

PROTECTION OF THE CHILD OF UNKNOWN LINEAGE: THE CONVENTION ON THE RIGHTS OF THE CHILD AND ALGERIAN LEGISLATION

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Abstract:

The Algerian legislator has not overlooked the protection of children of unknown parentage. This issue has been addressed in many of its texts, both in family law and other laws. However, Algeria's ratification of the Convention on the Rights of the Child elevates its provisions above domestic law. The significance of this study lies in its focus on protecting a crucial segment of society, namely children of unknown parentage. Its aim is to assess the compatibility of Algerian legislative texts with the Convention on the Rights of the Child regarding the rules and mechanisms for their protection. Our findings indicate that the Algerian legislator has managed to reconcile the provisions of the Convention on the Rights of the Child without contravening Islamic law, particularly through the establishment of guardianship and prohibition of adoption.

Keywords: child of unknown parentage, child protection, parentage, guardianship, foster care.

INTRODUCTION:

Allah Almighty has made children the joy and adornment of life, as He says: "Wealth and children are the adornment of worldly life."¹ Therefore, Islamic law has shown great concern for the protection of children from the moment they are conceived until they reach the age of maturity. Child protection is also a goal of international law and national legislation alike.

Islamic law has worked to prevent the existence of children of unknown parentage in Islamic society by regulating marriage, which is considered a sacred contract. Its regulations are governed by the Quran and the Sunnah (traditions of the Prophet Muhammad), and it is considered the only legitimate means through which legitimate children are conceived. Islamic law has also prescribed severe punishments, including death by stoning, for any prohibited sexual relations, such as adultery. Furthermore, strict and exhaustive methods of establishing paternity have been defined.

Islamic law has emphasized the care and reformation of orphans and the protection of their wealth, which they inherit through bequests, wills, or gifts, among other means. It has made it necessary to seek permission from a judge in many cases before disposing of their assets. It considers those who consume the wealth of orphans as if they were consuming fire in their bellies, and their ultimate destiny is Hell. Islamic law has also made sponsoring orphans one of the means of attaining the pleasure of Allah and the proximity to the Messenger of Allah, peace be upon him, in Paradise.

The Algerian legislator, like other national legislations, has placed significant emphasis on the protection of children and has enshrined this in many of its laws. It has been influenced by the principles of Islamic law at times and international agreements at others. One of the most important international texts for child protection is the International Convention on the Rights of the Child of 1989², which, upon Algeria's ratification, has become superior to domestic law.

¹ Surah Al-Kahf, verse 46

² General Assembly resolution 44/25, dated November 20, 1989, concerning the Convention on the Rights of the Child, entered into force on September 2, 1990, according to Article 49. Algeria ratified it by Legislative Decree No. 92-06, dated November 17, 1992, which includes interpretative statements on the Convention on the Rights of the Child, Official Gazette No. 91, issued on January 23, 1992.

While children in general require legal protection to ensure they live within stable families, children of unknown parentage are particularly in need of protection and care as they are victims of society as a whole. They do not even have the recognition of belonging to a family. Hence, the legislator has shown particular concern for this group and has worked to reduce their numbers through regulating issues of parentage and nationality. Mechanisms have been established to protect them, such as the foster care system and social care institutions. These provisions can be found in various scattered texts, including family law³, civil status law⁴, nationality law⁵, criminal law⁶, and child protection law⁷.

If Algerian family law refers us to the provisions of Islamic law in cases where there is no specific text, Algeria's ratification of the Convention on the Rights of the Child in 1992 elevates its provisions above Algerian law as a whole, including family law. This has led us to choose this topic, which demonstrates its importance in its connection to a humanitarian, social, and legal issue of utmost significance: the protection of children of unknown parentage who often suffer from discrimination and social violence.

This study aims to define the concept of children of unknown parentage and examine the various legislative and social mechanisms established for their protection. Furthermore, it seeks to determine the extent of compatibility between national legislative texts and the provisions of the Convention on the Rights of the Child concerning the protection of this group of children.

The research problem revolves around the extent of compatibility between Algerian legislative texts and the provisions of the Convention on the Rights of the Child regarding the established mechanisms for the protection of children of unknown parentage. This becomes especially relevant when considering that Algerian family law refers to Islamic law in cases where there is no specific text, and some of the mechanisms outlined in the Convention on the Rights of the Child conflict with the provisions of Islamic law, such as the adoption system.

To address this research problem, we adopted an analytical approach to analyze the texts and reach conclusions. Additionally, we utilized the comparative method to compare Algerian legislative texts with the provisions of the Convention on the Rights of the Child. At times, we also employed the descriptive method to provide definitions and highlight the plight of children of unknown parentage.

We divided our research topic into two main axes:

The concept of children of unknown parentage.

The legal mechanisms for the protection of children of unknown parentage.

We concluded our research with a set of findings and recommendations.

I- Concept of Children of Unknown Parentage

Neither the Convention on the Rights of the Child nor Algerian legislation provides a specific definition for children of unknown parentage. However, both texts require the state to provide protection and care for them and recognize them as having a set of rights. To define the concept of children of unknown parentage, we need to first define the concept of a child, then the concept of parentage, and finally, the concept of unknown parentage.

1. Definition of a Child

- Definition of a Child Terminologically:

³ Law No. 84-11, dated June 9, 1984, concerning family law, Official Gazette No. 24, issued on June 12, 1984, as amended and supplemented by Order No. 05-02, dated February 27, 2005, amending family law, Official Gazette No. 15, issued on February 27, 2005.

⁴ Order No. 70-20, dated February 19, 1970, relating to civil status, as amended and supplemented by Law No. 14-08, dated August 9, 2014, Official Gazette No. 49, issued on August 20, 2014.

⁵ Order No. 70-86, dated December 15, 1970, concerning Algerian nationality law, as amended and supplemented by Order 05-01, dated February 27, 2005, Official Gazette No. 15, issued on February 27, 2005.

⁶ Order No. 66-156, dated June 8, 1966, concerning penal law, Official Gazette No. 47, issued on June 10, 1966, as amended and supplemented.

⁷ Law No. 15-12, dated July 15, 2015, concerning child protection, Official Gazette No. 39, issued on July 19, 2015.

The term "child" refers, in terminology, to both males and females from the moment of birth until they reach maturity. During this stage, they require utmost care⁸. This concept is mentioned in the Quran in Surah Ghafir, Verse 67: "It is He who created you from dust, then from a sperm-drop, then from a clinging clot; then He brings you out as a child; then [He develops you] that you reach your [time of] maturity; then [further] that you become elders." This verse illustrates the stages of human development, starting from birth, where the term "child" is used, to maturity and old age.

The plural form of "child" is mentioned in Surah An-Nur, Verse 59: "And when the children among you reach puberty, let them ask permission [at all times] as those before them have done." This refers to reaching the age of puberty, which is the age of assuming legal responsibilities. Abu Hanifa determined this age to be 18 years, while the three imams set it at 15 years.

2. Legal Definition of a Child

The definition of a child is stated in Article 1 of the Convention on the Rights of the Child as follows: ⁹"For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

According to this article, the term "child" is limited to human beings. Therefore, the fetus is not considered a child under the provisions of this text. If the fetus were included, the term "human entity" would have been used, as indicated in many international texts related to scientific development.

It is worth noting that the phrase "below the age of eighteen years" is used, which means that an individual who is 18 years old is still considered a child according to the provisions of this convention. Furthermore, it is also observed that the convention allows for a child to be considered an adult if the applicable law defines the age of majority as below 18 years. This flexibility is acknowledged in this text.

As for Algerian legislation, the Child Protection Law, in Article 2, defines a child as ¹⁰"every person who has not reached the age of eighteen years in full." This definition aligns with the definition in the Convention on the Rights of the Child. The use of the word "person" signifies that it does not include the fetus, as the legal personality of an individual, according to Article 25 of Algerian Civil Law¹¹, begins at the moment of their live birth. Therefore, a person is considered a child from the moment of birth until reaching the age of 18 years in full.

Secondly: Definition of Lineage (Nasab)

The Convention on the Rights of the Child or Algerian legislation does not define lineage. However, within the Algerian Family Law, the rules of establishing and negating lineage are addressed in Articles 40 to 45. Therefore, we will discuss the definition of lineage linguistically and terminologically, and then its definition in Islamic jurisprudence.

Lineage (Nasab) is defined terminologically as the relationship of blood or affiliation that connects an individual to their ancestors¹², branches, and extended relatives. It is also defined as the attachment of a child to their parents, with the reference "So-and-so son of So-and-so"¹³ for a son or "So-and-so bint So-and-so" for a daughter. This is exemplified in the Quran, where it states: "And [mention] Maryam, the daughter of 'Imran..." (Surah At-Tahrim, Verse 12). It is also mentioned in

⁸ Ahmed Mukhtar Omar, Contemporary Arabic Language Dictionary, Volume II, Alam Al-Kutub, Cairo, 2008, p. 1405.

⁹ General Assembly resolution 44/25, dated November 20, 1989, concerning the Convention on the Rights of the Child, referenced above.

¹⁰ Law No. 15-12, dated July 15, 2015, concerning child protection, referenced above.

¹¹ Order No. 75-58, dated September 26, 1975, containing the civil law, Official Gazette No. 78, issued on September 30, 1975, amended and supplemented.

¹² Ahmed Mohamed, Subject of Attribution in Islamic Law and Legislation, 1st Edition, Dar Al-Baath, Constantine, Algeria, 1983, p. 17.

¹³ Ayadi, Sarah, Established Protection for Children of Unknown Parentage in Islamic Law and Algerian Legislation, Journal of Social Sciences Development, Volume 11, Issue 01, Bajja Mokhtar University, Annaba, 2018, p. 145.

Surah Al-Ma'idah, Verse 116, where Allah Almighty says: "And when Allah will say, 'O 'Isa, Son of Maryam..."

2. Definition of Lineage (Nasab) Legally:

Although Algerian legislation addresses the provisions of lineage in the Family Law within Articles 40 to 45, it does not provide a specific definition for lineage. Consequently, we are referred to the legal definition of lineage according to Article 222 of the same law, which is based on the principles of Islamic jurisprudence. When referring to Islamic jurists, we find that they did not focus on providing an exact definition for lineage, but rather relied on the general definition mentioned earlier, which is the attachment of a child to their father if born within a legitimate relationship, or to their mother if born out of wedlock. Allah Almighty says in Surah Al-Ahzab, Verse 5: "Call them by [the names of] their fathers; it is more just in the sight of Allah. But if you do not know their fathers - then they are [still] your brothers in religion and those entrusted to you."

Thirdly: Definition of Child of Unknown Lineage

Based on our definition of a child and lineage, we can arrive at the definition of a child of unknown lineage as follows: It is a child who has not reached the age of eighteen and does not know their father or both parents.

1. Definition of Child of Unknown Lineage in the Convention on the Rights of the Child:

The definition of a child of unknown lineage can be inferred from Article 20 of the Convention on the Rights of the Child, which states the following: "-A child temporarily or permanently deprived of his or her family environment or in whose best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

-States Parties shall, in accordance with their national laws, ensure alternative care for such a child.

-Such care could include, among other things, foster placement, kafalah of Islamic law, adoption, or, where necessary, placement in suitable institutions for the care of children..."

From this text, it can be deduced that a child of unknown lineage falls under the category of children permanently deprived of their family environment, and the state has the responsibility to provide alternative care for them.

2. Definition of Child of Unknown Lineage in Algerian Legislation:

Algerian legislation does not specifically define children of unknown lineage, although it emphasizes their protection in the 2020 Constitution¹⁴. The third paragraph of Article 71 states: "The State protects and guarantees children who have been abandoned or are of unknown lineage." Additionally, the fourth paragraph of the same article stipulates criminal protection for them against all forms of violence, exploitation, and abandonment, stating: "The law punishes all forms of violence against children, their exploitation, and abandonment."

The text highlights the use of two terms: "Children of unknown parentage" and "Abandoned children." A child of unknown parentage refers to a child whose father is unknown, regardless of whether the mother's identity is known or unknown. Legally and religiously, a child is attributed to their father and, therefore, falls under the following categories:

1. Child born out of wedlock (Illegitimate child): According to the consensus of jurists, a child born out of wedlock is attributed to the mother but not to the father. The child does not inherit from the father but inherits from the mother.

2. Child resulting from zina (adultery or fornication): The Supreme Court ruled that the attribution of a child born out of adultery to their father is negated. The court stated, "According to religious and legal provisions, if adultery occurs, the attribution is negated, and prohibition is established between the spouses."¹⁵ Adultery is considered a legitimate means to negate parentage in Islamic law

¹⁴ Presidential Decree No. 20-442, dated December 30, 2020, concerning the issuance of the constitutional amendment approved in the referendum of November 1, 2020, Official Gazette No. 82, issued on December 30, 2020.

¹⁵ Supreme Court, Personal Status Chamber, Decision No. 69798 issued on 23/4/1991, Judicial Journal, Issue 04, Year 1994, p. 54.

and Algerian family law¹⁶. According to established jurisprudence, the period for negating parentage does not exceed eight days from the date it becomes known.

A child born outside the legally defined gestation period is also considered to have unknown parentage. Article 42 of the Family Law states, "The minimum gestation period is six months, and the maximum is ten months." Therefore, any child born within a period of less than six months from the date of marriage is deemed to be the result of an illegitimate relationship and cannot be attributed to the husband. Similarly, if a child is born after ten months from divorce or death, their parentage cannot be attributed to the divorced or deceased husband.

An abandoned child is a child who has been abandoned by their parents due to financial incapacity or other reasons. They may have unknown parentage or known parentage. This category includes orphaned children who have no one to care for them. It is similar to the concept of "foundling" among Islamic jurists, which refers to a child who has been abandoned or lost by their parents and is taken in for their protection and care¹⁷.

The terms "child of unknown lineage" and "Al-Laquit" are mentioned in Article 64 of the Civil Status Law, which states: "The civil status officer shall give names to foundling children and children born to unknown parents, who have not been attributed any names. The child is identified by a series of names, the last of which is a family name." This text employs the term "foundling children" alongside those of unknown lineage.

Furthermore, Article 67 of the same law states: "Anyone who finds a newborn must declare it to the civil status officer at the place of discovery. If they do not wish to take care of the child, they must hand it over to the civil status officer along with the clothing and other belongings found with the child." The civil status officer then prepares a report and subsequently issues a birth certificate for the child. In this case, the newborn may be of unknown lineage or abandoned.

Regarding family law, it does not specifically address provisions for individuals of unknown lineage, except for a mere reference in Article 119, which states: "The foster child may be of unknown or known lineage." Article 120 states: "The foster child must preserve their original lineage if it is known, but if the lineage is unknown, Article 64 of the Civil Status Law shall apply to them."

It is worth noting that Decree 29-24 dated January 13, 1992¹⁸, allows the foster guardian to grant their surname to the fostered child if the child is of unknown lineage.

The rules for proving lineage stipulated in Article 40¹⁹ and subsequent articles of the Family Law also apply to proving the lineage of a child of unknown lineage. Lineage can be proven for those of unknown lineage through acknowledgment of paternity or maternity, even if it occurs at the time of impending death, when it is deemed credible by reason or custom, according to Article 44. The judge may also resort to scientific methods for proving lineage, as stated in the second paragraph of the same article. The most significant method nowadays is the use of genetic fingerprinting, which scholars have approved as permissible for proving lineage but not for denying it²⁰.

The nationality law also refers to children of unknown lineage in Article 7, which states: "A child born in Algeria is considered Algerian by birth if:

- The child is born in Algeria to unknown parents, and the recently born child found in Algeria is considered born there unless proven otherwise.

¹⁶ Article 41 of the Algerian Family Code: "The child is attributed to his father when the marriage is legal, and paternity is possible and has not been denied by legitimate means."

¹⁷ Alal, Amal, *The Foundling and its Relation to Parentage*, Journal of Legal and Political Research, Issue Five, December 2015, p. 144.

¹⁸ Executive Decree No. 92-24, dated January 13, 1992, complements Decree No. 71-157, dated June 3, 1971, amended by changing the surname, Official Gazette No. 05, issued on January 22, 1992.

¹⁹ Article 40 of the Algerian Family Code: "Paternity is established by valid marriage, acknowledgment, evidence, marriage of presumption, or any marriage that is annulled after consummation in accordance with Articles 32-33-34 of this law."

²⁰ Ahmed Abdel Ghayyed Hussein, *Legitimacy of Establishing or Denying Paternity through Genetic Testing in Islamic Jurisprudence*, Journal of Sharia and Law College, Tanta University, Vol. 1, Issue 35, 2020, p. 57.

- The child is born in Algeria to an unknown father and a mother whose name is stated on the birth certificate without other information enabling the proof of her nationality."

Algerian nationality law grants Algerian citizenship to both foundling children and children of unknown lineage.

As for the penal code, it does not include the term "unknown lineage" in its texts. However, it punishes anyone who assaults the lineage of a child through crimes related to the violation of the child's civil status rights, including the crime of failure to declare the birth of a child, the crime of not delivering a newborn child (Article 442-3 of the Penal Code), the crime of killing a newborn child (Article 259 of the Penal Code), and crimes related to preventing the verification of the child's identity (Article 321 of the Penal Code).

It is evident that the rights of children of unknown lineage are scattered across several laws. However, it would be better if a specific section were dedicated to children of unknown lineage in the family law, considering that a child always needs a caring family, or if a separate chapter were allocated to them in the child protection law, to facilitate easy reference for judges and relevant parties.

II- Mechanisms for the protection of children of unknown lineage.

In the second paragraph of Article 20 of the Convention on the Rights of the Child, it states: "States Parties shall provide, in accordance with their national laws, alternative care for such a child." According to the third paragraph of the same article, alternative care includes guardianship as provided for in Islamic law, or foster care. It also includes residency in appropriate institutions for child care, while considering the continuity of the child's upbringing and their ethnic, religious, cultural, and linguistic background.

Since adoption is prohibited in Algeria both religiously and legally²¹, we will focus here on studying the system of guardianship and supportive child care institutions.

Firstly, the system of guardianship as a mechanism to achieve alternative care for children of unknown lineage:

Islamic law prohibits adoption due to its potential harms and instead allows for the system of guardianship as an alternative care mechanism. Allah says, "Nor has He made your adopted sons your [true] sons. That is [merely] your saying by your mouths, but Allah says the truth, and He guides to the [right] way. Call them by [the names of] their fathers; it is more just in the sight of Allah. But if you do not know their fathers - then they are [still] your brothers in religion and those entrusted to you. And there is no blame upon you for that in which you have erred but [only for] what your hearts intended. And ever is Allah Forgiving and Merciful." (Quran, Surah Al-Ahzab, verses 4-5).

Despite the Sharia's emphasis on caring for and reforming orphans, it prohibits them from being considered as the actual children of their guardians or taking their lineage. The Family Law, following this approach, states in Article 46 that "adoption is prohibited religiously and legally" and permits the system of guardianship in Articles 116 to 125 of the Algerian Civil Code.

Therefore, we will discuss the definition of guardianship, its conditions, and the effects of the guardianship contract.

The definition of guardianship is provided in Article 116 of the Family Law, which states: "Guardianship is a voluntary commitment to undertake the care, upbringing, and protection of a minor child, similar to the responsibilities of a father towards his biological child, through a legal contract." Therefore, guardianship is a contractual donation in which the guardian commits to assuming the responsibility of a minor child, including their financial support, upbringing, and care, in a manner similar to that of a biological father towards his own child.

From this definition, we can infer the following characteristics of guardianship:

- Voluntary commitment: The guardian undertakes the care of the child of unknown lineage as a voluntary act of benevolence, without any material or moral compensation.
- The guardian's commitment entails providing for the minor child's financial support, upbringing, and care, resembling the concept of custody as defined by the legislator: "caring for the child, educating

²¹ Article 46 of the Algerian Family Law: "Adoption is prohibited both religiously and legally."

them, nurturing them in the religion of their father, ensuring their well-being, health, and moral development.²²

- The child under guardianship can be either male or female, and their lineage may be known or unknown.
- Guardianship is exclusively applicable to minor children and does not include adults who have reached the age of maturity.

2- Conditions of Guardianship

There are specific conditions pertaining to both the guardian and the child under guardianship, as well as conditions related to the guardianship contract.

A. Mandatory Conditions for the Guardian and the Child under Guardianship

Article 118 of the Family Law stipulates the conditions for the guardian as follows:

- The guardian must be a Muslim. Non-Muslims are not allowed to act as guardians for children in Muslim countries. This is because guardianship is considered a communal obligation in Islamic law, and if an abandoned child cannot find someone to be their guardian, it becomes a sin for the entire community.
- The guardian must be of sound mind. Mental capacity is a prerequisite for legal responsibility, and a person who is not of sound mind cannot be held responsible for the care, upbringing, and protection of a minor child. Therefore, a medical certificate verifying their mental and psychological health is required when submitting the application.
- The guardian must be suitable to undertake the responsibilities of the ward. The guardian should possess good character, be trustworthy, and be in good physical and mental health, enabling them to raise and care for the child. Additionally, full eligibility is required, and minors or those lacking eligibility cannot enter into a guardianship contract.
- It is also a practical requirement for the guardian to be married. They must provide a copy of their marriage contract when submitting the guardianship application to the judge. An unmarried individual cannot act as a guardian for a minor child.
- The guardian must be capable of providing for the ward, especially financially. It is necessary for the guardian to have a steady income and a source of livelihood. They should have a family environment in which the child can be raised. The purpose of guardianship is to provide an alternative family for a child of unknown lineage. Therefore, the guardian is requested to submit their salary statement and a copy of their property ownership or lease agreement along with the guardianship application.

As for the conditions related to the child under guardianship, Articles 116 and 118 state the following:

- The child must be a minor, i.e., under the age of eighteen years.
- The child under guardianship can be of unknown lineage, such as an abandoned child, or born out of wedlock or adultery. Alternatively, the child may have known parentage, but due to certain circumstances, the parents are unable to care for the child and relinquish their guardianship rights to the guardian.

B- Mandatory Conditions in the Guardianship Contract

- The guardianship must be established through a legal contract conducted before the Family Court, the Court President, or a notary public²³. The approval to grant guardianship is only given after an investigation is conducted to ensure the fulfillment of the guardianship conditions. This investigation may involve the participation of the Public Prosecution or the Social Welfare Department.
- If the child under guardianship has known parentage, the consent of the parents is required²⁴. However, if the child's parentage is unknown, guardianship can be granted with the approval of the Director of Public Health and Population.

²² Article 62 of the Algerian Family Code: "Guardianship entails caring for the child, educating them, raising them under the supervision of their father, ensuring their protection, and preserving their health and morals."

²³ Article 117 of the Algerian Family Code.

²⁴ Article 117 of the Algerian Family Code.

- The best interests of the child must be considered when entering into or terminating the guardianship contract.

3- Effects of the Guardianship Contract

- The child under guardianship retains their original lineage if it is known. If the child's lineage is unknown, Article 64 of the Civil Status Law mentioned earlier applies. It should be noted that Decree 92-24 mentioned above allows the guardian to bestow their surname upon the child under guardianship.
- The guardian is responsible for the upbringing, care, and financial support of the child under guardianship, similar to a biological parent's obligation towards their own child.
- Guardianship grants the guardian legal authority and all familial benefits and educational opportunities enjoyed by a biological child (Article 121 of the Family Law).
- The guardian manages any assets acquired by the child under guardianship through inheritance, wills, or gifts for the benefit of the child (Article 122 of the Family Law).
- The guardian is allowed to bequeath up to one-third of their own assets to the child under guardianship, while any amount exceeding one-third is subject to the approval of the legal heirs (Article 123 of the Family Law).

4- Termination of Guardianship

Guardianship can be terminated in the following circumstances:

- If the parents or one of them requests the return of the child under guardianship to their custody. In this case, if the child has reached the age of discernment, they have the right to choose. If the child is not of discerning age, the judge will decide on the parents' request, taking into consideration the best interests of the child under guardianship (Article 124 of the Family Law).
- If the guardian relinquishes their guardianship, this must be done before the authority that approved the guardianship, with the knowledge of the Public Prosecution (Article 125 of the Family Law).
- In the event of the guardian's death, the guardianship transfers to the legal heirs if they commit to fulfilling the responsibilities. If they do not commit to it, the authority responsible for care will assume the child's guardianship (Article 125 of the Family Law).
- When the child under guardianship reaches the age of majority (adulthood), as guardianship is intended for minor children. This poses significant challenges in practice, as the child who has been living with a family or a care institution for many years may suddenly be asked to leave once they reach the age of 18. This undermines the care and support provided to the child.

It is worth mentioning that the guardianship system is derived from Islamic law, based on mutual support and solidarity within the community while preserving the rights of the guardian's legal heirs. The child under guardianship does not inherit from the guardian, and their bequest is limited to one-third of the guardian's assets, unlike adoption where the adopted child loses their original identity, is attributed to the adopting person, and competes with legal heirs in inheritance.

Second: Institutions for the Care of Vulnerable Children

If there is no guardian for a child of unknown parentage, the state, based on its international commitment resulting from the ratification of the Convention on the Rights of the Child, is obligated to provide protection for the child in institutions for the care of vulnerable children. This is what the Algerian legislator adopted when establishing institutions for the care of vulnerable children, as outlined in Executive Decree No. 12-04 dated January 4, 2012, which defines their basic model law²⁵. Therefore, we will discuss the definition of this institution and its role in protecting vulnerable children.

1- Definition of Institutions for the Care of Vulnerable Children

The Algerian legislator did not explicitly define institutions for the care of vulnerable children or the term "vulnerable child." However, Article 2 of the aforementioned Executive Decree 12-04 mentions their characteristics as follows: "Institutions for the care of vulnerable children are public institutions

²⁵ Executive Decree No. 12-04, dated January 4, 2012, containing the Model Basic Law for Child Welfare Institutions, Official Gazette No. 05, issued on January 29, 2005.

with an administrative nature and enjoy legal personality and financial independence." Therefore, institutions for the care of vulnerable children possess the following characteristics:

- They are public institutions affiliated with the state: The legislator does not allow the private sector to establish institutions for the care of vulnerable children in order to ensure the protection of this category and prevent their exploitation. These institutions are exclusively public and are under the guardianship of the Minister responsible for national solidarity (Article 3) and are established by decree (Article 4).
- They are institutions of an administrative nature: They are not civil or commercial entities but administrative institutions subject to administrative law.
- They possess legal personality: They have a designated name and headquarters determined by their establishing decree, as well as domicile, nationality, a legal representative, and the capacity to litigate.
- They have financial independence: The director prepares the budget proposals, which are then deliberated by the board of directors (and subsequently sent to the supervisory authority and the Ministry of Finance for approval). The institution's budget includes revenue and expenditure sections. The revenue section consists of grants provided by the state, contributions from local communities, contributions from public and private institutions and bodies, donations, bequests, and all other resources related to the institution's activities. The expenditure section includes administrative expenses, operational expenses, and all necessary expenses to achieve its objectives.
- They have the authority to enter into contracts and agreements and to acquire and dispose of movable and immovable assets. They also have the power to accept or reject donations and bequests.
- Additionally, they receive and provide social care for the vulnerable children until they are placed with a family or reach the age of eighteen.

Therefore, institutions for the care of vulnerable children can be defined as public administrative institutions affiliated with the state. They receive and provide care for vulnerable children until they are placed with a family or reach the age of adulthood.

The tasks of the Emergency Childhood Institution, according to Article 5 of Decree 12-04:

- Receiving and providing care for medically vulnerable children from birth until the age of eighteen, day and night, while waiting for their placement in a family environment.
- Ensuring maternity care through treatment and nursing.
- Ensuring protection through medical, psychological, emotional, and social monitoring, as well as preventive and therapeutic healthcare for the well-being and safety of infants, children, and adolescents.
- Implementing pedagogical and educational care programs.
- Accompanying children and adolescents during the care period to facilitate better integration in academic, social, and vocational aspects.
- Ensuring the physical and intellectual safety of children and adolescents.
- Promoting harmonious development of the personalities of children and adolescents.
- Providing educational follow-up for adolescent children.
- Preparing adolescents for social life.
- Working towards placing children in a suitable environment.

Furthermore, through appropriate measures, the institution can ensure the care and social integration of these children beyond the age of eighteen.

If the medically vulnerable child has a disability, specialized institutions provide care based on their specific psychological, medical, and educational needs, as stipulated in Article 6 of Decree 12-04.

The organization of the Emergency Childhood Care Institution: it is governed by Article 7 of the aforementioned decree:

A) Board of Directors:

- Chaired by the Governor or their representative, the Board of Directors consists of:
 - Representative from the Directorate of Social Activity and Solidarity of the province.
 - Representative from the Directorate of Education of the province.
 - Representative from the Directorate of Health and Population of the province.



- Representative from the Directorate of Vocational Training and Education of the province.
- Representative from the Directorate of Youth and Sports of the province.
- Representative elected by administrative staff of the institution.
- Representatives from associations with a social character operating in the same field as the institution.
- The Board may invite any competent person to assist in its work.
- The Director of the institution attends Board of Directors meetings in an advisory capacity and assumes the role of secretary.

These members are appointed for a renewable term of three years (Article 11 of Decree 12-04). The Board of Directors meets twice a year in regular sessions, called by the Chairperson. It may also convene in extraordinary sessions upon the request of the Chairperson, two-thirds of its members, or upon the request of the supervisory authority (Article 13 of Decree 12-04).

The deliberations of the Board of Directors are not valid unless at least half of its members are present. If the quorum is not met, they shall be summoned again within eight consecutive days for the postponed meeting, and in this case, the deliberations are valid regardless of the number of attendees (Article 14 of Decree 12-04).

Decisions of the Board of Directors are made by a majority vote of the attending members, and in the event of a tie, the Chairman's vote prevails. The deliberations become effective after two-thirds of the days starting from their submission to the supervisory authority, unless a formal objection is raised within this period (Article 15 of the same decree).

B) The Director:

The Director of the Emergency Childhood Care Institution is appointed by a decision of the Minister responsible for National Solidarity. Their duties end in the same manner, and they are responsible for the management and representation of the institution in legal matters and all aspects of its operations. They are also in charge of the institution's budgetary matters (Articles 17-18 of the same decree).

C) The Psychological and Medical-Educational Council:

Article 20 of Decree 12-04 specifies the members of the Psychological and Medical-Educational Council of the institution as follows:

- The Director of the institution serves as the Chairperson.
 - Clinical psychologist.
 - Physician.
 - Nursery assistant or maternal assistant elected by their peers.
 - Specialized educator elected by their peers.
 - Social worker.
 - Assistant responsible for the daily life of the institution elected by their peers, nurse.
- These members are appointed by the Director of the institution for a renewable one-year term. They are tasked with studying and expressing their opinions on matters related to educational activities and programs for emergency childhood care, especially:
- Conducting observation and guidance activities and ensuring their follow-up.
 - Developing and proposing educational, cultural, and recreational activity programs and ensuring their implementation.
 - Proposing all measures that allow for meeting the needs of emergency children and adolescents in the medical, psychological, social, and educational fields.
 - Providing suggestions and recommendations on all matters related to the institution's tasks, organization, and operations²⁶.

This council meets every three months in regular sessions convened by its chairperson. It can also hold exceptional sessions upon request by its chairperson or upon the request of two-thirds of its members. Its deliberations are valid only if at least half of its members are present. If the quorum is

²⁶ Article 19 of Executive Decree No. 12-04 containing the Model Basic Law for Child Welfare Institutions.

not met, the members shall be summoned again within eight days from the postponement of the initial meeting, and in this case, the deliberations are valid regardless of the number of attendees. Thus, it becomes clear that the priority is to place the child in a caring family. If that is not possible, the state provides alternative care for the child in care institutions, which are the emergency childhood care institutions.

Conclusion:

Children of unknown parentage are a part of society that suffers from numerous social, psychological, and economic problems for a sin they did not commit. Therefore, they are in need of international and national legal protection.

Through our study, we have reached a set of results:

- A child is defined as any person who has not reached the age of eighteen.
- A child of unknown parentage is defined as a person who has not reached the age of eighteen and whose paternity is unknown.
- A child of unknown parentage may be a legitimate child abandoned or lost by their parents, or an illegitimate child resulting from adultery or rape.
- A child of unknown parentage has the right to enjoy all the rights afforded to a child with known parentage, including the right to identity and lineage, and the right to care and upbringing in a family environment.
- The Convention on the Rights of the Child emphasizes the provision of alternative care for children of unknown parentage, either through providing a foster family through sponsorship or adoption, or through child care institutions.
- The Algerian legislature is keen on protecting lineage, deriving its provisions from Islamic law.
- Mechanisms for protecting children of unknown parentage in Algerian legislation are in line with the provisions of the Convention on the Rights of the Child, while also adhering to the principles of Islamic law. The legislature has adopted the sponsorship system to provide an alternative family for the child, along with supportive child care institutions as an alternative means of caring for children who have not been sponsored.
- Unlike the Convention on the Rights of the Child, the Algerian legislature does not recognize the lineage of a child born out of adultery, rape, or apostasy, even if the biological father acknowledges paternity, due to the absence of a legal marriage.
- Some scholars of Islamic law permit the affiliation of an illegitimate child to their biological father, considering it in the best interest of the child.
- Child care institutions are required to release the child when they reach the age of eighteen, without any other institution available to protect them.

Based on that, we present the following suggestions:

- Consider the jurisprudential school that permits the affiliation of an illegitimate child to their biological father, as it serves the best interest of the child.
- Utilize genetic fingerprinting to establish the lineage of neglected, abandoned, and foundling children.
- Expand protection to include the child even after reaching the age of eighteen, to support their education and assist them in obtaining employment or a source of livelihood.
- It would be beneficial to consolidate specific provisions for the protection of children of unknown parentage, rather than having scattered provisions in multiple laws.
- Strengthen penalties for anyone involved in the existence or abuse of a child of unknown parentage.
- Raise awareness among members of society to treat this group equally to children with known parentage, particularly through religious sermons in mosques, social media platforms, organizing awareness events and study days to raise awareness about this socially marginalized group.
- Encourage the establishment of child care centers and orphanages by individuals, by providing free land to those interested in building orphanages or child care centers, along with tax exemptions and simplification of administrative procedures.
- Encourage the establishment of centers to accommodate young adults after they reach the age of eighteen, to allow them to complete their education and acquire means of livelihood.

- Provide monthly allowances to orphaned young adults after they reach the age of eighteen until they find employment or a job, and assist them in obtaining such opportunities.

I. Sources

1. The Holy Quran.

2. Lexicons:

- Ibn Manzur, Abu al-Fadl Muhammad bin Mukarram. *Lisan al-Arab*, Vol. 11. Dar Sader, Beirut, 1993.
- Omar, Ahmed Mukhtar. *Mu'jam al-Lughah al-Arabiyyah al-Mu'asirah*, Volume 2. Alam al-Kutub, Cairo, 2008.

3. Legal Texts:

a) Ratified Conventions:

- United Nations General Assembly Resolution No. 44/25, dated November 20, 1989, containing the Convention on the Rights of the Child, which entered into force on September 2, 1990, in accordance with Article 49. Algeria ratified it through Legislative Decree No. 92-06, dated November 17, 1992, including interpretative statements on the Convention on the Rights of the Child, Official Gazette No. 91, issued on January 23, 1992.

b) Constitution:

- Presidential Decree No. 20-442, dated December 30, 2020, regarding the issuance of the constitutional amendment approved in the referendum on November 1, 2020. Official Gazette No. 82, issued on December 30, 2020.

c) Legislative Texts:

1. Order No. 66-156, dated June 8, 1966, containing the Penal Code, amended.
2. Order No. 70-20, dated February 19, 1970, related to civil status, amended by Law No. 14-08, dated August 9, 2014. Official Gazette No. 49, issued on August 20, 2014.
3. Order No. 70-86, dated December 15, 1970, containing the Algerian Nationality Law, amended by Order No. 05-01, dated February 27, 2005. Official Gazette No. 15, issued on February 27, 2005.
4. Order No. 75-58, dated September 26, 1975, containing the Civil Code, amended.
5. Law No. 84-11, dated June 9, 1984, containing the Family Law, amended by Order No. 05-02, dated February 27, 2005, amending the Family Law. Official Gazette No. 15, issued on February 27, 2005.
6. Law No. 15-12, dated July 15, 2015, relating to the protection of the child. Official Gazette No. 39, issued on July 19, 2015.
7. Executive Decree No. 92-24, dated January 13, 1992, complementing Decree No. 71-157, dated June 3, 1971, amended by changing the last name. Official Gazette No. 05, issued on January 22, 1992.
8. Executive Decree No. 12-04, dated January 4, 2012, containing the Model Basic Law for Childcare Institutions. Official Gazette No. 05, issued on January 29, 2005.

II. References

1. Books:

1. Ahmed Mohamed. *The Concept of Lineage in Islamic Law and Jurisprudence*. 1st edition. Dar Al-Baath, Constantine, Algeria, 1983.

2. Scientific Journals:

1. Ahmed Abdel Ghied Hussein. *The Legitimacy of Establishing or Denying Lineage through Genetic Fingerprinting in Islamic Jurisprudence*. *Journal of Sharia and Law*, Tanta University, Vol. 1, Issue 35, 2020.
2. Amal Alal. *Illegitimate Children and their Relationship to Lineage*. *Journal of Legal and Political Research*, Issue 5, December 2015.
3. Sarah Ayadi. *Legal Protection for Children of Unknown Lineage in Islamic Law and Algerian Legislation*. *Tadweer Journal of Social Sciences*, Volume 11, Issue 01, Baji Mokhtar University, Annaba, 2018.

3. Judicial Decisions:

- Supreme Court, Personal Status Chamber, Decision No. 69798, issued on April 23, 1991. *Judicial Journal*, Issue 04, 1994, p. 54.