

Algeria's Reservations to the 1989 Convention on the Rights of the Child: Between International Commitments and National Legal Specificity

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Abstract:

This article aims to analyse Algeria's obligations arising from its ratification of the 1989 Convention on the Rights of the Child, with a focus on the nature of the reservations it expressed regarding certain of its provisions. The central issue lies in Algeria's ability to reconcile the requirements of international legitimacy with the imperatives of its constitutional and legislative system, which is grounded in Islamic jurisprudential references. The study adopts a descriptive-analytical method, supported by legal comparison, to identify points of convergence and divergence. The findings indicate that the reservations primarily concern freedom of belief and expression as well as the protection of privacy. The study further highlights that Algeria reinforced its national legal framework with specific protection for children through the 2015 legislation. It concludes that harmonising international commitments with national particularity remains a problematic matter requiring ongoing legislative reform.

Keywords: Algeria, Convention on the Rights of the Child, reservations, international legitimacy, child protection.

Introduction

Algeria ratified the 1989 Convention on the Rights of the Child, and by acceding to this Convention, it became legally bound to implement its provisions domestically. However, Algeria accompanied its accession with interpretive declarations concerning Articles 13, 14, 16, and 17 of the Convention, maintaining that certain provisions therein were incompatible with the specific characteristics of the national legal system particularly those related to the Islamic reference enshrined in Article 2 of the Constitution, which states that "Islam is the religion of the State," as well as in related legislation, foremost among them the Family Code, which is mainly derived from Islamic law.

These reservations have drawn repeated criticism from the Committee on the Rights of the Child, established under Article 44 of the Convention. In its concluding observations, the Committee has called upon Algeria to review its reservations and take the necessary measures to ensure full compliance with the Convention's provisions. This prompted Algeria to initiate legal and institutional reforms aimed at strengthening the protection of children's rights, while simultaneously respecting the legal and religious particularities of Algerian society.

On this basis, the central issue of this study is framed in the following question: To what extent has Algeria succeeded in striking a balance between its international obligations under the Convention on the Rights of the Child and its reservations grounded in constitutional and legislative specificities?

To answer this question, the analytical method was adopted as a foundation, through an examination of relevant national and international legal texts, supplemented by the comparative method necessitated by differences in positions and practices, to assess the degree of convergence or divergence between Algeria's stance and international experiences in this area.

The study is divided into two interrelated sections:

The first section addresses the content of the 1989 Convention on the Rights of the Child, focusing on the fundamental principles it establishes, and examines the nature of Algeria's reservations to specific provisions and the legal issues they raise.

The second section analyses Algeria's position on the Convention by exploring the motives and justifications behind these reservations, assessing their consistency with national legal and doctrinal particularities, and highlighting the legislative and institutional efforts undertaken by Algeria to implement the Convention's provisions despite the continued existence of those reservations.

Axis One: The Content of the 1989 Convention on the Rights of the Child and Algeria's Reservations Thereon

The 1989 Convention on the Rights of the Child represents the culmination of a long process of international efforts aimed at consolidating the rights of the child.¹ It was adopted by the United Nations General Assembly during its forty-fourth session, with the unanimous approval of the Member States, thirty years after the 1959 Declaration and ten years after the 1979 Declaration, both of which constituted foundational stages towards the recognition of children's rights within a binding international legal framework.²

This Convention is distinguished by a set of intrinsic features and fundamental principles that established a comprehensive and integrated protection for the child. It is the first comprehensive international instrument explicitly devoted to the rights of the child, combining civil, political, economic, social, and cultural rights.³ This section will address three main aspects: first, identifying the characteristics that distinguish the Convention from other international instruments; second, presenting the general principles that underpin the Convention; and third, outlining the specific provisions.⁴ Upon which it is founded, foremost among them the principles of non-discrimination, the best interests of the child, the right to life, and freedom of expression; and third, analysing the reservations made by Algeria upon its accession to the Convention, with particular attention to their legal and constitutional contexts and their implications for the level of international commitment.

Firstly) The intrinsic characteristics of the Convention on the Rights of the Child: The prominent significance of the Convention on the Rights of the Child lies in its ability to unify international standards related to the protection of children's rights within a comprehensive "Charter," whereas previously these standards were scattered across various treaties differing in their legal scope and

field of application. Thus, the Convention represented a qualitative shift in the path of recognising the fundamental rights of the child within an integrated legal and philosophical framework.⁵ To enhance this protection, the Convention was supplemented with two Optional Protocols, one concerning the sale of children, child prostitution, and child pornography, and the other relating to the involvement of children in armed conflicts.⁶

The Convention features a set of intrinsic characteristics, notably being the first international document specialised in the rights of the child, clearly focusing on the child's specific needs given their legal and biological vulnerability. It also expresses the collective will of the international community to grant childhood a central place in policies and legislation. Additionally, it is distinguished by its comprehensiveness, encompassing various children's rights, both general and special, and precisely defining the obligations of the States Parties towards them. Furthermore, it is a forward-looking Convention aimed at ensuring children's participation in all areas of life by obliging States to provide appropriate conditions for this to be realised. In light of these characteristics, it becomes necessary to address the fundamental principles upon which the Convention is founded.

Secondly) The fundamental principles underpinning the Convention are outlined in the Convention on the Rights of the Child, which contains a Preamble that recalls the fundamental principles upon which the United Nations was established and references most of the international instruments related to children's rights. This Preamble emphasises that the child, due to their vulnerable status, is in urgent need of care, protection, and special attention, while simultaneously stressing the importance of respecting the cultural and social values surrounding the child and their environment.⁷

The States Parties are encouraged to promote international cooperation and intensify collective efforts to improve childhood conditions and development.⁸

Special importance is given in the Preamble to the family, considered the fundamental unit of society, highlighting its essential role in ensuring the necessary care and protection of the child, and its direct responsibility in this regard.

Regarding the substantive structure of the Convention, it enshrines a set of fundamental principles.⁹ Through 54 articles divided into three parts. The first part, which is the longest, encompasses articles 1 to 41 and addresses the rights accorded to the child, whether personal, social, or economic.¹⁰ Within the definition provided in Article 1, which states that "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier," this Convention is the first international document to offer an explicit and precise definition of the child.¹¹

The Convention establishes a series of pivotal principles, foremost among them the principle of non-discrimination and equality of all children, the principle of the best interests of the child, in addition to recognising fundamental rights such as the right to life (Article 6), the right to education, freedom of opinion and expression (Article 12), alongside numerous other rights and freedoms that lay the foundation for comprehensive protection of the child.

The principle of non-discrimination and equality among all children: The Convention on the Rights of the Child, in its Article 2,¹² Affirms the commitment to the principle of equality among children without any form of discrimination.¹³ This fundamental principle aims to ensure that all children enjoy the recognised rights without distinction based on sex, origin, religion, language, or any other status. It represents an extension.¹⁴ Among the international core human rights instruments established, the foremost is the Universal Declaration of Human Rights of 1948, as outlined in Article 2.¹⁵ the first principle of the 1959 Declaration of the Rights of the Child, as well as Article 2 of the International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights of 1966^{16 17}. At its core, this principle holds that all individuals are equal in rights and duties, and no discrimination is permissible for any reason whatsoever.¹⁸

The Convention also includes additional provisions that strengthen the protection of children's rights, such as Article 6 concerning the guarantee of their survival and development, as well as Articles 12 to 15, which call for respect for the child's right to express opinions and actual participation in all matters affecting them, thereby embedding the principles of justice, participation, and human dignity in dealings with the child.

2. **The best interests of the child:** Article 3 of the Convention on the Rights of the Child stipulates that the "best interests of the child" must be regarded as the primary consideration in all decisions and actions affecting the child's status, whether taken by public or private institutions, courts, administrative or legislative authorities in the state.¹⁹

This principle obliges States Parties to prioritise the rights of the child when adopting any administrative, judicial, or legislative measures related to them. It represents a qualitative shift in the international legal protection of children, as the child's interests are no longer contingent upon those of the parents or guardians, but rather stand independently, requiring special and distinct guarantees.²⁰

The Algerian legislator enshrined this principle in the Child Protection Law promulgated on 15 July 2015, which will be addressed in detail in the second section of this study.

Moreover, the Convention calls on States Parties to find an effective balance between the responsibility of parents for the care and upbringing of the child and the obligation of the State to provide support and assistance to parents in fulfilling this role, as stipulated in Articles 18 to 27 of the Convention.²¹

3. **The child's right to life:** The right to life is among the fundamental and essential rights from which all other rights derive; hence, the Convention on the Rights of the Child accords paramount importance to this right, as stated in its Article 6. This recognition of the child's right to life entails the obligation of States to provide adequate nutrition to ensure proper growth, alongside securing necessary healthcare,²² Moreover, creating a stable family environment is conducive to balanced upbringing.

The Convention also pays special attention to children with disabilities, affirming their right to enjoy a dignified and whole life by guaranteeing their access to health and rehabilitation services, taking into consideration the economic capacity of their parents or guardians.

Furthermore, the Convention emphasises the importance of providing appropriate education and training to this group to ensure their full integration into society. To achieve these objectives, the Convention holds States Parties responsible for adopting legislative, administrative, social, and educational measures adequate to protect the child from all forms of neglect or exploitation.²³

Respect for the child's views and right to expression: Article 12 of the 1989 Convention establishes the principle of recognising the right of the child capable of forming their own views to freely express them on all matters affecting their life and rights.²⁴ It obliges States Parties to give due weight to these views in accordance with the child's age and maturity. To this end, the Convention provides that the child must be enabled to be heard in any judicial or administrative proceedings affecting them, either directly or through a representative or an appropriate body, consistent with the procedural rules of national law.

Article 13 of the Convention further reinforces this principle by affirming the child's right to freedom of expression in all its forms, including the freedom to seek, receive, and impart information and ideas without restriction of boundaries, through any chosen means, whether speech, writing, art, or other legitimate modes of expression.

Algeria has issued an interpretative declaration regarding this article, which will be addressed later in the context of this study. This principle reflects the necessity of enabling the child.²⁵ To freely express their views on all matters affecting their rights or freedoms, with particular emphasis on the voices of children nearing the age of majority (18 years), as they constitute a significant segment of society, a fact underscored by reports from the United Nations Children's Fund (UNICEF).

Through enshrining this principle, the Convention constitutes an important step in unifying international standards related to child protection within a comprehensive legal text, making it an indispensable foundational reference, albeit not sufficient on its own.

To achieve adequate protection, there is a pronounced need for additional measures that go beyond the mere proclamation of rights to include precise delineation of the obligations arising therefrom and guarantees for the mechanisms of their implementation and monitoring.

Moreover, the international protection of children's rights should not be limited to encouraging cooperation among States Parties, but should also extend to the activation of peremptory norms in international law.²⁶ Relating to fundamental aspects of child protection norms that may only be amended by new provisions possessing the same binding force within the international legal system.

Thirdly: Algeria's reservations on specific provisions of the Convention and their justifications²⁷

A reservation constitutes a legal aspect in the conclusion of international treaties. It reflects the contractual freedom of States, permitting them to make reservations upon ratification or accession to a treaty, provided that such reservations do not conflict with the object and purpose of the treaty, as outlined in the Vienna Convention on the Law of Treaties of 1969.²⁸

Article 2, paragraph (d) of the mentioned Convention defines a reservation as: "a unilateral statement, whatever its wording or designation, made by a State when signing, ratifying, accepting,

approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State".²⁹

Accordingly, a reservation results in a special legal status for the State, whereby certain provisions become non-binding or apply under specific conditions, placing that State in a distinct legal position from that of the other States Parties to the Convention.³⁰

Based on this understanding, Algeria treated the Convention on the Rights of the Child with utmost seriousness, considering it a fundamental reference in the field of child protection and committing to work in accordance with its principles.³¹ However, like many Arab states, Algeria expressed reservations on specific provisions of the Convention that it considered to conflict with the national legal system or with its religious and cultural references.

It is observed that several countries.³² Bangladesh, Syria, Kuwait, Saudi Arabia, Djibouti, Pakistan, and Iran have made reservations or general declarations covering the entire Convention, based on the potential conflict of its provisions with Islamic Sharia or the requirements of their national constitutions. For example, Tunisia had submitted a general reservation before withdrawing it in 2008. Qatar also modified its general reservation, limiting it to Articles 2 and 14, which relate to the principles of non-discrimination and freedom of thought, conscience, and religion, the same areas covered by Algeria's reservations.³³

Specifically regarding Algeria, its interpretative declarations³⁴ covered the following articles: Article 13 concerning the child's freedom of expression, Article 14 on freedom of thought, conscience, and religion, Article 16 relating to protecting the child from arbitrary or unlawful interference with their privacy, and Article 17 stipulating the child's right to access media, information, and education.

It is worth noting that Algeria's interpretative declarations are attached to its instrument of ratification.³⁵ They were divided into two declarations: the first addressing the first and second paragraphs of Article 14, while the second covered Articles 13, 16, and 17.

The first interpretative declaration regarding paragraphs 1 and 2 of Article 14 of the Convention states:

- (a)** States Parties respect the child's right to freedom of thought, conscience, and religion.
- (b)** States Parties shall respect the rights and duties of the parents, as well as, where applicable, legal guardians, to provide direction to the child in the exercise of their right in a manner consistent with the evolving capacities of the child.
- (c)** Freedom to manifest religion or beliefs shall be subject only to limitations prescribed by law and necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others.

The Algerian interpretative declaration clarified that the exercise of this right by the child is not absolute but is linked to the fundamental components of the Algerian legal system, foremost among them being that Islam is the state's religion, as stipulated in Article 2 of the Algerian Constitution. In the same context, freedom of belief and opinion is safeguarded, as stated in Article 51 of the 2020 constitutional amendment, which provides: "The inviolability of freedom of opinion shall not be infringed. Freedom of religious practice is guaranteed and exercised within the

framework of respecting the law. The state guarantees protection of places of worship from any political or ideological influence."

Article 52 of the Constitution further stipulates that freedom of expression is guaranteed. Freedom of assembly and peaceful demonstration are guaranteed and exercised upon mere declaration. The law determines the conditions and modalities under which they are exercised.

Regarding the final part of Article 14, which obliges the state to respect the right of parents or the legal representative to direct the child in exercising their religious rights, the Algerian declaration confirmed that such direction is enshrined in the Family Law, which specifies that the child is to be raised according to the religion of the father, in accordance with Islamic Sharia provisions.³⁶

On the other hand, Islam enshrines the principle of freedom of belief, granting the individual full freedom to choose their creed, provided this is done based on intellectual conviction, reflection, and contemplation.³⁷ In accordance with the verses indicating God's omnipotence.

Although the Convention acknowledges certain restrictions on the exercise of freedom of belief, those imposed by law to protect public order and safety, Algeria considers religion, as one of the fundamental pillars of national identity, a crucial factor in shaping the child's personality and protecting them from deviation. From the perspective of Islamic Sharia, changing one's religion after reaching maturity is not permissible; Islam does not allow a Muslim to change their religion, whether in childhood or after adulthood.³⁸

b. The second interpretative declaration concerning Articles 13, 16, and 17 of the Convention on the Rights of the Child: This declaration addressed Articles 13, 16, and 17 of the Convention. Article 13 guarantees the child's right to freedom of expression,³⁹ Article 16 focuses on protecting the child from any assault that may affect their reputation.⁴⁰ Alternatively, dignity, as emphasised in Article 17, highlights the necessity of enabling children to benefit from media and education.⁴¹ In this regard, the declaration referred to national legislation, particularly provisions of the Algerian Penal Code and Media Law, as ensuring legal protection for the child's person and their right to expression. Regarding Article 16, which obligates States Parties to guarantee protection of the child from any interference with their privacy or violation of their reputation, Algeria clarified in its declaration that this protection is enshrined in national legislation, especially the Penal Code provisions that criminalise violations of public order and morals, as well as incitement to immorality and prostitution, which align with the requirements of the Convention.

Concerning parental supervision, Article 16 does not explicitly address the necessity of parental supervision or awareness of the child's private life details. In contrast, Algeria considers parental intervention necessary, given the child's inability at certain stages of age to distinguish between what is beneficial and potentially harmful to them.⁴²

Regarding the provisions of Articles 13 and 17, the interpretative declaration emphasised that the child's right to freedom of expression and media is not absolute but is limited by the necessity to respect the rights of others, and to preserve public order and national security, as affirmed by Algerian legislation. Algeria has previously guaranteed this right under the Media Law of 1990, specifically Article 24, which calls for international cooperation in the field of media while

prohibiting any publications directed at children that could harm them or incite them to violence and deviance.⁴³

It is noteworthy that this declaration confirms the consistency of the provisions on which Algeria made reservations with existing national laws, such as the Constitution, Family Law, Penal Code, and Media Law, all of which were enacted before Algeria acceded to the Convention and even before its international adoption.

Accordingly, the fundamental reason for Algeria's reservations about these articles lies in their potential conflict with the basic principles underpinning the Algerian legal system, particularly those stated in the first chapter of the first title of the Constitution, especially Article 2, which stipulates that "Islam is the religion of the State." Since the Constitution represents the supreme law of the land, other legislative texts, including Family Law, must align with and not contradict it. Therefore, all Algerian reservations contain the expression: "The provisions of this article shall be applied within the limits of the Algerian legal system and insofar as they do not conflict with the Algerian Family Law".⁴⁴

The delay in implementing some provisions of the Convention is attributed to the weakness of national mechanisms tasked with monitoring its application, where implementation remains contingent upon a set of legislative and administrative measures that States must undertake. The Convention is also criticised for allowing States broad discretion in choosing how to activate some of its provisions, even within the framework of international law constraints, through the adoption of reservations or interpretative declarations.

Axis Two: Measures Taken by Algeria in Response to the Recommendations of the Committee on the Rights of the Child

Since its accession and ratification of the Convention on the Rights of the Child, Algeria has exerted significant efforts to align its national legislative system with the provisions of the Convention, pursuant to Article 154 of the 2020 Constitution, which states that "Treaties ratified by the President of the Republic, under the conditions stipulated in the Constitution, shall prevail over the law." Respecting international obligations ratified by the State constitutes a commitment to achieving actual results rather than merely exercising due diligence, as failure to comply may incur international responsibility.⁴⁵ In this context, Algeria hastened to take a series of legal and institutional measures to ensure the implementation of the Convention at the national level.

Firstly: The UN Committee on the Rights of the Child and Its Role in International Monitoring

The Committee on the Rights of the Child is a supervisory body established under Article 43/2 of the Convention,⁴⁶ tasked with monitoring the extent of States Parties' compliance with the obligations they have undertaken within the framework. The Committee consists of eighteen (18) independent experts and usually convenes once a year at the United Nations headquarters or another appropriate venue, according to paragraph 10 of the same article.

The Committee is linked to a permanent Secretariat affiliated with the Office of the High Commissioner for Human Rights in Geneva, which studies the periodic reports submitted by States Parties as part of the ongoing monitoring and follow-up mechanisms for implementation of the

Convention. According to Article 44/1, which states: "States Parties undertake to submit to the Committee through the Secretary-General of the United Nations reports on the measures they have adopted to give effect to the rights recognised in the present Convention and on the progress made in the enjoyment of those rights: (a) within two years of the entry into force of the Convention for the State Party concerned, and (b) thereafter every five years."

Paragraph two of Article 44 further requires that these reports include explanations of any obstacles and difficulties that may impede compliance with the obligations imposed by the Convention. The reports must contain comprehensive information enabling the Committee to gain an accurate and thorough understanding of the implementation process.

In this regard, the Committee adopts guidelines defining the required format and substance of the reports, including those related to the two Optional Protocols appended to the Convention. Upon reviewing these reports, the Committee issues its concluding observations, which include an assessment of the extent to which the State Party has fulfilled its international commitments.

Secondly, the Committee's position on Algeria's interpretative declarations regarding specific provisions of the Convention

During its review of reports submitted by States Parties pursuant to Article 44 of the Convention on the Rights of the Child, the Committee, in its 2012 concluding observations, expressed satisfaction with Algeria's accession to the two Optional Protocols attached to the Convention. The Committee also commended the efforts made by Algeria to implement the recommendations issued in its previous concluding observations; however,⁴⁷ It expressed concern over Algeria's continued adherence to its declaration regarding paragraphs 1 and 2 of Article 14 of the Convention, as well as its failure to review its interpretative declarations concerning Articles 13, 16, and 17 of the same Convention.

In this context, the Committee reiterated its 2005 recommendation, urging the Algerian State to reconsider and withdraw these declarations, in conformity with the Vienna Declaration and Programme of Action issued by the 1993 World Conference on Human Rights.

Moreover, the Committee commended the positive legal reforms that Algeria has undertaken, particularly those related to the amendment of the Family Law in 2005 and the revision of the Nationality Law. Nonetheless,⁴⁸ The Committee reiterated its concerns about the continued existence of legal provisions dealing with custody, inheritance, divorce, and polygamy, calling for their abolition. These provisions remain subject to Algerian reservations due to their close connection to Islamic Sharia, which forms one of the foundations of the Algerian legal system, as Islam is the state's official religion.

In light of the above, the following question arises: What measures has Algeria taken to activate the provisions of the Convention on the Rights of the Child at the national level?

Thirdly: Legal and institutional measures taken by Algeria to promote children's rights

Keen on implementing the provisions of the Convention on the Rights of the Child and enhancing the rights recognised thereby, Algeria has adopted a range of legislative and institutional measures aimed at establishing adequate and comprehensive protection for children within the national and international frameworks. This was in response to the recommendations of the Committee on the

Rights of the Child and as an embodiment of its international obligations, especially in light of the constitutional affirmation of the supremacy of international treaties.⁴⁹ Over domestic laws, as enshrined in the 2020 constitutional amendment. In this context, two types of adopted measures can be distinguished:

1. **Legal measures:** Algeria has taken a series of legislative measures aimed at activating the provisions of the Convention on the Rights of the Child within its domestic legal system. The rights of the child were enshrined in the recent constitutional amendment, alongside the enactment of new legislation such as the Child Protection Act, in addition to substantive amendments affecting several laws directly or indirectly related to the child's status, particularly the Nationality Law and the Family Law, which included:

- a. Constitutionalisation of children's rights in the 2020 constitutional amendment: The Algerian constitutional founder, through the 2020 constitutional revision, paid special attention to children's rights, enshrining their protection within explicit constitutional texts. The scope of compulsory education was expanded to include the middle school stage alongside primary education, which had previously been limited to basic education, under Article 65. This article affirms free public education and guarantees the right to education, with the State's commitment to continuously improve its quality. This addition constitutes a new gain not present in previous constitutions. The Constitution also enshrines the principle of neutrality for educational institutions, with the same article specifying that the State shall "ensure the neutrality of educational institutions and maintain their pedagogical and scientific character in order to protect them from any political or ideological influence." It is thus understood that protecting childhood requires shielding it from political and ideological struggles, while reinforcing the school's role as a fundamental basis for citizenship education.

Regarding the pivotal article on children's rights in the 2016 Constitution, which was Article 72, it was revised to Article 71 in the 2020 Constitution, with substantive changes to its content. It assigned the protection of the family and childhood primarily to the State rather than involving society, stipulated the joint responsibility of the State and family in protecting children's rights, and affirmed care for abandoned and unknown-parentage children.⁵⁰

In the same context, the wording related to the inclusion of deprived and special needs groups was amended, with Article 72 of the 2020 Constitution stipulating that the State "works to ensure the integration of deprived groups with special needs into social life..." after the more general formulation in the 2016 Constitution.

The constitutional founder also emphasised punishing all forms of violence against children, adding additional forms such as exploitation and abandonment, while retaining them in the heart of Article 71. This article also imposed an obligation on guardians to ensure the upbringing of their children, in return for children's duty to be kind to and assist their guardians, under threat of criminal prosecution.

Additionally, the Constitution maintained the obligation of medical examination for minors (Article 45) and criminalised child labour (Article 66). It guaranteed the exercise of individual

freedoms, respecting the rights of others, including the protection of family, childhood, and youth (Article 81).⁵¹

The most notable aspect of this amendment is the constitutionalisation of the principle of the "best interests of the child" or l'intérêt supérieur de l'enfant, set out in Article 71. Although this concept is not new, as it was previously enshrined in Article 2 of the Declaration of the Rights of the Child, its constitutional inclusion represents a significant advancement in the field of child protection.

In this context, a terminological disparity is observed between texts, where the Constitution uses the phrase "best interests of the child," while the Child Protection Law employs "best interest",⁵² Raising issues concerning legislative coherence and terminology precision. The application of this principle means that the determination of the child's interests remains subject to the discretion of those around the child, including parents, judges, or educators, who seek the optimal situation that serves the child's welfare. For instance, custody may not be granted to the mother after divorce if the judge, based on objective data, deems her unfit to realise the child's best interests. Here, the juvenile judge plays a significant discretionary role in determining what is best for the child, considering the circumstances of each case.⁵³ While this approach offers practical solutions to some real-world problems, it simultaneously raises questions about the limits of judicial discretion, particularly since determining the best interests of the child requires consideration of intertwined psychological, social, and legal factors. This renders the matter sensitive and complex, requiring awareness, expertise, and courage in decision-making to achieve an optimal balance.⁵⁴ Among various considerations.

Therefore, the protection afforded to the child is not limited to constitutional texts but requires the combined efforts of state institutions,⁵⁵ The family and society must ensure its effective and practical implementation.

In reinforcing the institutional framework, Article 211 of the Constitution provides for the establishment of the National Human Rights Council.⁵⁶ As an independent administrative and financial body entrusted with oversight, early warning, and evaluation of human rights conditions, as well as submitting an annual report to the President of the Republic and publishing it publicly, this represents a significant addition to Algeria's commitments in the field of human rights generally and children's rights specifically, given that the protection of this group forms an integral part of the universal human rights framework.

b. Enactment of the Child Protection Law: This law is the first independent legislative text concerning child protection adopted by Algeria since independence, consolidating the social and judicial protection directed at this category. Consequently, the most prominent manifestations of this protection are highlighted.

b-1/ Social protection: The most notable form of social protection enshrined by the Algerian legislator in the framework of child protection is the establishment of a national body dedicated to child protection and promotion.⁵⁷ Supervised by a national commissioner appointed by the President of the Republic. This is explicitly stated in Article 11 of Law No. 15-12 dated 15 July 2015, concerning child protection, which provides: "A national body for the protection and promotion of childhood shall be established under the authority of the Prime Minister, headed by

the National Commissioner for Child Protection, tasked with overseeing the protection and promotion of children's rights..."

Among the most prominent powers granted to this body is the so-called notification mechanism, which the Committee on the Rights of the Child has long recommended. The National Commissioner can receive notifications from any child in a situation of danger. This mechanism also extends to the child's legal representative and any natural or legal person. The Commissioner may intervene spontaneously to assist children at risk or in cases where the child's best interests are compromised. The body has established a free helpline to facilitate the reporting of any act that may endanger a child.⁵⁸

Based on these notifications, the Commissioner refers them to the regionally competent open environment service to take appropriate measures to remove the danger from the child, as enshrined in Articles 15 and 16 of the same law. Article 15 states: "The National Commissioner for Child Protection shall be notified by any child, their legal representative, or any natural or legal person concerning any violation of the child's rights."

Among the core tasks assigned to the National Commissioner is participation in preparing the periodic reports submitted by Algeria to international and regional bodies concerned with children's rights. Within this framework, the Commissioner is also tasked with preparing an annual report, presented to the President of the Republic, on the extent of implementation of the Convention's provisions, as stipulated in Article 2 of Law No. 15/12, reflecting Algeria's commitment to monitoring the fulfilment of its international obligations.

b-2/ Judicial protection: Judicial protection provided by the Child Protection Law is embodied in the possibility for the juvenile judge to intervene to protect a child facing a situation of danger.⁵⁹ This intervention may occur at the judge's initiative without prior notification, and the child has the right to notify the judge verbally, as confirmed by paragraph two of Article 32 of the law, which states: "... the juvenile judge may act ex officio. Notification received verbally from the child may be accepted."

The law grants the child the right to legal counsel and authorises the juvenile judge to take a range of appropriate measures to protect the child, including:

- Keeping the child within their family environment.
- Handing the child over to a parent who does not exercise custody, provided custody has not been revoked by a court ruling.
- Handing the child over to a trustworthy person or family.

The judge may also entrust the open environment services to follow up with the child within their family, educational, or professional surroundings.

In addition to these measures, the law enshrines several principles aimed at protecting children who are victims of specific crimes, as well as special provisions concerning juvenile delinquents, thereby strengthening the legal and judicial protection of this vulnerable group.

c- Amendment of nationality and family laws considering the best interest of the child: The Committee on the Rights of the Child viewed the amendment to the nationality law as a positive step, as it enabled children to acquire their mother's nationality in realisation of the principle of

gender equality, as provided in Article 9 of the law. It also allowed foreign men married to Algerian women to obtain Algerian nationality, as stipulated in Article 9 bis of the same law. These reforms align with the recommendations issued by the Committee on the Elimination of Discrimination against Women, given their direct and positive impact on protecting children's rights.

The Committee also praised the amendments made to the Family Law by Order No. 05-02 dated 27 February 2005, which prohibits the guardian, whether the father or a relative, from forcing a minor under their guardianship to marry. The Committee expressed satisfaction with the inclusion of the principle of the best interests of the child within this law, considering it a binding principle that judges must observe when making any family-related decision.⁶⁰

Conclusion:

It is clear from the foregoing that Algeria is making considerable efforts to fulfil its international obligations arising from its accession to the Convention on the Rights of the Child, through adopting a series of legislative and institutional reforms, most notably issuing the first specific child protection law since independence, representing a pivotal step towards building a comprehensive national system for child protection. The creation of the position of "National Commissioner for Child Protection" is also a significant institutional achievement, reflecting the political will to enhance protection for this vulnerable segment of society. It is valued as a mechanism for ongoing supervision and follow-up on children's rights. In the same vein, Algeria's reservations to specific provisions of the Convention do not affect its essence or undermine its objectives; instead, they reflect differences in legal, cultural, and religious perspectives. These reservations are interpretative rather than substantive, as confirmed by official Algerian positions, despite the continued calls by the UN Committee for Algeria to reconsider them.

Despite international praise for these measures, UN committees, particularly the Committee on the Rights of the Child, consider them insufficient and call for further practical implementation and field evaluation of these policies.

In light of the above, several recommendations can be made to enhance the protection of children's rights in Algeria, including:

- The need to activate the role of the National Commissioner for Child Protection and Promotion on the ground, providing the human and material resources necessary for the adequate performance of their duties.
- Enhancing coordination between central institutions and local bodies concerned with child protection to ensure a coherent and effective response to the challenges faced by children.
- Intensifying preventive efforts against social phenomena considered primary causes of juvenile delinquency through comprehensive and proactive awareness programmes.
- Supporting the family as the fundamental environment for the child's growth and development by adopting social and economic policies that ensure its cohesion and stability.

Creating a protective environment for children cannot be achieved solely through legal texts, but requires a combination of political will, sustained field action, and the integration of efforts among various stakeholders to ensure a better future for Algeria's children.

Endnotes:

¹ Suhail Hussein Al-Fatlawi, *Human Rights* (Amman: Dar Al-Thaqafa for Publishing and Distribution, 2010), 216.

² United Nations General Assembly, *Convention on the Rights of the Child*, Resolution No. 44/25, adopted on 20 November 1989, published in *United Nations Treaty Series*, vol. 1577, p. 3 et seq.

³ Mahmoud Sherif Bassiouni, *International Instruments on Human Rights*, vol. 2 (Cairo: Dar Al-Shorouk, 1st ed., 2003), 212.

⁴ Khaled Abdel Aziz, *International Protection of the Rights of the Child under International Human Rights Law* (PhD thesis, Faculty of Law, Cairo University, 2010), 145.

⁵ Ahmed Dawoud Ruqayya, *The Legal Protection of the Child between Algerian Family Law and International Treaties*, Master's thesis, Faculty of Law and Political Sciences, Tlemcen, Algeria, academic year 2002-2003, 31-32.

⁶ The First Optional Protocol was adopted, opened for signature, ratification, and accession by UN General Assembly Resolution No. 263, 54th session, dated 25 May 2000, entered into force on 18 January 2002; Algeria joined this Protocol in 2006. The Second Optional Protocol was adopted, opened for signature, ratification, and accession by UN General Assembly Resolution No. 54/262, 54th session, dated 25 May 2000, and entered into force on 23 February 2002. Algeria joined this Protocol in 2009.

⁷ Ghassan Khalil, *Children's Rights, Historical Development since the Beginning of the Twentieth Century* (Beirut, 2000), 110.

⁸ Nawal Allaq, "Protection of Child Rights in Algerian Law in Light of International Standards in the Context of the Particularities of the Child and Family Foundations," *Journal of Research in Law and Political Sciences*, Faculty of Law and Political Sciences, Ibn Khaldun University, Tiaret, Vol. 9, No. 1, 2023, 516.

⁹ Thomas Hammamberg, *Making Reality of the Child* (Radda Barnen, Sweden, 1994), 8-10.

¹⁰ United Nations, *Convention on the Rights of the Child*, New York, 1989, Articles 1–41.

¹¹ See also: Taha Zahran, *Juvenile Criminal Treatment*, PhD dissertation, Faculty of Law, Cairo University, Egypt, 1978, 70; Mahmoud Saeed, *International Protection of Children during Armed Conflicts* (Cairo: Dar Al-Nahda Al-Arabiya, 2007), 14.

¹² Article 2 provides: "(a) States Parties respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. (b) States Parties take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child's parents, legal guardians or family members."

¹³ Samar Abdullah, *Children's Rights in Islam and International Conventions*, Master's thesis, An-Najah National University, Palestine, 2003, 145.

¹⁴ Boulihia Shahira, "Children's Rights in International Covenants," *Al-Ahyaa Journal*, Faculty of Social and Islamic Sciences, University of Hadj Lakhdar – Batna, Algeria, vol. 11, no. 1, 2009, 499.

¹⁵ The Universal Declaration of Human Rights was issued pursuant to General Assembly Resolution No. (2017/01) At its third session on 10 December 1948, the Convention was approved by 48 states without opposition; 8 states abstained. Algeria ratified the Universal Declaration of Human Rights under Article 11 of the 1963 Constitution, as published in Official Gazette No. 64, dated September 10, 1963.

¹⁶ The International Covenant on Civil and Political Rights was adopted by General Assembly Resolution 2200A (XXI) dated 16 December 1966 and entered into force on 23 March 1976, with the First Optional Protocol, pursuant to Article 49 of the Covenant. Algeria ratified it in 1989. The International Covenant on Economic, Social and Cultural Rights was adopted and opened for signature, ratification, and accession by the UN General Assembly Resolution 2200 A (XXI) on 16 December 1966. It entered into force on 3 January 1976, pursuant to Article 27 of the Covenant. Algeria ratified both Covenants in 1989 (Official Gazette No. 20, dated 17 May 1989).

¹⁷ Selini Nassima, "Children's Rights in Covenants and International Conventions and Their Protection Mechanisms," *Academia Journal for Political Studies*, Faculty of Law and Political Sciences, Hassiba Ben Bouali University, Chlef, Algeria, vol. 6, no. 3, 2020, 22 et seq.

¹⁸ Montaser Saeed Hammouda, *Protection of Children's Rights in Public International Law and Islamic Law* (Alexandria, Egypt: Dar Al-Jami'a Al-Jadida, 2007), 69.

¹⁹ Montaser Saeed Hammouda, *Protection of Children's Rights*, 70.

²⁰ Muhammad Al-Saghir Msika, "Protection of Children in International Conventions," *Journal of International Law and Development*, vol. 9, no. 2, 2021, 466.

²¹ See website: <http://www.alwafd.org>.

²² Montaser Saeed Hammouda, *Protection of Children's Rights*, 72.

²³ Hafzi Souad, *The Constitutional and Legal Organisation of Fundamental Rights and Freedoms in Algeria and Mechanisms for Their Guarantee* (Algiers: Dar Houma for Printing, Publishing and Distribution, 1st ed., 2018), 185.

²⁴ Bouzid Ben Mahmoud, "General Principles of Children's Rights in the Algerian Constitution," *Al-Bayban Journal for Legal and Political Studies*, Faculty of Law and Political Sciences, Mohamed Boudiaf University, Bordj Bou Arréridj, vol. 1, no. 1, June 2016, 193.

²⁵ Samia Khabizi, "The 1989 UN Convention on the Rights of the Child: Towards Consolidating the Child's Right to Information," *Journal of Media Legislation*, Faculty of Science and Communication, University of Algiers 3, vol. 1, no. 3, 2023, 59.

²⁶ Ibrahim Ahmed Khalifa, *International Commitment to Respect for Human Rights and Fundamental Freedoms* (Alexandria, Egypt: Dar Al-Jami'a Al-Jadida, 2007), 21.

²⁷ Algeria's interpretative declarations regarding the Convention on the Rights of the Child

First – Article 14 (paragraphs 1 and 2): Through its interpretative declaration, the Algerian government clarified that the application of the first and second paragraphs of Article 14 is to be entirely consistent with the fundamental principles of the Algerian legal system, particularly the provisions of Article 2 of the Constitution considering Islam as the religion of the state, and Article 36, which enshrines freedom of belief and the sanctity of opinion. The Algerian interpretation also relies on the provisions of the Family Law (Law No. 84-11 dated June 9, 1984), which stipulates that the child's upbringing follows the father's religion.

Second – Articles 13, 16, and 17: Regarding these articles, Algeria declared that it would apply them in a manner that ensures the best interests of the child and the preservation of their physical and mental integrity. In this context, the Algerian government confirmed that its interpretation of these provisions would be restricted by several legal and national considerations, including provisions of the Penal Code, especially those related to violations affecting public order and public morals, incitement to corruption and prostitution, and the stipulations of Law No. 90-04 dated 3 April 1990 concerning the media, notably Article 24, which states: "An advisory educational body must assist the director of publications intended for children," and Article 26 of the same law, which states: "National and foreign periodic and specialised publications, whatever their type or purpose, must not include anything contrary to Islamic morals, national values, human rights, or advocate racism, fanaticism, or treason, nor include any advertisements encouraging violence and delinquency," as published in the Official Gazette No. 91 dated 23 December 1992.

²⁸ The Vienna Convention on the Law of Treaties of 1969 was adopted by the United Nations Conference on the Law of Treaties, convened pursuant to UN General Assembly resolutions No. 2166, dated 5 December 1966, and No. 2287, dated 6 December 1967. The conference was held in two sessions in Vienna, the first from March 26 to May 24, 1968, and the second from April 9 to May 22, 1969. Upon its conclusion on 22 May 1969, the Convention was formally adopted and opened for signature on 23 May of the same year. It entered into force on January 27, 1980, while Algeria acceded to it on October 13, 1987.

²⁹ "Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of specific provisions of the treaty in their application to that State.

³⁰ Ibrahim Ali, *Intermediary in International Treaties*, 1st ed. (Cairo: Dar Al-Nahda Al-Arabiya, 1995), 327.

³¹ Maryam Amrouch, "The Status of the Convention on the Rights of the Child in the Algerian Constitutional System of 2020," *Journal of Law and Human Sciences*, vol. 16, no. 1, 2023, 1617 et seq.

³² Faten Sabri Said Al-Laithi, *International Protection of Children's Rights*, Master's thesis, Faculty of Law, University of Hadj Lakhdar Batna, academic year 2007–2008, 18.

³³ Maryam Amrouch, op. cit., 1623 et seq.

³⁴ Nawal Allaq, op. cit., 518.

³⁵ Pursuant to Legislative Decree No. 92-06 dated 17 November 1992, including ratification with interpretative declarations of the Convention on the Rights of the Child (Official Gazette 18/1992); Presidential Decree No. 92/461 dated 19 December 1992, ratifying with interpretative declarations the Convention adopted by the UN General Assembly on 20 November 1989, Ministry of Foreign Affairs (Official Gazette 91/1992); and Presidential Decree No. 97/102 dated 5 April 1997, ratifying the amendment to paragraph 2 of Article 43 of the Convention on the Rights of the Child, adopted at the conference of States Parties on 12 December 1995 (Official Gazette 20/1997).

³⁶ Article 62 of the Algerian Family Law No. 84/11 dated 9 June 1984, amended and supplemented by Order No. 05/02 dated 27 February 2005, provides: "Custody is the care, education, and upbringing of the child according to the religion of his father, and the safeguarding of his protection and preservation of health and morals. The custodian must be competent to carry out this."

³⁷ Mounir Belhaj, *The Right to Freedom of Belief and the Practice of Religious Rites*, Master's thesis in Public Law, specialising in Human Rights, Faculty of Law and Political Sciences, University of Oran, academic year 2011/2012, 26.

³⁸ Saad Al-Mursafi, *Hadith of Apostasy in the Light of Modern Fundamentals: Narration and Knowledge*, 1st ed. (Beirut: Al-Rayan Foundation, 1995), nine et seq.

³⁹ Article 13 provides: (a) "The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. (b) The exercise of this right may be subject to certain restrictions, provided by law, and necessary to respect the rights or reputations of others, or to protect national security, public order, public health or morals."

⁴⁰ Article 16 states in its first paragraph: "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation."

⁴¹ Article 17 provides: "States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health..."

⁴² Nasrin Inas Ben Othman, *The Best Interests of the Child in Algerian Family Law*, Master's thesis in Comparative Family Law, Faculty of Law, University of Abou Bekr Belkaid, Tlemcen, academic year 2008/2009, 116.

⁴³ Nasira Belhoussin, "The Algerian Legislator's Perspective on Algerian Children's Media Rights from the Legal Legislation of Media Laws Issued in Algeria," *Journal of Media Legislation*, vol. 2, no. 2, 2024, Faculty of Media and Communication, University of Algiers 3, 23.

⁴⁴ Soufian Bakhda, "Legal Guarantees for the Protection of the Child in Light of International Human Rights Law and National Legislation," *Maabar Journal*, University of Algiers 1, vol. 6, no. 1, 162.

⁴⁵ Hasina Cheroun, "Implementation of International Conventions before the Algerian Criminal Judge," *Journal of Humanities*, Faculty of Law and Political Sciences, Mohamed Khider University of Biskra, Algeria, Issue 11, May 2007, 90.

⁴⁶ Article 43/2 provides: "The Committee shall consist of ten experts of high moral character and recognised competence in the field covered by the present Convention. The States Parties shall elect the members of the Committee from among their nationals; the members shall serve in their personal capacity and shall give consideration to equitable geographical distribution as well as to the principal legal systems"

⁴⁷ Salem Huwa, "Algeria's Implementation of International Human Rights Treaty Obligations," *Al-Manar Journal for Legal and Political Research*, Faculty of Law and Political Sciences, Yahia Farès University of Médéa, vol. 3, no. 2, December 2019, 27 et seq.

⁴⁸ Aisha Humaidi, "The Extent of Compatibility of Algerian Legislation Related to Children's Rights with the International Convention on the Rights of the Child," *Al-Shamil Journal of Rights*, Faculty of Law, University of Badji Mokhtar Annaba, Algeria, vol. 2, no. 2, 43.

⁴⁹ Abdelhaq Ben Saidi, "The Constitutional and Institutional Path for the Protection and Promotion of Children's Rights in Algeria," *Journal of Global Politics*, Faculty of Law and Political Sciences, University of Boumerdès, vol. 6, no. 2, 400 et seq.

⁵⁰ Maryam Amrouch, "The Status of the Convention on the Rights of the Child in the Algerian Constitutional System of 2020," *Journal of Law and Human Sciences*, vol. 16, no. 1, Faculty of Law and Political Sciences, University of Martyr Ziane Achour Djelfa, 1618.

⁵¹ Maryam Amrouch, *ibid.*, 1619.

⁵² Fatima Issaoui, "The Best Interests of the Child in Algerian Legislation," *Al-Wahat Journal for Research and Studies*, University of Ghardaia, 2023, vol. 16, no. 1, 687.

⁵³ Houaria Rezoui and Abdelkader Qasim Al-Eid, "The Best Interests of the Child in Juvenile Justice," *Journal of Algerian and Comparative Public Law*, Djilali Liabes University, Sidi Bel Abbès, Algeria, vol. 8, no. 1, 2022, 460 et seq.

⁵⁴ Ali Manie, *Juvenile Delinquency and Social Change in Contemporary Algeria*, University Press, 2002, 56.

⁵⁵ Nasrin Inas Ben Othman, *The Best Interests of the Child in Algerian Family Law*, Master's thesis, Faculty of Law, Abou Bekr Belkaid University, Tlemcen, academic year 2008-2009, 70.

⁵⁶ Zahia Rabti, "The National Human Rights Council as an Advisory Body in Light of the 2020 Constitutional Amendment," *Journal of Law and Human Sciences*, Faculty of Law and Political Sciences, University of Martyr Ziane Achour Djelfa, vol. 15, no. 3, 2022, 396.

⁵⁷ Hasina Cheroun and Fatima Qaffaf, "The Protective Role of the National Body for Child Protection and Promotion," *Annals of the University of Algiers 1*, vol. 32, no. 2, 2018, 542 et seq.

⁵⁸ Hasina Cheroun and Fatima Qaffaf, "The Protective Role of the National Body for Child Protection and Promotion," *Annals of the University of Algiers 1*, vol. 32, no. 2, 2018, 547.

⁵⁹ Abdelhafid Afroukh, *Criminal Policy Towards Juveniles*, Master's thesis, Faculty of Law and Political Sciences, Mentouri Brothers University, Constantine, academic year 2010-2011, p. 4.

⁶⁰ Amara Amara, "Legal Protection of the Child's Right to Nationality under Amended Order 05-01 to Order 70-86 Containing the Nationality Law," *Journal of Legal Studies and Research*, Faculty of Law and Political Sciences, Mohamed Boudiaf University, M'sila, Algeria, vol. 6, no. 2, 2021, 78.