

The constitutional and international basis for children's rights

الأساس الدستوري والدولي لحقوق الأطفال

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• Abstract:

This research paper seeks to underscore the paramount importance of international and constitutional protections afforded to children's rights. It emphasizes the commitment to safeguarding their interests and defending their fundamental rights and freedoms. The constitutional enshrinement of such protections is indispensable, given that the Constitution represents the supreme law of the State, prevailing over all other legal norms. The incorporation of children's rights within international and constitutional instruments ensures their durability and stability, rendering their observance a binding obligation upon both individuals and public authorities. This framework constitutes the most robust guarantee for the effective realization and enforcement of children's rights.

Keywords: Children's Rights, Constitution, Protection.

ملخص:

تهدف هذه الورقة البحثية إلى إبراز قيمة الحماية الدولية والدستورية لحقوق الطفولة التي اهتمت لشؤونها وتدافع على حقوقه وحرياته ولا بد من تكريس الحماية اللازمة له بموجب الدستور الذي يعتبر هو القانون الأساسي في الدولة والذي يمتاز بصفة السمو على باقي القواعد القانونية، حيث أنّ معالجة حقوق الطفولة في صلب الوثائق الدولية والدستورية يكسبها ثباتا واستقرارا، لأنّ احترامها يصير واجبا من قبل الأفراد ومن قبل السلطات العمومية على حد سواء، وفي ذلك أكبر ضمانة لها.

الكلمات المفتاحية: حقوق الطفولة، الدستور، الحماية.

• Introduction

Among the topics that have received wide and early attention from the international community is the protection of children's rights, considering that children represent the most vulnerable group in society. This concern stems from the numerous crises and challenges faced by children, which have often prevented them from enjoying a proper childhood that ensures healthy physical, psychological, and mental development. Such challenges include violence, poverty, exploitation in all its forms, abuse, neglect, lack of healthcare, drug abuse, human trafficking,

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and recruitment into armed conflicts. Consequently, states and organizations have exerted greater efforts to provide mechanisms, means, and guarantees capable of ensuring the protection and enjoyment of children's rights.

In this regard, Algeria has ratified numerous international and regional human rights instruments, particularly those concerning children's rights. These instruments have served as important sources of inspiration for national lawmakers in drafting domestic legal provisions, ensuring their conformity with international obligations. The Algerian state's commitment to children's rights is also reflected in its constitutional framework, recognizing the Constitution as the supreme law of the State, to which all legal texts must adhere. This constitutional enshrinement provides an essential guarantee for the protection of children's rights by all, whether rulers or citizens.

With the 2020 constitutional amendment, Algeria witnessed a significant expansion in the area of rights and freedoms, including those related to children, prompting the following research question: **To what extent can it be said that the Algerian Constitution and international conventions have achieved adequate protection of children's rights?**

To address this issue, the study is divided into two main sections:

- The first section examines the constitutional and legal foundations for the protection of children's rights.
- The second section explores the development of constitutional protection for children's rights through Algeria's successive constitutions, culminating in the 2020 constitutional amendment.

First Section: Constitutional and Legal Foundations for the Protection of Children's Rights

As a human being, the child benefits from the general rights recognized for all individuals. However, due to their vulnerability and inability to defend themselves, children also require specific rights, necessitating special care and protection. This has been affirmed both in internal legislation and constitutional provisions, particularly with the constitutional amendment of 2020 and the enactment of Law No. 15-12 of July 19, 2015, concerning the protection of children.¹

First: The Value of Constitutional Protection of Rights and Freedoms

No right or freedom can be exercised unless it is first recognized by the State.² Individuals and institutions cannot act beyond what the law permits. Therefore, the legal rule is the sole instrument through which rights and freedoms are recognized. Following recognition, it becomes necessary to

¹ Examples include: - The International Convention on the Elimination of All Forms of Racial Discrimination of 1966.

- The International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights of 1966.
- The African Charter on Human and Peoples' Rights of 1987.
- The International Labour Organization Declaration on Fundamental Principles and Rights at Work of 1998.
- The African Charter on the Rights and Welfare of the Child of 2003.
- The Arab Charter on Human Rights of 2006.
- The Convention on the Rights of Persons with Disabilities of 2009.

² Thabet Dunyazad, "Children's Rights in Danger and Mechanisms for Their Protection in Algerian Legislation," Journal of Human Rights Studies, Issue 2, June 2018, p. 81.

organize these rights by defining their content and conditions for exercise, and to provide the necessary guarantees for their protection.

Legal norms take different forms depending on the issuing authority; they may be constitutional, legislative, or regulatory. Consequently, legal norms differ in their hierarchical value, where lower-ranking rules must conform to higher-ranking rules in both form and substance, in accordance with the principle of the hierarchy of legal norms.

The Constitution is the fundamental law of the State and occupies the highest rank among legal norms. Its provisions are binding upon all public authorities and can only be amended or repealed through special procedures. Thus, organizing any right or freedom within the constitutional framework grants it the highest level of protection¹. Nonetheless, constitutional norms generally establish broad principles and frameworks, delegating the detailed regulation of rights and freedoms to the legislative authority, which represents popular sovereignty.

It follows that the higher the legal standard that regulates a right or freedom, the broader the scope for its enforcement by all authorities. Hence, the constitutionalization of rights reflects the State's commitment to uphold them above all other legal texts.²

Moreover, any legal norm that lacks a sanction for its violation is theoretically incomplete and practically ineffective. To safeguard the legal order,³ the constitutional drafters envisaged the possibility of public authorities failing to comply with constitutional provisions when enacting laws. Accordingly, constitutional review mechanisms were established to ensure the conformity of laws with the Constitution, and individuals were granted the right to challenge the constitutionality of legislative or regulatory provisions that infringe upon their constitutionally guaranteed rights and freedoms.⁴

Second: The Development of Constitutional Protection of Children's Rights

The protection of children's rights has evolved significantly within Algeria's constitutional history, reflecting both internal and external influences on the drafting of constitutional texts.

-The 1963 Constitution⁵ made no explicit reference to children's rights but mentioned in its preamble the adoption of social policies aimed at improving the living standards of workers, promoting women's participation in public affairs, developing the country, eradicating illiteracy, and enhancing public health and housing conditions. These general commitments could be interpreted as implicitly including children's welfare through the family unit.⁶

¹ If freedom is the ability to choose an action, then a right is this same ability, but enhanced by the individual's ability to demand that others respect it. In other words, freedom is the availability of the ability, while a right is the ability to compel others to respect this ability. Therefore, a right is nothing more than Embodying Freedom and Transitioning It from the Theoretical Framework to the Practical Framework), Muhammad Sa'id Majzoub, *The General Theory of Human Rights: The Development of Public Rights and Freedoms and Legal Mechanisms for Their Protection*, Modern Book Foundation, First Edition, Lebanon, 2014, p. 17.

² Muhammad Sa'id Majzoub, op. cit., p. 69.

³ Ben Sa'adi Abdelhaq, *The Constitutional and Institutional Process for the Protection and Promotion of Children's Rights in Algeria*, World Politics Magazine, Volume 6, Issue 22, 2022, p. 399.

⁴ Presidential Decree No. 20-442 of 15 Jumada al-Ula 1442 corresponding to December 30, 2020, regarding the issuance of the constitutional amendment, approved by referendum on November 1, 2020, Official Gazette No. 82, dated December 30, 2020, Articles 190 and 165.

⁵ Constitution of September 10, 1963, Official Gazette, No. 64, dated September 10, 1963.

⁶ - Ben Saadi Abdelhak, op. cit., p. 399.

-The 1976 Constitution¹ marked progress by explicitly referring to children as citizens who had not reached working age. Article 65 used the term "childhood" for the first time, stating that the State shall protect motherhood, childhood, youth, and old age through appropriate policies and institutions, indicating a more independent vision toward children's issues.²

-The 1989 Constitution,³ despite being a turning point in Algerian constitutional history, did not expand upon the advances of the 1976 text regarding children's rights. It emphasized the sanctity of the family, the guarantee of decent living conditions, and the right to free and compulsory basic education, encouraging parents to educate their children.⁴

-The 1996 Constitution⁵, following Algeria's ratification (with reservations) of the 1989 United Nations Convention on the Rights of the Child by Presidential Decree No. 92/461, ⁶showed a more prominent commitment to children's rights. Article 72 stipulated that the family, society, and the State protect children's rights, with specific mention of the protection of abandoned or unknown parentage children, the suppression of violence against children, and support for vulnerable groups, including children with special needs.

However, criticisms were directed at the 1996 text for prioritizing family and society over the State in the responsibility hierarchy for children's protection, whereas the State should have been positioned as the primary guarantor, followed by society and then the family.⁷

Additional provisions in this Constitution included mandatory medical examinations for detained minors, penalties for child labor exploitation, and sanctions against parents neglecting their children's education⁸, all maintained in the 2016 constitutional revision⁹.

-The 2020 Constitutional Amendment introduced a substantial advancement in children's rights protection. Article 71 replaced the former Article 72 and provided that:

¹ - Order No. 76-97, dated Dhu al-Qi'dah 30, 1396 (corresponding to November 23, 1976), promulgating the Constitution of the People's Democratic Republic of Algeria, Official Gazette, No. 94, dated Dhu al-Hijjah 2, 1396 (corresponding to November 24, 1976).

² - Ben Saadi Abdelhak, op. cit., p. 400.

³ - Presidential Decree No. 89-18, dated Rajab 22, 1409 (corresponding to February 28, 1989), concerning the publication of the text of the constitutional amendment approved in the referendum of February 23, 1989, Official Gazette, No. 9, dated Rajab 23, 1409 (corresponding to March 1, 1989).

⁴ - Articles 50 and 55 of the 1989 Constitution.

⁵ - Presidential Decree No. 96-438, dated Rajab 26, 1417 (corresponding to December 7, 1996), promulgating the text of the constitutional amendment ratified by referendum on November 28, 1996. Official Gazette, No. 76, dated Rajab 27, 1417 (corresponding to December 8, 1996).

⁶ - Presidential Decree No. 92-461, dated Jumada II 24, 1413 (corresponding to December 19, 1992), ratifying, with interpretative declarations, the Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989. Official Gazette, No. 91, dated Jumada II 28, 1413 (corresponding to December 23, 1992).

⁷ - Yacoub Bouhabila, Public Policies for Child Protection in Algeria, Academy of Constitutional Law, Arab Organization for Constitutional Law, Seventh Session, 2022, p. 3.

⁸ - Articles 65 and 69 of the 1996 Constitution.

⁹ - Law No. 16-01 of 26 Jumada I 1437, corresponding to March 6, 2016, containing the constitutional amendment, Official Gazette, No. 14, dated 27 Jumada I 1437, corresponding to March 7, 2016.

*The family enjoys the protection of the State.

*Children's rights are protected by both the State and the family, with paramount consideration given to the best interests of the child.

*The State protects and guarantees the rights of abandoned children or those of unknown parentage.

*Parents are legally obliged, under threat of criminal prosecution, to educate their children.

*Children are likewise obliged, under threat of criminal prosecution, to show kindness and support to their parents.

*The law punishes all forms of violence, exploitation, and abandonment of children.

Through this article, along with other articles of this constitutional amendment, we can see a qualitative shift in advancing children's rights and the level of their protection, through the following observations:

- Protection of children's rights by the state and the family. Here, the constitutional founder has reorganized the responsibilities for protecting children and their rights, placing the state first, followed by the family.¹

-Adopting the principle of the best interests of the child as a constitutional principle, meaning that the child's interest shall always be the primary consideration over the interests of the family and society, and this principle becomes enforceable before judicial authorities.²

-Obligating parents to ensure the upbringing of their children and obligating children to show kindness toward their parents, under penalty of criminal prosecution.

-Punishing the use of violence against children in all its forms, not just physical violence as stipulated in the 2016 amendment, and criminalizing the exploitation and abandonment of children.³

-Expanding compulsory education to include middle school, in addition to primary school.

-Guaranteeing the right to education and upbringing, with the state committed to continuously improving their quality.

-Ensuring the neutrality of educational institutions, preserving their scientific and pedagogical character to protect them from political or ideological influence.

-The school's role in instilling citizenship values, serving as a foundational basis for civic education in accordance with Article 65.

¹ - Yaqoub Bouhabila, op. cit., p. 3.

² - op. cit., p. 3.

³ - Ben Saadi Abdelhaq, op. cit., p. 403.

-**Guaranteeing the integration of marginalized groups and those with special needs**, including children, into social life according to Article 72, replacing the provision under the 2016 amendment which merely facilitated access to recognized rights.

-**The necessity for every individual to exercise their freedoms** while respecting the recognized rights of others, notably the right to honor, private life, family protection, childhood, and youth as stipulated in Article 81.

Third: Ensuring Child Protection in National Legislation

Issuance of Law No. 15/12 on July 15, 2015, concerning child protection, which clarified its purpose in Article 1, stating that the law aims to establish the rules and mechanisms for child protection.

This law, which consolidates all provisions related to child protection, also abolished Article 149, stating, "All provisions that contradict this law are hereby repealed, particularly..." It also established central and local bodies responsible for child protection and established social and judicial protection mechanisms¹.

What can be noted about this law is its delay in its enactment. The Committee on the Rights of the Child made this observation, i.e., the absence of a legal text related to children's rights, in its 2005 report on Algeria, but it was not implemented for another 10 years.

This law excessively addressed social protection for children at risk and judicial protection for juveniles, while other rights, such as the child's right to alternative care, the rights of children with disabilities, and the child's right to receive information, were not mentioned.

Second Theme: Children's Rights at the International Level

In this section, we will address some key international declarations and conventions that aimed to ensure sufficient protection of children's rights, as follows:

First: Children's Rights in the Geneva Declaration of 1924

The Geneva Declaration of 1924 is considered the **first international written document** issued concerning children's rights, marking the beginning of international attention toward childhood. It contained a preamble and five main principles:

- The child must enjoy all the means necessary for material and spiritual development, including food, medicine, and psychosocial care.
- The child must receive food, medical treatment, shelter, and care.
- The child must be the **first recipient of aid** in cases of disaster.

¹ - Loukal Mariam, Commentary on Child Protection Law No. 12-15 in Light of International Conventions and National Legislation, Why a Child Protection Law? International and National Causes, Journal of Legal Studies, Algeria, 2016, p. 210.

-The child must be protected from all forms of exploitation and mistreatment.

-The necessity to **educate children** and instill in them a sense of responsibility so they may serve humanity better.¹

Second: Children's Rights in the Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights refers to children's rights:

Article 25 emphasizes that motherhood and childhood are entitled to special care and assistance, and all children, whether born in or out of wedlock, shall enjoy the same social protection.²

Article 26 stipulates the right to free and compulsory education, at least at the elementary level, and affirms the parents' right to choose the kind of education for their children.

Third: United Nations Declaration of the Rights of the Child (1959)

This declaration came as an extension and expansion of the Geneva Declaration of 1924:

-Its preamble refers to the UN Charter and the Universal Declaration of Human Rights, emphasizing that the child, being human, enjoys all the rights contained therein.

-It acknowledges children's need for special legal protection due to their physical and mental immaturity.

-It advocates for the gradual implementation of these rights through legislative and non-legislative measures.

-The ten guiding principles include:

*The child's enjoyment of all rights without discrimination.

*Special protection and necessary facilities for physical, mental, and moral development.

*The right to a name and nationality.

*Access to social security benefits.

*Special treatment, education, and care for disabled children.

*The right to parental care and family life.

*The right to free and compulsory elementary education.

*Priority access to protection and relief in all circumstances.

¹ The Geneva Declaration of the International Union for the Protection of the Rights of the Child, later adopted by the League of Nations upon its promulgation on September 26, 1924.

² The Universal Declaration of the Rights of Man and of the Citizen, issued by the United Nations General Assembly, December 10, 1948.

*Protection against neglect, cruelty, and exploitation.

*Protection against practices promoting racial or religious discrimination.

Fourth: Children's Rights in the Two International Covenants of 1966

Adopted by the United Nations General Assembly on December 16, 1966:

-The International Covenant on Civil and Political Rights addresses children's rights in:

Article 23: The importance of the family as the natural unit of society.

Article 24: Specific rights of the child, including the right to a name and nationality, and the obligation of society and the state to offer protection without discrimination.

-The International Covenant on Economic, Social and Cultural Rights affirms children's rights in:

Article 10: Special protection and assistance to the family and mothers.

Article 11: The right to an adequate standard of living.

Article 12: The right to health care.

Article 13: The right to free and compulsory primary education.

Fifth: The Convention on the Rights of the Child (1989)

-Adopted on November 20, 1989, signed by 61 countries in 1990, and entered into force on November 20, 1990.

-The preamble emphasized prior charters and treaties and recognized the harsh living conditions faced by many children around the world.

-Key principles of the Convention include:

*Non-discrimination (Article 2).

*The best interests of the child (Article 3).

*The child's right to life, survival, and development (Article 6).

- The Convention contains 54 articles divided into three parts:

*The first part includes 41 articles detailing the child's rights, both general (as a human being) and specific (as a child).

Conclusion

From the above, we conclude that constitutional and international protection of children's rights is the strongest protection that can be provided in countries. This is because constitutional rules are at the apex of the state's legal system and are therefore binding on all, whether individuals or public authorities. However, what can be noted is that the constitution is limited to establishing general principles and frameworks without delving into details, which it relegates to the legislature to regulate. This makes the legislature the primary guardian of these rights by formulating a legal, institutional, and treaty system capable of transforming them from theoretical frameworks to actual practice. This is embodied in international declarations and agreements, and the Algerian legislature's issuance of Law No. 15-12 on the Rights of the Child.

Recommendations:

The legislative authority and all those involved in proposing amendments related to children's rights are required to review and update this text by incorporating amendments and additions related to the aforementioned substantive issues.

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