



# APPLICATION OF THE AFRICAN CHARTER ON THE PROTECTION AND WELFARE OF THE CHILD IN ALGERIAN LEGISLATION - OBJECTIVE AND PROCEDURAL STUDY-

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## Abstract

*Algeria has worked through many legal texts to give a margin to the rights of the child, This is evident through substantive and procedural aspects, from his birth and his affiliation with the family and the state, and the keenness to provide a legal environment that makes the child's interest the desired goal in line with the African Charter on the Rights and Welfare of the Child, taking into account the specificity of Algerian society and its religious dimension, where legislative details appeared in Algeria that are richer and more realistic than the African Charter, especially some financial rights approved by Islamic law, Despite this, certain aspects remain worth updating at the level of the Charter and the Algerian legal text in light of the continuous violations recorded against childhood, which requires developing procedural aspects and not keeping them as theoretical texts that harm the child instead of protecting him.*

**Keywords:** *Child; Protection; Procedures; African Charter on the Rights and Welfare of the Child; Algerian legislation.*

## I- INTRODUCTION:

Countries strive to care for children due to the significant importance this group represents in society, as they embody the future of nations. Children need special care because they are unable to meet all their own needs and are vulnerable in many aspects, especially physiological and psychological, due to their young age. This concern has led many countries to enact local laws that prioritize the best interests of the child as an objective that must be achieved.

To further this endeavor, countries have given international attention to childcare due to its importance. Universal Children's Day was established in 1954 and is celebrated on November 20 each year to promote international togetherness, awareness among children worldwide, and improve their welfare. November 20th is significant because it marks the adoption of the Declaration of the Rights of the Child by the United Nations General Assembly in 1959 and adopted the Convention on the Rights of the Child in 1989.

At the continental level in Africa, countries have given significant importance to child welfare by adopting a special document, the African Charter on the Rights and Welfare of the Child. The Assembly of Heads of State and Government of the Organization of African Unity at its 16th Ordinary Session in Monrovia, Liberia, from July 17 to 20, 1979, adopted this charter. It recognized the need to respond appropriately to promote and protect the rights and welfare of the African child. The charter, adopted in Addis Ababa in July 1990, was ratified and came into effect on November 20, 1999.

Algeria has demonstrated its commitment to the importance of child protection by joining global and regional charters. This is evident through its ratification of the United Nations Convention on the Rights of the Child, approved by the UN General Assembly on November 20, 1989, which Algeria ratified in 1992. Additionally, Algeria ratified the African Charter on the Rights and Welfare of the Child in 2003. This commitment is reflected in the updating of Algeria's domestic legislation concerning children, ensuring that the child's best interest is prioritized and protected fully through various legal texts. Moreover, Algeria enacted the Child Protection Act in 2015, which emphasizes the child's best interest as paramount.



The African Charter on the Rights and Welfare of the Child organizes various rights, recognizing the child as an individual needing care from a responsible adult. This care includes attention to the child's material, financial, and psychological well-being, protecting them from any risks that could affect their upbringing and behavior. The goal is to ensure a proper upbringing free from influences that might lead to delinquency, whether those influences come from the state or the parents.

Algerian legislation, in many instances, acknowledges the special situation of the child due to their young age. This legislation applies to all stages of a child's life, starting from their status as a fetus and the necessities required ensuring proper care. It guarantees the child's right to belong to the state through legal connections and provides financial benefits they deserve as a member of a family that should serve as a safe haven.

The role of parents is crucial in providing all necessary care, and there must be legal provisions that prioritize the child's best interests. This includes imposing penalties on guardians who neglect their legal duties or fail to pay legally mandated alimony. Additionally, the legal texts should be flexible regarding procedures to be followed when a child is involved in a crime. All procedures, especially those related to the child's financial rights, should be subject to judicial oversight.

The importance of this topic is evident through the comparison that can be explored between the provisions of the African Charter on the Rights and Welfare of the Child as a general legal text and the practical texts adopted by the Algerian legislator after its ratification. This comparison remains relative in applying all the details outlined in the Charter, considering the unique characteristics of each country, including Algeria. The significance is varied between scientific and practical aspects.

The scientific importance is highlighted by showcasing Algerian legal texts as a reflection of the African Charter and examining how these texts align with achieving the child's best interests for their protection in all aspects of life. On the other hand, the practical importance is demonstrated through the procedural applications of the Charter's provisions, as evidenced by the judicial applications highlighted by the Algerian Supreme Court in numerous decisions. These decisions reflect the general approach of the Algerian legislator, who has taken the guidelines of the African Charter into account when drafting texts and their applications.

The aim of the study is to identify the differences between the African Charter as an abstract and general text and the legislative texts in Algeria and their applications. It seeks to assess the Algerian legislator's efforts to update the legal system in line with Algeria's unique characteristics as a sovereign state with its legislative sources, which may agree or disagree with certain provisions of the African Charter. Additionally, the study aims to highlight the areas where the Algerian legislator has made significant and additional efforts beyond what is outlined in the Charter. Furthermore, it proposes alternatives in areas of legislative deficiency and provides an interpretation of how well the Algerian legal texts align with the African Charter, ultimately aiming to protect the best interests of the child.

The pursuit of protecting the child's best interests and achieving their well-being is a serious challenge that Algeria aims to establish through numerous constitutional and legal texts. This is evident through the adaptation of many texts in line with international agreements, particularly the African Charter on the Rights and Welfare of the Child, while considering certain details that Algeria may have reservations about, especially those related to the religious dimension, given that Algeria is a Muslim country.

This raises the following question: To what extent are the legal texts in Algeria sufficient to achieve more effective protection for the child in accordance with the African Charter on the Rights and Welfare of the Child? This will be answered through a series of ideas that examine various substantive and procedural aspects in Algerian legislation at different levels.

The research approach to this topic necessitates a comprehensive understanding of numerous legal aspects that range from description to analysis. Therefore, the descriptive method will be adopted



by examining the texts that highlight the general direction of the African Charter on various fronts and their corresponding legal texts in Algeria, which include both substantive and procedural elements. This will be done through various laws such as the Child Protection Law, family law, Nationality Law, Civil Code, Civil and Administrative Procedures Law, Penal Code, Criminal Procedures Law, and others.

Additionally, the analysis will focus on the behavior of the Algerian legislator in addressing various issues related to child protection and the extent of conformity or divergence with the African Charter, considering it a source of legislation in Algeria due to its ratification. This will lead to proposing some suggestions in the event of deficiencies, aiming to achieve a value-driven approach.

The study of this topic involves addressing numerous aspects that reflect legislative concern for the child, through various legal texts that attempt to consider both the African Charter and the local Algerian context. Therefore, it is somewhat challenging to cover all details due to the multiple situations in which the child may find themselves—sometimes as a victim, and at other times as a perpetrator of legally punishable acts. Hence, this research encompasses both substantive and procedural aspects to assess the extent to which Algerian legislation aligns with the African Charter after its ratification.

The study will be divided into four sections, covering both substantive and procedural components. The first section focuses on the conceptual aspect of the term "child" from various perspectives, highlighting the attention paid by scholars and legal experts to child protection. The second section covers the substantive aspects of child protection due to their belonging to the state and family, securing them a set of rights, most notably the African Charter, which influenced Algerian legislation through numerous legal texts across various laws that may need updating.

The third section represents the procedural aspect, addressing the child's financial rights, specifically focusing on the procedures that must be followed regarding their rights to inheritance and alimony, and highlighting the extent to which Algerian legislators have ensured oversight of these procedures through the judiciary. Finally, the fourth section discusses the judge's role in various positions to protect the child in the areas of labor and legal guardianship, as well as the pursuit of a fair trial and the establishment of special rules that take into account the child's circumstances and age.

## **II- The Significance of the Conceptual Aspect of the Child's Protection.**

Various definitions of a child have been proposed, reflecting differing perspectives and the significance attributed to this vulnerable group across different legal, social, and economic systems. Consequently, definitions vary on several details, particularly concerning the beginning and end of childhood. This can be outlined as follows:

### **II.1. The concept of the child from a psychological and social perspective.**

The child is the focus of many studies that make him an important element in society, this is evident from psychologists and sociologists, which is considered influential on legal concepts in order to control his situation and determine his rights. This can be explained through the psychological and social aspect as follows:

#### **II.1.1. The concept of the child according to psychologists.**

Children hold significant importance for psychologists, as they represent the first stages of human development. Within this context, a child can be defined as any individual from the beginning of fetal development in the mother's womb until the onset of sexual maturity, which varies between males and females<sup>1</sup>, It is clear from the definition provided by psychologists that they expand the

<sup>1</sup> Moussa Mahmoud Souleiman (2006), *Juvenile Delinquency Law and Criminal Treatment of Minors: A Comparative Study*, First Edition, Alexandria: Manshiyet Al-Ma'arif, p.119.



concept of a child to include the fetal stage and do not limit it to the period starting from the child's birth<sup>2</sup>, This would provide additional legal protection during the fetal stage.

### **II.1.2. The concept of the child according to sociologists**

In sociology, the definition of a child varies according to different perspectives. However, they generally agree that a child's personality begins from the date of live birth. There is divergence in defining the end of childhood: some believe it ends at the age of twelve, others at puberty, and some consider it ends at the age of majority or at the legal age of marriage, which differs among countries according to their domestic laws<sup>3</sup>.

From the definitions provided by sociologists, it is evident that a child is considered any person whose life begins after birth, meaning the prenatal stage is excluded. In this context, sociologists differ from psychologists, who also include the prenatal stage.

### **II.2. The concept of a child from a legal perspective.**

The legal differences appear through the method of establishing the definition of the child, which is considered a guarantee and protection for him through regional and international organizations, reaching local legislation, and this can be clarified according to the following:

#### **II.2.1. The concept of a child in the United Nations convention on the rights of the child.**

The international focus on childhood has been diverse, with regional agreements addressing the issue until the United Nations issued an international Convention specifically concerning children, which received global attention. Many countries ratified it and aligned their domestic laws with the Convention. This Convention defines a child in its first Article<sup>4</sup>.

The Convention clarifies that it defines the concept of a child by specifying the maximum age for the end of childhood, without addressing its beginning. The purpose of setting a specific age is to avoid discrepancies that might arise from different national laws.

#### **II.2.2. The concept of a child in the African charter on the rights and welfare of the child.**

The African continent has given significant importance to children within the scope of international care for this group, similar to other regional assemblies. This includes the member states of the African Union who are parties to the African Charter on the Rights and Welfare of the Child. According to Article 2 of this Charter.<sup>5</sup>

It is evident from the definition provided in the Charter that it aligns with the United Nations' definition of a child, giving it a global dimension.

#### **II.2.3. The concept of the child in Algerian legislation.**

The Algerian legislator enacted a specific law concerning children, reflecting a significant step given the challenges this group presents to the state, particularly in light of some violations affecting them. The law 15-12<sup>6</sup> on the protection of children defines a child in Article 2; In this regard, the Algerian legislator followed the United Nations Convention on the Rights of the Child, which was adopted by the UN General Assembly on 20 November 1989, and ratified by Algeria

<sup>2</sup> Mohammed Yahya Qasem Al-Najjar (2013), *Child Rights between Legal Texts and Reality and Its Impact on Juvenile Delinquency*, First Edition, Beirut: Al-Halabi Legal Publications, p.51.

<sup>3</sup> Hillaly Abdullah Ahmed; Khalid Mohamed Al-Qadi (2006), *Children's Rights in Islamic Law, International Charters, and National Legislation*, Cairo: Dar Al-Tala'a, p.24.

<sup>4</sup> United Nations Office, *Convention on the Rights of the Child*, adopted and opened for signature, ratification, and accession by General Assembly resolution 44/25 of 20 November 1989, with effect from 2 September 1990.

<sup>5</sup> *Treaty-African\_Charter\_On\_Rights\_Welfare\_Of\_The\_Child.Pdf* (Au.Int) 36804.

<sup>6</sup> Law No. 15-12, of 15 July 2015, concerning the protection of children, People's Democratic Republic of Algeria, official Journal No. 39 issued on 19 July 2015, p.5.



through Presidential Decree 92-461<sup>7</sup>, Algeria also ratified the African Charter on the Rights and Welfare of the Child through Presidential Decree 03-242.<sup>8</sup>

The evaluation of the Algerian legislator's approach reveals that it was influenced by both the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The Algerian definition of a child excludes the embryonic stage, reflecting Algeria's commitment to these international frameworks for child care.

### III. Objective Aspects of Child Protection Due To Affiliation.

The child's affiliation makes him the owner of a right and a priority in many cases. The child can belong to the family as the narrow scope of his upbringing, and he can also belong to the state of which he holds citizenship. Thus, affiliation means providing certain limits that serve to protect the child and provide many rights.

#### III.1. Applications of the African charter in Algerian legislation due to the child's affiliation to the family.

To ensure the success of the African Charter on the Rights and Welfare of the Child, its substantive provisions and procedural arrangements must be legitimate within the community. If its true goal is to protect children, this element should align well with the philosophical and cultural understanding of concepts within the African continent<sup>9</sup>.

Legally, children in Algeria receive their rights from various laws. During the 1990s, when many crises occurred, Algeria ratified almost all international agreements on children's rights<sup>10</sup>.

Children's rights are not just objectively defined facts or those written in international and regional children's rights documents. Rather, they are more and deeper than that, as they are formed, reflected upon, and influenced by the daily practices of peoples<sup>11</sup>.

The substantive aspects of child care are reflected through various laws, with numerous aspects being addressed in both the African Charter on the Rights and Welfare of the Child and Algerian legislation. The Algerian legislator has incorporated these principles into legal texts with the aim of ensuring the best interests of the child. This can be outlined as follows:

##### III.1.1. Protection of the child during the fetal stage.

The fetus is granted a degree of legal recognition from the moment of conception. The African Charter on the Rights and Welfare of the Child emphasizes the protection of the child's right to life, including during the fetal stage, and requires member states to ensure this protection. The Charter broadly defines this right, as stated in Article 5.

The Algerian legislator has translated the concern for the fetus's life in accordance with Article 25 of the Civil Code, which states in its second<sup>12</sup>.

<sup>7</sup> Presidential Decree No. 92-461 of 19 December 1992, includes the ratification, along with interpretive statements, of the Convention on the Rights of the Child approved by the United Nations General Assembly on 20 November 1989. People's Democratic Republic of Algeria, official Journal No. 91, issued on 23 December 1992.

<sup>8</sup> Presidential Decree No 03-242 of 08 July 2003, ratifying the African Charter on the Rights and Welfare of the Child, adopted in Addis Ababa in July 1990. People's Democratic Republic of Algeria, official Journal No. 41, issued on 08 July 2003, p.3.

<sup>9</sup> Thoko Kaime (2009), *The African Children's Charter: Does It Represent a Relevant Vision of Childhood and Children's Rights?*. Children's Legal Rights Journal 11 (29), USA, New York, 3-18.

<sup>10</sup> Mahmoud Boussena, Habib Tiliouine (2015), *Children's rights in Algeria: History, achievements and research evidence*, Children's Legal Rights, 5 (2), Global studies of childhood, sage, UK, p.132-145.

<sup>11</sup> Thoko Kaime (2009), *Socio-legal approaches to children's rights under the African Charter on the Rights and Welfare of the Child: A discussion of methodology*, The International Survey of Family Law, UK, Bristol, 4-13.





By contrast, a fetus that dies in the womb, is expelled through abortion, or dies during birth does not acquire legal personality<sup>13</sup>.

Human personality begins with the complete birth of the child, as stated in Article 25 of the Civil Code, and the occurrence of birth is recorded in civil status registers or by other means, as indicated in Article 63 of the Civil Status Law<sup>14</sup>.

Therefore, the fetus should have legal capacity, provided it is born alive, which grants it the capacity to enjoy certain rights.<sup>15</sup>

The Algerian legislator has implemented certain mechanisms outlined in the African Charter by enacting legal provisions that protect the child's life from its inception. This reflects a qualitative application of the principles set forth in the Charter.

### III.1.2. Protecting personal rights.

Personal rights are reflected in the African Charter on the Rights and Welfare of the Child, which emphasizes the importance of proper upbringing within a healthy family and social environment. The Algerian legislator has incorporated the African perspective into these rights, enacting various legal provisions to regulate them. This demonstrates the commitment to prioritizing these rights in multiple legislative contexts, as detailed below.

#### III.1.2.1. Name.

The African Charter on the Rights and Welfare of the Child recognizes the child's right to a name that distinguishes them from others, as stated in Article 6, and the Algerian legislator has adopted this principle in Article 28 of the Civil Code, which stipulates that a child must have a name. The article mandates that names should be Algerian, except for children born to non-Muslim parents. This provision is flexible and serves the best interest of the child, ensuring that Algerian children receive names reflecting their national identity while also accommodating non-Muslim children with names that align with their faith.

The African Charter on the Rights and Welfare of the Child also emphasizes the necessity of registering the child immediately after birth, as stipulated in Article 6. This requirement is reinforced by Algerian legislation through the Civil Status Law, particularly Article 64, which regulates the naming process. This article prohibits the use of names not designated for use or customary practice, and allows the civil status officer to assign names to foundlings or children of unknown parentage. This reflects a commitment to the child's right to identity and life, regardless of the circumstances of their birth. Emphasis is placed on registering the child's name in accordance with the Civil Status Law.

#### III.1.2.2. Right to establishing parentage.

The child should grow up in a family environment to ensure proper educational and psychological development within the care of their parents or guardians. According to the Child Protection Law, particularly Article 4, parents have the responsibility to ensure appropriate conditions for the child's growth within their financial means and capabilities. Therefore, it is crucial to address the child's lineage, which is established legally if the marriage is valid, as per Article 40 and subsequent

<sup>12</sup> Law No. 05-10, of 20 June 2005, amending and supplementing Ordinance No.75-58 concerning the Civil Code, as amended and supplemented, People's Democratic Republic of Algeria, official Journal, No. 44 issued on 26 June 2005.

<sup>13</sup> Farida Mehamedi (Zouaoui) (1998), Introduction to Legal Sciences - Theory of Rights, First Edition, Algiers, CEDOC, p.57.

<sup>14</sup> Law No. 14-08 of 09 August 2014, amending and supplementing Ordinance 70-20 related to Civil Status, People's Democratic Republic of Algeria, Official Journal No. 49, issued on 20 August 2014.

<sup>15</sup> Chafik Hadi (2018), **Legal Personality of the Fetus: A Comparative Study**, Journal of Law and Political Science 4 (2), Algeria: university center Salhi Ahmed, 146-146, visited: 12/09/2024, <https://www.asjp.cerist.dz/en/article/117719>.



articles of the Family Code. The child is attributed to their father, with the law emphasizing the importance of proof in line with Islamic jurisprudence, Furthermore, parentage is even established through artificial insemination, as clarified by Article 45 bis of the Family Code.<sup>16</sup>

This provision is not explicitly stated in the African Charter on the Rights and Welfare of the Child as a requirement for establishing the child's lineage from a lawful marriage. However, the Algerian legislator has maintained the lawful aspect of the relationship between a man and a woman, which results in children. On the other hand, Algerian law prohibits adoption, as stated in Article 46 of the Family Code, which legally and religiously forbids adoption. Nevertheless, the Algerian legislator has provided for the possibility of granting a family name to an adopted child according to the amendment to the Civil Status Law<sup>17</sup>, This approach represents a qualitative adjustment to Article 24 of the African Charter, The Algerian legislator has demonstrated flexibility in aligning with Islamic religious principles by adopting the guardianship system for children and granting them a family name.

### III.1.2.3. Right to custody.

The African Charter on the Rights and Welfare of the Child highlights in Article 16, paragraph 1, the necessity to protect the child's well-being from practices such as torture or inhumane or degrading treatment, particularly physical or mental abuse, especially when assigning custody to a relative or legal guardian. This emphasis is clearly reflected in the provisions of the Algerian Family Code, which provides more detailed regulations than the African Charter. The Algerian Family Code specifies the importance of considering the best interests of the child in all related matters, as outlined in Articles 62 to 72 bis of the Algerian Family Code.

The Algerian legislator prioritized the mother for custody, followed by the father, aligning with the African Charter on the Rights and Welfare of the Child. The Charter emphasizes the importance of considering the child's best interest upon the parents' separation and ensuring equal rights for both parents.

Legislative protection for the child in custody is evident through various regulations. Notably, if an individual files a lawsuit requesting the revocation of custody from the current custodian and its reassignment after the legal custody period has expired, the judge must dismiss the case. This dismissal is based on the expiration of the right to request custody and the end of the legal custody period<sup>18</sup>.

The legislator also emphasized the necessity of demanding custody within a specified period, which is clearly indicated as one year. This is detailed in Article 68 of the Family Code, The reason for this stipulation is to ensure that anyone who desires to take on the responsibility of child custody does so promptly, preventing prolonged periods that could negatively impact the child.

### III.1.2.4. Right to protection from neglect.

The African Charter on the Rights and Welfare of the Child emphasizes the necessity of protecting children from neglect in general, as clearly stated in Article 16, and the Algerian legislator has translated it into objective legislative aspects, touching on many forms of child neglect. The legislator has addressed this by imposing strict penalties under the Penal Code, ranging from imprisonment to fines to protect children. These measures cover various forms of neglect, such as abandoning the family home and mistreating children.

<sup>16</sup> Larabi Belhaj (2010), *The Concise Commentary on Family Law - Marriage Provisions*, Sixth edition, Benaknoun: University Publications Office, p.374.

<sup>17</sup> Executive Decree No. 20-223 of 08 August 2020, amending and supplementing Executive Decree No 71-157 concerning surname changes, People's Democratic Republic of Algeria, Official Journal No. 47, issued on 11 August 2020.

<sup>18</sup> Abdelaziz Saad (2013), *Procedures for Family Affairs Lawsuits before Primary Court Sections*, First edition, Algiers, Houma Publishing House, p.179.



Many substantive provisions of the African Children’s Charter are focused on child protection, with the most relevant being Article 16, which addresses the protection of children against abuse and torture.<sup>19</sup>

The African Charter on the Rights and Welfare of the Child emphasizes the necessity for parents to fulfill their responsibilities according to Article 19 of the Charter, whether the parents are together in marriage or after separation. The best interest of the child should be a priority despite the parents' circumstances.

Additionally, Article 20 of the Charter clearly stipulates that the child's best interest should be prioritized, and parents must ensure that the child's welfare is not neglected. Consequently, neglecting the child by leaving the family home without a valid reason is considered neglect. The Algerian legislator has criminalized this behavior and specified penalties for it. This situation is illustrated by a parent leaving the family home for more than two months, by imprisonment from six months to two years and a fine of 50,000 DZD to 200,000 DZD. The two-month period is not interrupted unless the parent returns to the family home in a manner indicating a desire to resume family life permanently.

If the marriage was informal, and the spouse neglected their obligations, the wife must first officially register her marriage before filing a complaint. This is in accordance with Article 22 of the Family Law, which requires submitting a request to the public prosecutor in the court within whose jurisdiction the marriage occurred<sup>20</sup>.

The consideration of leaving the marital home for a period exceeding two months must include both abandoning the marital residence and neglecting familial duties simultaneously<sup>21</sup>.

In addition to the two-month period required by law, there is also the condition of neglecting familial duties towards the spouse and children, whether these obligations are material or moral<sup>22</sup>. However, bad faith is presumed, and the spouse who left the home must prove the existence of a valid reason. Algerian legislation has not elaborated on the most significant reasons that might justify leaving the marital home<sup>23</sup>.

The accused cannot raise this issue before the first instance court and before any defense on the merits. The public prosecutor retains the discretion to decide whether to continue the prosecution<sup>24</sup>.

Parents or guardians play a more proactive role in deciding the type and extent of information and content that young children can share and consume, but they should also take into account the perspectives and opinions of the children themselves.<sup>25</sup>

The African Charter provided general guidelines emphasizing the importance of maintaining household discipline that ensures the child's dignity in a humane context. This was articulated in Article 20 of the Charter. The Algerian legislator has strived to apply these details, emphasizing that parents should care for and raise their children in line with the teachings of the noble Islamic

<sup>19</sup> Afrooz Kaviani Johnson, Julia Sloth-Nielsen (2020), **Child protection, safeguarding and the role of the African Charter on the Rights and Welfare of the Child: Looking back and looking ahead**. African Human Rights Law Journal, (20), South Africa: Pretoria University, 644-666.

<sup>20</sup> Abdelaziz Saad (2002), *Crimes against the Family System*, second edition, Algiers, National Office of Educational Works, pp.12.13.

<sup>21</sup> Ahcene Bouskiaan (2002), *The Brief Guide to Special Criminal Law - Crimes Against Persons and Crimes Against Property*, First Edition, Algiers, Dar Homa publication, pp.145.148.

<sup>22</sup> Abdelaziz Saad, *Crimes against the Family System*, op.cit, pp.14.15.

<sup>23</sup> Ahcene Bouskiaan, op.cit, p.149.

<sup>24</sup> Algerian Supreme Court - Criminal and Misdemeanor Chamber - Decision dated on 29 April 2010, Case No. 574335- (Judicial Journal, 2011, Issue 1, p.296).

<sup>25</sup> Avani Singh (2021), **Understanding the privacy rights of the African child in the digital era**, African Human Rights Law Journal, (21), South Africa: Pretoria University, 99-125.





religion, good morals, and the commendable customs of society, and this is clearly stated in Article 330.

Through this, it is possible to determine the elements upon which this crime is based. The attributes of fatherhood or motherhood must be present. This requirement is essential and logical, as it aims to ensure that the perpetrator and the victim have a true parental relationship based on a legitimate marriage<sup>26</sup>.

For the judicial prosecution of this crime, the legislator has stipulated through legal text that one of the children must be harmed in any way that affects their health, body, morals, or safety. This harm can result from either positive or negative actions by the father or mother. It should be noted that the legal text does not include specific criteria for determining the extent of the damage that warrants punishment, leaving this to the discretionary authority of the trial judge to assess the significance of the damage<sup>27</sup>.

These guidelines are consistent with the African Charter, which emphasizes the need for action in cases of neglect or maltreatment of children from all aspects. This is outlined in Article 16, which the legislator has adapted into criminal legislation to deter parents who deliberately and without serious reasons neglect their children.

To preserve the family unit, the Algerian legislator made some amendments to the Penal Code, including the introduction of mediation to avoid penalties for a spouse neglecting their children, especially if they demonstrate remorse and a genuine intent to care for them<sup>28</sup>.

### **III.2. Objective aspects of child protection due to state affiliation.**

Countries grant numerous benefits to their citizens due to their affiliation through nationality. Citizens enjoy rights and, in return, are obligated to fulfill duties towards the state as defined by its laws and constitutions, especially children, with favorable conditions, protecting them from various conflicts that could endanger them in both times of peace and war. The following outlines these rights:

#### **III.2.1. The right to nationality.**

The African Charter on the Rights and Welfare of the Child addresses various aspects of a child's status and ensures their right to nationality, protecting them from issues related to establishing parentage and consequently acquiring nationality. This is reflected in Article 6.

In line with the provisions of this article and its content, the Algerian legislator has implemented several measures. A child is entitled to Algerian nationality if born to an Algerian father or mother, known as the principle of descent. When the child's paternity is established, the child automatically acquires the nationality of the father without restrictions. This is outlined in Article 6 of the Algerian Nationality Law<sup>29</sup>.

<sup>26</sup> Ahcene Bouskiaan, *op.cit.*, p.153.

<sup>27</sup> *Ibid.*

<sup>28</sup> Ordinance No. 15-02 of 23 July 2015, amends and supplements Ordinance No. 66-155 of 8 June 1966 People's Democratic Republic of Algeria, Official Journal No. 48, issued on 10 June 1966, which includes amendments to the Code of Criminal Procedure People's Democratic Republic of Algeria, Official Journal No. 40, issued on 23 July 2015, p 30.

<sup>29</sup> Ordinance No. 05-01 of 27 February 2005, amending and supplementing Ordinance No. 70-86 concerning Algerian Nationality Law, People's Democratic Republic of Algeria, Official Journal, No. 15 issued on 27 February 2005.



The legislator has also provided special protection to the child regardless of the legitimacy of their birth. The distinction between legitimate and illegitimate children is not made; it is sufficient for the child to be born to an Algerian father<sup>30</sup>.

A child can also acquire Algerian citizenship by birth regardless of the nationality of their parents, whether they are Algerian or foreign. This applies to a child born on Algerian territory, granting them citizenship under the principle of territoriality. According to Article 7 of the Nationality Law, a child found abandoned and newly born can obtain citizenship to ensure they are not stateless, and the Algerian legislator has also granted citizenship to a child with an unknown father if the mother is recorded on the birth certificate. This demonstrates the legislator's concern for granting Algerian citizenship to the child regardless of the circumstances of their birth.

### III.2.2. The right to domicile.

When a child has citizenship, this grants them the right to a domicile, which is a place of residence. This is addressed in Article 38 of the Civil Code, and the principle is that a minor does not conduct their own affairs but does so through a legal representative. However, the legislator grants a minor the right to handle certain matters once they reach the age of eighteen, such as managing their assets and some legal transactions. Accordingly, they have a special domicile for these activities, as indicated in Article 38 of the Civil Code.

### III.2.3. The right to education.

Knowledge of children's rights mostly has associations with happiness and school satisfaction, where some other measures have associations with higher levels of happiness, neighborhood quality, and knowledge of children's rights<sup>31</sup>.

Governments should take a three-pronged approach to implementing this Charter, by formalizing the Charter's status through progressive legislation, and by ensuring that government officials and employees at all levels are adequately informed<sup>32</sup>.

The African Charter on the Rights and Welfare of the Child emphasizes the importance of educational aspects for children throughout their developmental stages. It mandates free primary education, as stipulated in Article 11, Therefore, the state must provide education to the child as a constitutional right, according to Article 65 of the 2020 Algerian Constitutional Amendment<sup>33</sup>, and this aligns with the National Education Orientation Law<sup>34</sup>.

The African Charter on the Rights and Welfare of the Child also addresses secondary education in Article 11, additionally; the Charter highlights the social dimension of education, such as financial aid or school supplies, to ensure the child's well-being in the educational environment, and this aligns with the African Charter's focus on ensuring regular school attendance for all children, especially those who are at risk of falling behind, and also emphasizes alimony for gifted and disadvantaged children, particularly girls, as outlined in Article 11.

<sup>30</sup> Kheira Al-Arabi, *Children's Civil Rights in Algerian Law*, Thesis to obtain doctorate, Faculty of Law, University of Oran, Academic Year 2012-2013, p.67.

<sup>31</sup> Dejo Olowu (2002), *Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child*, *The International Journal of Children's Rights*, Netherlands : 10 (2), 127-136

<sup>32</sup> Habib Tiliouine (2017), *Algerian Children's Perceptions of their Rights and their Self-Reported Personal and Contextual Experiences*. *Journal of Social Research and Policy*, 7 (2), Pakistan: hyber Pakhtunkhwa, 1-16.

<sup>33</sup> Presidential Decree No. 20-442 of 30 December 2020, concerns the issuance of the constitutional amendment approved in 1 November 2020 referendum, People's Democratic Republic of Algeria, Official Journal No. 82, issued on 30 December 2020.

<sup>34</sup> Law No. 08-04 of 23 January 2008, concerning the National Education Orientation Law, People's Democratic Republic of Algeria, Official Journal No. 04, issued on 27 January 2008.



In addition to higher education, which is addressed by the Charter in Article 11, the Algerian legislator has made education essential, considering that failure to provide basic education places a child in a state of risk. This reflects the implementation of the African Charter. The Algerian Child Protection Law echoes this in Article 2, which considers a child to be at risk if their right to education is compromised.

#### III.2.4. The right to health care.

The legislator began focusing on health aspects by requiring a medical certificate for individuals planning to marry, as stipulated in Article 7 bis of the Family Code. This certificate must be issued within three months and proves that the individuals are free from any disease or conditions that may pose a risk to the marriage. This requirement is an implementation of the African Charter on the Rights and Welfare of the Child, which emphasizes reducing mortality rates among newborns. Article 14 of the Charter.

This is clearly reflected in the Health Law, Article 69, which emphasizes the need to care for the health of both the child and the mother<sup>35</sup>, and this aligns with the African Charter on the Rights and Welfare of the Child, which emphasizes the need for care for pregnant women and nursing mothers as stated in Article 14, and also highlights the importance of children's health in the same article.

Algeria has implemented the provisions of the African Charter on the Rights and Welfare of the Child, which called for incorporating medical care programs into national development plans, as stated in Article 14, and translated this into action by allocating a significant budget to the public health sector through the 2024 Finance Law. The allocated budget amounts to 848, 225,000,000 Algerian Dinars, which is a substantial figure compared to other sectors. Within this budget, a significant amount of 17,949,138,000 Algerian Dinars has been earmarked for training in the health field.

#### III.2.5. The protection of children in armed conflicts.

African countries feel that Africa was not represented in the process of drafting the International Convention on the Rights of the Child, with only four countries participating in the convention: Algeria, Morocco, Senegal and Egypt, and therefore the convention is not suitable to address issues specific to Africa, such as children in armed conflict<sup>36</sup>.

The African Charter on the Rights and Welfare of the Child emphasizes the need to protect children during armed conflicts, as outlined in Article 22. This article stresses that states must adhere to international humanitarian law in cases of conflict that affect children specifically, taking all necessary measures to ensure that children do not participate in conflicts or recruitment. Algeria has reflected this commitment through its Child Protection Law 15-12, which includes provisions in Article 6 for protecting children in all circumstances, including armed conflicts.

The Algerian legislator has considered this aspect by ensuring that children are not involved in military life in its physical sense, and this is evident through the recruitment policy pursued by the Algerian Ministry of Defense, which sets the age from 18 years at least to 22 years at most<sup>37</sup>.

#### IV- Procedural Aspects of Protecting the Financial Rights of the Child.

The Algerian legislator has precisely regulated children's rights, linking them to procedural aspects that must be observed. These aspects represent guarantees for the recognition and protection of

<sup>35</sup> Law No. 18-11 of 2 July 2018, relating to Health, amended and supplemented, People's Democratic Republic of Algeria, official Journal No. 46 issued on 29 July 2018, p.10.

<sup>36</sup> Ildephonse Sindayigaya (2024), *The African Charter on the Rights and Welfare of the Child, an Instrument Based on African Socio-Cultural Realities: Truth or Utopia?*. Open Journal of Social Sciences, 12 (1), USA .510-532.

<sup>37</sup> Algerian Ministry of National Defense website < <http://www.mdn.dz> > (visited on 7 July 2024, at 11:26 am).



children's rights under legal texts, alongside the substantive aspects of children's rights across various laws. Procedural considerations are tied to the concept of absolute nullity.

#### **IV.1. Procedural aspects of protecting the child's succession.**

The Algerian legislator has provided several guarantees to protect the succession of a child, or minor. Therefore, if the succession includes a minor, the division of the estate must be carried out through the judiciary.

##### **IV.1.1. How to divide the estate of children.**

The child cannot be held responsible for debts not incurred by themselves but by their parents. Instead, the child benefits only from the positive aspect of the financial estate, and the supreme court addressed this issue regarding the non-obligation of heirs to bear the compensation awarded<sup>38</sup>.

The division of the estate, or the decision not to divide it, depends on the will of the heirs. If they agree not to divide it, it remains as it is. If they wish to divide it, it can be divided in the manner they choose, unless there are minors (children) without a guardian, and the estate includes real estate. In such cases, division can only occur with the court's permission, including children through their legal guardians, and to encourage them to continue working and exploiting the estate. When the parties to the division know that it has become conclusive, they are assured that no disputes will arise<sup>39</sup>, likewise, an amicable division of the estate that results in the exclusion of some heirs is considered null and void<sup>40</sup>.

##### **IV.1.2. Nature of procedures for succession division lawsuits.**

The nature of the procedures for dividing an estate is urgent regarding deadlines, speed of resolution, and appeal methods. This urgency is due to the fact that an estate may include assets that cannot be left for an extended period, such as crops, livestock, and trade goods. Additionally, there is a need for prompt liquidation to address the needs of heirs, particularly if they are minors or incapacitated<sup>41</sup>.

The legislator mandates urgent procedures in estate division cases. Therefore, the provisions of Article 301 of the Civil and Administrative Procedure Code apply to the reduction of deadlines, particularly for serving summons before the Family Court or the court president, which can be reduced to twenty-four hours, It falls within the scope of urgent matters for the judge to appoint<sup>42</sup> a judicial guardian, as illustrated by the Supreme Court's decision<sup>43</sup>.

According to the second paragraph of Article 498 of the Algerian Civil and Administrative Procedures Code, the jurisdiction for succession cases is assigned to the court within whose territorial jurisdiction the deceased's domicile is located, even if some of the assets considered part of the estate are outside the jurisdiction of this court, unless the law provides otherwise.<sup>44</sup>

<sup>38</sup> Algerian Supreme Court - Personal Status Chamber - Decision dated on 22 December 1993 - Case No. 102567 - (Judicial Journal of 1994, Issue 3 p 22).

<sup>39</sup> Mohamed Mehda (2004), *The Inheritance and Succession: A Study Alimoned by Judicial Decisions and Rulings*. First Edition, Algiers, Dar Al-Fajr for Publishing and Distribution, pp.59.61.

<sup>40</sup> Abdelaziz Saad, *Procedures for Family Affairs Lawsuits before Primary Court Sections*, op.cit, p.223.

<sup>41</sup> Mohamed Mehda, op.cit, p.57.

<sup>42</sup> Lahcine Ben Cheikh Ath Moulouya (2015), *The Guide to Family Law*, Second Edition, Algiers, Dar Houma, p.402.

<sup>43</sup> Algerian Supreme Court - Personal Status Chamber - Decision issued on 04 Mai 1985 - Case No. 26440 - (Judicial Journal of 1990. Volume 2, p.115).

<sup>44</sup> Laarabi Belhadj (2007), *Family Law with Amendments by Order 05/02 and Commentary on Supreme Court Principles over Forty Years 1966- 2006* first Edition, Algiers, Office of University Publications,



In the case where all or some of the heirs are minors with no guardian or trustee, the Public Prosecutor may request the court to liquidate the estate and appoint a guardian for these assets until they reach the age of majority and receive their succession. The guardian is required to present an account with alimony documents and a copy of that account to the court, in accordance with Articles 97 and 182 of the Family Code.<sup>45</sup>

If there are minors among the heirs, or if several heirs are minors, the division of the estate must be conducted through the court. In this case, the minor's guardian or trustee will represent them. Both adult heirs and the representatives of the minors have the right to request the division and settlement of the estate through a legal action, in accordance with Articles 724 and 727 of the Civil Code<sup>46</sup>. The legislator requires that the division of the estate be carried out by a court ruling issued by the Family Affairs Division, following the preparation of the succession share. This may necessitate the appointment of an expert to divide the estate's assets. Judicial division is intended to protect the minor's assets and ensure their share<sup>47</sup>.

If the minors do not have a guardian or custodian, the judge must appoint a trustee for their assets after dividing the estate. This trustee will manage the minors' assets responsibly, as a prudent person would manage their own personal assets, and will be legally accountable in case of any negligence<sup>48</sup>.

#### **IV.1.3. Criminalization of seizing the Succession.**

Seizing succession by some heirs is considered a crime<sup>49</sup>, as indicated by the Algerian legislator in Article 363 of the Penal Code, before the division of succession shall be punished with imprisonment from two months to three years and a fine from 500 to 3000 dinars, and mediation can also be applied in succession<sup>50</sup>.

Lawsuits related to the division and settlement of an estate can be filed either by an heir, an interested party, or the public prosecutor, depending on whether a dispute exists, and the Public Prosecution Office may file requests for the liquidation of the estate if all or some of the heirs are minors with no guardian or custodian. It may request the court to appoint a custodian for the minors' assets until they reach the age of majority<sup>51</sup>.

#### **IV.2. Procedural aspects of protecting the child's alimony.**

Alimony due for a child is a crucial means to meet their needs and is protected by legal provisions across various branches of law. On this basis, the creditor (typically the parent or guardian) can claim it through specific procedural frameworks to ensure their right. The legislator has provided punitive measures to protect the rights of creditors and to deter debtors who neglect to fulfill their obligations.

##### **IV.2.1. Legal claim to collect the legally imposed child alimony.**

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p.544. (See Supreme Court - Personal Status Chamber - Unpublished Decision dated 24 February 1986, File No. 40651).

<sup>45</sup> Larabi Belhadj (2018), *The Concise Guide to successions and Wills According to the New Algerian Family Code*, Third Edition, Algiers, Dar Houma publication, p.483.

<sup>46</sup> Abdelaziz Saad, *Procedures for Family Affairs Lawsuits before Primary Court Sections*, op.cit, p.223.

<sup>47</sup> Lahcine Ben Cheikh Ath Moulouya, op.cit, p.402.

<sup>48</sup> Mohamed Mehda, op.cit, p.56.

<sup>49</sup> Ahmed Deghiche (2009), *The substitution in Family Law in Algeria*, First Edition, Algiers, Dar Houma, p.221.

<sup>50</sup> Ordinance No. 15-02, of 23 July 2015, amends and supplements Ordinance No. 66-155, of 8 June 1966, People's Democratic Republic of Algeria, Official Journal No. 48, issued on 10 June 1966, which includes amendments to the Code of Criminal Procedure, People's Democratic Republic of Algeria, Official Journal, No. 40, issued on 23 July 2015 at 30.

<sup>51</sup> Ahmed Deghiche, op, cit, p.221.





Alimony is obligatory for the person responsible and is a right for the beneficiaries, according to the legal provision that defines the beneficiaries, and article 77 of Algerian family law includes the obligation for ancestors to alimony descendants and vice versa, based on capacity, need, and degree of kinship. If the person responsible refuses to provide alimony, the law allows the beneficiaries to seek judicial recourse to claim it.

If the conditions for filing the claim are met by the person who claims to be entitled to alimony, and in accordance with the provisions of Article 77 of the Family Law, this allows them to file alimony claim by submitting an opening statement of the claim to the Family Affairs Section of the primary court that has jurisdiction over the domicile of the alimony creditor.

The person entitled to alimony can file their claim before the Family Affairs Section, according to Article 423 of the Civil and Administrative Procedures Law, which defines the specific jurisdiction of the section.

The Family Affairs Section is the legally authorized section to handle cases of relative alimony. If the claim is filed before another section, that section cannot adjudicate the case or claim lack of jurisdiction. Instead, it must refer the case through the court clerk to the Family Affairs Section and inform the court president accordingly, as stipulated in the last paragraph of Article 32 of the Civil and Administrative Procedures Law.

This refers to having a direct relationship between the parties involved in the lawsuit, namely the plaintiff and the defendant, with regard to the subject of the dispute<sup>52</sup>, This applies to the alimony suit filed by one of the children against his relative, so he must prove his capacity in this, by proving the kinship that enables him to file his suit, within the scope of what is stipulated in Article 77 of the Family Law, so the capacity is based on the direct and personal interest in the litigation, and the judge is not satisfied with taking into account the capacity in the plaintiff, but also confirms it in the defendant, because if it is absent, the suit is rejected.<sup>53</sup>

#### IV.2.2. Protection of the child alimony system under Algerian legislation

The criminalization of non-payment of alimony is generally covered by Article 331 of the Algerian Penal Code. However, its specific components are outlined in Article 78 of the Family Code, which includes necessities such as food, clothing, medical care, housing or its cost, and all other essentials according to custom and practice. Alimony obligations for relatives are based on the kinship relationship under Article 77 of the Family Code. In the event of the dissolution of the marital relationship, children benefit from alimony, with male children receiving alimony until they reach adulthood and female children until they marry, as stipulated in Article 75 of the Family Code.<sup>54</sup>

Alimony debt also falls within the scope of preferential rights, particularly those owed by the debtor to their relatives for the last six months, as specified in Article 993/2 of the Algerian Civil Code.

This refers to having a direct relationship between the parties involved in the lawsuit, namely the plaintiff and the defendant, with regard to the subject of the dispute<sup>55</sup>, This applies to the alimony suit filed by one of the children against his relative, so he must prove his capacity in this, by proving the kinship that enables him to file his suit, within the scope of what is stipulated in Article 77 of the Family Law, so the capacity is based on the direct and personal interest in the litigation,

<sup>52</sup> Said Senkouka (2011), Explanation of the Civil and Administrative Procedure Code. First Edition, Ain Mlila, Dar Al-Houda, p.46.

<sup>53</sup> Abdelrahman Barabara (2009), Explanation of the Civil and Administrative Procedures Law. Second Edition, Algiers, Baghdadi Publications, pp.35.36

<sup>54</sup> Ahcene Bouskiaan, op, cit, pp.177-178.

<sup>55</sup> Said Senkouka, op, cit, p.46.



and the judge is not satisfied with taking into account the capacity in the plaintiff, but also confirms it in the defendant, because if it is absent, the suit is rejected<sup>56</sup>.

Article 331 includes the idea that failure to pay is presumed willful unless the defendant proves otherwise. Additionally, insolvency resulting from habitual misconduct or laziness is not considered an acceptable excuse.

Before a creditor entitled to alimony from a relative obligated to pay it can initiate criminal proceedings to compel the enforcement of the judgment, they must provide evidence for their claim. The convicted party might attempt to argue that no such judgment was issued against them, that they were not notified of the judgment, or that they did not refuse to pay the amounts designated for alimony.

The crime of refusing to pay alimony falls under the category of continuous crimes. The misdemeanor of failing to pay alimony is considered an ongoing offense. As such, a defendant who delays or refuses to pay court-ordered alimony continues to commit this misdemeanor until the full debt is paid.<sup>57</sup>

Based on this, the party damaged by their relative's failure to pay alimony can file a lawsuit against them in the Misdemeanors and Violations Section. The territorial jurisdiction of the court is determined according to Article 329 of the Code of Criminal Procedure, which allows for the case to be heard either in the court of the defendant's domicile, the court where the crime occurred, or the court where the defendant was apprehended, and the legislator in Article 331 of the Penal Code imposes a strict penalty on anyone who intentionally fails, for a period exceeding two months, to pay the amounts ruled by the court for family support, or refuses to pay the full amount of support ruled for his wife, ancestors or descendants, despite the issuance of a ruling requiring him to do so. He shall be punished with imprisonment from six (6) months to three (3) years and a fine from 50,000 DZD to 300,000 DZDIt shall be presumed that the failure to pay is intentional ,<sup>58</sup> unless proven otherwise. Insolvency resulting from habitual misconduct or laziness shall not be considered an acceptable excuse for the debtor in all cases.

The amendment to the Code of Criminal Procedure includes an important concept regarding the possibility of the victim forgiving the defendant after the court-ordered amounts have been paid. This forgiveness halts the criminal proceedings, provided that all due amounts are paid and the victim forgives the defendant, it is clear that forgiveness must be accompanied by the debtor's payment of the amounts due. Forgiveness alone is not sufficient to dismiss the charges against the defendant unless the debt has been fully and finally settled with all court-ordered amounts.

Examining the legislative handling of child alimony reveals that it is distributed across the Family Code, which outlines the general framework concerning the rules and types of alimony. However, the penalties for failing to pay legally mandated alimony are addressed in the Penal Code. This approach is difficult to understand, especially since it would have been preferable to include such penalties within the sections related to alimony in the Family Code<sup>59</sup>.

#### **V. The judge's intervention in the procedural aspects of child protection.**

The judiciary is considered a haven for demanding, protecting and approving the rights of the child, especially if violations have been proven, as the judge plays a central role in protecting his rights through many procedures guaranteed by the law, which are considered a prior supervision by the judge, whose role may sometimes appear more important than the role of the parents, therefore

<sup>56</sup> Abdelrahman Barabara, op, cit, pp .35-36

<sup>57</sup> Ahcene Bouskiaan, op, cit, p.186.

<sup>58</sup> Law No. 06-23 of 20 December 2006, amending the Penal Code, People's Democratic Republic of Algeria, Official Journal, No. 84, issued on 24 December 2006, p.24.

<sup>59</sup> Rachid Ben Chouikh (2008), Explanation of the amended Algerian Family Law: A comparative study of some Arab legislations. First Edition, Algiers, Dar Al-Khaldouniya, p.157.



the Algerian legislator responded seriously to what was stated in the African Charter in the procedural aspects that the judge is responsible for implementing with his multiple powers and positions.

#### V.1. Judge's intervention in the field of child labor and legal guardianship.

The child is considered a weak person in front of those who supervise him within the scope of the work that is regulated by the legal texts, as well as the legal guardianship because the guardian assumes the responsibility of managing his money.

##### V.1.1. Judge's intervention in the field of child labor

The problem of child labor is more pronounced in Africa than elsewhere in the developing world, but the actual statistics remain far from reality and unreliable, with child labor participation rates reaching 30 percent<sup>60</sup>.

The African Charter emphasizes the importance of considering the child's best interests and avoiding any activities that may affect their upbringing or hinder it, particularly child labor.

The Algerian Constitution upholds this principle by explicitly prohibiting child labor in Article 66. It further defines the specific conditions by setting the minimum age for child labor at 16 years as a general rule. This age can only be lowered in exceptional cases, such as apprenticeship contracts, in accordance with Article 7 of Law 18/10, which sets out the rules applicable to apprenticeship<sup>61</sup>, and The minimum age for acceptance into training (which is different from employment) is set at 15 years at the time of contract signing<sup>62</sup>, The Algerian legislator's concern is also evident in the requirement for authorization. A minor can only be employed with a permit from their legal guardian, as stipulated in the second paragraph of Article 15 of Law 90-11 concerning labor relations<sup>63</sup>.

The Algerian legislator has also stipulated that every worker or apprentice must undergo medical examinations related to employment<sup>64</sup>, and prohibits employing minor workers in hazardous jobs that lack sanitary conditions or that could harm their health or morals<sup>65</sup>, In addition that workers under the age of 19 are not allowed to work at night, in

accordance with Article 28 of Law No. 90-

11, which defines night work as any work performed between 9 a.m. and 5 a.m.

In addition to the Algerian legislator's commitment to protecting working children through the aspect of remuneration, which is determined in advance between the child and their guardian on one side, and the employer on the other, which fully aligns with the African Charter. This aims to protect the financial integrity of the child.<sup>66</sup>

<sup>60</sup> Sudharshan Canagarajah (2001), **Child Labor in Africa: A Comparative Study**. The Annals of the American Academy of Political and Social Science, 575, (1), USA, 1-30.

<sup>61</sup> Law No. 18-10 of 10 October 2018, which sets the rules applicable to apprenticeship, People's Democratic Republic of Algeria, Official Journal No. 35, issued on 13 June 2018.

<sup>62</sup> Kheira al arabi, op.cit, p.242.

<sup>63</sup> Law No. 90-11, of 21 April 1990, concerning labor relations, as amended and supplemented, People's Democratic Republic of Algeria, Official Journal No. 17, issued on 25 April 1990.

<sup>64</sup> Law No. 88-07 of 26 January 1988, concerning health prevention, safety, and occupational medicine, People's Democratic Republic of Algeria, Official Journal No. 4, issued on 27 January 1988.

<sup>65</sup> Nawel Allali, Nadia Hamida (2022), **Legal Protection of Child Labor in Algerian Legislation**, Journal of Labor Law and Employment, 7 (1), Algeria : Abdel Hamid Ben Badis University, Moustaghanem, 369-385. Visited: 24/11/2024, <https://www.asjp.cerist.dz/en/article/178936>.

<sup>66</sup> Mustapha Kouidri (2010), the Employment Contract between Theory and Practice. First Edition, Algiers, Dar Houma for Publishing and Distribution, pp 77-78.



The Algerian legislator has entrusted bodies with overseeing child labor to ensure better protection, with the Labor Inspectorate being responsible under Law 90-03 related to the Labor Inspectorate<sup>67</sup>, and he is responsible for overseeing the implementation of legislative and regulatory provisions related to labor relations and working conditions, especially children ; confirming adherence to medical examination procedures, and enforcing legal working hours, including prohibitions on night work and harmful tasks, and the labor inspector must make written observations in cases of violations.

The Algerian legislator, through Law 88/07 related to health prevention and occupational medicine, has ensured the mandatory conclusion of agreements with medical institutions to guarantee the health protection of workers especially for children<sup>68</sup>.

The supervisory aspect is handled by specific entities precisely defined by the legislator, namely the National Body for the Protection and Promotion of Childhood<sup>69</sup>, it is the primary and highest institution, and among its responsibilities is the protection of children in the workforce. This is achieved by contributing to the preparation and proposal of laws related to children, especially those concerning child labor, as well as receiving reports and notifications about violations of the rights of children at risk due to work conditions and economic exploitation, and taking appropriate actions with public authorities or judicial bodies.

The judiciary, through its various bodies, also exercises oversight over violations related to child labor. The juvenile judge serves as a guarantor of children's rights in general, as granted by the Child Protection Law. The judge's role is evident in receiving reports and notifications regarding a child being in a situation of danger due to work conditions, economic exploitation.

The criminal judge also plays a crucial role in addressing issues related to child labor. This is evident through the actions of the Public Prosecutor, who initiates criminal proceedings, and the judge who adjudicates on criminal matters, including offenses or violations related to the rules governing child labor as stipulated in the Labor Law and Child Protection Law 15/12.

The social judge, as the head of the social section in the court, also addresses social issues under Article 500 of the Civil and Administrative Procedure Code. This role includes extensive authority to supervise labor contracts and collective labor agreements, including those related to child labor, and he protects minors from arbitrary dismissal<sup>70</sup>.

#### **V.1.2. Judge's intervention in the field of guardianship.**

The African Charter, in Article 20, emphasizes the necessity for parents to care for the child and ensure their proper upbringing. It stresses the need to provide for all the child's life requirements and to guide them in a way that ensures their absolute benefit. This is reflected in the second paragraph of the article. The Algerian legislator has translated this important directive into a series of procedural details that should not be violated or disregarded, the operations that require the guardian to obtain the court's permission to manage the minor's property, according to Article 88 of the Family Code, can be detailed as follows :

##### **V.1.2.1. Sale, division, mortgaging, and reconciliation of real estate.**

<sup>67</sup> Law No. 90-03 of 06 June 1990, related to the Labor Inspectorate, People's Democratic Republic of Algeria, Official Journal No. 6, issued on 07 February 1990.

<sup>68</sup> Abdelkader Athmani, *The Criminal Protection of the Child from Economic Exploitation through Employment*, Doctoral Thesis, Faculty of Law and Political Science, Ahmed Draia University, Adrar, 2018-2019, p.240.

<sup>69</sup> Executive Decree No. 16-334 of 19 December 2016, specifying the conditions and modalities for the organization and operation of the National Body for the Protection and Promotion of Childhood, People's Democratic Republic of Algeria, Official Journal No. 75, issued on 21 December 2016.

<sup>70</sup> Yacine Ben Sari (2010), *Disciplinary Dismissal in Algerian Labor Legislation*. Third edition, Algiers, Dar Houma for Publishing and Distribution, p.83.



The guardian must seek the court's permission for these operations involving real estate. The court will consider the necessity and interest of managing the minor's property. The sale must be conducted through a public auction, according to Article 89 of the Algerian Family Code, and the guardian must seek permission from the court president to obtain authorization. Additionally, Article 181 of the Algerian Family Code, stipulates that if there is a minor among the heirs, the division must be done judicially, and the same applies to the official or possessory mortgaging of real estate, and in this context, the Supreme Court has emphasized that the division of real estate must be subject to judicial permission.<sup>71</sup>

The reconciliation process is considered a serious action, as it may resolve a dispute that involves the possibility of relinquishing a certain right for a minor, which could harm their assets. Therefore, the legislator included it among the actions that require the judge's authorization.<sup>72</sup>

#### **V.1.2.2. The sale of movable property of special importance.**

In addition to the details provided regarding the necessity of obtaining authorization for dealing with real estate, the legislator also included movable property. However, it was specifically described as "of special importance," a vague and unclear term. The interpretation of this term is left to the judge's discretion when granting authorization. Conversely, based on the opposite meaning of the text, a guardian may deal with ordinary movable property that does not hold significant value, or with movable property related to the sale of perishable fruits, without needing to wait for the judge's authorization.

#### **V.1.2.3. Investing a Minor's Funds through Lending, Borrowing, or Participating in a Company.**

To ensure that borrowing is prompted by an urgent need for the minor, or that lending is to a trustworthy person to avoid the loss of the minor's funds, the guardian cannot proceed with these actions without obtaining the required authorization<sup>73</sup>, Investing in a company poses a risk to the minor's funds due to the potential for profit or loss, which is contrary to the minor's best interests and the necessity of preserving or growing their assets.

#### **V.1.2.4. Leasing a minor's property for more than three years or extending beyond one year after reaching the age of majority.**

These provisions are determined for the properties owned by the child at most, and if the lease agreement exceeds three years after the child becomes an adult or lasts more than one year, the judge's approval is obtained. Although the provision addresses real estate, it does not provide detailed differentiation, and the judge must consider the necessity and best interests of the minor before<sup>74</sup> granting permission to the guardian. If the action concerns the sale of property owned by the minor, it must be sold according to the procedures for public auctions.

#### **V.1.2.5. Treating the child well.**

Corporal punishment is the most prevalent form of violence against children across all regions, including Africa. While adults are legally shielded from any form of assault, the legality of corporal

<sup>71</sup> Algerian Supreme Court - Personal Status Chamber - Decision issued on 19 December 1988 - Case No. 51282 - (Judicial Precedent of the Personal Status Chamber for the Year 1991- Issue No. 2 p.63).

<sup>72</sup> Algerian Supreme Court - Personal Status Chamber - Decision issued on 10 October 1991 - File No. 72353 - (Judicial Journal of 1993, Issue No. 3, p.115).

<sup>73</sup> Kamal Hamdi (2003), Guardianship over Assets. First Edition, Egypt, Cairo, Maaref Establishment, p.51.

<sup>74</sup> Algerian Supreme Court - Personal Status Chamber - Decision issued on 30 June 1986 - File No. 41470 - (Judicial Journal of 1989, Issue No. 2 p 81).





punishment strips children of their right to equal protection under the law, creating clear discrimination against them.<sup>75</sup>

The African Charter emphasizes the necessity for the guardian to exercise a reasonable degree of supervision over the child's behavior while performing their duties according to article 10.

According to Article 2 of the Algerian Child Protection Law, a child is considered to be in a state of danger if subjected to abuse, including torture, physical damage, detention, denial of food, or any harsh treatment that could impact their emotional or psychological balance. This also includes situations where the child might be a victim of a crime committed by their legal representative.

The legislator has also imposed strict penalties on those responsible for the child, especially in cases of financial mismanagement or exploitation. Article 380 of the Penal Code prescribes imprisonment from three months to three years and a fine of 500 to 10,000 DZD. If the victim is under the care, supervision, or authority of the offender, the penalty is imprisonment from one to five years and a fine of 1,000 to 15,000 DZD.

The 2024 amendment to the Penal Code introduced stricter penalties for offenses involving harm to minors. Article 269 now prescribes imprisonment from six months to five years and fines between 100,000 and 500,000 DZD for anyone who intentionally strikes or injures a minor or deprives them of food.<sup>76</sup>

The legislator has also increased the penalties when the perpetrator is one of the parents or anyone responsible for the child's care. According to the amendment to Article 272 of the Penal Code, the punishment now ranges from five to ten years of imprisonment.<sup>77</sup>

## V.2. Guarantees of a fair trial.

Certain circumstances may cause a child to commit an act punishable by law, but that does not mean that he will be punished harshly in a manner that does not reflect his circumstances and age. Algerian legislation has taken this aspect into account from a procedural standpoint. The role of the juvenile judge and the public prosecutor appears in seeking to take into account specific procedural aspects in the legal text to protect him from entering the world of crime, in accordance with the African Charter.

### V.2.1. Respect the legal age.

A child who has committed a crime should not be treated in the same manner as other adult offenders, due to their young age and limited understanding of their actions. The African Charter emphasizes the need for special care and treatment for such cases article 17, in particular, highlights the aspects of juvenile justice, specifying in its first paragraph, From this perspective, the legislator has focused on protecting children who commit crimes by not imposing penalties, especially if they are under 13 years of age. Instead, protective or educational measures are applied. For those between 13 and 18 years old, the law provides for protective or educational measures or, alternatively, lighter penalties, as outlined in Article 49 of the Penal Code.

The legislator has also considered the overall situation of a child who may commit or attempt to commit a crime by granting them the right to a fair trial, This is outlined in Article 9 of the Child Protection Law.<sup>78</sup>

<sup>75</sup> Sonia Vohito (2021), *The African Children's Charter and ending corporal punishment of children in Africa: A work in progress*, South Africa: Pretoria University, *African Human Rights Law Journal*, (21), 54-98.

<sup>76</sup> Law No. 24-06, of 28 April 2024, amending and supplementing Ordinance 66-156 on the Penal Code, People's Democratic Republic of Algeria, *Official Journal* No. 30, issued on 30 April 2024.

<sup>77</sup> Law No 18-11 of 02 July 2018, related to health, People's Democratic Republic of Algeria, *Official Journal* No. 46, issued on 29 April 2018.



### V.2.2. The child is innocent in principle.

The judge should consider the child innocent until proven guilty, as stipulated by the African Charter in Article 17, The Algerian legislator has incorporated this principle procedurally, specifying in Article 32 of the Child Protection Law the local jurisdiction of the juvenile judge based on the child's place of residence or where the child was found. This judge is responsible for examining petitions submitted by the child or their legal representative, and for informing the child of the contents of the petition according to Article 33 of the Child Protection Law, as well as hearing statements from the child or their legal representative. The child has the right to be assisted by a lawyer, and the juvenile judge may assess the child's character from various perspectives, reflecting a qualitative consideration by the legislator. The legislator adopted the African Charter's emphasis on promptly informing the child of the charges against them, as Article 17 specifies.

The investigating judge may temporarily place the child in a specialized child protection center, a service responsible for child welfare, or a medical facility, depending on the child's condition, with these measures not exceeding six months. The file is then sent to the public prosecutor, who may appoint a doctor to examine the child during detention to protect the child's best interests, according to Article 51 of the Child Protection Law. This is considered a specific measure by the Algerian legislator to align with the African Charter.

Additionally, the African Charter requires setting a specific age threshold below which children are not considered legally culpable, as stated in the final paragraph of Article 17, and Algerian legislation reflects this by specifying that a child under 10 years of age cannot be subject to criminal prosecution. Children aged 10 to 13 are only subject to protective and educational measures and cannot be placed in a penal institution, even temporarily. For those aged 13 to 18, placement in a correctional facility is only permissible if absolutely necessary and no alternative measures are available ; otherwise, the child may be placed in a rehabilitation and reintegration center or a special wing, However, Article 17, in its fourth paragraph, did not specify the minimum age for criminal responsibility, which would leave room for abuse of children by the state, which contradicts the principle of protecting children by creating a protected environment<sup>79</sup>, in contrast to the Algerian legislator, which specified This is considered to provide more guarantees to protect the child during court procedures.

The Child Protection Law provides safeguards for children, stipulating that the duration of detention for questioning cannot exceed 24 hours. This is applicable only in cases of offenses that constitute a clear breach of public order, where the penalty exceeds five years, or in criminal cases. The detention period may be extended, but only in 24-hour increments each time. If these safeguards are exceeded, the judicial police officer may be subject to penalties for arbitrary detention.

### V.2.3. For drug-related crimes

The special attention given to children with addiction issues is also evident in the treatment program outlined in Article 7 of Law 18-04. This article allows a judicial investigator or juvenile judge to order medical treatment for individuals who are accused of committing offenses related to addiction, as long as it is based on medical expertise.

This provision highlights the difference between voluntary and compulsory treatment for addiction, and allows the judicial authority to exempt individuals from punishment to prevent recidivism<sup>80</sup>,

<sup>78</sup> Article 9 of the Child Protection Law is concise and requires more detail, especially in the case of amendments, and should be elaborated further.

<sup>79</sup> Ramphal Sillah (2013), *Assessing The African Charter on the Rights and Welfare of The Child (ACRWC) As a Blueprint Towards the Attainment of Children's Rights in Africa*. IOSR Journal of Humanities and Social Science, 11, (2), USA, 50-55.

<sup>80</sup> Ahcene Bouskiaan, op, cit, p.512.



This aligns with the African Charter on the Rights and Welfare of the Child, which emphasizes the need to provide special care to children. The Charter highlights that the purpose of punishment should be to reintegrate the child into the family and ensure social rehabilitation, as stated in the seventh paragraph of Article 17.

The individuals subject to detoxification treatment are those charged with drug offenses, particularly children, which must be verified through medical expertise. In this context, the judicial investigator or juvenile judge appoints a specialist to examine the accused and determine their need for treatment. If the medical report indicates that treatment is not necessary, the judicial investigator or juvenile judge continues the investigation and refers the case to the competent judicial authority for trial or decides to proceed with the case if there are grounds for doing so. Conversely, if the expert determines that treatment is needed, the judicial investigator or juvenile judge will issue an order to place the individual in a treatment center until the investigation is complete<sup>81</sup>.

The judicial authority can also order that individuals addicted to drugs undergo training on the dangers of drugs<sup>82</sup>. This is specified in Article 7 of Law 23-05, which amends Article 8 of Law 18-04. Additionally, Algerian legislation provides extra safeguards for children under investigation by mandating audiovisual recording of testimonies from children who are victims of sexual exploitation. A psychologist must attend the session, and the public prosecutor, investigative judge, or judicial police officer may appoint someone to carry out these recordings. The recordings are stored with the case file for use in proceedings<sup>83</sup>.

## VI. Conclusion.

The Algerian legislator has worked to protect children's rights through a wide range of legal texts across various laws, ensuring alignment with international conventions, particularly the African Charter on the Rights and Welfare of the Child. The legislation has addressed children's rights even before ratifying the Charter, and after its adoption, the legislator has updated the texts to align with the Charter's provisions. However, Algeria has made certain adjustments reflecting its Islamic values and societal norms. This is evident in its refusal to recognize adoption as a means of caring for non-biological children. Instead, Algeria has adopted a system of guardianship inspired by Islamic law, which provides care for children whose parents are unable to care for them, and the Algerian legislator has also considered the specifics of the African Charter by establishing substantive and procedural rules aimed at protecting and preserving the child. This is evident in the enactment of the Child Protection Law, which includes procedural aspects designed to safeguard the child and ensure fair trial guarantees, especially in criminal cases. It sets short timeframes, such as a 48-hour detention period for investigation, with any extensions requiring justification. The law also considers basic rights from the prenatal stage, including the right to inheritance, the right to a name and family affiliation through lineage, and protection of custody rights. It addresses financial rights such as child alimony and inheritance from relatives through strict legislative provisions with penal consequences for violations. Additionally, it ensures the child's right to Algerian citizenship, protection in the workplace, regulation of the guardian's role in managing the child's financial matters, and guarantees a fair trial, with judicial oversight for crimes involving the child. These aspects demonstrate the legislative interest in establishing and protecting children's rights in alignment with the African Charter, ratified in 2003. However, these provisions are relative in their application, which does not indicate their inadequacy. In some respects, they were

<sup>81</sup> Ahcene Bouskiaan, op, cit, p.512.

<sup>82</sup> Mammar hamis, Delmi chkrin (2023), Drugs between the legislative framework and ways of prevention and control. *Journal of legal studies*, Algeria: Yahia Fares University, Medea, 9 (2), 290-304. Visited: 24/11/2024, <https://www.asjp.cerist.dz/en/article/224629>.

<sup>83</sup> Article 46 of the Child Protection Law outlines the procedures for investigating a child who is a victim of sexual abuse, representing a legislative response that aligns with the African Charter on the Rights and Welfare of the Child.



more suitable for achieving the child's best interests compared to the African Charter, particularly concerning the establishment of lineage for children born from valid marriages, which the Charter does not address. This highlights the need to update the Charter's provisions to account for the specificities of the countries that have ratified it. Additionally, Algerian legislative texts require updates to better align with the child's best interests, despite their current provisions. There is also a need for strict judicial oversight of those responsible for implementation and holding accountable those who are negligent, including parents in some cases, and the most important recommendations can be summarized as follows:

**First: The most important results.**

The key findings can be summarized as follows:

1- The Algerian legislator has ensured the child's right to life by protecting it during the fetal stage through legal provisions that guarantee care for the pregnant mother, the requirement for immediate registration upon birth, and granting the child the right to inheritance, which is managed by their guardian. This approach distinguishes itself from the African Charter on the Rights and Welfare of the Child, which does not elaborate extensively on the fetus's rights, considered a preliminary stage of the child's life. Additionally, the right to a name, which distinguishes the child from others, is addressed by the African Charter and translated into Algerian law through the Civil Status Code, which mandates the registration of births.

2- In the context of the child's family rights, the African Charter does not address the child's right to lineage, which the Algerian legislator tackled through the Family Code by requiring a legitimate marriage contract between a man and a woman for lineage confirmation. However, it aligns with the African Charter concerning custody, which the Algerian law has given great importance through its provisions, prioritizing the best interest of the child, as demonstrated in the Supreme Court's judicial applications. Additionally, Algerian law for religious reasons does not recognize the guardianship (kafala) system, which parallels the adoption system mentioned in the African Charter. Nevertheless, the Algerian legislator ensures that the family name is granted to the child under guardianship, despite the absence of lineage with the family providing care, in alignment with the Charter. Moreover, the child's right to alimony is reinforced by punitive measures in Algerian law, which include imprisonment and fines for any father who fails to pay court-ordered amounts in favor of his children. The law also upholds the child's right to inheritance, regardless of their age, a right derived from Islamic law, which is clear on this matter and enshrined in the Algerian Family Code, with penalties imposed for inheritance violations. These matters are under judicial oversight, particularly when there is a minor among the heirs, providing a level of protection that the African Charter does not detail. Furthermore, the Algerian legislator has ensured the child's protection from all forms of family neglect, imposing severe penalties on those responsible for the child's care. The laws regulating child labor are also strictly enforced, in accordance with the provisions of the African Charter.

3- The African Charter provided general guidelines on the need to grant advantages to children due to their national affiliation through various rights. The Algerian legislator has addressed this flexibly by granting citizenship to children born on Algerian territory, whether their parents are Algerian or unknown. This is a protection and consideration of the child's status, regardless of the circumstances of their birth, whether legitimate or otherwise. Additionally, the right to health care is translated into Algerian law through specific provisions and substantial funding allocated for child health care throughout all stages of their development. Moreover, the right to education is emphasized by the legislator, making primary education compulsory and free, and prioritizing it in the state budget each year, as reflected in the financial law figures.

4- The African Charter includes precise guidelines to ensure a fair trial for juvenile offenders, which the Algerian legislator has aimed to implement through Law 15-12 concerning child protection. This law is largely procedural and includes rules to be observed throughout all stages of the trial, which are flexible and appropriate for the child's age. The goal is to contain and protect the child from strict procedures that could lead to delinquency, especially in the context of drug



abuse. This is done under judicial supervision, with various levels of oversight from the public prosecutor, investigation, and trial judges. Failure to adhere to these procedures can lead to the invalidation of the trial.

### **Second: The most important Suggestions.**

Based on the results reviewed, the following suggestions can be made:

1- Efforts should be made to make the African Charter more adaptable to the specificities of countries, particularly regarding the recognition of legitimate and legally established parentage resulting from a valid marriage. Additionally, there should be a need to provide special protection for the fetus through expanded legal texts. Furthermore, there may be a need to amend the Algerian Civil Status Law to align better with the African Charter, especially by incorporating digitization across all sectors in Algeria.

2- It would be better if the Family Code were more aligned with the African Charter, particularly concerning child custody, which remains insufficient and needs further refinement, especially regarding the child's right to visitation—a matter the Charter emphasizes. Some provisions in the Family Code might exacerbate issues related to child custody in divorce situations instead of resolving them. Judicial discretion in this area should be constrained by legal texts. Additionally, it is necessary to regulate alimony laws in Algeria more effectively, as imprisoning debtors, especially if they are proven to be indigent, exacerbates the problem. There should also be expanded judicial oversight of all significant financial transactions involving minors managed by their guardians to safeguard the child's assets from mismanagement.

3- In response to the African Charter, it is necessary to update health laws in Algeria to align with child protection standards. Additionally, public health services for children should be improved to match the financial capabilities of their parents, especially given the limited income of some families. The state should intervene to assist with necessary medical procedures and examinations for children and to curb private clinics that exploit this need for financial gain. There should also be stricter regulations to ensure free education is not limited to just the primary level and to penalize parents who prevent their children from attending educational institutions for various reasons.

4- In the context of updating the procedural legal system, efforts should be made to make it more flexible, especially when it concerns children, who should be treated as victims when they engage in unlawful activities that could lead to imprisonment. Those who abuse their authority in arresting, investigating, or imposing penalties on them should be held accountable, with the penalties being proportionate to their young age. The aim of the punishments should be to integrate them into society and rehabilitate them, rather than punish them in a way that could turn them into criminals. This should be achieved through provisions in the Code of Criminal Procedure.

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