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Legal protection of children of unknown parentage according the international perspective

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Abstract:

Children constitute an integral component of society, with the fundamental right to life from which numerous protective rights emanate, preparing them to fulfill their societal duties. Throughout history, children have been referred to by various terms, including minor, juvenile, young boy, and ward Notably, children of unknown parentage face deprivation of a vital aspect of human existence- identity and lineage- thus impeding the establishment of their personality and their full entitlement to civil, social, and cultural rights. This scenario starkly contrasts with children whose lineage is known, prompting an investigation into whether children of unknown parentage receive protection under statutory laws and international conventions.

Keywords: Child; Lineage; Unknown Parentage; International Conventions; International Treaties.

*** Zeghoudi Amar**

Introduction:

The essence of a family is founded upon the legitimate marital union between a man and a woman, designed to preserve lineage and perpetuate descent through the procreation of children, who are the cherished fruits of this union. These children, celebrated as life's adornments , are pivotal in fortifying the marital bonds of parents, who often avoid separation solely for their children's benefit, recognizing them as divine blessings whose true value is known profoundly only by those deprived of them.

Typically, a child is born into a stable, nurturing environment under lawful parents, who provide essential care, protection, and attention. This nurturing is unquestionably crucial for a child whose lineage is established, but what of the child whose lineage remains unknown and identity unclaimed?

Reflecting the equitable focus that Sharia and international treaties bestow upon children with established lineage, similar consideration is extended to children of unknown parentage.

Thus, we are compelled to explore the following critical inquiry:

What are the existing legal protection mechanisms for children of unknown parentage within the realms of international law?

This article will delve into two primary sections:

- **First Section:**Protection of children of unknown parentage according to international conventions.
- **Second Section:** Protection of children of unknown parentage according to regional charters.

THE FIRST TOPIC: PROTECTION OF CHILDREN OF UNKNOWN PARENTAGE ACCORDING TO INTERNATIONAL CONVENTIONS

Children's rights receive substantial support from international conventions and specialized agencies, whether the child is of known or unknown parentage, as perceptions of relationships vary from one country to another. In the Western world, the view of children of unknown parentage is generally more normative, reflecting their open cultural attitudes, particularly regarding relationships between men and women. In contrast, Islam prohibits relationships outside the framework of marriage.

These conventions have played a crucial role in upholding human rights and fostering international cooperation in establishing standards for child protection.

The United Nations has prioritized genuine child protection, creating entities dedicated to ensuring these rights are maintained and respected.
These discussions also address instances of human rights violations and abuses as they arise. This section will cover several key aspects: first, children's rights at the international level; second, children in specific international declarations; third, children in international conventions and governmental organizations; and fourth, role of specialized international agencies in child protection.
Based on this ,we will present the followin figuers ;to what externt do international organizations contribute to protecting children of unknown parentage ?

First: International Conventions

Children's Rights in the Universal Declaration of Human Rights: .A

UDHR, adopted on December 10, 1948, by UN General Assembly, recognizes the dignity and equal rights of all people as fundamental to freedom, justice, and peace.
It decisively rejects brutal acts and fosters a world where individuals experience freedom of speech and belief, and are protected from fear under the rule of law. This ensures human rights are preserved and reduces the need for rebellion against tyranny.

1. **General Principles of the Universal Declaration of Human Rights:**

UDHR consists of 30 articles that cover various rights, including civil, political, economic, social, and cultural. Articles 3 through 21 specifically protect the right to life, liberty, and security.
They prohibit slavery, servitude, torture, or any cruel treatment and affirm every individual's right to legal recognition and protection.
These articles also support the right to legal remedy for rights violations, protection against arbitrary arrest, and uphold freedoms related to opinion, expression, peaceful assembly, political participation.
UDHR stands as the foremost global document concerned with enshrining fundamental human rights and values. Despite its significance, the declaration was adopted through a non-binding vote -verbally and by show of hands- without any formal signing or official international ratification.[1]

2. **International Covenant on Economic, Social, and Cultural Rights:**

This Covenant, established by UN General Assembly Resolution 2200 (XXI) on December 16, 1966, and ratified by 142 countries by 2000, focuses on the protection and advancement of economic, social, and cultural rights, which is divided into five sections. [2]

- Right to self-determination.
- Defines obligations and commitments of states.
- Enumerates and specifies fundamental rights.
- Mechanisms for international implementation.
- Legal concluding procedures .[3]

International Covenant on Civil and Political Rights .3

Adopted on December 16, 1966, and ratified by 144 countries by 2000, this Covenant legalizes civil and political rights outlined in the Universal Declaration of Human Rights, with specific provisions for child protection in Articles 23 and 24. [4] This covenant specifically includes provisions for the protection and welfare of children, highlighting its significance.

Both covenants illustrate the global commitment to recognizing and legally establishing a broad range of human rights. They underscore the imperative for nations to comply with these standards, especially in protecting and upholding the rights of children.

Second: Child in Special International Declarations

Geneva Declaration of 1924: .1

The League of Nations issued the first international declaration on children's rights in 1923, formalized in 1924, in response to the impacts of World War I.

This declaration became a seminal international document in the global consensus on children's rights. Although it was not legally binding for nations, and did not address children's rights to development comprehensively, the Geneva Declaration is immensely significant as the first international declaration to articulate children's rights, advocating for their protection. This was in response to the widespread suffering and hardship caused by World War I, especially among children and women[5].

Despite its limitations in fully addressing all children's rights, its issuance at such an early time marked a positive step toward urging nations to pay attention to and protect children's rights, recognizing children as a distinct group with specific needs.

The Geneva Declaration outlines five core principles, with a preamble stressing global responsibility to protect all children, regardless of background. The first principle emphasizes the necessity to fulfill children's material and spiritual needs. The declaration outlined several key principles: the second principle mandated adequate nutrition, healthcare, shelter, and aid for orphaned, disabled, and lost children.

The third principle prioritized children's right to receive aid during adversities. The fourth principle highlighted the importance of safeguarding children from exploitation and ensuring their ability to earn a livelihood. The fifth principle underscores the role of education and fostering responsibility in children to help them contribute positively to society.[6]

Declaration of the Rights of the Child of 1959: .2
Adopted by the UN in 1959, this declaration expands on foundational human rights documents to specifically affirm ten principles dedicated to protecting children's rights, emphasizing equality and non-discrimination.
A notable aspect of this summit was its serious call for nations to prioritize child mortality issues and to reflect this priority in their public budgets, leading to the creation of the 20/20 Initiative, a strategy aimed at combating the worst effects of poverty.

Third: The Child in International Conventions and Governmental Organizations
Various international conventions have played roles in safeguarding children's rights. Among these conventions:

1. **Convention on Rights of Child of 1989:**

Ratified by nearly all UN member states and effective from September 1990, this Convention provides a binding international framework for protecting a broad spectrum of children's rights, from civil to cultural. It mandates regular compliance reports to the overseeing UN Committee on the Rights of the Child. A child is defined as anyone under 18, unless national laws set a younger age for adulthood.
The Convention places the best interests of children as a top priority in all actions and policies[7]. The Convention is structured into three main sections: outlining specific rights and principles, establishing the Child Rights Committee for oversight, and detailing treaty adherence processes[8]. Further enhancements include 2002 protocols addressing child involvement in armed conflicts and protections against exploitation like trafficking and pornography.[9]

2. Optional Protocol on Involvement of Children in Armed Conflict (2002):
Adopted in May 2000 and effective from February 2002, this protocol prohibits child recruitment and participation in armed conflicts and calls for the protection of civilian infrastructure to ensure children's safety during wars.

3. Optional Protocol on Sale of Children, Child Prostitution, and Child Pornography (2002):
Effective from January 2002, this protocol reinforces protections against the exploitation of children through trafficking, prostitution, and pornography, expanding on the Convention on the Rights of the Child with detailed measures to prevent child abuse and exploitation.[10]

4. International Labor Conventions on Child Protection:
Several international labor conventions aim at the complete eradication of child labor, including:

- International Labor Convention No. 138
- International Labor Convention No. 182
- International Labor Conventions No. 5, 6, and 7.
- International Labor Conventions No. 7, 10, 15, and 16.
- International Labor Conventions No. 33, 58, 59, and 60.
- International Labor Conventions No. 33, 58, 59, 60, 73, 77, 78, 79, 90, 112, 123, and 124.

Fourth: The Role of Specialized International Agencies in Child Protection
Specialized agencies have played a significant role in safeguarding children's rights. Notable among these are:

1. **United Nations Children's Fund (UNICEF):**

Originally created in 1946 to aid children affected by World War II, UNICEF was made a permanent body in 1953 through UN Resolution 802, transitioning to the United Nations Fund for Child Welfare. Its mission expanded to provide long-term support for children worldwide.
This allowed it to broaden its focus to global child welfare, especially in developing regions. For its extensive efforts, UNICEF received the Nobel Peace Prize in 1965.

2. **International Labour Organization (ILO):**

ILO plays a role in implementing child protection policies, offering technical and financial assistance, and formulating resolutions and agreements that safeguard children's rights. The ILO, established in April 1919 and headquartered in Geneva, Switzerland, began working with the United Nations in 1946 to support global labor standards and the protection of workers' rights.
The International Labour Organization (ILO) has issued various guidelines to protect working children, aimed at enhancing their conditions and ensuring their

safety. Notably, the Philadelphia Declaration, part of the ILO Constitution since 1944.[11]

3. **World Health Organization (WHO):**

The WHO has been instrumental in eradicating diseases and providing vaccinations, collaborating with both governments and NGOs. A significant part of its mission involves supplying nations with necessary immunizations against various diseases, developing cooperative research programs, and assisting developing countries in improving healthcare for children. The guiding principle here is the right of every child to receive appropriate medical treatment that prevents illnesses.

4. **United Nations Educational, Scientific and Cultural Organization (UNESCO):**

UNESCO protects of human rights, with a particular focus on education, science, and culture. It is the leading global organization committed to educational and cultural development. UNESCO assists member states in enhancing early childhood education and development to empower children, including minority children, to progress and develop their capacities. It requires member states to guarantee the right to education for children, emphasizing equal opportunities as stated in Article 28 of its convention.[12]

THE SECOND TOPIC: PROTECTION OF CHILDREN OF UNKNOWN PARENTAGE ACCORDING TO REGIONAL CHARTERS

First: The European Social Charter

Launched by the Council of Europe in 1950 and effective from 1962, the European Social Charter extends protections in areas such as employment, education, health, and social security, with a particular emphasis on the rights of children and vulnerable groups.[13]

Second: The Arab Charter on the Rights of the Child

Initiated in the late 1970s and driven by earlier contributions to the Universal Declaration of Human Rights, Arab states enhanced children's rights through targeted initiatives, especially during 1979's International Year of the Child. From 1974 to 1982, the League of Arab States led various child-centric programs to bolster these rights regionally[14].

A significant seminar on the situation of Arab children, especially Palestinian children, took place in Cairo from October 23 to 26, 1978. This seminar presented

a critical initiative to assess the condition of childhood in Arab countries and called for an Arab convention to discuss child welfare issues.
A crucial conference, the Arab Child Conference, was held in Tunis from April 8 to 10, 1980, focusing on the establishment of an Arab organization for children. The interest in children's rights led to the development of regional charters about 20 years later.
A conference reviewing the implementation of the Universal Declaration of the Rights of the Child in several Arab countries led to the drafting and adoption of the Arab Charter for the Rights of the Child during the fourth session of the Council of Arab Ministers for Social Affairs in Tunis in December 1983.

Conclusion:

Children possess inherent human rights that must be safeguarded by both society and the state, irrespective of their parentage. A universally acknowledged right across legal systems is that every child deserves to have an identity and a family, both crucial for their social, psychological development, and well-being.
Legal scholars have laid the foundation for legislative texts that establish parentage, and Islamic law specifically seeks to protect children of unknown parentage from being lost.
Most statutory legislations have enacted numerous provisions concerning the fate and protection of these children, leading to international conventions dedicated to this purpose. Even if protection exists for children of unknown parentage in Algeria, it is partial and superficial.
In conclusion, there is a crucial need for legislators to specifically and effectively address the issue of children of unknown parentage, including amending family laws to incorporate scientific methods for establishing parentage even without the other party's consent (the father).
As for penal law, a preventive role is needed to combat phenomena and causes that lead to this situation, such as prostitution and illegitimate relationships in general, even if the parties are unmarried, as upheld by Sharia law, and to fight against the exploitation of children of unknown parentage, whether materially or morally.
The result of international protection ; legal recognition and rights , birth registration and documentation ,increased awareness and advocacy , access to education healthcare , protection from explitation and abuse.

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Footnotes:

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[2]Ghassan Khalil, *Child Rights from a Historical Perspective Since the Early Twentieth Century*, Beirut, p. 41.

[3]Mohammed Abdo Al-Zaghir and Abla Ibrahim, *Child Rights in Arab Countries*, 1st edition, Riyadh, p. 16.

[4]Nader Farjani, *Towards an Arab Charter for Human Rights*, Arab Institute for Human Rights, Tunis, 1990, p. 6.

[5]Ghassan Khalil, op. cit., p. 25.

[6]Samar Khalil, Mahmoud Abdellah, *Child Rights in Islam and International Conventions*, no edition, Thesis Depository Center, Jordan, p. 142.

[7]Wafaa Marzouk, *Protection of Child Rights under International Conventions*, Al-Halabi Publications, Beirut, p. 58.

[8]Website, accessed on April 26, 2019, at 10:00 AM, www.un.org

[9]Mohammad Seddouk, *Study of Human Rights Sources*, Algeria, University Publications Office.

[11]International Covenant on Economic, Social and Cultural Rights, adopted by United Nations General Assembly Resolution 2200 on December 16, 1966.

[12]Ghazi Hosni Sabbari, *Human Rights and Fundamental Freedoms*, Dar Al-Thaqafa, 1997, p. 201.

[13]Hosni Nassar, *Human Rights in International Conventions*, Dar Al-Manashir Al-Halabiya, Syria, p. 79.

[14]Hosni Nassar, ibid., p. 80.