

The Child And The Algerian Revolution In A Contemporary Legal Reading

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Abstract:

This article examines the legal status of children during the Algerian Revolution from a contemporary legal perspective. It explores the dual role of children as both active participants and victims of war, highlighting their involvement in military and civilian capacities. The study assesses the extent to which international humanitarian law and human rights law provided legal protection to Algerian children under colonial rule, addressing issues such as forced displacement, recruitment, and war crimes. Additionally, it evaluates the legal implications of violations committed against children and their recognition as protected persons under international law. The article further discusses how these violations constitute breaches of fundamental legal principles, reinforcing the necessity of historical legal accountability. Ultimately, this study contributes to the broader discourse on war crimes and the enduring impact of conflict on children's rights.

Keywords: Children, Algerian Revolution, international humanitarian law, children's rights, civilian protection, war crimes, human rights violations, colonial occupation, legal status, international.

Introduction

When discussing the glorious War of Liberation, it is imperative to emphasize that it was, above all, a truly popular revolution, where all Algerians, from various social strata, rose up to drive it forward. It did not distinguish between the old and the young, or between the strong and the weak¹. Moreover, no one can deny that the law was, and still is, in favor of the Algerian revolution in all its circumstances, details, and actors, including the 'children' category.

As a legal principle states: rights require defense, while humanity requires protection. The Algerian child was not left to his innocence or his age. Some had their fatherhood and/or motherhood stolen and were deprived of their children, others had their kinship stolen and were deprived of one or both parents, and others had their innocence and humanity stolen, thus being deprived of their dignity, safety, and security. These are the scenes that affected the children of Algeria during French colonialism. This is why we are prompted to raise a series of questions, to which we will provide answers from a specific legal perspective, with defined frameworks and contexts:

What role did the Algerian child play in the liberation revolution?

What was the legal status they enjoyed?

What kind of rights were established for them, and which should have been guaranteed to every child?

I- The Various Roles Played by Children During the Liberation Revolution

1. The Child as an Essential Actor Despite the Circumstances: Their Roles in Direct and Indirect Participation

Experience, as witnessed or recounted by those who lived through it, has shown that there were numerous reasons that made the Algerian child during colonization a significant actor, embodying both suffering and heroism.

Children living through armed conflict develop a sense of vulnerability and fragility², which often drives them to join military forces they perceive as their protective shield for themselves and their families, and as a source of empowerment.

Their voluntary involvement can also be explained as a form of retaliation for the loss of their families, their orphanhood, forced displacement, exile, or forced separation. Additionally, the matter may have a cultural dimension, as participation in military activities is seen as a symbol of heroism alongside military leaders, where wielding a weapon becomes a testament to strength and resilience.

¹ As expressed by the freedom fighter and writer Mohamed Salah Seddik: "Children of the revolution are classified into two categories: children born in the 1940s, whose childhood coincided with the outbreak of the revolution and some of whom participated in its later years, and children born in the 1950s, who remember the events of the revolution as witnesses to the horrors of the Liberation War. Their testimonies outlined the features of French colonialism and recount the suffering of children during those horrors: they were children whose childhoods were stolen, and whose dreams were taken away," cited from the book *Children of the Revolution... Children Without Childhood*, previously referenced, p. 236

² See Dubois: "Vulnerability is determined by the set of combined capabilities in such a way as to produce a capacity for resilience of individuals or societies in the face of risks," (in Ballet, Dubois, and Mahieu, 2005, p. 23).

Furthermore, participation may be attributed to social and economic reasons rooted in the struggle for survival and support in the face of unemployment, the search for sustenance, or escaping certain conditions. For instance, some girls joined the army or entered early marriages to avoid falling into the hands of the enemy and being exploited³.

Finally, it is important to highlight cases where colonizers used children, particularly those aged 15 and older, and even many as young as seven or eight. These children were kidnapped from the streets, their homes, or schools and forcibly coerced into participating in military operations, serving the colonizers against their homeland. This represented a form of psychological destruction and forced detachment from their national identity, compelling them to betray it, as evidenced by vivid historical accounts. However, such cases remain exceptions.

It is irrelevant, even insignificant, to distinguish between a child who voluntarily participated and one coerced into joining the armed forces. In either case, the child remains a unique individual. It is insufficient to claim that the Algerian child participated in the war merely because they carried one or several types of weapons (grenades, Kalashnikovs, etc.). Their contribution extended indirectly as cooks, messengers, couriers, spies, nurses, or providers of specific services.

2. The Child as a Victim of War

The Algerian child during the liberation revolution was a victim of the colonizer and its brutal and inhumane practices, evident through:

A. Refugee Children

One of the colonizer's most heinous practices was the forced displacement of villagers and rural inhabitants into detention camps and centers of exile and death. These places were overcrowded with vulnerable and fragile groups, primarily children. In addition, the issue of forced displacement and seeking refuge in neighboring countries to escape killing, torture, and persecution was one of the most burdensome challenges for the revolution. It complicated its goals of resistance, defending the homeland, and ensuring the safety and protection of the population, especially with the growing number of displaced individuals⁴.

Often, the dire conditions and deteriorating living standards led to homelessness and death. This raises the question: Did refugee children truly have a legal status that guaranteed them protection?

It is worth noting that a refugee is a person protected under international human rights law, particularly the 1951 Refugee Convention, which defines a refugee as:

"Any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of their nationality and is unable or, owing to such fear, unwilling to avail themselves of the protection of that country; or any person who, not having a nationality and being outside the country of their former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it."

However, this definition is vague and less comprehensive, and more importantly, it does not provide protection for refugees in the context of war and occupation.

On the other hand, Article 1(2) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa offers a broader definition. It recognizes refugees as: "Any person compelled to leave their habitual residence due to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of their country of origin or nationality, in search of refuge elsewhere outside their country of origin or nationality."⁵ So, Africa had a deeper understanding of the relationship between refuge and the circumstances of wars and the resulting problems.

This perspective aligns with the 1948 Universal Declaration of Human Rights, which allows war and occupation to be considered forms of persecution that force people to flee for their lives. Article 14 of the declaration affirms: "Everyone has the right to seek and enjoy asylum in other countries in the face of persecution."

While the 1951 Refugee Convention makes the criteria and procedures for obtaining refugee status a purely procedural matter, the practice has led to broader interpretations. These interpretations allow refugees to receive the necessary protection and ensure they are afforded a minimum standard of treatment that states must respect.

Accordingly, international humanitarian law interprets the concept of "refugees" broadly within the context of armed conflicts, considering them as "civilians" displaced due to such conflicts, unable to access protection. It is important to emphasize that refugees should not automatically be granted this status under national laws. Rather, their right to receive international protection and assistance is affirmed as long as the conflict persists. They are entitled to safeguards to ensure their survival, the most significant of which include: humanitarian assistance, non-refoulement (prohibition of expulsion), integration, and

³ Action for the Rights of the Child, an inter-agency initiative with UNHCR, Save the Children, UNICEF, OHCHR, the International Rescue Committee, and Terre des Hommes. <http://www.savethechildren.net/arc/files/french/main.html>

⁴ The number of refugees was recorded at 60,000 in 1957, then increased by 70,000 the following year, and later doubled to 150,000, and so on. Author of "Children of the Revolution... Children Without Childhood," previous reference, pp. 141-154.

⁵ This convention was adopted by the Organization of African Unity on September 10, 1969 (45 UNTS 1001) and entered into force on June 20, 1974.

the prohibition against considering refugees as enemies solely based on their nationality, even if they hold the nationality of the opposing party in the conflict⁶. Refugees must be afforded the same protections as civilians⁷.

Given the vast number of children crossing borders outside Algeria, whether unaccompanied or accompanied by women and the elderly, some were scattered in temporary shelters, while others joined refugee centers or Algerian childcare homes in Tunisia⁸. These groups received support from other countries, contributing to their transfer to neighboring states, and from non-governmental organizations such as "Terre des Hommes." This organization, in 1960, called upon the Swiss public to host Algerian children who were victims of war⁹. This reflects the seriousness of their situation, which required support and humanitarian aid, as mandated by the principles of civilian protection in armed conflicts.

Moreover, Professor Abdel Rahman Nasser, in his narrative book *Children of the Borders*, published in 1989, described various aspects of the daily lives of refugee children—including educational, cultural, civic, and political dimensions. These experiences combined tragedy, fear of death, hope for return, and the resolve to continue the struggle against the enemy.

B . Orphaned Children (With Their Mothers or Without Parents): A Special Category of Protected Persons Under International Humanitarian Law

Neither hours nor volumes would suffice to describe the reality and conditions of Algerian children, whether before or after the November 1 Revolution. Experts, such as historians and politicians, are better positioned to explain and elaborate on these events based on firsthand testimonies and occurrences.

It is said that in a colonial context, as in any other context, the scope of the law is not limited to explicit legal texts. Rather, it encourages the identification of a plurality of norms that do not seem to form an integrated system but [...] are accepted and applied by the social community according to its needs¹⁰. This led to the emergence of the so-called "native law" (Code de l'Indigénat), which France exploited to the fullest extent to legitimize all forms of abuse against Algerians. This included codifying special penalties for expropriation, confiscation of wealth, home seizures, punishment without trial, social discrimination, and more¹¹. However, we will provide a general overview to analyze the legal framework within which these events occurred.

In terms of social Condition, these were characterized by:

⁶ Article 40 of the Fourth Geneva Convention of 1949. In addition, Article 70 of the same convention states: "If they find themselves in a territory suddenly occupied by the state from which they originally fled, the occupying power shall not arrest, prosecute, convict, or deport these refugees for acts committed prior to the outbreak of hostilities."

⁷ Article 73 of the First Protocol to the Geneva Conventions of 1977, Article 73, and Article 4 of the Second Protocol.

⁸ It is noted that the French authorities had conflicting statistics regarding the number of refugees, ranging from approximately 25,000 to 120,000. However, the National Liberation Front estimated their number to exceed 125,000, half of whom were children spread across several Tunisian cities (Beja, Kef, the south, and the center, etc.). For instance, centers were established to accommodate them, such as "Dar Thala," "Yasmina Center," "Sidi Bou Said," "Al-Surour," and "Ramses," among others. See Mohamed Ben Saâdou, *The Refugee Children during the Liberation Revolution (1954–1962)*, Lughah Kalam Journal, Issue 2, 2016, pp. 60–63.

⁹ « Pour les vacances de cent enfants misérables, besoin tout de suite maisons de campagne, milliers de francs (5 francs par jour et par enfant pendant un mois), moniteurs, monitrices, cuisiniers, cuisinières. Du 3 juillet au 3 août, et ainsi de suite. », Traduction : "For the holidays of a hundred destitute children, we urgently need country homes, thousands of francs (5 francs per day per child for one month), monitors, cooks, male and female. From July 3 to August 3, and so on." This is the appeal made by Edmond Kaiser to the Swiss people in 1960 to host, during a summer camp, a hundred Algerian children who were victims of the war. Our founder created Terre des Hommes on July 22 of the same year as a movement for immediate and direct aid to children in distress. Available at: <https://www.tdh.org/fr/recits/proteger-les-enfants-notre-mission-depuis-60-ans>

¹⁰ HOAREAU-DODINAU Jaqueline, "Regard sur l'anthropologie historique du droit," in *Cahiers d'anthropologie du droit*, no. 4, 2004, pp. 179–184.

¹¹ "provoque d'emblée des abus qui incitent à une réglementation progressive : à partir de 1844, des listes d'infractions spéciales circulent, plus ou moins suivies ; des maximums de peines sont prévus, plus ou moins respectés ; des commissions disciplinaires sont instituées au niveau local (1858-1860) =mais le pouvoir de répression des commandants et des chefs auxiliaires continue à s'exercer, parallèlement, sans contrôle. L'avènement du régime civil et républicain entre 1870 et 1880 pose la question de la survivance des pouvoirs =disciplinaires. Non seulement la réglementation de 1874 les maintient en territoire militaire – à peine modifié", Traduction : "It immediately provoked abuses that prompted progressive regulation: starting in 1844, lists of special infractions circulated, more or less followed; maximum penalties were established, more or less respected; disciplinary commissions were instituted locally (1858–1860), but the repressive powers of commanders and auxiliary chiefs continued to be exercised, parallelly, without oversight. The advent of the civil and republican regime between 1870 and 1880 raised the question of the survival of disciplinary powers. Not only did the 1874 regulation maintain them in military territories – barely modified," Guignard, Didier, "L'abus presque ordinaire" (The Almost Ordinary Abuse), *L'abus de pouvoir dans l'Algérie coloniale (1880–1914)*, Presses universitaires de Paris Nanterre, 2010, <https://doi.org/10.4000/books.pupo.3121>.

-The Spread of Epidemics and Diseases¹²: These arose from widespread starvation affecting the population¹³, the denial of medical treatment, or access to medications and vaccinations due to racial discrimination, and deliberate deprivation of basic needs. Pollution and the lack of hospitals, doctors, or medical personnel exacerbated the situation. Naturally, children (aged between one month and 15 years) were the primary victims, being born with illnesses or congenital or mental deformities¹⁴, or dying before reaching the age of 14. Conversely, this situation led many young men and women to train in nursing and medical care to help the population overcome these hardships.

-Loss of Parents and Homes: Many children lost their parents and were stripped of their shelters, leading to their displacement, either with or without their families. This forced many to seek refuge in neighboring countries.

-Early Child Labor: Many children joined the workforce early, either with their guardians or independently, to support their families. They were exploited and enslaved by settlers or the military in harsh or degrading jobs, such as construction work, cleaning, sewage maintenance, sailing, or shoe polishing¹⁵, among others. This was often at the expense of their education, as they were forcibly deprived of schooling by the colonizer or due to the harsh conditions that compelled them to seek sources of income.

-The erasure of national and Arab identity from every Algerian child's personality was a persistent and tireless goal of the colonizer. This was achieved by targeting educational institutions, closing them, or tightening the conditions of teaching and learning to make them harsher and a source of punishment and death. As a result, these children either fled schools to herd sheep or perform hard labor, joined the ranks of the revolutionaries, or, under certain circumstances, were forced into French schools. In these schools, they endured many hardships and were subjected to an educational curriculum deliberately designed to instill the colonizer's teachings, glorifying its civilization, history, language, and "modernity."

-The intensification of efforts to Christianize children through policies such as closing mosques, Quranic schools, kuttab, and reformist schools aimed at educating children. Evidence of this includes their conversion into churches and monasteries, as well as the provision of care for orphans, homeless children, and those whose families had been displaced. Priests and nuns took charge of raising and educating them according to Christian teachings¹⁶.

In terms of security and political conditions, these were marked by:

-The continued acts of torture in various forms¹⁷ against children aged 15 and 16, their arbitrary arrests, imprisonment without trial, or their burning as corpses without mercy, or the rape of girls¹⁸, as witnessed in the events of the May 8, 1945 massacres, the December 11, 1960 demonstrations, and other events that continued without interruption until independence.

These practices, experienced by some or acknowledged by others, constituted war crimes, crimes against humanity, and acts of extermination, reflecting the extent of violations committed by France in contravention of international human rights law and international humanitarian law.

II- Violations Committed Against Children During the Liberation Revolution

1. Violations of children's basic rights (as they are human beings protected under international human rights law)

¹² Particularly smallpox, typhus or malaria, tuberculosis, rickets, and infectious diseases.

¹³ The Swedish journalist Rita Fands stated: "Thousands of children are currently dying from hunger and diseases, most of whom died after spending a long time deprived of food, surviving only on a few spoons of coffee and grains of wheat... As I wandered the streets of Stockholm with its lights and shop windows filled with gifts that every child dreams of, the images of starving children came to my mind." Quoted in the book "Children of the Revolution... Children Without Childhood", previously cited, p. 37.

¹⁴ The testimony of freedom fighter Hussein Ait Ahmed in his memoir: "I personally suffered from malaria when I was six years old and battled the illness throughout my elementary school years." Quoted in "Children of the Revolution... Children Without Childhood", previously cited, p. 35.

¹⁵ . It should be noted that shoe polishing during the revolution carried other, more positive connotations. The revolutionaries used it as a method to convey information between fighters and intelligence agents, allowing them to monitor the movements and actions of the occupying soldiers and administrators

¹⁶ Cardinal Lavigerie is known for strongly contributing to the gathering of 1,500 orphans to provide for them, convert them to Christianity, and build two villages in the plains of Chlef after they reached adulthood. He was tasked by the "White Fathers" to track and capture them through persuasion rather than force. Some of these children were later captured after their villages were attacked, their families displaced, and their fathers executed. Additionally, one of the colonial governors of Constantine reported on August 20, 1945, that over 1,370 orphaned children were recorded, including 600 in the Sétif region, 30 in the villages of Kherrata, Beni Aziz, and Ain El Kebira. Some were relocated to other provinces like Oran for their safety and care. See "Children of the Revolution... Children Without Childhood", previously cited, pp. 53 and 83.

¹⁷ Methods used included electric shocks, hot water, food or sleep deprivation, severe beatings, and more. See the book "Children of the Revolution... Children Without Childhood", previously cited, pp. 123-ss

¹⁸ For example, three children were sentenced to prison for stealing in the Choufril village during the trial on October 1, 1945. Others were subjected to summary execution and their bodies burned in Belkhir in Khenchela province (Milya Zimo), where 12-year-old student Ibrahim Kattab, along with his pregnant mother (in her sixth month) and father Mohamed, were killed. Eleven students were executed with the complicity of their French teacher and militia leader Henri Garifi on May 11, 1945, according to the testimony of fighter Sassi Ben Hamla, who was 19 years old at the time. See "Children of the Revolution... Children Without Childhood", previously cited, p. 89.

The first question that comes to mind for any of us is: What legal protection is internationally or globally guaranteed to children in parallel with the Liberation Revolution ?

The child is one of the social and human categories that enjoys an excellent legal status in both times of peace and war. No country can claim or interpret exceptions to the provisions in international human rights charters, international humanitarian law, or national laws that recognize broader and better rights for children. This means that no armed conflict can be used as an excuse to violate the rights guaranteed to every child. It is the duty of every country or group to uphold these rights.

One of the foundational principles for respecting human rights is the Universal Declaration of Human Rights of 1948, which Algeria adopted in its first constitution in 1963¹⁹, immediately after independence. This commitment continued through to the current constitution, which has been in effect since 2020²⁰. Algeria's intention to ratify various international and regional human rights treaties²¹—both general and specific—further affirms this commitment. The inclusion of the Declaration in the preamble of these texts is seen as a reflection of its constitutional value, as it is an integral part of the law²².

Moreover, according to the 1989 Convention on the Rights of the Child, a child is defined as anyone under the age of 18 unless adulthood is reached earlier under national law. However, the Geneva Conventions and their additional protocols use different age limits for the protection measures they require²³.

It is known that the Convention on the Rights of the Child was issued after the Liberation Revolution. Algeria ratified it in 1992 with reservations²⁴. However, the various situations that Algerian children lived through during colonialism can be applied to this text, which was the first comprehensive international legal instrument to group all human rights concerning the child: civil, cultural, economic, political, and social rights. The Convention contains 54 articles and 3 optional protocols. Many countries have worked to establish a special legal status for children worldwide, affirming their full right to enjoy specific rights. Furthermore, the best interests of the child and the basic rights they enjoy are considered solid principles in international law.

¹⁹ Article 11 of the 1963 Constitution states: "The Republic grants its approval to the Universal Declaration of Human Rights."

²⁰ The preamble of the 2020 Constitution declares: "The Algerian people express their adherence to the human rights stipulated in the Universal Declaration of Human Rights of 1948 and the international treaties ratified by Algeria." The preamble is an integral part of the Constitution, and its provisions hold constitutional value.

²¹ This includes the International Covenants on Civil and Political Rights, and on Economic, Social, and Cultural Rights, 1966, which Algeria joined in December 1969. There is also the African Charter on the Rights and Welfare of the Child, 1990, which came into force in 1999. Algeria ratified it under Presidential Decree No. 03-242 on July 8, 2003, published in Official Journal No. 41.

²² It is important to note that while the Universal Declaration is not legally binding, its moral and ethical weight as the first global document gives it historical significance as a foundational reference.

²³ For children under the age of 18: Employment of children under 18 in occupied territories is prohibited according to Article 51 of the Fourth Geneva Convention. Additionally, the death penalty is not applicable to them according to Article 68 of the Fourth Geneva Convention and its additional protocols. To protect them from participation in hostilities, their recruitment is prohibited under the Additional Protocols of 1977. For those under 15, special care must be provided for orphans and displaced children, and necessary measures should be taken according to Article 24 of the Fourth Geneva Convention. They are entitled to equal treatment, whether foreign or local, under Article 38 of the Fourth Geneva Convention. Health care and nutrition should be maintained as per Articles 50 and 89 of the Fourth Geneva Convention. A 12-year age basis has been adopted to define children's identity, as outlined in Article 24 of the Fourth Geneva Convention. UNICEF. Examen stratégique décennal de l'étude Machel les enfants et les conflits dans un monde en mutation, 2009, disponible sur : https://childrenandarmedconflict.un.org/publications/MachelStudy-10YearStrategicReview_fr.pdf, p ,145.

²⁴ Algeria joined the Convention on the Rights of the Child under Presidential Decree No. 92-462, with interpretive declarations, published in Official Journal No. 91.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts²⁵ further reinforces this, emphasizing the importance of implementing special protection for children²⁶, thus strengthening the core Convention.

It is crucial to emphasize that there exists a category of rights that are inalienable and non-negotiable, remaining applicable under all circumstances. This principle equally applies to humanitarian law, as protected persons under the Geneva Conventions cannot,

The most important aspects of this document include urging states to respect the rights and principles enshrined in international humanitarian law and human rights law, particularly the international protection of refugees, with a focus on the defense of children and adolescents, and specifically respecting: -The best interests of the child and the role of the family as a fundamental unit in society responsible for the protection and welfare of children. -The fundamental right of children and adolescents to life, liberty, security, and protection from torture or degrading treatment or punishment. -The right of children and adolescents to education, adequate nutrition, and the best possible healthcare. -The right of children and adolescents affected by armed conflict to special protection and treatment, considering their vulnerability, which makes them more susceptible to injury, exploitation, or death during these times. -The right of children and adolescents to be protected from harmful traditional practices and all forms of exploitation.

The document calls on states to take all possible measures to protect refugee children and adolescents, particularly: - Avoiding the separation of refugee children and adolescents from their families and encouraging assistance, protection, family reunification, and the care of unaccompanied minors. - Ensuring the physical security of children and adolescents by establishing humanitarian and civilian camps and settlement areas at reasonable distances from their home countries' borders. - Preventing violence, exploitation, trafficking, or prostitution involving children, and taking all necessary measures to assist those who have fallen victim to these practices and facilitate their rehabilitation. - Implementing appropriate training for armed forces personnel and law enforcement on human rights and child protection. -Holding accountable those responsible for violations when they occur. - Ensuring access to education and medical treatment or specialized care, including assistance for the integration of refugee children, particularly orphans or unaccompanied minors.

Under any circumstances, partially or fully ²⁷relinquish these rights guaranteed to them by these conventions. These rights include: the right to life, the prohibition of torture and all forms of degrading and inhuman treatment, the prohibition of punishing individuals below the legal age, the prohibition of slavery and human trafficking, the right to recognition of legal personality, and freedom of thought, belief, and religion.

The heinous and brutal acts committed by French colonial forces against children exemplify the complete violation of such rights. These acts included the killing and burning of infants and minors, sometimes in mass exterminations; severe and cruel torture for interrogation or revenge against their families; their enslavement and use in hard and degrading labor; and sentencing them to execution or imprisonment despite their young age. These atrocities are countless.

Affirming child protection during times of war does not solely rely on the child's individual status but also on their family affiliation. This principle is firmly established in international humanitarian law, which mandates the respect of family rights

²⁵ The text issued in 2000, which Algeria ratified in 2009, includes a preamble that discusses the reasons and motivations that led to the adoption of this document and the establishment of a specific text for children in armed conflicts. It states: It encourages overwhelming support for the Convention on the Rights of the Child, reflecting a broad commitment to enhancing and protecting children's rights. It also emphasizes that children's rights require special protection and necessitate continued improvements in children's conditions without discrimination, as well as their upbringing and education in peace and security. It expresses concern over the harmful and widespread effects of armed conflicts on children and the long-term consequences of these situations on the sustainability of peace, security, and development. It condemns the targeting of children in armed conflicts and direct attacks on sites protected under international law, including places commonly inhabited by children such as schools and hospitals. It notes the adoption of the Statute of the International Criminal Court, particularly the inclusion of compulsory or voluntary recruitment of children under 15 years old or their active involvement in hostilities as a war crime in both international and non-international armed conflicts. It considers that continued strengthening of the rights recognized in the Convention on the Rights of the Child requires increased protection of children from participation in armed conflicts. This is reflected in a document issued by the UN Refugee Agency, which expresses international will for this text. It is also important to recall the role played by the Security Council in this area, which has adopted six resolutions since 1999 concerning children in armed conflicts. Conclusion No. 84 (XLVIII): Refugee Children and Adolescents - Adopted by the Executive Committee (1997), available at: <https://www.refworld.org/policy/exconc/excom/1997/en/41698>

²⁶ The Optional Protocol is considered an effort to enhance the implementation of the Convention and increase protection for children during armed conflicts. It requires states to "take all possible measures" to ensure that members of their armed forces under 18 do not participate directly in combat. It also requires states to raise the minimum age for voluntary recruitment into the armed forces from 15, although it does not mandate that the minimum age be set at 18.

²⁷ Common Article 7 of the Geneva Conventions Applicable in the First, Second, and Third Geneva Conventions, as well as Article 8 of the Fourth Geneva Convention. 30. Plattner, Denise "International Humanitarian Law and Inalienable or Non-Derogable Human Rights." Published in *Non-Derogable Rights and States of Emergency*, edited by D. Prémont, pp. 349–363. Brussels: Bruylant, 1996.

in occupied territories²⁸. Such obligations extend to human rights principles applied during peacetime, as articulated in relevant international instruments under the concept of "family unity." This concept, a fundamental pillar of civil rights, prohibits any actions that harm or threaten to dismantle family units under any circumstances²⁹. In the context of armed conflict, warring parties are required to ensure family unity, even in situations involving deprivation of liberty or displacement³⁰.

2. Grave Violations Against Children (as a Special Category Protected by International Humanitarian Law)

Given the complex and contentious nature of armed conflicts, where multiple factors interplay, parties to the conflict are bound to respect the rules of international humanitarian law, encompassing its customary and treaty-based provisions. Occupation, recognized as an international armed conflict under the First Additional Protocol of 1977, is one such situation. The French occupation of Algeria serves as an example of an occupation characterized by extensive and inhumane practices against the Algerian people, with children among the primary victims. These acts represent grave violations of international humanitarian law, targeting children in two capacities: as combatants and as civilians.

A. Legal Status of Child Combatants

One of the significant events during the French occupation of Algeria was the occurrence of the First and Second World Wars, which resulted in significant human losses. Up until 1945, the international community was still governed by the Hague Conventions of 1899-1907, particularly Article 65 of the Hague Regulations, which was the only provision regulating the relationship between the occupier and the inhabitants of occupied territories. Additionally, the rules of armed conflict were governed by the principle of distinction between combatants and non-combatants³¹, with military operations being carried out solely by combatants, who were presumed to possess strength and capability, not vulnerability.

Accordingly, international humanitarian law prohibits the recruitment of children under the age of 18, a principle respected and upheld by the leadership of the Algerian liberation revolution. They prioritized the education, training, and care of children, including those who remained with their families and those in orphanages and refugee shelters. The engagement of children with mosques, Quranic schools, traditional study centers, and religious institutions was considered a national duty equivalent to armed struggle.

However, the tragic circumstances faced by these children during the continuation of the revolution forced them, without prior warning and by the realities of the situation, to participate and support in various ways, such as delivering messages, monitoring French troop movements, and transporting food, medicine, and supplies. Even so, this cannot legally be considered recruitment as defined in Article 77, paragraph 2 of the First Protocol to the Geneva Conventions of 1977, which emphasizes "direct participation," as well as Article 38, paragraph 3 of the Convention on the Rights of the Child and Article 22 of the African Charter on the Rights and Welfare of the Child.

More importantly, even in cases where these children were exceptionally captured by the enemy, their young age and circumstances required the enemy to ensure their special protection, including necessary care, family unity, separation from adults in detention, and the prohibition of sentencing them to death.

There are numerous examples of participation by Algerian children where the French colonizer failed to adhere to the established legal regulations:

- **Omar Yacef**, known as "Little Omar," whose courage, intelligence, and deep patriotism made him one of the first "Casbah revolutionaries." He played a key role in transmitting information, hiding freedom fighters, and facilitating connections between the leader Larbi Ben M'hidi, Yacef Saadi, and other guerrillas. His sacrifices continued until the house sheltering them was bombed.

- **Murad Ben Safi** was another hero who specialized in delivering messages within Algiers despite suffering from a lung condition, taking care of his parents, and selling newspapers. He ultimately died due to his illness, exacerbated by being pursued by the police.

²⁸ Historical References to Pre-Geneva Conventions Instruments: Article 37 of the Lieber Code of 1863, Article 38 of the Brussels Declaration of 1874, Article 49 of the Oxford Manual of 1880 (cited in Vol. II, Chapter 32, §§.3905, 3907, 3923–3925), Article 46 of the 1907 Hague Regulations, Article 27(1) of the Fourth Geneva Convention of 1949.

²⁹ Human Rights Instruments on Family Protection: Article 16(3) of the Universal Declaration of Human Rights (1948), Article 5(b) of the Cairo Declaration on Human Rights in Islam (1990), Article 23 of the International Covenant on Civil and Political Rights (1966), Article 10 of the International Covenant on Economic, Social and Cultural Rights (1966), Article 15 of the African Charter on Human and Peoples' Rights (1981), Final text of the Human Rights Commission Resolution No. 84 concerning refugee children and adolescents.

³⁰ Specific Provisions in the Geneva Conventions and Additional Protocols: Article 49 of the Fourth Geneva Convention (1949), Article 74 of the First Additional Protocol (1977).

³¹ The conflict is characterized by the presence of combatants engaging in hostile operations. A combatant is defined as someone belonging to one of the following categories: 34. Members of the armed forces or their auxiliary or supporting organizations. 35. Individuals affiliated with the forces mentioned in the previous point but actively participating in combat. This definition is derived from the Geneva Diplomatic Conference on "Reducing the Impact of War on Civilian Populations," as part of the International Committee of the Red Cross's efforts to clarify the concept of civilian populations.

- **Chama Boufji**³², started participating at the age of 12, demonstrating remarkable awareness. She organized gatherings, led school celebrations, and advocated for freedom throughout Algiers. She established the "Charitable Works School" with the help of her father, her sister Khadra, and her friend Safia Ben M'hidi. Her revolutionary contributions came at a high price³³, as she was imprisoned, tortured, and threatened with death by French forces despite her young age.

- **Children aged 10 to 17** contributed by providing guidance, support, supplies, communication intelligence, and medical assistance to the freedom fighters. Notable examples include Saad Ben Said³⁴, Hussein and Tayyib Belqurishiya³⁵, Mohamed El-Bashir Oulbassir³⁶, Massoudi Dahman and Boujemaa Rahmoun³⁷, and Ratiba Qariq Ahcene³⁸.

-**The child 'Abdelhafid Cherrouk,'** known as 'Guider,' joined the resistance prematurely alongside Mustapha Oudia and Sid Ali Kouirat. Drawing from the education provided by the Association of Muslim Scholars, he was able to solidify his affiliation with the National Liberation Front (FLN) in France. As part of a resistance squad, he participated in a 1958 operation targeting French Minister of Information Jacques Soustelle. He paid the price by being sentenced to death and imprisoned in France, enduring brutal torture³⁹. Abdelhafid Cherrouk's role became more prominent through collecting financial aid from migrants in France and later transitioning to armed combat and battles.

-**Fatima Khalif** joined the Liberation Army with her family at an early age and endured torture while giving birth in prison. Both she and her newborn suffered severe hardships as attempts were made to separate them and assassinate them.

-**Boualem Rahal** joined the resistance fighters alongside Saïd Touati and Akroure Jouher, participating in the bombing of the El-Biar stadium in February 1957. He was arrested and sentenced to death⁴⁰.

-**Djouher Akroure** joined the army in 1956 at under 18 years of age. She was tasked with planting bombs in sports stadiums alongside Boualem Rahal. However, she was arrested, sentenced to death, and endured imprisonment under torture and persecution until independence.

Many young individuals in the prime of their youth were martyred due to their active participation alongside the Liberation Army, whether directly or indirectly, through assassination, bombings, or the torture they endured⁴¹.

B. Regarding the legal status of children as civilian victims:

Even though Algeria was under occupation at that time and its circumstances prevented it from joining the international humanitarian law agreements until later (especially the first agreements), it was still bound by the respect for international humanitarian law, which aligns with the teachings of Islam, humanitarian ethics, and the practices carried out by military and political leaders in the field, such as Emir Abdelkader, who led the resistance between 1832 and 1887, and Sheikh Bouamama, among others. These practices included humane treatment that established the right to protect prisoners of war, as well as the right of civilians, including children and women, to special protection and the prohibition of attacks against them⁴².

³² This occurred in the early 1930s

³³ Her dedication to educating Algerian girls in language, religion, sewing, healthcare, and cooking was a priority to support the revolution. It is noted that she co-founded, alongside other freedom fighters, the "Union of Algerian Women." She passed away in 1987. Refer to the book "Children of the Revolution...Children Without Childhood," previously cited, pp. 65–67

³⁴ His house was a revolutionary center for support and provisioning

³⁵ Known for transmitting the movements of the French army and monitoring them.

³⁶ He was considered the youngest member of the National Liberation Army, and played a role in transporting supplies.

³⁷ Specializing in bomb explosion operations.

³⁸ She became a nurse despite being only fourteen and played a role in transporting medicines and treating the fighters.

³⁹ Had it not been for the ceasefire in March 1962, which allowed him to benefit from a pardon.

⁴⁰ His condition at that time affected the popular artist Mohamed Dweibi, known as 'Baji,' who was his companion in the Berberus prison (Sergaji), and Boulalam Rahal was known as 'the martyr of the guillotine.'

⁴¹ The list is still long: the martyr Mahmoud Bouhamidi, Haj Sulaiman, Aisha Fawziya, Ben Demrad Mansouria, Faris Boukhatem, Mliha Hamidou, Azim Fatiha, Khalifa Farash, Fneesh Rabe, Ben Allal Fatiha, Ben Ibrahim Zahra, Ait Imran Yamina, Habous Nabia, Hamdani Malika, Mohdabb Sahrawi, Bouziane Mohamed, Saadi Ahcen, Korat Fatima. See the book *Children of the Revolution... Children Without Childhood*, previously cited, pp. 180-190.

⁴² He was credited with creating a military guide, "Washawsh al-Katayeb." It is evident from his practices that Emir Abdelkader adhered to Islamic principles, as his military conduct remained within the framework established in the Qur'an and the noble Hadith, in accordance with Allah's words: "And fight in the way of Allah those who fight you" (verse 190, Surah Al-Baqarah). A principle which modern international humanitarian law translates into the rule of distinction between combatants and non-combatants, as stipulated in Article 48 of the First Additional Protocol to the Geneva Conventions. This principle is also evident in the saying of the Prophet Muhammad (peace be upon him) in his instructions to Zayd ibn Harithah when sending him to the Battle of Mu'tah: "Do not kill a child, a woman, an elderly person, or someone secluded in their hermitage." For further reference, see: Omar Saadallah, *Prince Abdelkader Al-Jazairi and the Emergence of Contemporary International Law*,

Algeria's accession to the four Geneva Conventions on June 20, 1960, during the colonial period, was merely a formality and a reinforcement of what already existed.

In contrast, the French occupier was not a party that respected the rules of war or the treatment of its participants, nor the restrictions on hostile operations it carried out against the Algerian population. It is worth noting that France had joined these conventions early on ⁴³(in addition to the customary laws that preceded them), but it violated them. Furthermore, it refused to treat the Algerian side as an equal adversary, declining to sign any agreement with it—not for legitimate legal reasons, but for political considerations aimed at avoiding even implicit recognition of it⁴⁴. France insisted on labeling the Algerians as rebels or outlaws since the outbreak of the revolution on November 1, 1954.

This attitude is reflected in the acts of repression and grave violations it committed against various segments of the Algerian people, indiscriminately targeting adults and minors, boys and girls, the elderly, and women, among others. Conversely, the steadfast Algerian resistance to injustice and occupation—led by its leadership and supported by its people—remained united and harmonized in spiritual, political, and humanitarian solidarity. It adhered to the principles of Islamic law and international humanitarian law, with humane treatment serving as the sole framework for defending Algeria's cause and its legitimacy externally, more so than internally.

In a similar vein:

-The perpetration of acts of kidnapping, rape, and assaults on girls aged between 9 and 12 years in front of their families, such as Aksim Zahia from the village of Zemoura, Rabah and Ghnouja from the outskirts of Skikda, and many others⁴⁵.

-Mass killings and assassinations targeting students and infants, such as the shooting of the student "Hamidou" from Tlemcen in 1956, and the deliberate killing or poisoning of infants by colonial doctors using lethal drugs or those causing physical disabilities and sterilization. For instance, the infant "Ammar" was killed by the doctor "Pierre Vincent Mazuca" in the city of Ain El Kebira in retaliation against his father, Laanour Lalioui, who participated in the events of May 8, 1945⁴⁶.

-The massacre of Housh El-Agha in Médéa in December 1956, which resulted in the displacement of families and the killing of children, including the siblings Elias, Mohamed, and Younes Ould Khawa.

-The ordeal of seven-year-old Mohamed, the son of the martyr Boukasmi Mohamed, commander of the Sixth Wilaya, who spent his childhood moving from family to family after the colonial forces destroyed his home. Later, he was enrolled in the Zubayriya school on the recommendation of freedom fighters after settling with his mother in the town of Fernan in northern Berrouaghia.

-The psychological trauma endured by the child Taher Ben Tarsha in the municipality of ElAmmaria in the Fourth Wilaya, after witnessing his father's martyrdom before his eyes when he was in fifth grade. This was followed by the incident of women fleeing from the village of "Medala" to escape abduction and assault. Taher was eventually transferred to the Sons of Martyrs Center at Dar Al-Tifl (Ben Chikhaou) and later to the 'Draa El Sema' Center.

-The nuclear tests conducted in the Algerian desert in 1960 were among the worst crimes against humanity ever committed, causing devastating harm to successive generations. A stark example of this is the deformities and disabilities that afflicted children.

-The participation of children in the demonstrations of December 11, 1960, in large numbers, inspired by their bravery and peacefulness, resulted in their assassination by the French. Examples include Salihah Ouateqi, aged 14, and Farid Meghraoui, aged 10... Similar atrocities occurred during the events of October 17, 1961, when French authorities killed and tortured Algerian immigrants in France, detaining many in mental health institutions. Among these victims was Fatima Boudar, a girl under the age of 14, who was thrown into the Seine River by French police.

Based on the aforementioned circumstances and factors, what is the basis for this protection, and why are children considered victims under the law?

The idea of protecting children in international humanitarian law is regulated by two domains: First : General legal protection, granted to children as 'human beings' and as a category explicitly recognized by law. Second : Special legal protection, granted

Al-Masadir Journal, Vol. 10, Issue 1, pp. 31-60. Ben Daoud Ibrahim, Rules of International Humanitarian Law and the Role of Prince Abdelkader Al-Jazairi in Establishing Them, Journal of Law and Human Sciences, Vol. 5, Issue 1, 2012, pp. 6-18. Abdelkader Douha, The Contribution of Prince Abdelkader Al-Jazairi to International Humanitarian Law, Al-Mawaaqif Journal, Vol. 5, Issue 1, 2010, pp. 297-305. Reem Nargis Qassem, Prince Abdelkader and International Humanitarian Law, Al-Insani Journal, 2018.

⁴³ France joined the Geneva Conventions on February 28, 1950, one year after their adoption, meaning it was obligated to genuinely adhere to them rather than merely claim compliance. Later, France acceded to the Second Additional Protocol to the Geneva Conventions on February 24, 1984, preceding its accession to the First Additional Protocol, which was delayed until September 11, 2001. The latter is known for regulating the provisions of occupation as part of international armed conflicts.

⁴⁴ For more information, see: Children of the Revolution... Children Without Childhood, National Center for Documentation, Press, Images, and Advertising, June 2023, p. 25.

⁴⁵ The same book, pp. 132-134.

⁴⁶ Ibid.

to children based on specific attributes, such as their age and vulnerability compared to other groups, necessitating enhanced and reinforced protection⁴⁷.

(b-1) General Legal Protection for Children

There is a set of principles, without exception, found in the provisions of customary international humanitarian law, the conventions of 1864, 1906, and 1929, the Fourth Geneva Convention concerning civilians of 1949, and the two Additional Protocols to the Four Geneva Conventions of 1977, which represent the solid foundation for protecting children as civilians in:

1- Not harming the rights granted to protected groups through special agreements between the warring parties, such as agreements for the transfer of the wounded or truce agreements, in which the granted protection should be strengthened and affirmed, not reduced.

2- Doubt is interpreted in favor of the protected person in case of a dispute over the classification of a civilian versus a combatant⁴⁸.

3-The Martens Principle⁴⁹, which subjects the status of combatants and civilians, necessarily and under any circumstances to the provisions of humanitarian treatment⁵⁰. Even the principles of Islamic Sharia.

Were preceded by secular texts that called for preserving human dignity and regulating the means and methods of warfare⁵¹. This represents a secure legal framework from which no party to a conflict can absolve itself, regardless of its nature⁵², under the pretext of not being a signatory to agreements and treaties or due to the absence of explicit provisions⁵³. This is the same

⁴⁷ Similarly, women, the elderly, the disabled, and individuals involved in medical, religious, and humanitarian services are also considered special groups covered by protection.

⁴⁸ This is stated in Article 5, paragraph 2 of the Third Geneva Convention of 1949, as well as Article 50, paragraph 1 of the First Additional Protocol to the Four Geneva Conventions of 1977.

⁴⁹ This principle was introduced by the Russian envoy, Fyodor Fyodorovich Martins, at the Peace Conference of 1899. At that time, it was considered one of the strongest diplomatic maneuvers used in international negotiations regarding the legal status of civilians. The major powers argued that since no legal rules governed their status, civilians should be treated as irregular soldiers and subjected to the death penalty. In contrast, smaller states believed they should be treated as regular combatants and subjected to the laws of war. Martins' response was as follows: "In cases not covered by the provisions, civilians remain under the protection and authority of the principles of international law established among civilized nations, humanitarian law, and the demands of the public conscience," which some described as a "reserve alternative."

⁵⁰ In its ruling on the case regarding military and paramilitary activities in Nicaragua, the International Court of Justice stated that humanity is about alleviating individual suffering, protecting lives, preserving health, and respecting human dignity. Max Huber, who was the President of the International Committee of the Red Cross from 1928 to 1944, defined humanity as the "unconditional recognition of the value of every human being, especially the weak, the sick, the prisoners, those in danger, those deprived of their rights, and the poor."

⁵¹ During those days, the goal was to spread the message of Islam, with the motives of peace and reconciliation taking precedence over war. Messengers sent to adversaries were bearers of good news and warnings—the good news preceding the warning, and the warning preceding war. If there was no response, *jizya* (a tax) preserved rights and dignity, and if that failed, war was waged according to the principles of Islam. The Prophet Muhammad (peace be upon him) would say: "Set out in the name of Allah, fight in the cause of Allah against those who disbelieve in Allah. Do not betray, do not steal from the spoils of war, do not mutilate, and do not kill children or those in hermitages." Abu Bakr al-Siddiq, in his famous advice, said: "O people, stop and listen to my ten commandments and keep them in mind: Do not betray, do not steal from the spoils of war, do not act treacherously, and do not mutilate. Do not kill a small child, an elderly person, or a woman. Do not cut down palm trees or burn them, and do not destroy fruitful trees. Do not slaughter sheep, cows, or camels except for food. You will pass by people who have secluded themselves in hermitages, so leave them to their devotion. You will come across people who will bring you dishes containing different types of food. If you eat from them, remember the name of Allah. And you will encounter people who have shaved the middle of their heads, leaving a band of hair around it—strike them with the sword. Advance in the name of Allah; may Allah annihilate your enemies with stabbing and plague." The protection of civilians and civilian property, as well as restrictions on excessive force, are further ensured in the Qur'anic verse, which serves as a general provision and clear directive in the form of a command: "And do not kill the soul which Allah has forbidden, except by right. This He has enjoined upon you that you may understand" (Qur'an 6:151).

⁵² Legal Safety Net cited by Hans Peter Gasser, *International Humanitarian Law (An Introduction)*, Hans Peter Gasser, Separate Print, Hans Haug, *Humanity For All*. ICRC. Henry Dunant Institute. Haupt, 2016, available on : <https://icrcndresourcecentre.org/wp-content/uploads/2016/03/EnglishTotal.pdf>

⁵³ This principle was included in the preamble of the Hague Conventions of 1899 and 1907 on the rules and customs of land warfare, Article 45 of the First Geneva Convention, and Article 56 of the Second Geneva Convention, in addition to Article 1 of the First Additional Protocol of 1977. The latter states, for instance: "In the absence of a specific rule in treaty law, combatants remain under the protection and authority of customary law, the principles of humanity, and the dictates of public conscience."

point emphasized by Emir Abdelkader of Algeria in a letter to James Klunberger, the then-president of the International Committee of the Red Cross, stating, "It is a mistake to consider that the foundations of international humanitarian law emerged with the signing of the Geneva Convention; rather, they existed prior to it." The principles introduced by the Emir regarding the treatment of prisoners and civilians have never lost their value. Hence, it is logical to assert that adherence to the rules of humane treatment is an imperative obligation that the French colonizer should have respected. Algerian leaders gave them harsh lessons in this regard that cannot be denied⁵⁴.

4- The principle that wartime advantages do not nullify the rights of protected groups, meaning that achieving victory or weakening the enemy does not justify violating the protections granted to those groups⁵⁵.

5- The prohibition of methods and weapons causing unnecessary suffering and all indiscriminate attacks⁵⁶.

6- Humane treatment⁵⁷.

7- Distinction between civilians and combatants⁵⁸.

8- Distinction between military objectives and civilian objects.

9- Non-discrimination among protected groups⁵⁹, based on the principle that all individuals are equal in rights and must be treated accordingly.

10- The principle of prohibiting the order not to keep people alive⁶⁰.

11- The principle of preserving the physical integrity of protected groups⁶¹, which includes prohibiting all forms of violence against their lives, health, or physical well-being, as well as any form of physical or psychological torture, corporal punishment, mutilation, degrading treatment, collective punishment, or any medical or scientific experiments, whether with or without their consent.

(b-2) Contents/Components (guarantees) of General Legal Protections for Children

It should be noted that Algerian children during the War of Liberation suffered greatly from the horrors of war and the practices carried out by the colonizer against them. This occurred despite the latter having no justification for violating the aforementioned principles, especially since these principles were translated into a set of obligations, measures, and regulations that must not be breached or abandoned under any circumstances.

These principles serve as guarantees for ensuring protection, among which the most notable are: Establishing safe zones and hospital zones by the warring parties to provide care for the wounded, the sick, pregnant women, and mothers of children under the age of seven. Creating neutral areas in combat zones. Offering special protection for the sick, the elderly, pregnant women, and children, including humane treatment and access to care. Protecting civilian hospitals that care for the wounded, sick, women, and children, ensuring they are not military targets, and safeguarding the individuals operating these hospitals. Prohibiting attacks on land, air, and sea transportation used to transport these individuals. Allowing the passage of trucks carrying essential medicines and food for these vulnerable groups. Providing care and protection for children under the age of fifteen as stipulated by the conventions (details to be elaborated later). Protecting families separated by war and facilitating communication between them.

These guarantees, outlined in the Fourth Geneva Convention of 1949, are based on the principle that warring parties must limit their operations to weakening and destroying the opponent's military strength without annihilating their population or targeting civilians not participating in hostilities. However, these guarantees were permissive in nature, which explains the issuance of the 1977 Additional Protocol I, which provided more precise and comprehensive provisions. The 1977 Additional Protocol I introduced stronger, bolder, and clearer guarantees compared to its predecessors, specifically addressing: The necessity to distinguish between civilians and combatants. Protecting civilians from dangers arising from military operations. Prohibiting the use of civilians as shields to deter or prevent attacks on military targets. Obligating warring parties to take all necessary precautions during attacks, such as relocating civilians away from combat zones, provided it does not involve forced displacement. This includes avoiding establishing military objectives within residential areas, among other measures. Ensuring

⁵⁴ Quoted from Reem Nargis Qasim, Emir Abdelkader and International Humanitarian Law, *Al-Insani Journal*, 2018, available at: [link https://blogs.icrc.org/alinsani/2018/11/15/2250/](https://blogs.icrc.org/alinsani/2018/11/15/2250/)

⁵⁵ Ahmad Abu Al-Wafa, *International Humanitarian Law and the Protection of Civilians in Armed Conflicts*, Volume on International Humanitarian Law: Prospects and Challenges, Scientific Conferences of Beirut Arab University, 4th Annual Scientific Conference of the Faculty of Law, Vol. 1, Al-Halabi Legal Publications, 2005.

⁵⁶ Article 23, paragraph 2, of the Fourth Geneva Convention of 1949.

⁵⁷ Article 10 of the First Additional Protocol of 1977 states: "The wounded, sick, and shipwrecked shall be respected and protected in all circumstances, regardless of the party to which they belong. They shall in all cases be treated humanely and receive, as quickly as possible, the medical care required by their condition."

⁵⁸ Article 50 of the First Additional Protocol of 1977 enumerates the categories included under combatants, noting that the recognition of such a principle is based on the philosophy proposed by Jean-Jacques Rousseau. He argued that conflict (here, an international armed conflict) is a factual situation between states, not between peoples, necessitating a distinction between those who participate on behalf of the state in attack or defense and those who do not.

⁵⁹ This is stipulated in Articles 12, 13, 16, and 20 of the four Geneva Conventions of 1949, as well as Article 75 of the First Additional Protocol to the four Geneva Conventions of 1977.

⁶⁰ Article 40 of the First Additional Protocol to the four Geneva Conventions of 1977 states: "It is prohibited to order that there shall be no survivors, to threaten an adversary with this, or to conduct hostilities on this basis."

⁶¹ Article 32 of the Fourth Geneva Convention of 1949.

civilians in enemy custody are treated with respect and humanity without discrimination. Prohibiting acts of violence against both civilians and military personnel, including torture, murder, mutilation, corporal punishment, violations of personal dignity, and acts against decency, It is prohibited to treat a protected person for a crime they did not personally commit. Women who have been deprived of their liberty must be held in places separate from men. Additionally, persons who have been captured, detained, or arrested for reasons related to an armed conflict are entitled to certain protections.

(b-3) Special Legal Protection for Children

Here, it is useful to remind of Rule 135 from the volume dedicated to codifying customary rules by the International Committee of the Red Cross and Red Crescent, which specifically addresses "children," stating that children affected by armed conflicts have the right to special respect and protection⁶². This rule predates the written texts in international humanitarian law, being derived from practice, codes of conduct, and customs of war⁶³. It also emphasizes a narrow view of protection, focusing on the necessity to provide protection based on the person's situation and the additional vulnerability they possess, as a child is considered to be in a stage of fragility or weakness that distinguishes them from other individuals covered by protection (especially adults), and thus deserves enhanced protective rules.

Article 24 of the Fourth Geneva Convention, which addresses the general framework for protecting children during armed conflict, stipulates the necessity of taking necessary measures to ensure that children under 15 years old who are orphaned or separated from their families due to the war are not neglected and that their care, religious practices, and education are facilitated in all circumstances. It also mandates that they be educated, if possible, by individuals who belong to the same cultural traditions.

Additionally, it is required to facilitate the accommodation of these children in a neutral country for the duration of the conflict, with the consent of the protecting power if available, and under the condition of verification. The authorities are further required to take necessary measures to verify the identity of all children under 12 by carrying an identity tag or through any other means.

Regarding the situation and treatment of civilians in occupied territories, Chapter Three of the Fourth Geneva Convention, Articles 27 to 34, mandates humane treatment, respecting their person, honor, and family rights in all circumstances, taking into account their health, age, gender, and without any harmful discrimination. It also prohibits certain actions such as acts of violence, threats, or torture in detention and imprisonment, or measures causing physical suffering, extermination of protected persons, killing, corporal punishment, mutilation, unnecessary medical or scientific experiments, or any other brutal acts.

In fact, all these acts were committed by the occupying French forces at the time against all civilians, including children, treating them as adults and with even more brutality.

Referring to Article 50 of the same convention, it stipulates that the occupying power is obliged, with the assistance of national and local authorities, to properly manage facilities designated for the care and education of children. The occupying power is also required to take all necessary measures to facilitate the verification of children's identities and the registration of their lineage, and it is prohibited from changing their personal status or attaching them to organizations or groups affiliated with it. If local institutions are incapable, the occupying power must take measures to ensure the care and education of children who have been orphaned or separated from their parents due to the war, in the absence of relatives or friends who can care for them, and whenever possible, by persons of their own nationality, language, and religion⁶⁴.

A special body is also tasked with taking all necessary measures to verify the identity of children whose identity is in doubt, with the permanent registration of any information available about their parents or relatives. The occupying power is prohibited from obstructing the application of any preferential measures concerning nutrition, medical care, and protection from the effects of war that may have been adopted before the occupation for the benefit of children under the age of fifteen, pregnant women, and mothers of children under seven.

Article 51 also prohibits forcing protected persons to serve in the armed forces of the occupying power, assist, be pressured, or be subjected to propaganda aimed at volunteering or participating in military operations or securing their facilities.

It also prohibits forcing individuals under 18 years of age to work. For those of this age, their service is restricted to tasks necessary for meeting the needs of the occupying army, serving the public interest, or providing food, shelter, clothing, transport, or healthcare for the population of the occupied territory.

This, however, did not happen, as the colonizers worked diligently to place a group of Algerian children in orphanages and churches under the care of nuns and priests, indoctrinating them with Christian teachings and the French language. Others were put at the disposal of French soldiers, coerced into participating in espionage and intelligence operations or serving the families of the occupying state. As for their identities, many were assigned to families unrelated to them, left without identification, or even their ages remained unknown.

III- The Impact of the Revolution on Algerian Childhood

1- Social Memory and National Education

The Algerian people's deep adherence to Islamic teachings and moral values since the time of French colonization was considered one of the key pillars that bolstered the resilience of various segments of society in confronting the colonizers and their brutality. Mosques, Quranic schools, and zawiyas played vital roles in revitalizing intellectual and cultural movements⁶⁵.

⁶² It is a customary rule applicable in both international and non-international armed conflicts.

⁶³ Like the Lieber Code, the Brussels Declaration, and the Oxford Manual.

⁶⁴ UNICEF. Decade Strategic Review of the Machel Study. op.cit. pp 146-151.

⁶⁵ As contributed by the Islamic Youth School of Algiers, established in 1921.

These institutions began by shielding children and youth in villages and rural areas from the machinery of ignorance driven by the colonizers and their attempts to spread French culture and teachings⁶⁶.

They also undertook the roles of teaching, providing literacy in the Arabic language, and ensuring Quranic memorization. Additionally, they instilled social education emphasizing patriotism and the defense of the homeland. Even refugee children aged between 12 and 19 who fled in fear for their lives or were separated from their families were cared for by the National Liberation Front (FLN). The FLN provided education, care, and upbringing for them in educational centers and shelters to prevent them from facing a fate of loss and homelessness.

This method of education undoubtedly gave rise to a revolutionary generation, passionate about freedom, advocating for the right to self-determination, and opposing racial discrimination—a cause Algeria believed in and championed in international forums and organizations.

2-Collective Contribution to Establishing the Concept of Positive Childhood

Here, reference can be made to the role of national and international non-governmental organizations in defending the rights of Algerian children during and after the revolution.

The Algerian Muslim Scouts⁶⁷ have always been, and continue to be, a school for militant education and elite formation. This is based on their goal of fostering national responsibility and ensuring effective communication between all generations and across various levels.

They are credited with playing a pivotal role in educating children and youth in various fields, and most importantly, achieving the highest possible level of national unity. Despite being subjected to oppression and being prevented from fulfilling their leading role, they were among the first to join the national revolutionary movement between 1945 and 1954, alongside the Association of Algerian Muslim Ulama, which influenced their activities and principles⁶⁸. These principles preserved unity and a spirit of sacrifice for and from the people under challenging circumstances.

Scout activities, despite their voluntary and educational context, became an organized framework for the enrollment of the largest number of individuals, starting with young children and including political and military leaders.

This was embodied in the role of the junior scouts and the girl scouts, who carried equipment and light goods, relayed information about French army movements and surprise inspections, made clothing for revolutionaries, and volunteered in treatment and feeding efforts. Additionally, training in this field provided necessary support due to the scouts' expertise and skills⁶⁹.

3-Contributing to Representing Childhood in Social and Popular Memory

Every time we speak about the Algerian Revolution, it reinforces our collective memory—a memory that does not distinguish whether we belong to the generation of the revolution, the generation of independence, or the contemporary generation. Rather, it is a memory that persists through time. What sets it apart is the influx of literary and artistic works after independence, which aimed to represent the role and status of children during the period of colonialism and the glorious liberation revolution. These works were not created merely for the sake of raising viewership in the historical or epic genre but were living testimonies based on real-life experiences, documenting various events with utmost fidelity. They also serve as lessons for subsequent generations to this day, capturing the depth and sanctity of a revolution and heroes who must never be forgotten⁷⁰.

The writings, novels, plays, epics, and films are numerous, including:

In the film category:

- "The Battle of Algiers" by Italian director Gillo Pontecorvo, which depicted the epic of the martyr Omar Yacef.

- "Children of November" by director Moussa Haddad, starring Mourad Ben Sâfi.

- "Hell at Ten" and "Witnesses of Yesterday" by director Amar Laskri, which portrayed the psychological trauma experienced by Algerian children during the liberation war.

- The documentary film "The Icon of the Young, Little Omar", directed by Nouredine Chkired and written by Abdelkrim Chakrouh.

In the category of novels :

⁶⁶ The colonizer's principle was: If you want to destroy a people, start with their identity.

⁶⁷ Its establishment as a unified national entity, the Algerian Muslim Scouts Federation, dates back to 1939, founded by Mohamed Bouras along with Sadeq El-Foul, who united various groups across the country.

⁶⁸ The association emerged as a reaction to the colonial administration's grandiose celebrations of the centenary of Algeria's occupation, with no regard for the dignity of the locals and amidst the widespread myth of "French Algeria" propagated by settlers and white colonizers, ignoring Algerian Muslims. See Abdelrahman Ammar, *The Leader and Martyr Mohamed Bouras*, Baghdad Publishing and Distribution House, Badr Encyclopedia for the Scout Movement, 2004.

⁶⁹ Represented in: duty to God and the homeland, duty to others, and duty to oneself.

⁷⁰ As Abdelaziz Bouchfirat stated in his article: "For the children of the revolution, forgetting the horrors of war is difficult. Memory leaves scars and wounds...not easily forgotten throughout a person's life, especially if the man...was a child during the war." Quoted from the preface by Mohamed Arzaki Farad, *Children of the November Revolution Remember*, p. 30.

- "P'tit Omar, la révolution dans le cartable" by writer Souhila Amirat, who, due to familial ties with Omar Yacef, documented details of the hero Omar's epic⁷¹.

- "Children of the Borders" by Abdelrahman Nacer, which portrays the events of Sakiet Sidi Youssef on the Algerian-Tunisian border, highlighting the suffering of Algerian refugees forced to cross the borders alone and face numerous dangers⁷².

In the category of theatrical plays:

- The play *Mother of Martyrs* by Algerian writer Azeddine Jlaoui, depicting the perseverance of a son directed towards education and learning during the revolution.

- The play *The Tragedy of Jamila* by writer Abdelrahman El Sharkawy and director Hamdi Gheith, portraying the tragedy and heroism of "Jamila Bouhired" alongside her brother "Sarhan" and his role in the struggle with her.

- The play *Petit Omar: The Revolution of Innocence* written by Hussein Tailab and directed by Mohamed Abbas Islam.

In the category of historical works:

- The book *Le Gamin de la Rue Monge* by Mohamed Zitouni⁷³.

- The book *Children of the November Revolution Remember* by Dr. Mohamed Arzaki Farad⁷⁴.

- *The Role of Children During the Algerian Liberation Revolution (1954–1962)* by Belaroussi Ilyas and Khadija Belhassini, published by Wamda Publishing, Distribution, and Translation House, 2022.

- The book *Children of the Revolution (Les enfants de la guerre)* by Dr. Mustapha Khiati⁷⁵.

- The book *Childhood in War (Une Enfance dans la Guerre)* by Leila Sebbar, featuring unpublished texts by about forty Algerian and French novelists, poets, philosophers, and historians who experienced their childhoods in Algeria during the war.

Conclusion:

Ultimately, there is no definitive conclusion when the subject is the Liberation Revolution and the discussion revolves around its various realistic aspects. Adding a legal perspective makes the matter more logical and clears up much of the ambiguity. The Algerian child and the Liberation Revolution, through a contemporary legal lens, present and authenticate a history using the legal tools in effect during and after the revolution. These are the same tools through which Algeria continues to uphold respect for its history and the permanence of what it achieved for the legal recognition of human rights within this enduring historical context.

⁷¹ Translated by Mourad Ouznagi, Al-Huda Publishing House, Algeria, 2012.

⁷² The book was published by the National Book Institution in 1989.

⁷³ Published by the French publishing house l'Harmattan in 2021.

⁷⁴ The book was published in 2022 by Dar Manchouarat Al-Hibr under his supervision and with the participation of a group of professors, fighters, and intellectuals: Al-Habib Sayeh, Bashir Frix, Boujemaa Gherir, Halima Jaghroud, Khalifa Ben Qara, Rabeh Khaddousi, Rachid Ouzani, Zaher Abdul Hamid, Saad Bouflaka, Suleiman Jawadi, Tayeb Nait Suleiman, Abdul Jalil Mertad, Abdul Rahman Azouq, Abdul Islam Maifi, Abdul Aziz Bouchfirat, Abdul Aziz Zghmoul, Abdul Aziz Filaali, Mohamed Bouazza, Mohamed El Hadi Harsh, Mohamed Slim Kallala, Mohamed Sari, Mohamed Yaken, Mohand Al-Arabi Si Youssef, and Mustafa Ashwi.

⁷⁵ Published by the Homa publishing house in 2017.