

RELATION BETWEEN INTERNATIONAL LAW AND ALGERIAN LAW ON THE PROTECTION OF CHILDREN AGAINST THE CRIME OF KIDNAPPING AND KILLING

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ABSTRACT

This study will present and analyse the circumstances of children who have been abducted and killed. And It try to concludes that the actual number of children dependent on the streets for their survival and development is unknown and that the number fluctuates according to each country's social, economic, political and cultural conditions, including increasing inequality and patterns of urbanization. This article analyses the reasons why children are exposed to such criminal acts and the challenges they face in their daily lives. It recognizes that those children before reaching home or schools they face this crime on the streets, children will have been subjected to multiple deprivations and violations of their rights, and we must therefore draw up some comparisons between both international and Algerian law in order to help clarify the existing legal grounds for such acts.

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Introduction

The law protects children through a set of frameworks and procedures, which are taken to prevent any method that abuses children, such as violence, kidnapping and murder, and to preserve their dignity from any form of miscellaneous violations, the most important of which is not to violating their right to life. Are Algerian laws in line with international laws in providing legal protection for children against kidnapping and murder?

At first, We want to highlight that this study it's a complementary part of first author's PhD research thesis for the simple reason of finding legal gaps to access appropriate solutions and Proof of result (Rahmani).

Second, about the laws that we will compared are situated:

For the international laws: General international such as declarations and conventions Universal Declaration of Human Rights 1998, International Covenants, European Social Charter 1965, Arab Charter on the Rights of the Child 1984, African Charter on the Rights of the Child 1990 (Rahmani).

Special international conventions Geneva Declaration on the Rights of the Child 1924 Universal Declaration of the Rights of the Child 1959 International Convention on the Rights of the Child 1989 and its Protocols (Rahmani). And about the Algerian laws are:

constitutions, 1963, 1976, 1989, 1996(Rahmani64). The Penal Code enacted by Ordinance No.66-156 of 18 May 1966, amended by Law No 16 of 14 Ramadan No 1437 of 19 June 2016 of the Official Journal of the Republic of Algeria., No 37(Rahmani73). Law n° 15_12 of Ramadan 28 of 1436 of 15 July 2015 concerning the protection of Algerian children, published in the Official Journal n°.39: 19.02.2015, approved by 3.0 1436HR. (Rahmani88).

Legal protection is to safeguard others from the illnesses, dangers and suffering to which they may be exposed, defend them and provide them with aid and support (Khalil Ahmed25). Such legal protection could therefore be a relationship between two or more States whereby such States would be guaranteed of certain legal protection.

So, are the Algerian laws in line with international laws in providing legal protection for children against kidnapping and killing?

Differences between general international instruments and Algerian constitutions

All these charters have agreed at the beginning of the establishment of the first idea of the manifestation and prominence of human rights in general and children in particular, in the same time The general international instruments under consideration and the various Algerian constitutions considered and agree that the protection of the child's right to live is a fundamental right that must be protected in all areas and by all available means.

In the same context the Algerians law was also agreed with the international conventions that the family should be protected as the primary source of child and child development with all required policies and legal means. They also agreed on the obligation of educating and sensitizing children. That obligation is incorporated, at least necessary and due at the basic level means the primary level, to train and protect their right.

Agreement was also reached on the presence and prohibition of any punishment which might adversely affect the life and physical integrity of the child, provide for certain legal exceptions at trial and in certain judicial proceedings. Considering the age of the child and the negative consequences that can be inflicted on the child as a result of their punishment. In addition to the general agreement on banning the employment of every child, with the provision of possible protection to reach the working age of the child, as well as the provision of health care, which in some cases may be free of charge while ensuring the healthy development of the child and preventing all methods of sexual exploitation or dealing with them through sale.

We also note that the general international instruments and the various Algerian constitutions, especially the last Algerian Constitution, have provided qualitative protection for children with disabilities or known persons with special needs by providing them with a special and respectful space in all societies (Alg Constitution, Amendment2016).

Agreements between international instruments and Algerian private laws:

The international instruments (Universal Declaration of Human Rights 01) and Algerian laws under consideration agree on the need to provide a happy life for the child, by granting rights and freedoms, which constitutes a special recognition for this category. It also agreed that special legislation should be adopted to ensure this protection at the international and national levels, as has been done by Algeria's domestic laws (Alg.Constitution 1989).

Agreement on the right of every child at the international and internal levels to be named and nationalized as a natural and recognized right from birth (shahira09). While children's health must be preserved by reducing mortality, avoiding hunger and providing a healthy living for children in an integrated family and family environment, which is a shared responsibility between parents and the State, in order the State must also take care of the family in this area in order to allow it to accomplish its role of child protection.

With the accord to ensure the right to social security and a healthy lifestyle for children and mothers while protecting them against all sorts of cruelty and violence and all the risks that hinder the proper development of the child, while guaranteeing the right to free and mandatory education in most of them (Mofid217).

These special laws as well accord that child with disabilities and illegitimate children must be provided with special care by both parents and the State so that this group can enjoy as harmonious a personality as possible (Mofid218). Besides preventing all sorts of torture, terrorism, prostitution, trafficking of children or their organs. And not exploit them in hostile or armed actions for their youth with special procedures before, after and during trials.

Differences between global international instruments and Algerian constitutions:

The Universal Declaration of Human Rights concerns the right to freedom from slavery, torture and all kinds of cruel and degrading treatment of human dignity, as a first step towards the beginning of the debate, expanding and elaborating rights in order to be able to speak about the rights of children of all sorts of violations (Bahieddin53). Algeria's first Constitution of 1963 directly asserts the need to protect the family as the basic element of society and closest to the child so as to offer special protection thereafter, that I regard as closer to the protection of children from kidnapping and murder (Alg constitution 63).

The same Convention (Universal Declaration of Human Rights) has protected and granted asylum as a form of legal protection of life and integrity, which was not part of the Algerian Constitution at the time. In the same way the Algerian Constitution of 1976 affirms the obligation of parents to raise their children and to provide them with full care and protection (Alg constitution 76). while the Universal Declaration of Human Rights is concerned with recognizing everyone's legal personality and prohibiting trafficking in persons, slavery and the enslavement of all kinds.

The Universal Declaration of Human Rights was a race to at least acknowledge the right to compulsory and free primary education, which did not fully materialize in the first Algerian Constitution in 1963, which stipulated the right to compulsory education free of charge and with no limitation on the duration of the constraint, which is at the heart of awareness and protection against numerous crimes, including the kidnapping and murder of children.

Concerning the first covenants (Civil and Political Rights.66).and the second covenants (economic and social rights66). explicitly protect and prohibit the application of the death penalty to persons under 18 years of age and pregnant women in the interests of the child. The 1989 Constitution stipulates those fundamental rights and freedoms must not be violated in general and that the violation of these rights must be punished (Alg Constitution89). In addition to those Algerian constitutions have neither addressed either considered the judicial protection of children in general in terms of procedures or measures to be taken to protect the child's right in the event of the crime of kidnapping and killing of children, which is contrary to the other general instruments under study, even if it indirectly protects its right during its life and before such violations.

Differences between international instruments and Algerian private laws:

In this comparison, Algerian legislators have outlined the offence of the kidnapping and killing children in the provisions concerning the criminalization of acts and setting out the punishment prescribed therein ("The penal Code", art291). contrary to the provisions of the special international conventions. We also note that there is disagreement about the Algerian special laws, where these offences are characterized by aggravating, mitigating and punishing factors for the author and the original contributor (Rahmani73).

whereas international instruments protect rights generally in order to guarantee the child's right to life by giving reasons.

The Algerian Penal Code, in conjunction with the offence of kidnapping of children, is singled out for trafficking in the organs of the kidnapped child, sexual assault or rape as an aggravating factor (Rahmani79). The Algerian legislator also distinguished its own procedures during and after the jury by offering temporary and quality protection to children (Rahmani88).

Ultimately the crime of abducting and killing children is punishable by law in view of the human value that this violation destroys by infringing on the security, freedom and safety of persons. On that basis, international and national legal protection must be guaranteed, corrective measures must be put in place and the phenomenon prevented, through the examination of the causes and prevalence of the phenomenon and the adoption of laws and agreements. Society and governments have failed to establish values and ethics in society and to deal seriously with anything that could undermine children's freedom and public safety. Following this legal comparison, we have been able to arrive at a number of conclusions and recommendations on the protection of children from kidnapping and killing at the national and international levels, which are summarized as follows:

The study showed that the Algerian legislature did not provide the necessary focus and attention in terms of clearly defining the legal texts to point out the protection of children from kidnapping and killing and to provide the necessary protection to apply these regulations.

In accordance with the rules of international law, the Algerian legislature has enacted a subsidiary law entitled: The Child Protection Act of 2015, in which I noted after my study that he had effectively taken care of the protection of children, but that he had a strong focus on the protection of children in conflict with the law, focusing on the observance of their rights before the courts because of their young age and how to rehabilitate them after all. law, which makes it urgent to make some amendments to it to ensure special and clear protection of children against kidnapping followed by murder

Conclusion

After studying Algerian constitutions, the Algerian legislature has not been interested in drafting or adding provisions that highlight the principle of the protection of children from kidnapping and killing, which is adopted in the Algerian Constitution, because the existence of an specific constitutional provision and principle based on the protection of children from kidnapping and killing provides a very important and addition in the social and legislative sector, considering that the Constitution is the supreme law of the State.

We recommend that emphasis be placed on the importance of ending impunity for all violations of the protection of children from kidnapping and killing under international and Algerian law, as part of a global approach that seeks lasting peace, justice and international cooperation in the establishment of facts and in the interests of the State.

To ensure the necessary protection for children against kidnapping followed by killing, the research worker recommends and proposes amendments at the international level to also establish specialized chambers at the level of the International Criminal Court to follow up and prosecute Perpetrators of this crime so that there is no possibility of dispensation for the criminal. With Non-traditional mechanisms are mandated to oversee and promote child protection from kidnapping and killing internationally in times of war and peace or even in the event of internal conflicts in a State.

In order to stand by the principle of the protection of children's right to life and to kidnapping and killing, we also recommend that any exclusion and rejection of all forms of amnesty for the abduction of children resulting from killing be underlined as one of the six serious violations of human rights and that no mercy be granted that would result in the annulment of a court established by the competent authorities internally and internationally.

References

- Algeria's Constitutional. Amendment 2016, proclaimed by Law No.01_16 of 06 Mar 2016 of the Official Journal n° 14 of 7 Mar 2016.
- Bahieddin, Hassan. Children's Rights in the Human Rights Structure Are Strategies One. Author of problems with the implementation of the Convention on the Rights of the Child in Egyptian reality. Egypt Amdist (1999).
- Constitution No 1989. issued by Presidential Decree No 89 18 of 22.01.409, corresponding to 28.1989, on the publication of the text of the amendment to the Constitution endorsed by referendums No.23.01.409, of the Official Journal of the Algerian Democratic and People's Republic of 23.01.1989.
- Constitution No 1989. issued by Presidential Decree No 89 18 of 22.01.409, corresponding to 28.1989, on the publication of the text of the amendment to the Constitution endorsed by referendums No. 23.01.409 of the Official Journal of the Algerian Democratic and People's Republic of 23.01.1989.
- Constitution of 1963. Journal officiel n 64 of 1963.
- Dr. Mofid, Shahab. Draft Arab Charter on Human Rights in the Light of the International Covenant on Economic, Social and Cultural Rights. volumes of the Siracusa Conference, vol. 2. Dar al-Alam for Millions. (1989).
- International Covenant on Economic, Social and Cultural Rights. 16 Dec 1966, took effect on 3 Feb 1976.
- Khalil, Ahmed, Khalil, al-Obaidi. Protection of civilians in international armed conflict in international humanitarian law and Islamic law. doctoral thesis philosophy in international humanitarian law, St. Clements World University, 2008.
- Rahmani, Imene. Protection of children from kidnapping and killing in Algerian law: a comparative study. doctoral thesis philosophy in international law, International Islamic University Malaysia, 2021.
- shahira, boulahia. Children's rights in international conventions and penal law. Mohammed Khaidar University, Biskra, 2004.
- The 1976 Constitution established by Order No. 76 _ 95 of 22 Dhi Qaeda 1396 corresponding to 14 Nov 1976 on the draft Constitution.
- The International Covenant on Civil and Political Rights 16 Dec 1966 took effect on 23 Mar 1976.
- The penal Code issued by ordinance. No. 66-156 of 18 May 1966, as amended by Law n° 16 of 14 Ramadan n° 1437 of 19 June 2016 of the Official Journal of the Algerian Republic, n° 37.
- Universal Declaration of Human Rights. adopted by the General Assembly resolution, 10 Dec 1948.