

Child Rights Conventions and Agreements and Protection Mechanisms

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Abstract:

Our noble religion has placed great value on children's rights, considering them the adornment of this worldly life and emphasizing the granting them many rights, including their right to clothing, care, and inheritance, among others. Our Prophet, peace and blessings be upon him, prioritized their protection, as evidenced by his prohibition against the Muslim army killing children and women. International, regional, and local laws and treaties have also sought to solidify these and other rights, emphasizing the protection of children's rights and establishing mechanisms to guarantee and safeguard them. Many countries, including Algeria, have followed suit. These conventions and treaties related to children's rights and childhood are the subject of this important study.

Key Words: Children's rights, protection, treaties and convention

Introduction:

God Almighty says in Surah Al-Kahf, verse 46: "Wealth and children are the adornment of this worldly life." Children are indeed the adornment of this worldly life, they are the men and women of tomorrow, the future hope of the family and the nation, Love and compassion for children are instinctive in the sound human soul, they are the dearest to our hearts, and we dedicate our lives to raising them properly. Through them, we see ourselves, for they are the fruit of our lives, which cannot grow without serious and proper care, nor mature without a well-supported and comprehensive approach, the child, this vulnerable human being, has no power or strength – therefore, it is self-evident that they should have fundamental human rights. The international community's interest in children's rights began to increase at the beginning of the last century when the League of Nations adopted the Geneva Declaration on the Rights of the Child on September 26, 1924, When the United Nations was established in 1945, it gave great importance to the issue of human rights and affirmed these rights in the preamble to its Charter and many of its articles, The Universal Declaration of Human Rights was issued in 1948. The United Nations' first work in the field of human rights was the Declaration of the Rights of the Child, which explicitly recognized the right of children to special care and assistance, this declaration led to other covenants and declarations affirming the rights of the child as a human being and as a child, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted in 1966. International efforts culminated in 1989 with the adoption by the United Nations General Assembly of the Convention on the Rights of the Child. National legislation today is no longer separate from international conventions and covenants; indeed, it cannot ignore the human rights guaranteed by these declarations and covenants. Therefore, it is natural for national constitutions and legislation to incorporate provisions from these conventions, through international mechanisms.

¹ Received: 23/05/2026; Accepted: 18/09/2026; Published: 01/10/2026

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This leads to the following question: What rights do international, regional, and local conventions concerning children's rights stipulate, and are there mechanisms to guarantee and protect them? To study this topic, a descriptive approach was adopted, highlighting the most important conventions on the rights of the child, as well as an analytical approach to demonstrate the importance of these rights and the mechanisms for their protection, this was achieved by addressing the issue through the following sections:

1-Tilte I: Children's Rights at the International Level

2-Tilte II: Children's Rights Between International and Regional Conventions and National Constitutions, and Mechanisms for Their Protection.

3-Tilte III: The rights recognized for the Algerian child according to the United Nations guidelines, also known as the Beijing Rules.

Finally, this presentation will include important findings and recommendations concerning children and their protection at the local, regional, and international levels.

1-Tilte I: Children's Rights at the International Level

Numerous international conventions address children's rights, ranging from international declarations and universal agreements to resolutions issued by international organizations. This section will highlight six conventions, which will be discussed sequentially:

1.1- First Subtitle : Children's Rights in the 1924 Geneva Declaration

At the international level, the 1924 Geneva Declaration is considered a pioneering document in the field of childhood. This declaration contains a preamble and five principles:

- 1- The child must enjoy all the means necessary for their physical and spiritual development, including the right to food, medicine, and psychological and social care.
- 2- The child must have access to food, medical treatment, shelter, and care.
- 3- The child is the first to receive relief and assistance in times of disaster.
- 4- The child must be protected from all forms of exploitation and ill-treatment.
- 5-It is essential to educate children and in still in them a sense of responsibility so that they may contribute to humanity.²

In order to activate this declaration, the League of Nations established the Advisory Committee for the Protection of Childhood, as well as a Documentation Centre for the Protection of Childhood, Both of them investigated some of the problems of childhood in the world, and their reports published their national legislation, this declaration remained in effect even after the outbreak of World War II in 1939³, Although this declaration is the first written international document issued in the field of children's rights, it is criticized for not being issued in the name of the member states of the League of Nations and not being addressed to them, but rather it was addressed to the men and women of the world in the form of a social document, Therefore, it does not impose legal obligations on the states regarding children's rights, nor did it address the rights of the child extensively, the heads of state and government of the member states of the League affirmed the implementation of the principles contained in this declaration⁴.

1.2- Second Subtitle : Children's rights in the 1948 Universal Declaration of Human Rights.

Article 25 of the 1948 Universal Declaration of Human Rights states that motherhood and childhood have the right to care and assistance, and that all children have the right to the same social protection,

² • Bouh*__-diba, Abdelwahab, Tunisia and Children's Rights, Official Press of Tunisia, 1992.P.43.

³ • Qutb, Muhammad, Man Between Materialism and Islam, Beirut, Dar Al-Shorouk, 1980.P.32.

⁴ • Muhammad, Muhammad Abdel-Jawad, Protecting Motherhood and Childhood in International Conventions and Sharia, 1980,P.15

whether born within or outside of marriage. Article 26, in its three paragraphs, stipulates the right of everyone to free and compulsory education, particularly at the primary and basic levels, and affirms the right of parents to choose the type of education given to their children. Thus, this Declaration did not include a detailed account of children's rights specifically, as was done in the context of the discussion on the family and the protection of civilians in the 1924⁵ Geneva Declaration. Rather, it only alluded to these rights indirectly in two articles. Nevertheless, this Declaration remains one of the most important international instruments that established what is known as international human rights law.

1.3- Third Subtitle : The United Nations Declaration of the Rights of the Child of 1959.

The establishment of the United Nations as a replacement for the League of Nations, and in light of the violations suffered by children during World War II, led the UN General Assembly to issue the "Declaration of the Rights of the Child" on November 20, 1959, with the approval of 78 countries, this declaration is considered an extension and expansion of the 1924 Geneva Declaration, it consists of a preamble and ten principles⁶, The preamble refers to the UN Charter and the 1948 Universal Declaration of Human Rights, implying that the child is a human being and therefore entitled to the rights included in this declaration.

The preamble also indicates that children's entitlement to special legal protection stems from their physical and mental limitations. Consequently, it calls for the recognition of these rights and efforts to ensure their observance through legislative and non-legislative measures to be taken gradually in accordance with the ten principles contained in the declaration, which are as follows:

- 1- The right of the child to enjoy all the rights set forth in the Declaration without exception and without discrimination.
2. The child shall enjoy special protection and be provided with the necessary facilities for their normal physical, mental, and spiritual development.
3. The child has the right to a name and nationality.
4. The child shall enjoy the benefits of social security.
5. The disabled child shall be provided with specialized therapy, education, and care.
6. The child shall be raised under the care and responsibility of their parents, and the child shall not be separated from their mother.
7. The child has the right to education, which shall be free and compulsory at least at the primary level.
8. The child shall, in all circumstances, be among the first to receive protection and relief.
9. The child shall be protected from all forms of neglect, cruelty, and exploitation. Trafficking in children and forcing them to work in any occupation or trade that harms their health shall be prohibited.
10. The child shall be protected from all practices that may lead to racial or religious discrimination⁷.

There is no doubt that this declaration is the true nucleus for the issuance of the Convention on the Rights of the Child of 1989, it was more detailed and comprehensive than the Geneva Declaration of 1924, but it did not explicitly stipulate the rights of groups with special circumstances, such as the rights of foundlings, in addition, it is not considered binding because it is not a binding international

⁵ • Hammouda, Montasser Saeed, *Protecting Children's Rights: A Comparative Study between Public International Law and Islamic Jurisprudence*, Alexandria, Dar Al-Fikr Al-Jami'i, 2010,p.123.

⁶ • Muhammad Yusuf Alwan, Muhammad Khalil Al-Mousa, *International Human Rights Law: Sources and Means of Oversight*, Part One, Amman, Dar Al-Thaqafa, 2011, p. 63.

⁷ Mukhaimer, Abdul Aziz, "The Convention on the Rights of the Child: A Step Forward or Backward?", 1993,p.145.

treaty, and it does not stipulate an international mechanism for monitoring and developing the principles contained therein⁸.

1.4- Fourth Subtitle : Children's Rights in the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

These two covenants were adopted by the United Nations General Assembly on December 16, 1966. The International Covenant on Civil and Political Rights addresses children's rights in only two articles: Article 24 and Article 33. Article 33 emphasizes the necessity of a family as the natural social unit from which a child develops properly and soundly. Article 24 stipulates a set of rights and protection measures that a child's status as a minor necessitates from their family, society, and the state, without discrimination. This article also grants the child the right to a name and nationality.

2-Tilte II: Children's Rights Between International and Regional Conventions and National Constitutions, and Mechanisms for Their Protection.

Second section is divided into two subsections: the first, entitled "The Child Between Local Constitutions (Algeria as an Example) and International and Regional Conventions," and the second, entitled "The Rights Recognized for the Algerian Child According to the United Nations Guidelines (the Beijing Principles)." The first requirement: The child between local constitutions (Algeria as an example) and international and regional conventions.

Thus, Algeria adopted two program-based constitutions based on a socialist approach. Consequently, in the area of rights and freedoms, it embraced social and economic rights, neglecting political and civil rights and freedoms. These latter rights and freedoms became the cornerstone of the 1989 and 1996 constitutions, amended and supplemented in 2008, which incorporated the characteristics of a state governed by the rule of law. Algeria adopted democracy and multi-party politics, as well as the key elements of a state governed by the rule of law, including universal human rights principles, particularly the International Covenant on Civil and Political Rights⁹. In general, Algeria has ratified 27 international conventions (National Observatory for Human Rights, December 1998), including the Convention on the Rights of the Child, adopted by the United Nations on November 20, 1989, which entered into force on September 2, 1990. Algeria acceded to this convention by ratification on December 19, 1992 (Official Gazette of the People's Democratic Republic of Algeria, No. 91, dated June 23, 1993), while expressing reservations on certain articles. Articles 13, 14, 17, and 16, although the international agreement prohibits making any reservations as stated in Article 41, it must be noted that, according to the 1989/1996 Constitution, as amended and supplemented in 2008, international agreements supersede domestic law, as stipulated in Article 122 of the 1989 Constitution and Article 132 of the 1996 Constitution. The necessary procedures outlined in Article 74/1 of the 1989 Constitution, Article 77/9, and Article 131 of the 1996 Constitution must be followed. This approach was supported by the Constitutional Council in its decision of August 20, 1989, which affirmed the constitutional principle of the supremacy of international treaties ratified by Algeria. Immediately upon their publication, these treaties are incorporated into domestic legislation, in accordance with Article 132 of the aforementioned Constitution. Consequently, any citizen may invoke them before the competent national judicial authorities. Furthermore, Algerian citizens may resort to human rights protection mechanisms after exhausting all other avenues. Internal appeal procedures.

These measures are governed by the International Convention on the Rights of the Child. Algeria is among the Arab countries that have not enacted a specific law for children (among the Arab countries where children have a specific law, the "Child Law," are the Arab Republic of Egypt, Iraq, the United Arab Emirates, and the Kingdom of Saudi Arabia). Algeria believes there is no justification for combining all substantive and procedural provisions concerning children into a single

⁸ Al-Jubouri, Khalaf Ramadan, State Actions Under Occupation, Alexandria, University Press, 2010.P.45.

^{9*} The Arab Council for Childhood and Development, Performance Report of the Arab Council for Childhood and Development Towards the Implementation of the Arab and International Declaration on Childhood, 2001.

law. It should be noted that the Arab Charter on the Rights of the Child stipulates that "States shall enact special legislation for the protection and care of children, separate from general laws" (this Charter has not yet entered into force, despite being adopted in 1984 by the Arab League). Furthermore, Algeria, in accordance with Articles 3 and 9 of the International Convention on the Rights of the Child, works to incorporate the best interests of the child into its national legislation¹⁰. This ensures the child's right to live with their parents unless doing so would endanger them. The legal system is based on the best interests of the child, and judges do not issue any ruling without consulting specialists, educators, and social workers.

The international rights of the child, as established by the 1989 Convention, are reflected in Algerian legislation through the Civil Code, the Code of Criminal Procedure, the Penal Code, and the Civil Procedure Code. Health, consumer protection law, the law on education and school guidance, labor law, and finally family law. The first thing that should be noted is what the Algerian constitution stipulated in Article 58, that "the family benefits from the protection of the state and society," The state also guarantees "the living conditions of citizens who have not reached working age, who are unable to work, and who are permanently incapable of working," according to Article 59.

Finally, we can recall the text of Article 63, which defined the scope of each citizen's exercise of all his freedoms within the framework of respecting the rights recognized for others in the constitution, especially respecting the right to honor, privacy, and the protection of the family, youth, and childhood, the following will attempt to focus on areas that the legislator has given special attention to in the field of protecting and supporting children's rights.

1.1- First Subtitle : The Child in Algerian Law.

The following sections address children's rights in several vital areas that have received attention from the legislature, in accordance with the Algerian Constitution and relevant international conventions ratified by Algeria and thus binding upon it, for the protection and welfare of the child.

1/ In the Field of Education

The International Convention on the Rights of the Child affirms the compulsory and free nature of education, a principle enshrined in Algerian law through Article 53 of the Constitution, which stipulates that "the right to education is guaranteed" and adds that "education is free under the conditions established by law. Basic education is compulsory. The State organizes the education system." It specifically states that "the State shall ensure equality in access to education and vocational training," as well as Decree 65-76 dated 04/16/1976, which regulates the national education and training sector, where Article 4 confirms that: "Education in Algeria is free and compulsory for girls and boys for a period of 9 years," and Article 7, which imposes penalties on parents who prevent their children from the age of 6 to the age of 16 from attending school. As for Executive Decree 66-76 dated 04/16/1976 concerning compulsory education, it stipulates in Article 2 that a warning be issued to the child's guardian at the beginning, and then in case of repetition, a financial penalty shall be imposed on him. 2/ In the field of work, Law No. 07/88 concerning occupational safety and medicine prohibits the employment of children under 18 years of age unless they are deemed fit for work after a medical examination by a doctor accredited by the competent authority. The age limit is then set at 16 full years after the ratification of Law 11-90 concerning labor relations, ratified in 1990. Medical monitoring continues until the child reaches the age of 18, and 21 if the work is hazardous. Medical examinations are free for children (Law 90-11 concerning labor relations, ratified in 1990). It should be noted that the 1996 Algerian Constitution does not specify a legal working age in Article 55, leaving this to legislation¹¹.

¹⁰ The International Convention on the Rights of the Child of 1989, United Nations Publications, New York, 1990.

¹¹ * The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000, and the Optional Protocol to the Convention on the Rights of the Child and the European Convention on the Exercise of the Rights of the Child of 1996, Council of Europe Publications, Strasbourg, 1996.

2/ In the field of health

Law No. 85-05 of 16/02/1985 concerning the protection and promotion of health, as amended and supplemented by Law No. 17/90 of 03/07/1990, stipulates in its second article: "The right of every person to enjoy physical and mental health" and their right "to receive appropriate treatment." Article 3/209 states: "Physicians must report all abuse to which a child is subjected and which they discover during the performance of their duties," Article 104 stipulates: "Inpatient and outpatient hospital units shall be established for the prevention, detection, treatment, and care of adolescents under 16 years of age and those suffering from mental disorders." Furthermore, health legislation protects children from the scourge of drug abuse (Law No. 05-85 of 16/02/1985 concerning the protection and promotion of health, as amended and supplemented by Law No. 17/90 of 03/07/1990), to reinforce all these provisions, Article 54 of The 1996 Constitution affirms that: "Health care is a right of the citizen and the state guarantees the prevention and control of epidemic and infectious diseases."

3/ The Right to Life

There are many rights, including the right to a name at birth. This is why the Algerian Constitution mandates the registration of births in the civil registry. Even if a child is homeless, the civil registry must be notified, which then assigns the newborn a name and surname, according to Article 4/64 of the Civil Status Law: "The civil registry officer assigns names to foundlings and children born to unknown parents who have not been given any names by the declarant. The child is given a set of names, the last of which is used as a family name, and is considered of unknown parentage in this case. The birth is registered in the civil registry by court order." The right to life for a child includes protection, education, and healthcare. These rights are no longer provided by the state as acts of charity but have become an obligation imposed by international law. It is an inviolable right enshrined in several conventions, including the Convention on the Rights of the Child (Articles 6-22), Article 5 of the African Charter on the Rights and Welfare of the Child, and Article 2/12 of the Convention on the Elimination of All Forms of Racial Discrimination (Convention on the Rights of the Child, 1989), in the military sphere. Algerian military law, in accordance with international agreements, prohibits the recruitment of children under the age of 18. Employment within the military is also subject to the same procedure. It is worth noting that, during the difficult years Algeria endured in the last decade of violence, Algerian authorities have been working diligently to reintegrate children who have been led astray into juvenile rehabilitation centres.

4/ The Right to Expression

Algerian law grants children the right to express their opinions, as stipulated in the International Convention on the Rights of the Child, on all matters concerning them. A child may not be detained or placed in a reformatory or independent family institution without first consulting them and considering their opinion. In cases of divorce, a child who does not wish to remain with their parents is under the care of the state. The judge takes into account the child's wishes if they wish to live with a family member, bearing in mind that Algerian law grants custody rights primarily to the mother.

Article 443 of the Code of Criminal Procedure states that: "To establish responsibility, one must refer to the date of the commission of the acts attributed to them." Algeria follows the approach of the international convention, considering the child to be "Anyone under the age of 18, as stipulated in various international conventions on the rights of the child (African, Arab, and European), is considered a minor, according to Article 42 of the Civil Code. The Civil Code defines a minor under 16 as lacking discernment, while the Criminal Code defines a minor below that age as lacking discernment¹². This difference in determining the age of criminal and civil liability stems from the influence of the French experience in this area on the Algerian legislature.

1.2- Second Subtitle : The Child Facing Justice

¹² The Amended and Supplemented Code of Criminal Procedure.

It is generally accepted that children are subject to a special jurisdiction within the judicial system, specifically the juvenile court or the "juvenile division" of the court. Children under 13 years of age benefit from the release system according to Article 44 of the Code of Criminal Procedure, and juveniles under 18 may also be subject to the same procedure. Preventive and educational measures are imposed on the child if they commit a misdemeanour or felony (Code of Criminal Procedure, as amended and supplemented). It should also be noted that the Algerian legislator favours preventive measures by placing the child in public institutions designed for rehabilitation and training. These are specialized protection centres established by Ordinance 75-64 dated September 20, 1975. Their mission is to give delinquent children the opportunity for social reintegration through moral, educational, athletic, and academic rehabilitation. This measure can be temporary or permanent, but it should not exceed six months if temporary. Here, it is important to recall the key principles contained in the International Covenant on Economic, Social and Cultural Rights, ratified on December 16, 1966, specifically Article [number missing in original text], and to implement what [is included in the original text]. It is stated in international agreements related to children's rights¹³.

3-Tilte III: The rights recognized for the Algerian child according to the United Nations guidelines, also known as the Beijing Rules.

1.1- First Subtitle : Children's rights according to the Beijing Rules.

Algeria recognizes, according to the United Nations guidelines known as the Beijing Rules, a set of rights, listed below:

- 1- The right of a parent or guardian to be present during all stages of official proceedings.
- 2- The right to express their opinion before the investigating judge – in accordance with Article 12 of the Convention.
- 3- The presumption of innocence until proven guilty.
- 4- The right to legal representation.

As for the Riyadh Principles, which call on states to establish separate juvenile detention facilities distinct from adult prisons, this is not feasible in Algeria due to limited resources and infrastructure. Children deprived of their liberty are currently imprisoned alongside adult offenders in institutions supposedly dedicated to children's rights, resulting in the same abuses that occur in such institutions, despite the provision of specific facilities.

1.2- Second Subtitle : Institutions dedicated to children's rights in Algeria.

Numerous institutions are dedicated to the care and protection of fundamental children's rights. We will mention just a few:

1. The Council for Monitoring and Evaluating the National Plan for the Protection and Promotion of Childhood (Algeria, along with Somalia, Djibouti, and the Comoros, was one of the only Arab countries without councils or committees for children, as stipulated in the 2001 Arab Declaration on Childhood. The Council was established by Official Gazette No. 58, dated August 25, 1999).
2. The Juvenile Court (a specialized juvenile court).
3. A specialized juvenile police force.
4. A social protection centre for children.
5. A rehabilitation centre that receives children under judicial supervision.
6. Listening units, which are open intermediary services that address children's problems.

¹³ Kharif lectures on public freedoms delivered to fourth-year law students, Faculty of Law, University of Blida, 2002-2003.

7. The Advisory Committee for the Promotion of Human Rights was established by the President of the Republic, succeeding the National Observatory for Human Rights. All these measures contribute to Algeria's efforts to keep pace with what international legislation demands, and it seeks to issue as soon as possible the "Juvenile Law" and an independent judicial body that is affiliated with the exceptional judiciary, which is responsible for trying juveniles, as well as the need to adapt the internal laws related to children's rights so that they keep pace with what is stipulated in the international conventions on human rights and children's rights in particular¹⁴.

Conclusion:

In conclusion, this presentation entitled "The Child in International, Regional, and Local Conventions and Agreements" yielded a number of findings, most notably:

- 1- International and regional conventions and agreements, as well as the local constitutions of countries like Algeria, demonstrate an interest in protecting children's rights, as clearly evident in the legal texts.
- 2- Despite these agreements stipulating children's rights and how to protect them, this segment of society remains the most vulnerable to violations at various levels, whether in times of peace or war.
- 3- Human rights declarations and agreements have neglected some important children's rights, such as shaving the head, circumcision, and choosing a good name for the new born, They also fail to explicitly address the rights of foundlings and orphans.

Based on these findings, a number of important recommendations were made, the most significant of which are:

- 1- These texts must be aligned with domestic legislation to achieve harmony between the international obligations resulting from ratification and the fulfilment of social, economic, and cultural obligations.
2. It is essential to delve deeper into the world of children and their rights, as this topic is vast and multifaceted. Children are the future of nations, and therefore, they must be provided with all the necessary safeguards to create a conducive environment for unleashing their creative potential and protecting them from the dangers that threaten them.
3. The legislature should expedite the adaptation of domestic law to international conventions and treaties on the rights of the child, which Algeria has ratified, by introducing the necessary amendments, particularly to the Penal Code and the Code of Criminal Procedure. This includes establishing specific penalties for minors to ensure their reintegration into society, their rehabilitation, and their well-being.
4. The enactment of a "Juvenile Law" and the establishment of an independent judicial body specializing in this area should be expedited.
5. Attention must be given to the rights of foster children, foundlings, and children after parental separation, both psychologically and legally, by enacting laws that guarantee their protection.
6. Amendments should be made to the Penal Code and the Code of Criminal Procedure to impose strict penalties on perpetrators of various crimes against children.
- 7- It is noteworthy that despite the existence of agreements, conventions, and texts stipulating the protection of children in armed conflicts and wars, the reality is that flagrant violations of their rights occur, especially in wars involving major powers, as clearly demonstrated in the wars in Iraq, Syria, and Palestine, etc. Therefore, it is imperative to abandon double standards and punish countries that violate international or regional agreements and conventions, regardless of the balance of power.

¹⁴ Ordinance 69-27 Containing the Basic Law for Judges, issued on 13/05/1995.

- Law No. 85-05 of 16/02/1985 Containing the Protection and Promotion of Health.
- Law No. Decree No. 90-11 of April 21, 1990, concerning labor relations.
- Decrees No. 76-66 and 76-67 concerning compulsory and free basic education.

8- Holding international and regional conferences, as well as local forums and seminars, to raise awareness about the importance of caring for this segment of society, protecting them from exploitation, violence, and neglect, and clarifying the internationally guaranteed rights of children.

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