



HEARING A CHILD VICTIM OF SEXUAL ASSAULT CRIMES ACCORDING TO LAW NO. 15-12 CONCERNING THE PROTECTION OF THE CHILD

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Abstract :

Article 46 of Law No. 15-12 concerning Child Protection, issued on July 15, 2015, establishes the procedure of audiovisual recording for child victims of sexual assault in Algerian law. This mechanism addresses the challenges of collecting evidence and protecting a child's well-being in such cases.

Keywords: Child, Victim, Sexual Assault, Child Testimony, Audiovisual Recording..

INTRODUCTION:

Despite Algeria's ratification of the 1989 Convention on the Rights of the Child, which stipulates in Article 12 the child's right to express their opinion and be heard, and despite the Algerian legislator's affirmation in the constitution of the supremacy of international treaties over domestic laws, this right was not enacted for the child except in matters related to the child's status, such as guardianship, the exercise of parental authority over the minor, or its temporary withdrawal - but at a specific age, namely the age of discernment (13 years and above). As for criminal matters, the Algerian legislator has given the greater share to hearing the delinquent child so that he has the right to express his opinion and defend himself, as well as in Decree No. 72-03 dated 10/02/1972 concerning the protection of childhood and adolescence, which affirmed the possibility of hearing the child exposed to moral danger by the juvenile judge regarding the measure taken in his regard¹.

With the issuance of Law No. 15-12 dated July 15, 2015, concerning the protection of the child, the Algerian legislator stipulated in Article 46 under the title of "Protection of Children Victims of Certain Crimes" on the procedures for audiovisual recording when hearing a child victim of sexual assault crimes. Thus, the Algerian legislator has finally complied with the provisions of Article 12 of the aforementioned 1989 Convention on the Rights of the Child.

Our study of the topic of hearing a child victim of sexual assault crimes is of legal importance, as it works to clarify the most important sexual crimes committed against children and to address one of the children's rights, namely the right to be heard and to express his opinion in all judicial and administrative proceedings, by speaking based on this right and clarifying its importance and conditions. Finally, our study will review the most important procedural guarantees that the Algerian legislator surrounded this right with within the Child Protection Law No.15-12 concerning the protection of the child.

RESEARCH PROBLEM:

What are the guarantees that the Algerian legislator has surrounded the right of a child victim of sexual assault crimes with, according to Law No. 15-12 concerning the protection of the child?

METHODOLOGY:

To answer this research problem, we followed the descriptive approach by addressing: the various definitions related to the child, the child victim, stating the types of sexual assault crimes committed against the child, speaking based on the principle of hearing the child, presenting its conditions and procedures according to Law No. 15-12, as well as we used the analytical approach



by analyzing the legal texts of the Algerian legislation related to the Penal Code and Law No. 15-12 concerning the protection of the child, and analyzing them in some cases.

Chapter 1: Conceptual Framework for Hearing Child Victims of Sexual Assault

This chapter addresses the definitions of "child" (Section 1), "child victim" (Section 2), and "sexual assault" and its types (Section 3).

Section 1: Definition of the Child

To comprehensively define a child, it is essential to delve into both the linguistic and conceptual aspects of the term

Subsection 1: Linguistic Definition

Child in language refers to a newborn as long as they are soft and tender. This name remains for them until they are distinguished. The plural form is "children" and the feminine form is "girl." The child is also known as the young one of both males and females².

Subsection 2: Technical Definition

We will explore the concept of "child" from the perspectives of Islamic law, psychology, and sociology, and finally, legal definitions from international conventions and Algerian law.

First: Definition of the Child in Islamic Law

Islamic law uses various terms for children, such as "boy," "youth," "young man," and "son." A child, in this context, is someone who lacks understanding due to their young age. and among His (God's) words is His saying

*"And she pointed to him. They said, 'How can a baby in the cradle speak?'"*³[Quran 19:29]

The first stage of childhood, according to the view of the majority of Islamic legal scholars, begins at birth and continues until the child reaches the age of seven. During this stage, the child is referred to as the "non-discerning boy". Consequently, the fetus within the mother's womb is not considered a child. The second stage, then, extends from the age of seven to the attainment of the dream age (puberty), which signifies the end of childhood. Jurists generally set the age of puberty at fifteen years, while Imams Abu Hanifah and Malik set it at eighteen years old⁴.

Second: Definition of the Child in Psychology and Sociology

From a social and psychological standpoint, the child is considered a fully formed human being, born equipped with all the faculties, capabilities, senses, and human and humane qualities. The child possesses the ability to think and has a cognitive capacity that functions spontaneously and instinctively. These faculties lack only the encounter with life events and human behavior to activate and drive them to action. Thus, the child must embark on a long journey through an arduous process to learn how to live in society⁵.

However, psychologists and sociologists differ in their definition of the minimum age of childhood. Psychologists consider the fetus from its creation in the mother's womb to sexual maturity to be a child. They explain this by stating that the fetal development stage in the mother's womb is the most critical stage of life altogether, until reaching adulthood and the accompanying sensitive biological and psychological phenomena. On the other hand, sociologists view childhood as starting from birth until the child's social maturity, when the personality components and self-formation are complete, upon reaching adulthood and the accompanying social upbringing⁶.

Third: Definition of the Child in Law

We will discuss the legal definition of "child" according to international treaties and then Algerian law, as this study focuses on Law No. 15-12 concerning Child Protection.

1. Definition of the Child in International Treaties

Despite the mention of the term "child" in many international conventions, most of them have not precisely defined the concept of a child or set a maximum age for childhood. However, the Convention on the Rights of the Child, adopted by the UN General Assembly on November 20, 1989, defines a child in Article 1 as follows: "For this Convention, a child means every person under the age of 18, unless the majority age is attained earlier under the applicable law⁷."

However, the Convention does not specify when childhood begins, whether from the fetal stage or the moment of birth. This is an issue of paramount importance. If childhood begins from the



moment of conception, then the right to life enshrined in Article 6(1) of this Convention applies from the moment of conception and not from the moment of live birth. Consequently, abortion would be prohibited, and other rights would begin to be legally protected from the moment of conception, such as the right to health, the right to privacy, and other rights. Therefore, it would be better to address this issue, especially since this Convention is the result of many attempts and organizations that have taken the issue of the child as their focus⁸.

2. DEFINITION OF THE CHILD IN ALGERIAN LAW

According to Article 2(2) of Law No. 15/12 on Child Protection, dated July 15, 2015, a child is any person who has not reached the age of eighteen (18) years. The term "minor" used in the same article has the same meaning⁹.

Section 2: Definition of the Victim

The term "victim" is widely used in international laws, while national laws have limited themselves to two terms: "the injured party" and "the harmed party." This term was first used by the UN General Assembly in Milan in 1985. The Seventh Declaration of the United Nations on Crime Prevention and the Treatment of Offenders defines victims as those who individually or collectively suffer harm, particularly as a result of an attack on their physical or mental integrity, moral injury, or material loss, or a serious attack on their fundamental rights due to acts or omissions that constitute violations of the criminal laws in force in Member States, including laws criminalizing the abuse of power¹⁰.

The Algerian legislator used the term "child victim" in Law No. 15/12 on Child Protection. Article 2/3 defined a child at risk and mentioned the cases in which a child may be at risk, including:

- ✓ If the child is a victim of a crime by their legal representative,
- ✓ If the child is a victim of a crime by any other person if the child's best interests require protection,
- ✓ If the child is a victim of armed conflicts and other situations of instability and widespread insecurity¹¹.

Section 3: Definition of Sexual Assault and Its Types

Before delving into the various types of sexual abuse, it is essential to establish a clear understanding of the term "sexual abuse" itself.

Subsection 1: Definition of Sexual Assault

Sexual assault or sexual abuse is defined as forced or deceptive contact by a person who is older than the child for sexual gratification. This assault can be committed by strangers to the child, relatives, or even parents to fulfill their sexual desires¹².

Sexual assault is not just about full sexual intercourse; it also includes incomplete sexual intercourse. For example, touching or rubbing the offender's genitals, exposing the child, or exposing the child to the offender, forcing the child to watch pornographic films, or forcing the child to engage in other sexual acts... all of these acts are considered sexual assault¹³.

Subsection 2: Types of Sexual Assault

There are many types of sexual assault, including indecent acts, sexual harassment, rape, incitement to debauchery and prostitution. We will discuss each of these types as follows:

First: Indecent Act

This act is called "indecent assault" in Egyptian law and "sexual assault" in Tunisian law. The Algerian legislator has not defined this crime as other legislation has, but it can be defined based on the case law and jurisprudence as follows: any act that is practiced on the body of another person and is likely to constitute a public or private breach of morality¹⁴.

The Algerian legislator has criminalized indecent acts against minors in Article 334 of Ordinance No. 75-47 dated June 17, 1975, amending and supplementing the Penal Code No. 66-156. This article stipulates that any individual who commits an indecent act against a minor under the age of sixteen, whether male or female, without violence or attempted violence, shall be punished with imprisonment from five to ten years.



The penalty is further aggravated according to the second paragraph of the same article to imprisonment from five to ten years if the perpetrator is an ascendant of the minor, even if the minor has passed the age of sixteen but has not yet reached the age of marriage¹⁵.

Article 335 of the aforementioned ordinance states that imprisonment from five to ten years shall be imposed on anyone who commits an indecent act against a human being, male or female, without violence or attempted violence. If he has not reached the age of sixteen, the offender shall be punished with imprisonment from ten to twenty years¹⁶.

The penalties are also increased according to the text of Article 337 bis of the Penal Code if the offender is an ascendant of the person against whom the indecent act or rape has been committed, or if he is a member of a group that has authority over him, or if he is one of his teachers or those who serve him for a fee, or if he is a servant for a fee with the persons mentioned above, or if he is an employee or a member of the clergy, or if the offender, whatever his capacity, has called in the assistance of one or more persons in committing the crime, the penalty shall be imprisonment from ten to twenty years in the case provided for in the first paragraph of Article 334 and life imprisonment in the cases provided for in Articles 335 and 336¹⁷.

Second: Sexual Harassment:

Sexual harassment manifests itself in several forms: it may be a gesture, a word, a touch, or physical contact, and this behavior is not desired by the victim. The harm resulting from this behavior can be psychological, physical, moral, and social¹⁸.

Therefore, we can conclude that sexual harassment of children is a sexual practice by an adult or an older child on another child, which is committed in various forms such as words and gestures with sexual connotations, and may develop into touching and physical contact without the victim's consent¹⁹.

The crime of sexual harassment was addressed by the Algerian legislator by amending the Penal Code by Law No. 04-15 dated November 10, 2004, according to Article 341 bis, which stated that anyone who exploits his authority or profession by issuing orders to others, or by threat or coercion or by exerting pressure on them to force them to comply with his sexual desires, shall be considered to have committed the crime of sexual harassment and shall be punished with imprisonment from two (2) months to two (2) years and a fine from 50,000 DA to 100,000 DA. In the case of recidivism, the penalty shall be doubled²⁰.

It is noticeable at first that the Algerian legislator criminalized sexual harassment in the workplace only but remedied this by amending the Penal Code by Law No. 15-19 dated December 30, 2015, by amending Article 341 bis 1 in its first paragraph and adding paragraphs 2 and 3, where paragraph 1 states that anyone who exploits his authority or profession by issuing orders to others, or by threat or coercion or by exerting pressure on them to force them to comply with his sexual desires, shall be considered to have committed the crime of sexual harassment and shall be punished with imprisonment from one (1) to three (3) years and a fine from 100,000 DA to 300,000 DA.

The second paragraph of the previous article states that anyone who molests another person by any act, word, or gesture of a sexually suggestive nature shall also be considered to have committed the crime provided for in the first paragraph and shall be punished with the same penalty. The third paragraph states that if the perpetrator is a relative, if the victim is a minor, under the age of sixteen, or if the commission of the act was facilitated by the victim's weakness or disability or illness or physical or mental incapacity or by a state of pregnancy, whether these circumstances are apparent or the perpetrator is aware of them, the penalty shall then be from two (2) to five (5) years and a fine from 200,000 DA to 500,000 DA²¹.

What is criticized about the Algerian legislator in Article 341 bis of the Penal Code in the third paragraph is that he did not include within the category of children exposed to sexual harassment those who are under or equal to 18 years old, although they are considered children in the Child Protection Law.



Third: Rape

The Algerian legislator referred to the crime of rape as "Hadd al-Ird" (lit. "violation of honor"), while the more accurate term is "rape." The Algerian legislator has not defined this crime or specified its elements. It can be inferred from case law and jurisprudence that it is the sexual intercourse of a man with a woman without her consent, which is the definition enshrined by the Egyptian legislator (Article 267 of the Penal Code) and the Tunisian legislator (Article 227 of the Penal Code)²².

In France, on the other hand, the situation has evolved from not defining rape at first to defining it in the Penal Code in the end. Before 1980, this crime was not defined in French law, while the courts settled on defining it as the sexual intercourse of a man with a woman without her consent. However, this situation evolved with the issuance of the Penal Code dated December 23, 1980, by defining rape as: "Any act of sexual penetration, whatever its nature, committed on another person by violence, coercion, threat or surprise," which is the definition adopted by the Penal Code issued in 1992 in Article 23-222 thereof. Consequently, rape is no longer confined to men and is no longer confined to the act of natural intercourse²³.

The Algerian legislator addressed the crime of rape of a minor in Article 336/2 of the aforementioned Ordinance No. 75-47²⁴ by stating that if rape is committed against a minor under the age of sixteen, the penalty shall be imprisonment from ten to twenty years.

Fourth : Incitement to Debauchery and Prostitution

Articles 342 to 349 bis of the amended Penal Code address the crime of inciting minors to debauchery and prostitution, which is considered one of the forms of sexual assault on children through incitement to engage in sexual activities in a casual, facilitating, or encouraging manner for prostitution by any means whatsoever, inside or outside the country²⁵.

Chapter 2: Procedures for Hearing Child Victims of Sexual Assault

This section will discuss the basis of the principle of child listening (Section 1), its objectives (Section 2), its conditions (Section 3), and the procedures for hearing child victims of sexual assault following Law No. 15-12 on Child Protection (Section 4) as follows:

Section 1: Basis of the Principle of Child Listening

We will discuss the basis of the principle of child listening in international and regional documents related to children through the following:

Subsection 1: In International Documents Relating to Children

Listening to the child victim is a principle recognized by the 1989 Convention on the Rights of the Child, which states in Article 12:

1. States Parties shall assure the child who is capable of forming his or her views the right to express those views freely in all matters affecting the child, the views of the child being given due weight by the age and maturity of the child.
2. For this purpose, the child shall be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law²⁶.

Subsection 2: In Regional Documents Relating to Children

Article 4/2 of the 1990 African Charter on the Rights and Welfare of the Child states that:

In all judicial or administrative proceedings affecting the child who is capable of forming his or her views, the child shall be allowed to be heard, either directly or through a fair representative as a party to the proceedings, and his or her views shall be taken into account by the competent body by the provisions of the relevant law²⁷.

Section 2: Objectives of Hearing a Child Victim of Sexual Assault

The purpose of hearing a child through audiovisual recording is to facilitate the child's hearing to the greatest extent possible to avoid the risks of re-telling what happened to him or her. This is



because repeated retelling will lead the child to live through the suffering he or she has experienced many times over, which could cause additional psychological trauma²⁸.

In addition, recording the child's testimony is an important piece of evidence, as the child can be heard during the sessions and in the presence of the accused without the need for the child to be physically present and questioned multiple times. This also avoids direct contact between the child and the perpetrator, especially if the perpetrator is a relative. In this case, the child may be pressured to change his or her testimony or not give it at all out of fear of the perpetrator²⁹.

Section 3: Conditions for Hearing a Child Victim of Sexual Assault

These conditions include the presence of authorized persons, the hearing sessions for child victims of sexual assault, the specialized training of investigators responsible for hearing child victims of sexual assault, and conditions relating to the means used to hear child victims of sexual assault.

Subsection 1: Persons Authorized to Attend Child Sex Abuse Victim Hearing Sessions

The child sex abuse victim hearing session requires the presence of two persons: a trusted adult and a psychologist.

First: The Presence of a Trusted Adult

When a minor child seeks to inform law enforcement or judicial authorities that he or she has been a victim of sexual crimes, he or she must necessarily be accompanied by an adult who supports his or her efforts. For this reason, the majority of experts believe that it is preferable that when a complaint is filed with the competent authorities, the person concerned with the complaint should first be heard so that the complainant feels that his or her efforts have been listened to seriously. This is followed by the next stage, which is the hearing of the minor, which, if conducted under appropriate conditions, will avoid the need for the minor to be heard again multiple times, which could lead to changes in the content of what he or she has said or inconsistencies in his or her statements. Therefore, most laws stipulate that the minor child victim of sexual crimes has the right to be accompanied by an adult of his or her choice when being heard by the judicial authorities. The purpose of this presence is to support the minor child when he or she speaks, and this condition serves as a means of instilling confidence in the minor child in choosing whom to accompany him or her before the investigating authorities³⁰.

However, if the child feels comfortable with the person who will be questioning him or her, he or she may dispense with the presence of this adult and simply make his or her statements on his or her own. Experience has shown that many minor children who are victims of sexual crimes prefer the second method, as they choose to express the events of which they have been victims without the presence of any of their parents³¹.

One of the characteristics that a trusted person must have is to take a neutral position and refrain from any initiative regarding the facts, as his or her task is limited to supporting the minor child when he or she speaks while remaining silent during the hearing phase. On the other hand, it is within the powers of the public prosecutor or the investigating judge to refuse any specific person to accompany the minor child, provided that this refusal is justified and justified in the best interest of the minor child or in the interests of revealing the truth³².

Second: Presence of a Psychologist

The approach of a man and judicial investigation officers must be well-secured so that the child feels that he or she is in safe hands, so the investigator should be accompanied by a psychologist³³.

Subsection 2: Specialized Training for Investigators Responsible for Hearing Child Victims of Sexual Assault

Hearing minor children requires the use of new techniques. Since this involves new techniques and methods, the need for specialized training for investigators has become self-evident. This led the public prosecutor's office in Belgium in 1995/1996 to develop a specialized training program for the judicial police in Brussels under the supervision of specialists in clinical psychology. This training was not limited to interrogation techniques but also extended to teaching a set of concepts about the child as well as the psychological mechanisms that can be limited to the following topics:

- Psychology of the minor child victim of a sexual crime.
- Appearance and personality of the perpetrator of sexual crimes against minors.
- Family diseases.
- The role of the psychologist.
- Analysis and verification of allegations made by the minor child victim of sexual crimes.
- Treatment techniques.
- Legal dimensions³⁴.

Subsection 3: Conditions Relating to the Means Used to Hear Child Victims of Sexual Assault

To hear minor children who are victims of sexual crimes, various material and technical means have been used. In this area, we mention the English experience where the means used by the English police are as follows³⁵:

- ❖ The room dedicated to hearing minor children contains two cameras fixed on the wall of the room, one of which is fixed to include all the contents of the room and is dedicated to recording the events and actions of all the people present in it, while a second camera is used with a lens to zoom in and out to allow coverage of all the movements of the minor child and his statements and gestures during the hearing process.
- ❖ A high-sensitivity audio recording device that allows recording the smallest word or the weakest sound.
- ❖ A neighboring technical room containing a table for controlling the cameras and also the monitoring screen through which all the images recorded by the two cameras are directly displayed with the audiovisual recording carried out in duplicate to prepare the hearing minutes.
- ❖ The technical room must be linked to the minor child's hearing room by a direct communication system between the technicians and the investigators.
- ❖ The quality of the media used to record the hearing of minor children who are victims of sexual crimes does not allow any change or erasure of the content of the recorded tapes, which must be time-stamped (year, day, hour, seconds), and the images must also be numbered.
- ❖ The recording process that is carried out by the camera must be carried out in a way that allows the defense to observe the actions of all the people present in the room (investigators, trusted persons, psychologists).
- ❖ In addition to the above, the recording system must include a recording system on audio tape only, which is located next to the audiovisual tape. This procedure allows doubts about the selection or cutting of images to be ruled out.
- ❖ after the recording process is complete, it is necessary to seal one of the tapes and deposit it with the clerk of the court in the form of a persuasive piece of evidence, while the second tape is used as a copy to record its contents in official written minutes for use during the investigation process.
- ❖ It is worth noting in this regard that the quality of sound and image is essential to achieve a firm recording that can be relied on absolutely before the subject matter judge.

Section 4: Procedures for Hearing Child Victims of Sexual Assault by Law No. 15-12

By reading the text of Article 46, it appears that it has established procedures that must be observed during the investigation and interrogation of a child victim of sexual assault, which are as follows³⁶:

- ❖ The audiovisual recording of the hearing of the child victim of sexual assault must be carried out.
- ❖ A psychologist may be present during the child's hearing.
- ❖ The public prosecutor or the investigating judge or judicial police officer responsible for the investigation or appointed under a judicial commission may instruct any qualified person to carry out this recording, which is deposited in a sealed safe, and the contents of the recording are written down and attached to the proceedings file.
- ❖ A copy of this recording is made to facilitate access to it during the course of the proceedings and is deposited in the file.



❖ It may, by decision of the investigating judge or the trial judge, be possible to view or listen to the recording during the course of the proceedings, and it may also be possible to view or listen to a copy of the recording by the parties and lawyers or experts, in the presence of the investigating judge or the clerk and under conditions that ensure the confidentiality of this access

❖ If the child's best interests so require, the recording referred to in this Article may be made exclusively in audio form, by decision of the Public Prosecutor or the Investigating Judge. The recording and its copy shall be destroyed within one (1) year from the date of the expiration of the public action and a record shall be made thereof.

CONCLUSION

The Algerian legislator, in Article 46 of Law No. 15-12 concerning the Protection of the Child dated July 15, 2015, affirmed the need to hear the child victim of sexual assault through the audiovisual recording technique. Through this article, he has surrounded this procedure with a set of guarantees that must be observed by the concerned authorities (investigating and investigating bodies) in the implementation of the principle of procedural legality.

To achieve more effective objectives of the child's right to be heard and to express his opinion during judicial and administrative proceedings in Algerian law, we propose to the Algerian legislator to introduce the following reforms:

1. Make the presence of a psychologist mandatory, not optional, in the sessions of hearing the child victim of sexual assault during the investigation and interrogation, due to its great importance in preserving the child's psyche from the sexual assault he or she has been subjected to.
2. Provide for the possibility of a trusted adult to be present with the child victim of sexual assault during his or her hearing during the investigation and interrogation, due to the great importance of that person in supporting and assisting the child, so that the testimony of that person is heard first before the testimony of the child victim to avoid repeating the latter's testimony many times and the great psychological impact this has on him or her due to re-remembering the painful events he or she experienced.
3. The necessity of making two copies of the recording of the child victim of sexual assault, sealing the first recording and sending it to the presiding judge, and the second recording remaining in the file to complete the investigation and interrogation procedures so that there is no tampering with the images and sounds recorded by the child victim.
4. The need for effective training and training for the investigators responsible for hearing the child victim of sexual assault by seeking the help of clinical psychology specialists and also teaching them many concepts about the child and the sociological mechanisms such as the sociology of the child victim of a sexual crime, the appearance and personality of the perpetrator of sexual crimes against minors, the role of the psychologist, treatment techniques, ... These concepts benefit the investigators in the effective preparation for the hearing process and in how to deal with the psychologically injured child victim.
5. Use child-friendly procedures by designing the hearing room for child victims of sexual assault for children and providing multidisciplinary services that are all gathered under one roof, as well as adapting the court environment in a way that takes into account the presence of child witnesses and victims.
6. Generalize the procedure of hearing the child victim of sexual assault in other crimes where the child is a victim, due to the effectiveness and importance of this procedure in taking into account the child's psyche and the proper delivery of the events he or she has been subjected to.
7. Include the provisions of the procedures for hearing the child victim of sexual assault set out in Article 46 of Law No. 15-12 concerning the Protection of the Child within the Criminal Procedure Code in the investigation and interrogation stages.

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