

LEGAL MECHANISMS FOR THE PROTECTION OF CHILDREN FROM DOMESTIC VIOLENCE IN ALGERIAN LAW

Dr. Sana AMMARI¹, Dr. Latifa BAHA²

¹contracted Professor, Martyr Hama Lakhdar University of El Oued, Algeria,

ammari_sana@yahoo.com

²contracted Professor, Martyr Hama Lakhdar University of El Oued, Algeria,

Baha.latifa22@gmail.com

Received: 10/03/2024

Accepted: 30/07/2024

Published: 14/08/2024

Abstract:

The phenomenon of violence against children has emerged in recent years as one of the most complex and significant social challenges globally. It involves the deliberate use of force and authority, threatening individuals belonging to the child category, whether in the form of verbal, physical, sexual abuse, mistreatment, or neglect.

This results in harm to the physical, psychological, social, and educational well-being of the child. Despite concerted efforts to confront and reduce all forms of violence against children, both internationally through conventions that ensure and guarantee children's rights, and nationally through legislative texts, the issue continues to escalate due to family disintegration and the use of inappropriate child-rearing practices.

This study aims to shed light on the phenomenon of domestic violence directed against children, highlighting the dangers of such violence, which can lead to lifelong behavioral disorders. It also seeks to understand the legal provisions that ensure the protection of children, prompting a further investigation into the effectiveness and efficiency of these legal guarantees.

Keywords: Psychological Violence, Verbal Abuse, Judicial Protection, Social Protection.

INTRODUCTION:

The family is the foundational unit in human and societal development, playing a pivotal role in shaping an individual's personality and behavior throughout different life stages. As a social institution, the family performs social, educational, and psychological functions, through which children acquire the general standards imposed by the prevailing cultural patterns in society.

This underscores the importance of parents' role in early socialization and the significant imprint they leave on their children's personalities. Children need a family that provides for their psychological, social, cultural, and economic needs through human interaction, not through demeaning, insulting, beating, neglecting, or isolating, which diminishes the family's importance and can pose a greater danger to children than any other environment. This is referred to as domestic violence directed against children.

Domestic violence directed towards children involves direct and indirect actions by parents or guardians aimed at inflicting psychological, verbal, physical, or sexual harm. The child and the legal protection accorded against domestic violence raise several questions concerning the definition of 'child' and 'violence' and the means of legal protection provided.

Thus, the issue at hand is: How effective and efficient are the legal mechanisms established by the legislator to protect children from domestic violence? Answering this question requires addressing it in two parts through the provisions of Law 12-15 related to child protection, focusing firstly on defining the concept of domestic violence against children, and secondly, on the legal mechanisms for child protection.

First Chapter:

The Concept of Domestic Violence Directed Against Children

The issue of domestic violence holds particular importance for both the state and society due to its tangible negative effects on families, communities, and public order.

First Section: Definition and Causes of Domestic Violence Directed Against Children

Before discussing the phenomenon of domestic violence against children, it is essential to understand some basic concepts.

First Subsection: Definition of Domestic Violence

Firstly: Definition of a Child

A child, linguistically male or female, signifies a young age beginning from birth until adulthood as stated in the Quranic verse, "Then We bring you forth as infants" (Surah Al-Hajj, verse 5).¹

Despite variations regarding the maximum age defining childhood before one becomes a fully mature adult, according to Islamic law, this is marked by reaching the age of puberty; if signs of puberty are not evident, the age is set at eighteen years according to the Maliki school (Ouda, 2005, p. 51).² In contrast, the majority of European and Arab legislation set this age at 18 years (Charif Sayed, p. 4).³

Furthermore, the Convention on the Rights of the Child, adopted by the UN General Assembly on November 20, 1989, and ratified by Algeria under Legislative Decree 06-92 dated November 17, 1992, specifies the child's age as 18 years.⁴

Before this, legislative specifications about the age of a child varied between 18 to 19 years, the age of civil majority being 19 years,⁵ the age for marriage also 19 years,⁶ and the age of criminal responsibility set at 18 years.⁷

Lastly, the age of criminal responsibility was definitively set at eighteen years in Article 2 of the Child Rights Protection Law, thereby aligning with the age specified in the 1989 UN Convention on the Rights of the Child. Article 2 of the Child Rights Protection Law states:

"For the purposes of this law, 'child' refers to any person who has not yet reached the full age of eighteen (18) years, the term 'minor' has the same meaning."⁸

Secondly: Definition of Violence

Violence is characterized as "intentional behavior targeting an individual or entity, which can be verbal or non-verbal, encompassing physical or moral confrontation, often accompanied by threatening expressions and driven by instinctual motives" (Achraf Abdel Fattah, 2007, p. 10).⁹

This term also extends to actions intended to damage others or their property (Hassan, 2006, p. 62).¹⁰

Furthermore, violence manifests as a forceful tactic used to coerce an individual or group into executing specific actions desired by another, often taking the form of physical acts like hitting or other methods such as social pressure. The legitimacy and acceptance of such violence are contingent upon societal recognition (Al-Tayr, 1997, p. 14).¹¹

Thirdly: Definition of Domestic Violence

Domestic violence, as defined by Bery (1995), is "the utilization of force unlawfully by one adult family member against another, frequently ensnaring children as common victims within the household."¹²

It also encapsulates physical or psychological assaults that result in physical or moral injuries, which are contrary to the law and subject to legal penalties (Hani, Al-Batayna, 2004).¹³

This definition underscores that domestic violence spans all violent interactions within a family context, perpetrated by any family member who holds authority or guardianship over the victim. Thus, it includes maltreatment among all family members, potentially occurring between spouses, from parents towards children, children towards parents, and even involving grandparents.

Definition of Domestic Violence Directed Against Children

Specifically, domestic violence against children involves "the repeated application of physical or psychological force by one or both parents against minor children. This can manifest through deliberate beating, severe and unregulated physical punishment, continuous mockery and insult of the child, neglect of their care, or failure to provide essential health, physical, psychological, and social needs.

Additionally, it includes exploiting children by assigning tasks beyond their capacity" (Naif ben Mohammed Al-Morawati, 2010¹⁴). It also encompasses "inflicting physical harm and damage on the child by their parents or caregivers through severe beating."

Second Subsection: Causes of Violence against Children:

- **Economic Causes:** Related to the difficult economic conditions faced by families due to rising poverty and unemployment rates. Lower-income families struggle to meet the essential needs of their children amidst rising prices, increased costs, expenses, and various family demands. The changing social status of the family in society poses a threat by pushing family members to acquire money, regardless of suitable qualifications or preparedness, resulting in some of the most severe forms of violence and material deprivation (Mohammed Mahmoud Al-Mahdi, 1997).¹⁵
- **Social Causes:** Such as family disintegration, marital disputes, family conflicts, and polygamy.
- **Legal Causes:** Shortcomings in legislation concerned with child protection and the non-implementation of laws.
- **Lack of Awareness:** Absence of awareness about proper upbringing methods.
- **Influence of Media:** The role of media and programs that encourage violence.

Second Section: Forms of Domestic Violence Directed Towards Children

First Subsection: Physical Violence

Physical violence consists of actions that are overtly abusive and may involve punching, biting, burning, or employing other methods that inflict harm on a child. These actions may not always stem from intent to harm; sometimes they occur as a result of excessive discipline or physical punishment that is unsuitable for the child's age. Physical abuse specifically refers to the utilization of force that is both inappropriate and detrimental to a child's development (Dhiab Al-Badayna, 2000, p. 12).¹⁶

Physical assault on a child can result in a variety of injuries such as bruises, fractures, wounds, scratches, cuts, bites, and other physical harms. It is also classified as assault when violence exerted by a child's parent or a relative leads to physical damage.

This can include being hit with an object or a fist, slapping, burning, poisoning, strangling, drowning, kicking, and shaking. These actions are considered assaults regardless of whether they result in visible injuries or fractures (SawsanChokr Al-Jalabi, 2006, p. 62).¹⁷

The issue of physical assault is specifically addressed in Article 02 of the Child Rights Protection Law, which states: "Mistreatment of a child, especially by exposing them to torture and assault on their physical integrity..."

Second Subsection: Psychological and Verbal Violence

Psychological and verbal violence includes behaviors or actions that inflict psychological harm and affect a child's emotional state, such as mockery, reprimanding, insulting, blaming, terrorizing, showing contempt, using obscene language, expulsion from the home, and house arrest.

Unlike physical violence, these actions may not leave visible marks, but they can cause profound emotional and psychological damage, shaping deep-seated tragedies within the child's personality. The legislative framework addressing psychological violence is found in Article 2 of the Child Protection Law, which articulates: "Mistreatment of the child... or any act that involves cruelty likely to affect the child's emotional or psychological balance."

Neglect

Neglect is defined as the failure to fulfill a child's basic needs, which can manifest as severe and detrimental neglect associated with both physical and psychological violence. This neglect can be physical-emotional or educational. Such conditions are legislated against in Article 2 of the Child Protection Law, which mentions: "Exposing the child to neglect or vagrancy." This form of neglect represents a significant aspect of child mistreatment that intersects with other forms of abuse, emphasizing the comprehensive nature of child protection laws.

Third Subsection: Sexual Assault

Sexual assault constitutes coercing the victim, regardless of gender, to engage in sexual acts or perform explicit sexual activities with the perpetrator. Rape is viewed as the most egregious form of sexual assault within the family context, often perpetrated under threats of harm should the victim fail to comply with the perpetrator's demands.

The legislative framework acknowledges sexual assault as a critical risk to children, as articulated: "Sexual exploitation of the child in various forms, including exploitation in pornography and prostitution, and involving them in sexual performances."

Child Labor

Forcing a child to work constitutes a form of violence against children, condemned both by law and ethical reasoning. Children require education and recreational activities to develop personal and cognitive abilities essential for healthy growth. Additionally, a child's physical capabilities are generally insufficient for laborious tasks.

Article 02 of the Child Protection Law addresses this issue by denouncing the economic exploitation of children, particularly through employment or tasks that hinder their educational pursuits or endanger their health or physical and moral safety.

In certain scenarios, children are compelled to beg, aiming to evoke sympathy and financial support from the public. Even in instances of refusal, children may be coerced into begging by their guardians. This practice instills various deviant behaviors in children, including trickery, deceit, lying, and stealing. The legislator identifies begging as a perilous situation for children, as stated in Article 02 of the same law: "Begging by the child or exposing them to begging."

Second Chapter:

Legal Mechanisms for Protecting the Child from Domestic Violence

It is unequivocally acknowledged that domestic violence directed against children represents a detrimental phenomenon that contradicts both Islamic and secular laws. The family, as the fundamental societal unit and the primary environment for child development, must be safeguarded from all forms of violence, harm, physical or moral abuse, sexual abuse, neglect, or delinquency leading to mistreatment or exploitation.

In response, the legislator has enacted the Child Protection Law 15-12, implementing necessary legal measures to ensure the security, safety, and stability of children by preventing domestic violence through preemptive actions and pursuing reformatory and therapeutic solutions post-occurrence.

Law 15-12 concerning child protection delineates the concept of a child within contexts that signify potential threats to the child's health, morals, upbringing, security, living conditions, or behavior. It highlights scenarios that are simultaneously indicative of the violence inflicted upon children. To mitigate these risks, the legislator has established primarily preventive protection measures, reflected in social protection policies, and, depending on whether the child is a victim or an offender, judicial protection measures have been allocated.

Second Section: Social Protection

Social protection is institutionalized at the national level through the creation of a national body for the protection and education of children, led by a National Commissioner appointed by decree. Operating under the Prime Minister's authority¹⁸, this entity is responsible for devising national and local programs to safeguard and promote children's rights.

It coordinates with various stakeholders, engages in awareness, information, and communication activities, supports research and education in the realm of children's rights, offers advice on national legislation impacting children, and fosters the engagement of civil society organizations. Additionally, this body handles notifications concerning children from the public, all administrative branches, and individuals involved in children's welfare.

Notifications containing criminal elements are escalated to the Minister of Justice, who then instructs the appropriate prosecution authorities to initiate legal action. An annual report detailing the state of children's rights is compiled and presented to the President of the Republic.¹⁹

On the local scale, social protection is managed by open environment services, tasked with monitoring at-risk children. These services receive reports from the child or their legal representative, the judicial police, governors, municipal council heads, or any public entity involved in child protection, including social workers, educators, teachers, and doctors, as well as natural or legal persons.

The open environment services may also proactively take specific preventive measures, executing them through a protocol agreement signed by all stakeholders, including the child, if aged 13 or older, and their legal representative. If consensus is not achieved or the agreement fails, the matter is escalated to the competent juvenile judge.

Second Section: Judicial Protection

Judicial protection is applied in two key scenarios: first, when a child is at risk of committing an offense, and second, when a child is a victim of an offense. The Child Protection Law outlines procedures for protecting children through the intervention of the juvenile judge, who makes decisions prioritizing the child's best interest.

This may include maintaining the child within their family or entrusting them to a custodial parent, a relative, or another trustworthy family. The juvenile judge, located at the child's place of residence or domicile, or in the absence of these, where the child was found, takes charge based on petitions from the child or their legal representative, the public prosecutor, local governors, municipal council heads, open environment services, associations, or public bodies focused on child welfare. The juvenile judge can also act autonomously and is empowered to receive verbal notifications from the child.²⁰

The juvenile judge conducts a thorough evaluation of the child's personality through social research and medical, mental, and psychological examinations, alongside behavior monitoring. Based on the available evidence, the judge may either implement or disregard these measures. This judge also gathers all pertinent information and reports concerning the child's circumstances and listens to statements from all relevant parties, utilizing the services of the open environment as needed.²¹

In addition, the Algerian legislator has provided criminal protection for children as victims by criminalizing numerous actions in Chapter Five "Penal Provisions," from Article 133 to Article 144, which outlaws all illegal behaviors targeting children.

First Subsection: The Crime of Using Violence Against a Child

Article 142 provides that any person responsible for the upbringing or care of a child within the centers specified in this law or within educational institutions who uses violence against a child in accordance with the Penal Code provisions will be penalized.

This crime is considered specific based on the fact that the legislator has regulated such acts under the Penal Code as intentional acts of violence starting from Article 264, thus this provision is specific to a particular category.

1. Elements of the Crime:

A. Material Element:

The criminal's behavior is manifested through the use of violence, which means any assault on a person causing either minor or severe physical effects or causing distress or terror psychologically. The crime exists regardless of whether the impact is physical or psychological, but it is realized through several forms, most importantly:

- **Hitting:** Any behavior that exerts pressure on the victim's body tissues without reaching the extent of cutting or tearing. (Mohamed Zaki, 2007, p. 533)²²
- **Wounding:** Considered a wound if it results in cutting or tearing the tissues of the victim's body, and includes bruises, cuts, tears, and even fractures, bites, and burns. (Ahsan Bousguia, 2005, p. 48)²³

B. Specific Element of the Crime:

The act must be committed by a person responsible for the upbringing or care of the child, and it should occur within specialized centers or educational institutions designated for child care.

C. Mental Element of the Crime:

The crime is considered intentional, requiring general criminal intent, which includes knowledge and will.

2. Punishment for the Crime of Using Violence Against a Child:

Originally considered a misdemeanour, the penalty is increased under aggravated circumstances to a severe misdemeanour, and at times further enhanced to a felony depending on the severity.

Second Subsection: Crime of Violating a Child's Privacy: Article 140 of Law 15-12 states, "Anyone who infringes or attempts to infringe on a child's private life by publishing or broadcasting texts and/or images by any means that could harm the child is punishable by imprisonment from one to three years and a fine from 150,000 DZD to 300,000 DZD."

1. Elements of the Crime:

A. Material Element:

The legislator has mentioned some forms of the material element of this crime, such as publishing, which means informing others about communications or images concerning the child. However, the method of publication is not specified, allowing the text flexibility to adapt to societal developments through the use of the term "or any means."

B. Mental Element of the Crime:

For the crime of violating a child's private life to occur, general criminal intent is required, which is the perpetrator's intention to harm the private life of the child, knowing that this infringes upon a legally protected interest. Additionally, the specific intent to cause harm to the child is required, referring here to psychological damage.

2. Punishment for the Crime of Violating a Child's Private Life:

If the crime is fully established and the perpetrator is criminally responsible, and the victim is a child, the punishment is imprisonment from one to ten years and a fine between 150,000 DZD to 300,000 DZD.

Article 269 of the Algerian Penal Code affords specific criminal protections to safeguard the physical integrity of children, stipulating: "Anyone who intentionally wounds or hits a minor under sixteen years of age, or intentionally deprives them of food or care to the extent that it endangers their health, or commits any other act of violence or aggression against them, except for minor injuries, is punishable by imprisonment from one to five years and a fine from 500 to 5,000 DZD."

The Algerian legislature acknowledges the profound influence parents have on their children's personalities and the pivotal role they play within the family. Consequently, behaviors that pose a significant risk to a child's health or morals are criminalized.

Article 330, paragraph 03 of the Algerian Penal Code provides: "A parent who exposes the health, security, or morals of their children, or one or more of them, to serious risk by mistreating them, setting a bad example such as habitual drunkenness or misconduct, or by neglecting their care or failing to provide necessary supervision, whether parental authority has been legally removed or not, is punishable by imprisonment from two months to one year and a fine from 25,000 to 100,000 DZD."

- **Crime of Indecency Towards a Child**

Article 335 of the Penal Code addresses indecency, declaring: "Anyone who commits an act that violates modesty against any person, male or female, without violence, or attempts to do so, shall be punished with imprisonment from five to ten years. If the crime is committed against a minor under the age of sixteen, the perpetrator shall be punished with imprisonment from ten to twenty years."

- **Crime of Begging**

Article 195 bis of the Penal Code focuses on the exploitation of minors in begging, stating: "Anyone who uses a minor under 18 years of age for begging or exposes them to begging shall be punished with imprisonment from six months to two years. The punishment is doubled when the perpetrator is a parent or someone with authority over the minor."

CONCLUSION

From the analysis above, it is evident that the Algerian legislator has prioritized the welfare of children by instituting a comprehensive set of procedural rules and safeguards. These must be adhered to and respected in interactions with children, as delineated in the Child Protection Law 15-12. These rules are uniquely designed and targeted, aiming to ensure the protection and development of the child in ways that consider both the particular sensitivities of their physical and mental development.

In this context, we recognize two paramount interests that merit protection: firstly, the societal interest, which involves suppressing behaviors that undermine societal stability and order, represented through the family as the cornerstone of society and the natural milieu for a child's development; secondly, the child's own interest, which necessitates appropriate care and guidance due to their dependence on such support. In this regard, the legislator has adeptly achieved a balance by establishing specific safeguards for the child, carefully weighing their needs against the broader societal interests.

In summary, the examination of Law 15-12 concerning the protection of child rights reveals that:

- The Algerian legislature has embraced the principle of the child's best interest, drawing inspiration from the 1989 United Nations Convention.
- The law introduces new provisions that prioritize the child's welfare, addressing scenarios where a child is in danger, including rights to education and care.
- Law 15-12 ensures specific safeguards for minors, including the right to have a parent or guardian present during investigative sessions, the right to legal representation, and the right to mediation.

The law, while providing foundational support for child protection, demonstrates several critical limitations:

- Lacks the necessary protection for the child's rights from the early stages of development, from pregnancy to childhood, in terms of care, upbringing, provision, and education.
- Fails to reinforce the natural family environment which is crucial for its role because protecting the child involves protecting the society from social diseases and the family from disintegration.
- Relies on judicial mechanisms to solve problems instead of preventive mechanisms to avoid their occurrence.
- Lacks methods and ways to protect children from dangers in the family and school environment, such as physical or psychological violence, child labor, begging, murder, and rape.

RECOMMENDATIONS AND SUGGESTIONS:

- Provide legislation and laws to protect children from domestic violence that align with societal values.
- Activate mechanisms to protect children from domestic violence through the role of the family, school, society, and state.
- The cultural, religious, and social systems should play a role in media and awareness of children's rights within the family environment.
- Enhance financial benefits for families to protect children from delinquency by ensuring means for a decent living including employment and housing.
- Allocate spaces and recreational centers for children.
- Combat all forms of violence against children through school curricula and media.
- Activate the role of places of worship in spreading religious awareness to deter violence against children.
- Employ the expertise of psychologists and social workers, especially in primary education, to reduce domestic violence against children.
- Provide specialized centers for the protection of children abused by their families.
- Foster a culture of dialogue among parents, as well as compassion and tolerance towards their children.
- Enable the state's role through monitoring media content and its influence on behavior and morals.
- Encourage media to discuss domestic violence against children.
- Strictly enforce the law against anyone violating children's rights.

Footnotes:

¹Verse 5, Surah Al-Hajj.

²Abdelkader Ouda, *Islamic Criminal Legislation*, Vol. 1, Dar Al-Turath Library, Cairo, 2005, p. 51.

³Cherif Sayed Kamel, *Criminal Protection of Children*, 2nd Edition, Dar Al-Nahda Al-Arabiya, Cairo, p. 4.

⁴Article 1 of the Convention on the Rights of the Child of 1989, issued by the United Nations General Assembly under Resolution No. 25/44, dated November 20, 1989.

⁵Article 40 of the Civil Code, Ordinance No. 58-75, dated Ramadan 20, 1395 AH, corresponding to September 26, 1975, including the amended and supplemented Civil Code, Official Gazette, No. 78, issued on September 30, 1975.

⁶Article 7 of the Family Law, Law No. 11-84, dated June 9, 1984, amended and supplemented by Ordinance 02-05, dated February 27, 2005, including the Family Law, Executive Decree No. 06-154, dated May 11, 2006.

⁷Article 442 of the Code of Criminal Procedure, Law No. 155-66, dated Safar 18, 1386 AH, corresponding to June 8, 1966, including the amended and supplemented Code of Criminal Procedure.

⁸Law No. 12-15, dated Ramadan 28, 1436 AH, corresponding to July 15, 2015, related to Child Protection, Official Gazette, No. 39, p. 5.

⁹Achraf Abdel Fattah Abu El-Magd, *Violence Against Children: Causes, Challenges, and Confrontation*, Symposium on Modern Trends in Preventing Child Delinquency, Police Academy, Cairo, 2007, p. 10.

¹⁰Hoda Hassan, *Diabetes and Its Relation to Some Psychological Factors and Personality Traits*, Journal of Social Sciences, Kuwait University, Vol. 34, No. 1 (2006), p. 62.

¹¹Mustafa Omar Al-Tayr, *Family Violence*, Naif Arab Academy for Security Sciences, Riyadh, 1997, p. 14.

¹²Berry, D. B. (1995). *The Domestic Violence: Source Book Everything You Need to Know* (3rd). Lowell House, NTC, Contemporary Publishing Group, Inc., Los Angeles, U.S.A.

¹³Abdel Jawad Hani, Mohammed Al-Batayneh, *Characteristics of Domestic Violence Victims and Perpetrators in Jordan*, Higher Council for Science and Technology, Amman, Jordan, 2004.

¹⁴Naif ben Mohammed Al-Morawati, *Domestic Violence*, Arab Journal of Security Studies and Training, Naif Arab University, Riyadh, Vol. 26, No. 51, Riyadh, 2010.

¹⁵Mohammed Mahmoud Al-Mahdi, *Introduction to Social Welfare Legislation*, University Modern Office, Alexandria, 1997, p. 224.

¹⁶Dhiab Al-Badaina, *Child Abuse: The Forgotten Victim*, Journal of Police Thought, Issue (11), Kingdom of Saudi Arabia, 2000, p. 12.

¹⁷Sawsan Chakir Al-Jalabi, *Children's Psychological Problems and Assistance Methods*, 1st Edition, Dar Raslan, Damascus, (2006), p. 69.

¹⁸Article 11 of Law 15-12 related to Child Protection.

¹⁹Article 13 of Law 15-12 related to Child Protection.



²⁰Article 32 of Law 15-12 related to Child Protection.

²¹Article 34 of Law 15-12 related to Child Protection.

²²Mohammed Zaki Abu Amer, *Penal Code (Special Section)*, New University House for Publishing, Alexandria, 2007, p. 533.

²³Ahsan Bousaguia, *Summary of Special Criminal Law, Part One (Crimes Against Persons and Property)*, Dar Houma for Printing, Publishing and Distribution, Algeria, 2005, p. 48.