language and speech impairments are subject to bullying¹⁰, merely because social skills, language and communication are some of the major attributes that expose students with disabilities to bullying as they put the person with a disability in a basic position of social participation. Even the slight shifts in the reactions of those with special needs amongst their peer groups can make them vulnerable to rejection and harassment.¹¹

The National Bullying Prevention Center in America indicated that 35.3% of students with emotional and behavioral disorders, 33.9% of students with autism spectrum syndrome, 24.3% of students with health disabilities and 19% of those with learning impairments are subject to high levels of bullying.¹²

3- Types of Bullying:

Bullying is a violation of human rights. It is divided into different types: physical bullying which refers to all forms of physical harm, and verbal bullying which encompasses all that hurts feelings¹³. This can be seen in various behaviors perpetrated by the bully. They may be direct and require a confrontation between the bully and the victim, including all types of verbal, physical and emotional harassment, for instance name-calling, beating or suspension, harassment, intimidation, threats, insults, mockery, humiliation, fabricating shameful stories, embezzlement, sexual harassment and shameful comments, hair pulling, stealing, rejection or social exclusion, ignorance, or making someone act against their will¹⁴, which is more prevalent amongst males.

Bullying could also take an indirect approach¹⁵ and could be hard to detect. However, it could be possible to deduce through the spread of malicious rumors about the victim, posting offensive comments, photos or videos over the internet or emails which make the victim ostracized, rude looks or gestures, offensive text messages or phone calls in which the bully focuses on certain aspects of the victim's physical appearance or personality as a pretext for bullying, such as disability. This form of bullying is more common amongst females. Provocation is deemed the most

common form of bullying, followed by physical bullying then boycotting in females.¹⁶

persons with disabilities are frequently subjected to common forms of bullying, such as verbal harassment and physical intimidation. They are also vulnerable to more complex psychological manipulation, where they may be coerced into inappropriate behaviors, particularly if their disability impairs their capacity for social judgment. Furthermore, bullying can be highly specific, exploiting particular aspects of a person's condition, such as heightened sensitivity to sensory stimuli (e.g., light or sound), or through "conditional friendships" that manipulate the victim into hazardous situations.¹⁷

4- Impacts of Bullying on Children with Disabilities:

Bullying affects people's ability to learn and entails severe physical, psychological and social repercussions on the mental and emotional safety of the bullied person, such as sadness, depressions, anxiety, low self-esteem and social isolation that can extend to self-harm as well as suicidal thoughts and feelings. Bullying could also have a deeper and more serious impact on the persons with special needs and lead to the deterioration of their condition, whether at home, in an institution, etc.

Empirical evidence, though still limited, indicates a strong correlation between disability and increased vulnerability to bullying. Research demonstrates that students with special educational needs are two to three times more likely to be bullied than their non-disabled peers. For instance, one study found that 60% of students with disabilities reported being bullied regularly, a prevalence rate starkly higher than the 25% reported among the general student population.¹⁸ Many disabled students already suffer from problems in their school environment more particularly, which are then made worse by bullying. This has a direct impact on their educational experience and leads to lower grades, lack of interest in academic achievement and high school dropout rates. In certain cases, some (16%) had to leave their home because they did not feel safe there, especially those who were victims of physical and sexual assault.¹⁹

On the other hand, these behaviors that the disabled person falls victim to may drive him/ her to become involved, in his/ her turn, in bullying and deviation activities. There are studies that indicate that 16% of students with disabilities of a total of 6531 students enrolled in third up to twelfth grade engage in bullying over a three-year period, which urgently necessitates that they receive direct directions in social and communication skills to limit these negative experiences.²⁰

The effects could lead to losing sight of the importance of the social integration of the disabled person and complicate the process of his/ her rehabilitation, which is the objective set forth by all national and international texts in relation to persons with disabilities and human rights, that strive to enable them to access all their rights without discrimination between them and normal people.

II- International and Domestic Legal Protection for Persons with Special Needs from Bullying:

Both states and international covenants have accorded special attention to persons with special needs, regardless of the type of disability (sensory, physical, motor, ...), but raised the issue of the extent of the special protection that is granted to this category from all types of bullying whether it is social, economic, electronic or school bullying. In addition, it also posed the question of whether the penalties prescribed for bullying the persons with special needs were different than those prescribed for bullying ordinary people. This is what we will address in the following:

1- International Legal Protection: Although the Universal Declaration of Human Rights (UDHR) of 1948 is a foundational human rights instrument, its text does not explicitly mention persons with disabilities. Instead, it establishes universal principles of equality and equal protection, prohibiting discrimination on the basis of "any kind," which provides a broad, inclusive framework.²¹ on the grounds of race, colour, sex, language, religion, political opinion or other opinion, social origin, property, birth or "other status", as expressed in Article 2 of the Universal Declaration of Human Rights. This expression is one of the most important expressions that include the category of persons with disabilities, in addition to Article 5 which mentions the prohibition of subjecting anyone to torture or to inhuman or degrading treatment. The former could entail that the category of persons with disabilities is one of the addressees.

In summary, while international human rights instruments have progressively incorporated the rights of persons with disabilities—either through definition or by enumerating specific entitlements—they consistently omit an explicit prohibition of "bullying." For example, the 1969 Universal Declaration on Social Development and Progress, while addressing broader social integration, does not name this particular form of harassment.²² calls governments to adopt appropriate measures to rehabilitate the disabled persons so as to enable them to participate in the economic life, and emphasized on their political, civil, social, economic and health rights without distinction. Whereas Convention No 159 of 1983 on Vocational Rehabilitation and Employment for the Disabled, established by the International Labor organization, called for the need to rehabilitate this category.²³

Additionally, the former texts have been followed by the Principles for the Protection of Persons with Mental Illness and Improvement of Mental Care of December 1991 which emphasizes on the rights of the persons with disabilities and the need to protect them from economic and sexual exploitation²⁴. This also applies to the Standard Rules on the Equalization of Opportunities for the Disabled, issued by the United Nations General Assembly on December 20, 1993.²⁵

The Declaration of the Rights of the Disabled Persons, adopted by the United Nations General Assembly in 1975 indicated that the persons with disabilities shall

enjoy all the rights set forth in the declaration without discrimination. Point 7 of the Declaration mentions that the disabled persons have the right to social and economic security. Although the concept of "bullying" is not explicitly named, the broader objective of ensuring security for persons with disabilities inherently entails protection from domination. This concept of domination, as emphasized in point 10, encompasses any treatment of a discriminatory, arbitrary, or degrading nature, thereby covering the fundamental characteristics of bullying.²⁶

The foundational framework for children's rights in Africa was established by the Sixteenth Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU), held in Monrovia, Liberia, from 17 to 20 July 1979, which adopted the Declaration on the Rights and Welfare of the African Child. This commitment was later codified into a binding instrument with the adoption of the African Charter on the Rights and Welfare of the Child (ACRWC) in Addis Ababa in 1999.

Mirroring the universal principle enshrined in Article 2 of the Universal Declaration of Human Rights, the ACRWC enshrines a robust non-discrimination clause. Specifically, the Preamble and **Article 3 of the Charter** prohibit discrimination against children on comprehensive grounds, including race, colour, sex, religion, political or other opinion, national or social origin, fortune, birth, or other status.

Furthermore, **Article 10 of the Charter** stipulates additional safeguards for the child's dignity and personal integrity. It guarantees the protection of the child's privacy from arbitrary or unlawful interference and shields them from attacks upon their honour and reputation, ensuring the right to legal protection against such violations.²⁷

Article 13 explicitly refers to handicapped children, preceded by Article 16 which stipulates the need for states to take legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, including sexual abuse by those who have the care of the child. It also stipulates the need to establish monitoring units to identify, report investigations, treatment and follow-up of instances of child neglect and abuse.

Article 16 refers to all children without exception, including disabled children, mentioned in Article 13. Although reference to disabled children is only inferred, it is still a good step forward in the protection of children in general and disabled children in particular. Even though the article does not explicitly mention the term "bullying", suggestive expressions were employed such as "degrading treatment", "physical or mental harm", "maltreatment" which are the expressions commonly used in defining bullying.

It seems that the article transferred the provisions of Article 19 of the United Nations Convention on the Rights of the Child²⁸ which is concerned with the rights of

children that fall victims to bullying and harassment, without special provisions for children with disabilities. The latter stipulates the need for states parties to take all legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, negligence, maltreatment or exploitation, including sexual abuse while in the care of any legal guardian. In addition, it stipulates the need to implement effective procedures for the report, investigation, treatment and follow-up these cases and, as appropriate for judicial intervention.

The convention also stresses that children should not be subjected to inhuman or degrading treatment (Article 37/1), whereas the Convention on the Rights of Persons with Disabilities²⁹ stipulates the need to raise awareness and combat stereotypes, prejudices and harmful practices relating to the persons with disabilities in all areas of life (Article 8/1 b). It also emphasizes that persons with disabilities should not be subjected to torture or to cruel, inhuman or degrading treatment or punishment, violence, abuse or exploitation and that the states parties should take all the legislative, administrative, social and educational measures to protect them inside and outside the house, identify and report these cases (Articles 15 and 16) and ensure the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities and the safeguarding of their personal safety (Article 17).

Although there is no explicit reference to bullying perpetuated on this category, the used expressions “cruel treatment”, “inhuman” or “degrading” refer directly to the entailed meaning. However, it should be noted that the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child use terms that are more accurate, such as “inhuman or degrading treatment”, particularly “physical or mental harm or maltreatment” than those used in the Convention issued specifically for the disabled persons.

We could also refer to Article 22 which stresses the need to respect the privacy of persons with disabilities and that they should not be subjected to unlawful attacks on their honour and reputation as well as their right to the protection of the law against such attacks or interventions. Article 14 (a) emphasizes that all states parties should guarantee the personal security of the disabled person on an equal basis with others. In the same vein, the Convention on the Elimination of Violence and Harassment in the World of Work was adopted in 2019³⁰ to prohibit unacceptable behaviors or practices or threats, whether a single occurrence or repeated, that result or are likely to result in physical, psychological, sexual and economic harm to the worker, which includes the disabled worker. These behaviors, practices or threats include physical and verbal assault, bullying, harassment and stalking, although not clearly stated, as Article 6, although limited to violence and sexual bullying, ensures the right to non-discrimination for male and female workers and other persons

belonging to vulnerable groups or groups in situation of vulnerability that are disproportionately affected by violence and harassment in the world of work.³¹

In a campaign launched in this regard, it was mentioned that harassment is not limited to malicious sexual behaviors but also includes bullying. Survey data from the United Nations, the European Union, and the International Trade Confederation reveal a widespread prevalence of workplace harassment and bullying globally. The statistics indicate that 77% of women in Africa have experienced such treatment, with figures ranging from 45-55% in Europe, 30-50% in Latin America, and 30-40% in Asia and the Pacific.³²

As far as the Arab world is concerned, Article 13 of the Arab Charter on Human Rights prohibits the torture of any person on the territory of any state, whether physically or psychologically or by treatment of a cruel, degrading or humiliating nature and deems it a punishable crime.

Although it appears that this document does not include articles for disabled persons and bullying against disabled persons, the aforementioned article, in general, could apply to this category.³³ While the Arab Convention No. 17 of 1993 on the Rehabilitation and Employment of the Disabled aims to facilitate the reintegration of persons with disabilities into the labour market, it fails to explicitly stipulate protective measures or redress mechanisms for instances of workplace bullying.³⁴

Point 10 relating to the axis of legislations of the Arab Decade of Disabled Persons (2004-2013)³⁵ stipulates the need for states to criminalize the neglect and maltreatment of disabled persons whether by their families, workers in institutions, or others. It does not include, however, any additional details despite the importance of the points and axis it prescribes and its coverage of important issues regarding all categories of persons with disabilities, namely children, women and seniors. There is also the Second Arab Decade (2022-2032) which supports the ways to integrate the disabled person and the Arabic classification of this category.

2- Domestic Legal Protection:

Law No 09-02 relating to persons with disabilities does not provide for the protection of disabled persons from bullying, except for the texts that prohibit discrimination against the disabled persons. For instance, Articles 24 and 25 prohibit the exclusion of disabled persons from employment competitions or tenure on the grounds of disability, therefore, we should refer back to the Penal Code as a general principle that grants special protection for the disabled person from exposure to harm, whether in relation to physical or psychological abandonment, exposure to danger³⁶, the crimes in which disability is a deemed as an aggravating circumstance³⁷, or the crimes relating to the disabled persons' properties such as theft or facilitating substance abuse.³⁸

We notice the lack of direct and explicit texts on the protection of the person with a disability in the Penal Code, except for Law 14-01³⁹, amending the Algerian Penal Code, which deems discrimination a misdemeanor punishable by imprisonment for a

period from six months to three years and a fine from fifty thousand Algerian Dinars to one hundred and fifty thousand Algerian Dinars if the perpetrator is a natural person (Article 295 bis 1).

According to this article, discrimination refers to any distinction, exclusion, restriction or preference based on sex, race, color, descent, national or ethnic origin, or disability with the aim of nullifying or impeding the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis in the political, economic, social or cultural fields or any other field of the public life. Therefore, these provisions are not particular to the person with a disability but include all types of people.

Bullying the person with a disability is a result of discrimination. If every act of bullying is deemed as discrimination, it does not necessarily entail that every act of discrimination is deemed as bullying. The latter is defined as any domination and humiliation that involve physical or verbal harm, which means that discrimination may occur in other ways or means which aim to deprive the person with a disability from his/ her rights in various, political, economic and social spheres without subjecting him/ her directly to mockery and humiliation. Accordingly, is it adequate to apply this article on bullying the person with a disability or is it necessary to search for a more appropriate text?

By referring to Law No 15-12 relating to the protection of the child, Article 2 defines “the child in danger” as a “maltreatment to the child”, especially in case of subjecting him/ her to torture, assault on his/ her physical safety, detention, deprivation of food or any act involving cruelty which affects the child’s emotional and psychological balance.

The last paragraph entails a direct reference to bullying against children, but in any case, it appears to be insufficient as it is only concerned with the category of children. Even though it covers the disabled child, it does not include adults or seniors, which highlights the need for a new more accurate and inclusive text.

In addition, Article 140 of the same law stipulates that anyone who compromises or attempts to compromise the personal life of the child, by publishing or broadcasting texts and/or pictures by any means that may harm the child, shall be punishable with imprisonment for a period of one to three years and a fine of one hundred and fifty thousand Algerian Dinars to three hundred thousand Algerian Dinars.

It appears that this article, similarly to the one before, does not include the adult or senior person with a disability and does not even provide the disabled child with special treatment, such as a stronger penalty because of disability. That is only if we consider that the contents of the article may be deemed as bullying, for publishing or broadcasting pictures of the disabled person could be motivated by reasons other than bullying, such as exploitation in the production of pornographic materials.⁴⁰

The Egyptian legislator is one of the most important initiators that established direct texts in relation to bullying with deterrent penalties if it occurs against normal people and severe penalties if it occurs against persons with special needs, whether children or adults, and regardless of their gender.

As far as normal persons are concerned, the Egyptian legislator added article No 309 bis B to the Penal Code which clearly defines bullying as : “Any show of strength or control by the offender, as well as exploitation of the weakness of the victim, or of a situation that the bully believes would offend the victim, such as gender, race, religion, physical descriptions, and health, mental or social status, with the aim of intimidating, ridiculing or degrading them or excluding them from a social environment”. The legal framework stipulates a baseline penalty for bullying, which is imprisonment for a term not less than six months and a fine ranging from ten thousand to thirty thousand pounds. The court may impose either the imprisonment or the fine.

Aggravating circumstances invoke a more severe penalty. If the crime is committed by two or more persons, by a family member, by someone responsible for the victim's education or care, by an individual in a position of authority over the victim, or by a legal or judicial guardian, the penalty is heightened to imprisonment for no less than one year and a fine between twenty thousand and one hundred thousand pounds, with either penalty being applicable.

In cases where two or more of these aggravating circumstances coincide, the statutory minimum penalty is doubled. Furthermore, if the perpetrator(s) are convicted of committing the same crime again, both the minimum and maximum limits of the punishment are subject to doubling.⁴¹

The Egyptian legislator has reinforced the legal protection for persons with disabilities through an amendment to Law No. 10 of 2018, introducing a new Article 50 *bis*. This provision establishes enhanced penalties for the bullying of individuals with disabilities, recognizing their heightened vulnerability.

The base penalty for this offense is imprisonment for a term of not less than two years and/or a fine ranging from fifty thousand to one hundred thousand pounds.

The penalty is significantly aggravated if the perpetrator is in a position of trust or authority over the victim. This includes family members, individuals responsible for the victim's education or care, legal or judicial guardians, or domestic workers. In such cases, the prescribed penalty is imprisonment for a period of three to five years and/or a fine between one hundred thousand and two hundred thousand pounds.

Should two or more of these aggravating circumstances concur, the statutory minimum penalty is doubled. Furthermore, in cases of recidivism—where the perpetrator re-commits the same offense—both the minimum and maximum limits of the punishment are subject to doubling.⁴²

Thus, the Egyptian legislator has accurately distinguished between bullying persons with disabilities and other terms that may be confused with it and which may

occur against normal people⁴³. As circumstances may be similar and a crime may mistakenly qualified as another crime, which happened when a person with special needs was subjected to terrorizing and intimidation with a ferocious dog, by more than one person (thuggery) and some deemed it as an act of bullying since the victim is a person with special needs. Therefore, the applicable law should be Article 47 of Law No 10-2018 relating to the persons with a disability, which stipulates that any individual who commits an act of violence or abuse against a person with disabilities is subject to legal penalty. Such acts include, but are not limited to, exposing the victim to danger, torture, beating, or any other form of physical or psychological harm. The prescribed punishment for these offenses is imprisonment for a term of not less than six months and a fine not exceeding fifty thousand pounds. however, these circumstances were qualified as punishable by the penalty of terrorizing and intimidation, stipulated in Law 6 of 1998, amended by Law 10 of 2011 (Articles 375 bis and bis A), which is a general article that is not specific to persons with special needs.

If bullying is of a sexual character, it may also be confused with Article 53 of Law No 10-2018 which stipulates that any person who presented, published or broadcasted, by any means of publication, any data, information, pictures, drawing or films for indecent acts that may harm or expose persons with disabilities or promote incorrect concepts that may offend shall be punishable with a fine between ten to two hundred thousand pounds.⁴⁴

Bullying-related articles also overlap with discrimination on the basis of disability, mentioned in Article 3 of Law 10-2018 of the Law on Persons with disabilities⁴⁵, which is punishable by the penalties mentioned in Article No 10-2011, amending the Penal Code, with imprisonment and a fine of no less than thirty thousand pounds and no more than fifty thousand pounds or by one of these two penalties, which is a general article that is applicable on everyone and not just persons with special needs.⁴⁶

Therefore, the Egyptian legislator preferred to intervene in order to set an accurate definition of bullying and define its penalties when it occurs against normal people and when it occurs against persons with disabilities, as mentioned above.

It appears that it is important for the legislation to include mechanisms on how to prove bullying in order to avoid causing injustice for the other party and to include rules that facilitate its implementation, as it is because of this ambiguity that many accused persons are acquitted due to the unclarity of the legal text.

Some consider⁴⁷ that there are generally accepted rules to prove the occurrence of the crime of bullying such as witness testimony and recording the incident, and that if the judge is convinced that the incident occurred, then that is sufficient evidence to prove the occurrence of the crime and apply the law on the perpetrator.

III- Preventive and Therapeutic Mechanisms Against Bullying:

The UNICEF sounded the alarm over the increasing exposure of millions of children around the world to bullying, according to international and human rights organizations, especially during the period of COVID when children's lives became internet-focused. Quarantine measures were met with families' reliance on technology and digital solutions to educate and entertain children as well as offer them an outlet to communicate with the outside world. In response, the UNICEF and its partners issued a new technical note so as to urge governments, teachers and families to pay attention to the security of children, particularly during the period of COVID and circulate information to children, families, social service workers and schools about local reporting and complaints mechanisms.⁴⁸

Therefore, applying aggravating legal rules on the bully as a preventive measure or even as a punitive deterrent measure, by itself, is not sufficient, especially since the issue is mainly attributed to social and moral factors. Accordingly, we need to pay attention to this aspect as well through establishing social preventive and therapeutic mechanisms. In the following are some of the most relevant mechanisms:

- Raise moral awareness of this category in society on all spectrums (school, family, mosque, work, ...) and issue directions to remind people of rejecting and not tolerating this behavior and even threaten the bully with the possibility of losing some of his/ her rights (which has been done by the Office for Civil Rights of the U.S. Department of Education in October 2014).
- Grant the rehabilitated disabled person access to special education and an individualized education program, which can be part of a plan to protect him/her from bullying, as each child with a disability has the right to free, appropriate public education, which could be obstructed by bullying.
- Pre-deal with the questions that the person with a disability receives and his/her response in this situation.
- Establish a free-of-charge hotline to assist the persons with disabilities who wish to get guidance and support and provide alternative mechanisms, such as websites and the media.

Nothing could obstruct the implementation of the special therapeutic measures mentioned in the Child Protection Model Law, issued during the sixty-second sessions of the members of the Committee on the Rights of the Child of the International Centre for Missing and Exploited Children, held in January 2013⁴⁹, mainly:

- Establish a formal response system to receive and coordinate reported cases of bullying, which shall include measures of emergency medical and psychological assistance, provide a safe environment for the disabled person, put in place specially trained service providers as well as establish long term rehabilitation procedures.

- Persons with disabilities, children particularly, shall receive continued assistance to reintegrate society; reintegration procedures should be tailored to the specific needs of the child and the type of suffering he has been subjected to, the child shall also be provided with continued mentoring and guidance to avoid exposure to bullying and social exclusion again as well as offer special alternative care in case of family bullying.
- Establish an independent oversight body to monitor the operations of alternative care providers. This body should be mandated to conduct regular, unannounced on-site inspections to control compliance with safety and hygiene protocols and assess worker performance. Furthermore, it is imperative to ensure that children residing in these facilities have unimpeded and confidential access to a robust, child-sensitive grievance mechanism, allowing them to safely file complaints or report concerns regarding their treatment and living conditions.
- Ensure complete confidentiality of information related to informants, whether care givers or others, and the necessity to provide assistance to facilitate identifying perpetrators, victims and the investigation.
- Immediate intervention of child protection committees in cooperation with specially trained law enforcement units.
- Provide legal assistance and justice by compensating the child for moral damages and lost opportunities of education and vocational training by bringing a case before a court, investigating the circumstances as well as reviewing the family care or educational care for the child.
- Having regard to the age, disability and maturity of the child in the proceedings to ensure the best interest of the child; the proceedings must be conducted by specially trained law enforcement officials, judges, prosecutors and lawyers that are informed about the rights of the disabled person to protect his/her best interests.
- Encourage alternatives to judicial fora, such as mediation solutions, whenever they serve the best interest of the child, prohibit the participation of the public and limit frightening and unnecessary interrogations of the disabled person, ensure that family members accompany the child in all stages of the proceedings and avoid direct contact or confrontation between the child and the offender.

Conclusion:

This study reflects the seriousness of bullying children with disabilities, particularly children. Given the causes and profound effects of bullying on this category of society, efforts have been deployed by states to counter this phenomenon and address its effects prior to and after its occurrence, through international covenants and domestic laws.

From the above, we **conclude**:

- 1- Bullying is a major obstacle to the integration of the person with a disability in society, which is the objective set forth by international covenants and domestic laws for years. Therefore, it is necessary to reflect on a direction and a solution to bullying before considering the social, political and economic integration of the person with a disability.
- 2- Bullying is a serious issue that is not only legal as much as it is social and moral.
- 3- The inadequacy of the protection provided to the person being bullied on the basis of disability due to the unclarity or lack of provisions that are directly and specifically related to bullying the person with a disability on domestic and international levels alike, as well as the general satisfaction with the provisions that are either related to bullying normal people or those related to assaulting children in general, with the exclusion of adults, or the provisions related to assaulting persons with disabilities, regardless of age and the type of assault or being specific about the term.
- 4- The lack of clear accurate texts defining bullying of the persons with disabilities may lead to confusion and error in qualifying the circumstances of bullying, since assault is form of bullying as are sexual innuendos.

Therefore, **we suggest**:

- There is an urgent need for the Algerian legislator to intervene in order to draft clear, accurate and direct provisions relating to bullying persons with disabilities, regardless of their age and gender, identify the punishable cases of bullying, provide an accurate definition of bullying, strengthen penalties because of the special condition of the person with a disability and the severe repercussions of bullying in impeding his/ her social integration process in addition to the need to distinguish between bullying and its related penalties from similar crimes.
- Adopt a self-defense policy, that is to say the necessity to include the person being bullied in decision making, planning, taking the necessary steps to address bullying cases, self-talk, describing weaknesses, learning about rights, taking responsibility and participating in deciding how to deal with the situation.
- Provide a standard definition of bullying persons with disabilities on both domestic and international levels, specify the acts that are deemed as bullying in order to properly qualify the incident as well as avoid evading responsibility and punishment.

¹¹ - Article I of the Convention on the Rights of Persons with Disabilities and the Optional Protocol, United Nations, 2006, p. 149.

² - Article II of Law No. 02-09 of 8.5.2002 on the protection and promotion of persons with disabilities, OJ 34.

³ - Eleanor Roosevelt, Bullying and Human Rights, Rights, sites : News, Volume 6 , Issue 4 Fall 2010, pp. 1-12, at p. 2.

⁴-Ibid.

⁵ -Protecting Children from Bullying and Cyberbullying, NSPCC learning (16/12/2020) : learning.nspcc.org.uk

⁶ Eva Baradji, Olivier Filatrian, les Personnes Handicapées sont plus souvent victimes de violence physiques, sexuelles et verbales, Direction de la recherche des études de l'évaluation des statistiques, juillet 2020, n° 1156, pp. 1-8, at p.3-4

⁷ -Samah Benabid, A study of some personality traits of the bullying adolescent schooled in the middle school, a field study in the middle school of Berwal Hussein - Ain Melilla, a supplementary thesis for obtaining a master's degree, specializing in clinical psychology, Department of Social Sciences, Larbi Ben M'hidi University, Oum El Bouaghi, 2017-2018, pp. 52-66.(translated).

⁸ Ibid., p. 57-58.

⁹ Eva Baradji, Olivier Filatrian, p.3-4.

¹⁰ Mc Laughtin, colleen, Findings of the Comprehensive review of the Literature: Responding to Bullying among children with special Educational Needs and/or Disabilities, Briefing paper 1/1/2015 (Book), Cambridge University, pp. 1-5.

¹¹ Ibid., p. 2-3.

¹² Pacer's National Bullying Prevention center, Bullying Statistics, site: pacer.org/bullying/info/stats.esp

¹³ Eleanor Roosevelt, bullying and Human Tights, op.cit., p. 3.

¹⁴ Some theoristis divide bullying into psychological bullying (intimidation, social exclusion and spreading rumors), emotional bullying (threats, mockery, insults and humiliation) and sexual bullying (shameful sexual comments). See: Samah Benabid, op.cit., p.51.

¹⁵ -Ibid, p.55.

¹⁶ Eleanor Roosevelt, Op.Cit., P. 8-9.

¹⁷ Mettre fin à la Violence et au Harcèlement contre les femmes et les Hommes dans le Monde du Travail, Bureau international du travail, Genève, Rapport V (1), conférence International du Travail 107^e session, 2018, pp. 1-154, at p. 15-16.(translated)

¹⁸ Bullying and Harassment of Students with Disabilities, 10/15/2019, site: eparent.com/education/Top-10-facts-that-parents-educators-and-student-should-know/

¹⁹ Eva Baradji, Olivier Filatrian, op.cit., P. 8.

²⁰ Chad A . Rose, Nicolas A, Gage, Exploring the Involvement of Bullying among students with Disabilities Over Time, 2016, PP. 298-314.

See also: Pacer's National Bullying Prevention Center, Op.Cit.

21 - Universal Declaration of Human Rights (1948), United Nations.

22 - Declaration on Social Progress and Development (1969).

23 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159

24 -Principles for the protection of Persons with mental illness and the improvement of mental health care(17/12/1991), General Assembly resolution 46/119.

25 -Standard Rules on the Equalization Opportunities for persons with Disabilities, 20/12/1993, General Assembly.

- ²⁶ - The Declaration on the Rights of Disabled Persons was adopted on December 9, 1975 by the United Nations General Assembly resolution A/RES3447 (XXX).
- ²⁷ -AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD Adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU Addis Ababa, Ethiopia - July 1990 Entered into force on 29 November, 1999.
- was ratified by Algeria by Presidential Decree No. 03-242 corresponding to 8/7/2003, O.J.41.
- ²⁸ -Although Article 23 deals with the need to assist and empower children with disabilities in their rights for social integration - UN Convention on the Rights of the Child (20/11/1989) It was ratified by Algeria by Presidential Decree No. 92-461 of 19/12/1992, O.J. 91.
- ²⁹ - Convention on the Rights of Persons with Disabilities adopted on 13/12/2006 and ratified by Algeria by Presidential Decree No. 09-188 of 12/5/2009, O.J. 33
- ³⁰ - **C190 - Violence and Harassment Convention**, 2019 (No. 190), in the World of Work, International Labour Conference
- ³¹ International Labour Organization, Violence et Harcèlement contre les Personnes Handicapées dans le monde du travail, Bureau International de Travail.
- ³² - ILO in Jordan launches campaign on the right to a Workplace free from violence and harassment, Press release, 21 June 2020, Regional Office for Arab States.
- ³³ -Arab Charter on Human Rights, council of the League of Arab States, Resolution 5427 of 15/09/1997.
- ³⁴ - Arab Convention No 17 of 1993 concerning the Rehabilitation and Employment of Persons with Disabilities.
- ³⁵ - Arab Decade for People with Special Needs (2004-2013).
- ³⁶ Articles from 314 to 319 of the Penal Code as amended and supplemented by Law 24-06, issued on 04/28/2024, Official Journal 30.
- ³⁷ They are crimes of trafficking in persons and human organs (Articles 15 and 29 of Law 23-04 issued on 05/09/2023, on the Prevention and Combating of Trafficking in Persons, Official Journal 32, and Article 303 bis 16 to 29 bis of law 09-01, issued on 02/25/2009, on Trafficking in Organs, Official journal 15, amending and supplementing Decree 66-156 relating to the Penal Code), sexual harassment (Article 341 bis, Penal Code, as amended and supplemented with Law 15-19), indecent act (Article 337, Penal Code, as amended and supplemented with Law 24-06), violation of sexual sanctity (Article 333 bis 3, Penal Code, as amended and supplemented with Law 19-15),
- ³⁸ Article 350 bis et seq of the Penal Code on theft, Article 13 of Law No 04-18 relating to the Protection from Narcotic Drugs and Psychotropic Substances and the Suppression of Illicit use and and trafficking, issued on 12/05/2004, Official Journal 83, amended and supplemented by Law 23-05, issued on 05/09/2023, Official Journal 32
- ³⁹ - Law No. 15-12 of 15/7/2015 on child protection, O. J. 39.
- ⁴⁰ The latest amendment to the Penal Code of the year 2024 includes a similar content, which is the contents of Article 333 bis 1 which stipulates that any person that photographs a minor under 18 years old of age by any means while being involved in sexual activities, photographs his/her private parts for the same purposes, produces, publishes, promotes, imports, exports, displays, sell or possesses pornographic material featuring minors is punishable with imprisonment for a period from five to ten years and a fine of five hundred to a million Algerian Dinars, without providing the disabled minor or adult with special provisions.
- 41 - Law No. 189 of 2020 amending the Penal Code promulgated by Law No. 58 of 1937.
- 42 - Law No. 10-2018 on the Rights of Persons with Disabilities, Official Journal No. 7 bis (c) on 19/2/2018, Egypt (19-10-2021), as amended by Law 2021.

⁴³ As was the case prior to the amendment when certain incidents of bullying were deemed as accusations of defamation and slander. See: Mahmoud Chorbadi, ““After increasing the punishment, four acts that make you a bully and put you under the law,” 17/07/2020, (translated 2022/1/6). see:

www.masrawy.com/news/news_cases/details/2020/9/17/1975723

⁴⁴ -Selim Sami, "Is there a punishment for bullying people with special needs?" "We Help" website for persons with disabilities, Egypt, 7/6/2020, (translated 21/1/2025) on: <https://nosaed.com/>

⁴⁵ Article 3 of Law 10-2018 stipulates that discrimination is : «Any limitation, restriction, exclusion, nullification or denial of any human right or basic freedoms stipulated in the constitution or any other legislation on the grounds of disability ».

⁴⁶ Chapter Eleven, Law No 10-2011, amending the Penal Code, Article 161 bis .

⁴⁷ -Mahmoud Chorbadi, op.cit.

⁴⁸ - Amani Zayed, study on "Bullying threatens the lives of children and adults and increases psychological crises and chances of suicide", Al-Wafd Portal, 10/8/2020(translated.

⁴⁹ - CHILD PROTECTION MODEL LAW Best Practices: Protection of Children from Neglect, Abuse, Maltreatment, and Exploitation January 2013.