

Legal protection of children from sexual exploitation In light of Algerian legislation and international agreements

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Abstract:

Sexual exploitation of children, in all its forms, is one of the emerging criminal phenomena around the world, which threatens the child's life, as the latter is exploited in all forms of sexual acts owing to these fragile physical and mental capabilities at this age range compared to adults.

This phenomenon has therefore become a significant challenge for countries to protect the child from all forms of exploitation and abuse, which requires concerted international efforts to address and combat this cross-border phenomenon, as various national and international legislation intervened to criminalize various forms of juvenile sexual exploitation.

Keywords: Child, sexual exploitation, criminal phenomenon, legal protection.

Introduction:

Childhood is the first stage of life and its first step towards social integration and transcendence. It is a basic stage in the formation and evaluation of human personality during which the child is prepared and rehabilitated to go through the following stages of his life with a awareness maturity. Therefore, childhood is the most sensitive stage in a person's life, as it is the base on which a child's intellect and personality are based.

Childhood is also one of the most important stages of individual growth and the formation of independent personality and the most influential one in building the family and society as a whole. On this basis, various national and international legislations have given the child special attention, and recognized him with a set of rights¹.

The previous century witnessed the beginning of a radical and decisive change in the way of dealing with children. New practices began to reflect the extent of attention and direct

¹ Hassanein Al-Mohammadi Badawi , Child Rights between Sharia and international Law, Dar Al-Fikr Al-jami, Alexandria,2007, P 07

attention to the child, to the degree of protection in exceptional circumstances, such as wars and other forms of armed conflicts.

Since the child is characterized weakness in terms of physical and mental abilities compared to an adult, children have become an easy prey to criminals of prostitution and other forms of sexual abuse by sexually exploiting them in the most heinous forms and manners. Nowadays, sexual exploitation of children is recognized as one of the shameful phenomena that threaten the child's life and destiny.

The phenomenon of sexual exploitation of children is not a nascent phenomenon, and is not confined to a specific geographical area. In fact, it has roots in history, yet it spread phenomenally at the end of the twentieth century and the beginning of this century, especially in countries where the dangerous triad (poverty, illiteracy, and ignorance) is widespread; this is added to the absence of religious and moral scruples. However, this does not negate its existence even in developed countries, to the extent that it has become a widespread phenomenon, which gained a global and international character.

Child sexual exploitation means the imposition of sexual acts or sexual innuendos by one or more persons on a particular child by taking advantage of the latter's mental or physical weakness. Under the concept of sexual exploitation, children are forced or tempted to engage in sexual activities, be they aware of what is happening around them or not. It is a set of mutual interactions and a sexual relationship between a child and an elder person, whether the assailant is a stranger or a member of the child's family.¹ Accordingly, sexual exploitation of children is characterized by a number of features, namely the desire for profit or the exploitation of a powerful relationship between a child and a dependent adult.

Sexual exploitation of children has become more widespread and threatening in different forms and images day after day. Such a situation necessitated the intervention of state legislators to protect children from this shameful phenomenon, based on a firm conviction on the part of the international community of the need to protect children from all forms of exploitation and abuse. Accordingly, various national and international legislations have been keen to combat this phenomenon.

Algeria is no exception to this, as the Algerian penal code protects the child from all forms of sexual exploitation.

Hence, the research questions revolve around the following issue: how effective are the legal mechanisms in protecting children from the manifestations of sexual exploitation?

A question we will try to answer by highlighting:

- Manifestations of sexual exploitation of children (the first topic).
- Then, the legal mechanisms to protect children from sexual exploitation.

The first issue: Manifestations of sexual exploitation of children.

Children may be subject to sexual exploitation, and be an easy prey for criminals of prostitution in the most horrific forms and acts. Accordingly, the images of sexual exploitation of children may manifest themselves in different ways, the most important of which are:

I. Sexual Abuse of Children.

There is no doubt that sexual abuse constitutes one of the most serious manifestations of mistreatment of children. Child sexual abuse means the use of a young person to satisfy the sexual desires of an adult or adolescent, in the sense of engaging in sexual activities with a child, whether this practice occurred out of coercion or threat, or by using trust, power, or influence, as a result the child's mental or physical weakness¹.

Accordingly, the sexual abuse of children is related to two main issues:

- **The first issue** is related to determining the age for engaging in sexual activities, as national legislation differs in determining this age. For example, Swiss law allows citizens who have reached the age of sixteen (16) to engage in sexual activities.

- **As for the second issue**, sexual assault does not refer to consensual sexual practices when it is done between minors.

Therefore, the degrees of child sexual abuse vary according to their severity:

1. Rape: It is considered as one of the most severe forms of sexual abuse perpetrated against children, and it is a crime whose punishment is stressed by law,² as it violates the body and soul of the victim and is carried out using force.

Rape is also the imposition of sexual intercourse by force against the will of the victim, whether by taking advantage of the position of the aggressor, such as being a relative of the victim or his teacher, for example, or by controlling or authority, or deception and exploiting the psychological, mental or physical disability of the victim. Rape may also be by temptations through rough Play.

2. Indecent acts: Sexual abuse may be done by using some indecent acts, such as touching the sexual organs of a child, or asking him to touch the sexual organs of an older or stronger person. These heinous acts may be accompanied by a threat to the child by this person to induce the victim to commit them.

3. Watching: Sexual abuse may also be done by forcing a child to watch sexual materials such as movies, websites, or photographs, etc.

¹ Article 18 of the Council of Europe Convention on the Protection of Children from Sexual Exploitation of 2007

² Article 344 of the Algerian Penal Code.

II. The Exploitation of Children in Prostitution.

Child prostitution means the use of children for the purpose of sexual activities in exchange for money or any other form of reward or compensation¹.

Child prostitution is often associated with poverty, especially in developing countries, where economic needs push children into sexual activities. However, this does not negate the willingness of parents sometimes to sell their children in the market for this shameful craft or trade in various countries, even advanced ones, in order to earn money, which reveals the deep family deviation within society, where children's bodies become a mere commodity.

However, there is another aspect of the exploitation of children in prostitution, which is the presence of systematized criminal organizations that profit and reap huge sums of money from child prostitution². In the worst cases, gangs and criminal organizations may resort to kidnapping children and forcing them into prostitution, both at the local level or by transporting them across international borders.

Child prostitution involves using, urging or forcing a child to engage in prostitution. It is worth noting in this regard that the consent of the child is not considered here to legitimize the exploitation of the child in prostitution. Hence, even if this act was issued or carried out with the consent of the child, the act remains within the framework of the child prostitution. Some national legislations and international conventions are keen to respect the child's personal freedom to engage in sexual activities. However, this is also considered as abuse on the grounds that this freedom is the result of an incomplete will, meaning that the nature of the child makes that will non-existent unless there is some sort of intervention by a person who is older and stronger than the child out of desire or for profit.

III. Child Pornography.

Exploitation of children in pornography means depicting the child by any means through which he is practicing real or simulated explicit sexual activities or any depiction of the child's sexual organs in order to satisfy sexual desires³.

Accordingly, child pornography includes everything related to sexually explicit material, as it includes the production, distribution or display of sexual images or films, or the acquisition or possession of pornographic material.

The phenomenon of child pornography is a commercial operation with children's bodies, from which huge sums are earned. Clients of which are especially homosexuals,

¹ Article 2/b of the Optional Protocol on the sale of children, child prostitution and child pornography for the year 2002.

² Fatima Shehata Ahmed Zidan, *The Child Center in Public International Law*, New University House, Alexandria, 2007, p. 382.

³ Article 2/c of the Optional Protocol on the sale of children, child prostitution and child pornography, for the year 2002.

where some pictures and video clips of the child are taken while he is completely undressed, or in tempting sexual situations, whether this is accompanied by a sexual act or not¹.

The steps of such a criminal act often begin with the workers on such pictures persuading the child to accept their offer of photography, sometimes by tempting him with money, and sometimes by using narcotic substances, or by forcing the child to photograph with threat. Once the child concedes photographs are taken many pictures in unclothed poses. These images may also be used later to threaten the child for sexual exploitation².

Photographing children in sexually inappropriate situations may occur on real children or on virtual children, according to what is known as false images, extracted from many parts of the images that are assembled together to eventually form one image. Which constitutes a flagrant abuse of childhood³.

The concept of child pornography may extend to include the exploitation of children in pornographic shows, where the child is used in a pornographic display, or forced to watch a child pornographic display, or by urging young victims to do so or forcing them regardless of the means used.

A child may also be prepared for sexual purposes by an adult using information and communication technology for the purpose of engaging in sexual activity or exploitation for the production of pornographic materials.

Perhaps the most important factor that has effectively contributed to the popularity and decline of the phenomenon of child pornography, whose protagonists are children, is the Internet. In terms of volume in the production and distribution of child pornography, it is now easy to obtain and at the lowest costs⁴.

The promotion of pornographic material in which the child is subject to abuse for the purpose of satisfying sexual instincts or for commercial gain is easily done via the Internet, where it has become a suitable place for selling the products of prostitution producers of films and juvenile pornography. The danger of this network in this regard is highlighted in the fact that child pornography has become directed to a large segment of pornography consumers, and the danger increases when such pornography in which children are shown as heroes, which causes the latter material and psychological harm. It should be noted that the case of child pornography often overlaps with the case of child prostitution, one leading to the other,

¹ Some international police reports indicate that Germany is the main source of this type of criminal activity, with child pornography networks forming an extensive network in Germany, see Fatima Shehata Ahmed Zaidan, previous reference, p. 384.

² Abd al-Rahman Asiri, Traditional and New Patterns of Child Abuse, Symposium on Child Abuse and Illicit Exploitation, Naif Academy for Security Sciences, Riyadh, 2001, p. 27.

³ In the year 1993, a man published a picture on the Internet showing him having sex with several children, only to find out that these pictures were not real, but were fake pictures of his imagination. For more details, see: Bushra Salman Al-Obaidi, Criminal Protection for Childhood, Master's Thesis, College of Law, University of Baghdad, 1999, p. 302.

⁴ According to the 2010 International Center for Missing and Exploited Children's report on child pornography, a large number of child sex offenders are using the Internet in the production and distribution of child pornography. See Othman Tariq, Protecting Children from Internet Pornography in Algerian Legislation, Al-Mufker Journal, Thirteenth Issue, p. 421.

which entails the existence of an organized trade in the exploitation of children for sexual purposes.

IV. The Exploitation of Children in Sex Tourism

In order to revive the tourism sector, some countries are resorting to the so-called "sex tourism". Sex tourism comprises organized trips using structures and networks with the intention of establishing commercial sexual relations between the tourist and the local population in a tourist destination¹. This type of tourism has spread all over the world, especially in countries whose economy depends on the tourism sector.

In recent years, sex tourism has targeted children in particular, as sex tourism has extended to exploiting poor children in many countries for several reasons, the most important of which are:

The tendency of some tourists to prefer sex with children to satisfy their sexual desires, whether these tourists are men or even women.

Another reason is the living conditions of children and their families that induce them to exploit children sexually. Often, parents in tourist countries resort to offering their children to tourists to have sex with them in order to get some money.

Reports issued by the United Nations Human Rights Committee revealed a large number of children being exploited in sex tourism; for instance, the number of children engaged in sex tourism in Brazil reached about 600,000. These reports also indicated the existence of large networks that exploit children in prostitution through sex tourism in the Philippines, Thailand and India. These reports added that those children are sometimes transported children from neighboring countries. Indeed, the menace has become cross-border, as children are being recruited from Burma, Nepal and Bangladesh to practice sex tourism in both India and Thailand².

The Arab countries were not isolated from this dangerous phenomenon, as some international reports indicate that Morocco topped the list of Arab countries where sex tourism in which children are used to promote it in Morocco is widespread. According to the report prepared by the World Tourism Organization W.A.T.O in 2003, Morocco is very famous in the field of child sexual exploitation. This country has become one of the preferred destinations for child sex tourism due to the stagnation of the sex market in the Asian market, in addition to Morocco's ambition with the beginning of the third millennium to develop the tourism sector and achieve the number of ten million tourists in 2010.

What has helped to exacerbate the phenomenon of child sex tourism is the leniency of national laws in punishing people who exploit children in this type of tourism, especially in countries whose economy depends mainly on the tourism sector.

¹ According to the definition of the World Tourism Organization of the United Nations.

² For more details, see: Khalid bin Muhammad Sulaiman Al-Marzouq, *The Crime of Trafficking in Women and Children and Its Punishment in Islamic Sharia and International Law*, Master Thesis, College of Graduate Studies, Naif University for Security Sciences, Riyadh, 2005, p. 36. See also : Fatima Shehata Ahmed Zidan, previous reference, pp. 385-386.

What also contributed to the spread juvenile sex tourism is the exploitation of information and communication technology, especially the Internet. This formidable tool has made it easy to access the world of sex tourism, through advertisements that have become included in this network. Some tourist agencies resort to the Internet to promote child sex tourism, and provide offers and incentives that will attract sex tourists from all over the world, which helped create a global trade in infantile sex tourism.

There is no doubt that victims of this crime, which have become the most growing type of illegal trade in the world, are increasingly exposed to various types of risks, including multiple forms of abuse and violence.

It is also no secret that this crime leads to illegal and unwanted pregnancy among young females who are exploited in sex tourism, in addition to the spread of sexually transmitted diseases, especially AIDS, in the absence of medical supervision, knowing that such crimes are carried out far from the eyes of state agencies.

The exploitation of children in sex tourism may keep them away from school and deprive them of the opportunity to continue their education. In addition, the child loses dignity and the sense of humanity, which may push him/her to commit suicide as a result of the frustration and depression that they suffers from as a result of pressure in all its forms, to have sex with people against their will. Sex tourism may also lead a child to engage in violence and commit crimes of all kinds.

In view of the profitable phenomenon of child sex tourism that has spread all over the world, this tragedy has become a practice that directly encourages the sale of children for exploitation in prostitution and pornography.

The second Issue: Legal mechanisms to protect children from sexual exploitation

In order to provide legal protection for children from the phenomenon of sexual exploitation in all its forms, the Algerian legislator has deliberately included provisions in the Penal Code that criminalize and punish sexual exploitation of children. The latter's position on this phenomenon is consistent with international efforts to combat this criminal phenomenon, and in this respect, the Algerian law has been ratified to align with international conventions.

One: Protection of Children from Sexual Exploitation in Algerian Legislation.

The Algerian Penal Code includes many legal provisions that criminalize and punish the abuse and exploitation of children in sexual acts.

A. Criminal protection of the child from honor crimes.

1- Protecting the Child from Rape.

The Algerian legislator did not define rape and only stipulated in Article 336/1 of the Penal Code the punishment prescribed for this crime as a felony, as it stipulated that: "Anyone

who commits the felony of rape shall be punished with temporary imprisonment from five (5) to ten (10) years.” The French legislator however defined rape in Article 222-23 of the Penal Code as “Every act of sexual penetration of whatever nature is committed against the same person by violence, coercion, threat or surprise”¹.

Through this definition, it becomes clear that the French legislator did not limit the crime of rape to the female, but also included the male, which is the same direction that the Algerian legislator followed. In Article 336/2 of the Penal Code when he considered the occurrence of rape to a minor who did not complete the age of eighteen, be they male or female. An aggravating circumstance makes the penalty for rape against a minor reach from 10 to 20 years. Hence, the Algerian legislator considers the victim’s young age, regardless of gender, as a legal presumption that cannot be proven contrary to the minor’s dissatisfaction, due to the child’s unawareness of the nature of the offender’s act.

a. Elements of the crime of raping a minor child.

- **The presumed basis:** is that the age of the victim, as the Algerian legislator determined it, is below the age of 18.

- **The material element:** consists of the following elements:

1. The act of intercourse, which is achieved by the person having sex with a female or a male². The act of penetration can be concluded by medical examination.

2. Child's dissatisfaction, which is achieved by using violence, either physical, or by using any other means such as beating, or moral such as threats. The young age of the victim in this case is considered a form of dissatisfaction³.

- **The moral element:** is represented in the willingness of the offender to commit a sexual act with the abused child, knowing that he/she is engaging in an illegal sexual relationship through coercion. Once the criminal intent is achieved, the motive or intention for committing the crime of rape is not considered, because the motive is not an element of criminal intent, so it is equal to the motive being to spend sexual lust or take revenge on the victim.

b. The Prescribed Penalty

The perpetrator of the crime of raping a minor under the age of 18 shall be punished with temporary imprisonment from 10 to 20 years. Sometimes, the offender is from the kinship of the person against whom the act is committed, or s/he is has authority over the victim, or is one of his teachers, or one of those who serve him for a fee, or one of the clergy.

¹ Art 23-222 French Criminal Law: “Any act of sexual penetration of any kind whatsoever committed against the person of another by violence, coercion, threat or surprise is rape”.

² Abd al-Hamid al-Shawarbi, *The Crime of Adultery, Mansha’at al-Ma’arif*, Alexandria, 1998, p. 83.

³ Muhammad Saeed Tamour, *Explanation of the Penal Code, Special Section: Crimes against Persons, Part 1, Second Edition*, House of Culture for Publishing and Distribution, Amman, 2002, p. 212.

In this case, the Algerian legislator raises the prescribed penalty to become life imprisonment¹.

There is no doubt that the Algerian legislator's intensification of the penalty in these cases is justified, since the occurrence of the crime of rape on the victim by a person of a certain capacity for him may inspire confidence, making it easier for the offender to commit this act².

2. Protecting the child under the age of 16 from a violent indecent act

The act of immorality means every act that is practiced on the human body, whether male or female, and that would constitute a breach of public morals, either openly or in secret³.

The Algerian legislator criminalized this act under Article 335 of the Penal Code, and distinguished it from rape in that rape only occurs through intercourse, while the indecent act includes all acts affecting honor except for sexual intercourse.

The young age of the victim, who did not exceed 16 years, is considered an aggravating circumstance for the crime of indecent act, whereby the offender is punished with temporary imprisonment from 10 to 20 years⁴.

a. Elements of the crime of an indecent act committed by violence against a minor under 16 years of age.

- **The theoretical basis:** At this age, the child has not exceeded 16, regardless of gender.
- **The material element:** is represented in the fact that the committed act offends public morals and affects public principles, provided that the act harms the child's body, for example, his undressing to passers-by, etc. Yet, this matter remains left to the discretionary authority of the judge to whom it is referred to determine whether the act committed was immoral or not.

In addition to the use of violence against a minor child, either physically or morally, the Algerian legislator did not require the association of the indecent act with violence in all cases. The crime is committed even if this act of indecency was perpetrated without violence, because the young age of the victim is in itself an absence of consent.

- **The moral element:** It is represented in the criminal intent, which implies that the offender's will is directed to committing this act through his knowledge and that what he is doing violates public morals, yet he deliberately commits them.

b. The Prescribed Penalty.

¹ Article 337 of the Algerian Penal Code.

² Abdel Wahed Imam Morsi, *Homosexuality and Murder*, Dar Al Maaref, 1995, p. 280.

³ Ahsan Bouia, *Al-Wajeez in Private Criminal Law, Crimes against Persons and Funds, Part 1, First Edition*, Homa House for Printing and Publishing, Algeria, 2002, pg. 99.

⁴ Article 335/2 of the Algerian Penal Code.

The offender who commits an indecent act committed with violence against a minor under 16 years of age shall be punished with temporary imprisonment from 10 to 20 years¹.

However, if the offender is from the child's ascendant, or has authority over the him/her, or one of the clergy, the penalty shall be raised to life imprisonment².

In view of the seriousness of the crimes referred to above committed against children, which can have a severe impact on the psyche of the child, the legislator has described them as criminal. In this case, the act is described as the felony, and deserves the most severe penalties, in order to protect the honor of the child.

3. Protection of the child from the crime of homosexuality

Arab and Islamic societies did not know the phenomenon of homosexuality in the recent past, yet the impact of globalization, western culture and the Internet had a great impact on the spread of this phenomenon in these societies in an amazing way, as some people resorted to such indecent acts in order to satisfy their sexual desires.

Homosexuality is defined as : “every unnatural sexual intercourse between two persons of the same sex”³. It includes penetration of the penis into the anus, which is known as sodomy, and includes abnormal sexual practice between two females, which is known as lesbianism.

The Algerian legislator criminalized homosexuality in Article 338 of the Penal Code. However, what concerns us in this research is the protection of the child in this crime. After our extrapolation to the text of Article 338/2 of the Algerian Penal Code, it is clear that the Algerian legislator has made the character of a minor in the crime of homosexuality an aggravating circumstance for this crime.

a. Elements of Homosexuality as an Act against a Minor

In addition to the fact that the act is committed against a minor who has not completed the age of 18, this crime requires the availability of a material and a moral element.

- **The material element:** It consists in performing any unnatural sexual act that would constitute sexual contact with a minor child between two persons of the same sex, whatever the nature of this contact.
- **The moral element:** It is represented in the criminal intent, as this crime is carried out the same way as any act of homosexuality committed against a minor child⁴.

b. The Prescribed Penalty

If one of the offenders is a minor who has not completed 18 years of age, the offender shall be punished by imprisonment for three years and a fine of 20,000 DA.

¹ Ibid.

² Article 337 of the Algerian Penal Code.

³ Ahsan Bousakia, op. cit., p. 104.

⁴ Ibid. p. 105.

What is noted in connection with the punishment prescribed for the crime of homosexuality against a minor is that it is a reduced punishment compared to the penalties prescribed for crimes of rape and indecent act, in addition to being a permissive punishment (which may be increased), and makes the matter under the discretion of the judge. The punishment for this crime is supposed to be established by force of law when it comes to protecting children from homosexuality.

II. Penal Protection of the Child from Incitement to Immorality and Prostitution

The Algerian legislator has realized the seriousness of the phenomenon of sexual exploitation of children, and the exploitation of children in prostitution has become an important aspect of its manifestations. This is mainly due to its negative repercussions on the child and society as a whole, as the phenomenon of child prostitution has become one of the most dangerous crimes against the child, being exposed to moral decay. This applies to the family and society, which prompted the Algerian legislator to dedicate an entire section in the Penal Code, represented in the Seventh Section, in order to protect minor children from crimes of incitement to immorality and prostitution, in articles 342 to 349 bis.

However, what is noticed on the texts of these articles is that they are general and unclear, which may make them difficult to apply.

1. Protecting the child from the crime of incitement to immorality

Article 342 of the Algerian Penal Code states: “Anyone who incites a minor under the age of eighteen to commit immorality or debauchery or encourages it or facilitates it, even if accidentally, shall be punished by imprisonment from five to ten years and a fine from 20,000 to 100,000 DA.”

The attempt to commit the misdemeanor stipulated in this article shall be punished with the penalties prescribed for a complete crime.

Through this article, the crime of incitement to immorality and debauchery takes two descriptions:

- An accidental character of the crime if the victim is a minor who has not completed 18 years.
- A habitual character.

However, both images share the following elements:

• **The material element:** is represented in inciting the child to acts of immorality and debauchery, encouraging or assisting in that, even if this is done accidentally, and regardless of the means used by the instigator, which would pave the way for the child to immorality and debauchery. This element of crime is available as soon as the act of incitement, assistance or encouragement has taken place, whether the result has been achieved or not¹.

¹ Abdel Aziz Saad, Moral Crimes in the Penal Code, The National Company for Publishing and Distribution, without a year of publication, p. 84.

• **The moral element:** is represented in the criminal intent, and the intent required in such crimes is the general criminal intent that is deduced from the offender's knowledge that what he is doing of incitement, assistance or encouragement would lead the child to enter the world of immorality and debauchery.

However, a question arises in this regard: **Is it required that the incitement be the person him/herself or for others?**

Professor Ahsan Bousakia argues that the incitement is for the benefit of others, which is what the Supreme Court held, i.e. that the crime of inciting a minor to immorality and debauchery requires that the offender incite others and not himself. Then it concludes that the crime does not occur against the accused who incited a girl who exceeded 16 years to satisfy his sexual desires as long as the latter was satisfied with sexual intercourse with him¹.

The person against whom the crime of inciting a child to immorality and immorality is proven shall be punished with original and complementary penalties:

According to Article 342 of the Algerian Penal Code, original penalties include imprisonment from five to ten years, and a fine of 20,000 to 100,000 DA. Attempt to commit these crimes shall be punished with the same penalties prescribed for the full crime.

- As for complementary penalties, the perpetrator of this crime may be sentenced to deprivation of one or more of the national, civil and family rights stipulated in Article 14 of the Penal Code, and to lose residency for a period of at least one year and five years at most².

The penalties prescribed for this crime in the above-mentioned articles are applied even if some of the acts constituting the elements of this crime took place outside the Algerian territory³.

2. Protecting the child from incitement to engage in prostitution.

Inciting a child to prostitution means every act that affects the child's psyche or attempts to persuade him to engage in prostitution, facilitate it or help him to do it. This might occur by presenting the child's body, whether male or female, to others to satisfy their sexual desires and lust, in return for a sum of money or any other compensation, as stipulated in Article 343/5 of the Algerian Penal Code.

According to Article 344, the Algerian legislator made the age of the child an aggravating circumstance for the prescribed penalty.

a. Elements of the crime of inciting children to engage in prostitution.

is represented in the age of the victim, as Article 344 considers it a misdemeanor to incite for prostitution against a minor who has not completed 18 years of age.

¹ Ahsan Bousqiaa, op. cit., p. 125.

² Article 349 of the Algerian Penal Code.

³ Article 345 of the Algerian Penal Code.

• **The physical element:** is achieved in one of the following respects¹:

- Using or luring a child into prostitution.
- Inducing a child to engage in prostitution.
- Exploitation of the child in prostitution in exchange for money and shelter.
- Helping the child to engage in prostitution.

• **The moral element:** means the criminal intent. Therefore, the error in estimating the age of the minor victim does not negate the availability of the moral element.

b. The Prescribed Penalty.

The offender, or the so-called intermediary in prostitution, is liable to imprisonment from five to ten years, and a fine of 20,000 to 200,000 DA².

The offender may also be sentenced to complementary penalties represented in the deprivation of one or more of the rights mentioned in Article 14 of the Algerian Penal Code, and a ban on residency from one to five years at most³.

3. Protecting the child from the crime of exploitation in pornography.

The exploitation of children in pornography means depicting a child by any means while he is engaged in sexual activities in a clear manner, whether real or unreal, or depicting the sexual organs of a minor child for primarily sexual purposes. This act is punishable in Article 333 bis 1 of the Algerian Penal Code.

a. Elements of the crime of child pornography.

• **The moral element:** is represented in the age of the victim, whereby Article 333 bis 1 stipulates that the crime of child pornography be committed on a minor who has not completed 18 years.

• **The material element:** is achieved by the offender carrying out one of the following activities:

- Photographing a child engaging in sexual activities, whether real or simulated.
- Photographing a child's sexual organs for sexual purposes.
- Producing, distributing, publishing, promoting, importing, exporting, offering, selling or possessing child pornography.

• **The moral element:** means the criminal intent that is achieved when the offender's will tends to exploit children in pornographic materials in any way.

b. The prescribed penalty.

¹ Abdul Aziz Saad, the previous reference, p. 113

² Article 344 of the Algerian Penal Code.

³ Article 349 of the Algerian Penal Code.

An offender who commits child pornography is liable to imprisonment from five to ten years, and a fine of 500,000 to 1,000,000 DA.

- With regard to child protection from crimes of sexual exploitation via the Internet, and despite the seriousness of these crimes and the increasing targeting of children, the Algerian legislator did not specify these crimes with an explicit provision in the Penal Code criminalizing this type of sexual exploitation of children. Therefore, we find that in Article 333 bis, that whoever displays or proceeds to display to the public, or distributes or attempts to distribute any indecent publication, advertisement or photographs, is punished in Article 333 bis of imprisonment from two months to two years and a fine of 20,000 to 100,000 AD.

However, this article remains insufficient to protect children from sexual exploitation via the Internet, especially regarding high-tech technologies that may expose the child to sexual perversion, or to be the object of sexual exploitation.

II. International efforts to protect children from sexual exploitation.

In the face of the increasing prevalence of juvenile sexual exploitation, there is a need for concerted efforts at the international level to address the situation and combat this phenomenon. Awareness of the seriousness of this problem and its dire consequences, the international community has adopted many conventions that prohibit and criminalize all forms of sexual exploitation of children. It also held several conferences against it.

A. Child Protecting from sexual exploitation under international conventions.

Among the most important international agreements concluded to provide protection for children from all forms of sexual exploitation, one can mention:

1. Protection of children from sexual exploitation in the Declaration of the Rights of the Child of 1924-1959.

On September 26, 1924, the General Assembly of the League of Nations issued a Declaration of Principles on the Rights of the Child called the "Geneva Declaration of the Rights of the Child". Although this declaration did not establish any legal obligations in the right of states because it was not issued on behalf of the member states of the League of Nations, it constituted a basic building block for the protection of children from all forms of exploitation, as it was credited with declaring many of the recognized rights of the child. Among them is the obligation to protect children from all forms of exploitation and abuse, including protection from sexual exploitation¹.

On November 20, 1959, the United Nations General Assembly adopted a new declaration on the rights of the child, which included ten principles protecting the child from all forms of exploitation, including protecting him from sexual exploitation.

2. Child protection from sexual exploitation in the UN Convention of 1989.

¹ Allwash Farid, Child Rights in International Conventions and Agreements, Legal Forum Journal, Issue 06 of 2009, p. 106.

This Convention is the basic international document for the protection of children from all forms of exploitation and abuse. It stipulates the necessity of prevention and protection of children from all forms of sexual exploitation and sexual abuse in all their forms¹.

- Article 19 of this Convention places a duty on the state with assignment to become a party to take all appropriate legislative and administrative measures to ensure the protection of children from all forms of violence, physical abuse, neglect, maltreatment or exploitation, including sexual abuse and exploitation. These regulations are applicable even if the child is in the care of his parents, legal guardian or any other person who undertakes the care of the child.

In this regard, the United Nations General Assembly obligates states to criminalize and punish all forms of active sexual exploitation or sexual abuse of children, including it takes place within the family, for commercial purposes, or child pornography, prostitution and sex tourism. It also requires states to take effective measures to ensure that perpetrators are prosecuted and that they do not go unpunished.

- Article 34 of this Convention affirms the right of the child to protection from sexual exploitation and sexual abuse in all its forms, as it states: “States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse”. For these purposes, states parties shall take in particular, all appropriate national, bilateral and multilateral measures to prevent:

- a. Carrying or forcing a child to engage in any illegal sexual activity.
- b. Exploitative use of children in prostitution or other illegal sexual practices.
- c. Exploitative use of children in pornographic performances and materials.

There is no doubt that Article 34 obliges the member states of the convention to protect children from all forms of sexual exploitation and sexual abuse by forcing them to take effective and deterrent measures to eliminate this appalling phenomenon.

- Additionally, the convention compels member states under Article 35 to take all appropriate measures to prevent the abduction, sale or trafficking of children for any purpose or in any form.

- Emphasizing the provision for further protection to the child from all forms of exploitation, including sexual exploitation, Article 36 of this Convention stipulates that: “States Parties shall protect the child from all forms of exploitation harmful to any aspect of the child's welfare.”

- In order to ensure the recovery of children from the consequences and effects of sexual exploitation, whether psychological or physical, and their reintegration into society. This Convention obligates the states parties in Article 39 to take all appropriate measures that guarantee the promotion of physical and psychological rehabilitation and social reintegration

of the child who is victim of any form of exploitation. Rehabilitation and reintegration should take place in an environment that promotes the health and ensures respect and dignity of the child.

3. Protection of children from sexual exploitation in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

In the face of the increasing phenomenon of sexual exploitation of children, there was an urgent need to prepare an optional protocol attached to the Convention on the Rights of the Child of 1989, in order to enhance the protection of children. It resulted in the issuance of the Optional Protocol on the sale of children, child prostitution and child pornography, which was adopted at The General Assembly of the United Nations on 05/20/2000 by Resolution No. 54/263, and this protocol entered into force on 01/18/2002.

The preamble of this protocol recognizes the continuation of the phenomenon of international trafficking in children and its increasing scope, for the purpose of selling and sexually exploiting children and using them in pornographic displays.

This is added to widespread sex tourism in which children are used in particular, and the consequent promotion of the sale and prostitution of children and their use in shows and pornography, despite the efforts made by the international community to eliminate the phenomenon of sexual exploitation of children in all its forms and its forms.

The preamble to this protocol also indicated that a large number of children face a high risk of sexual exploitation to which female children are the most vulnerable, as they represent the relatively largest group among the vulnerable groups that are sexually abused. It also acknowledged the spread of child pornography shows and materials on the Internet, and other modern technological technologies. With reference to the provisions of this Optional Protocol, it has been stipulated that:

- The necessity of providing in the national laws of the States Parties, and in particular in the Penal Code, the criminalization of the following acts and activities, as a minimum:
 - Offering, handing over or accepting a child in any way whatsoever for sexual exploitation.
 - Offering, securing, procuring or providing a child for the purpose of sexual exploitation.
 - Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornographic materials¹.

- Article 03/03 of this protocol obligates the state parties to take all necessary measures to make these crimes punishable by appropriate penalties, taking into consideration their seriousness, especially since crimes related to sexual exploitation of children are no longer locally organized crimes, but rather have become cross-border crimes.

¹ See: Article 3 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

- The fourth paragraph of this article also requires member states to take strict measures when necessary to determine the responsibility of legal persons for these crimes. This indicates the seriousness of the crimes related to sexual exploitation that stand behind institutions and companies that are considered among the international mafia that must be prosecuted and on whom the maximum penalties should be imposed.
- Introducing the mechanism of extradition¹, and this is what Article 5 of this Protocol stipulates. This text has come as an effective mechanism to combat and eliminate crimes related to the sexual exploitation of children across-borders. The extradition system represents one of the manifestations of international cooperation to combat cross-border crimes in general, in order to stand in front of the perpetrators' impunity from prosecution and punishment by taking refuge across the borders of states. .
- Confiscation of materials used to commit crimes related to sexual exploitation of children².
- Providing guarantees that will protect the rights and interests of child victims of sexual exploitation at all stages of the judicial process, especially by recognizing that the child is considered a weak party to the case, and adapting the legal procedures in the child's favor and making them recognize their special needs³.
- The necessity of international cooperation to prosecute criminals of sexual exploitation⁴.

4. Protection of children from sexual exploitation in the 1998 Rome Convention.

Sexual exploitation of children is considered a crime against humanity according to the Statute of the International Criminal Court. In this regard, the said Statute provides for the protection and promotion of human rights, as this system explicitly recognizes that crimes related to sexual abuse and exploitation are crimes against humanity, and this system is keen that judicial procedures are taken into account, especially when it comes to private sexual crimes with children.

The system of this Court is also keen on prosecuting the perpetrators of the crime of sexual exploitation committed against children, as acts that constitute crimes in violation of the rules of international human rights law and international humanitarian law⁵.

5. Protecting children from sexual exploitation in a declaration fit for children for the year 2002.

¹ Extradition means asking another state to hand over a person accused of committing a crime, or a court ruling that has been issued against him so that this state can try him or carry out the punishment issued against him, on the basis that it has jurisdiction to take the measures arising from the crime or implement the punishment issued against the person to be handed over. See Suleiman Abdel Moneim, *Lessons in International Criminal Law*, New University Publishing House, Alexandria, 2000, p. 87.

² Article VII of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

³ Article 8 of the same protocol

⁴ Article 10 of the same protocol.

⁵ Fatima Shehata Ahmed Zidan, previous reference, pp. 411-413.

A Declaration Fit for Children was adopted on May 10, 2002 by a resolution adopted by the United Nations General Assembly at its twenty-seventh special session. This declaration stipulates in item 39/c the protection of children from all forms of sexual exploitation.

The countries participating in the issuance of this declaration in Article 40 pledged to implement all strategies and measures that would eliminate the phenomenon of trafficking as well as sexual exploitation of children, in particular:

- Taking coordinated actions at the national and international levels, in an urgent manner, to eliminate the sale, abuse and sexual exploitation of children, including the exploitation of children for the purposes of producing pornographic materials, child prostitution, and pedophilia, and to combat existing child sex markets.
- Raising awareness of the illegality of sexual exploitation and abuse of children, including the one perpetrated over the Internet.
- Enlisting the help of the private sector, especially the tourism sector, and the media to provide support for a campaign against sexual exploitation of children.
- Identifying and addressing the causes and factors that would contribute to eliminating the phenomenon of sexual exploitation of children in all its forms, and implementing preventive strategies to combat this inhuman phenomenon.
- Protecting the security and safety of victims of sexual exploitation, providing them with material and moral support, and providing assistance in order to ensure their recovery from the effects of sexual exploitation and their reintegration into society.
- Taking unified measures at the national and international levels to criminalize the sale, exploitation and sexual abuse of children.
- Strengthening international cooperation by monitoring and exchanging information at the regional and international levels on cross-border trafficking of children.
- Strengthening international cooperation between governments, intergovernmental organizations, the private sector and non-governmental organizations to combat the criminal use of information technology, including the Internet, for the purposes of selling children, child prostitution and child pornography, and sex tourism and all forms of juvenile abuse and exploitation.

B. International Conferences against Sexual Exploitation of Children.

Due to the increasing prevalence of the phenomenon of sexual exploitation of children, many international conferences have been held to combat it in all its forms, and the most important of these conferences are:

1. Stockholm Conference against Commercial Sexual Exploitation of Children 1996.

This conference was held in August 1996 in Stockholm, Sweden, and was organized by one of the organizations concerned with the phenomenon of sexual exploitation of children, known as ECPAT international¹.

The countries and organizations participating in this conference approved a declaration to work towards ending the commercial sexual exploitation of children as an extension of the international campaign to reduce child prostitution related to sex tourism, based on what was stated in the 1989 Convention on the Rights of the Child in this regard.

This declaration also considered that the sexual exploitation of children is a flagrant violation of their rights, considering poverty as its main cause, in addition to a number of other factors.

In addition, this announcement alerted the increasing number of criminal networks that exploit children in prostitution and sexual exploitation, and their growing role in increasing the number of children exposed to commercial sexual exploitation.

This declaration also warned that the commercial sexual exploitation of children results in a set of severe damages that would erode the psychological, mental and social development of the child, in addition to the spread of sexually transmitted diseases, including AIDS. This declaration stipulates a set of obligations placed upon states to eliminate all forms of juvenile sexual exploitation, the most important of which are:

- Criminalizing sexual exploitation and punishing all those involved in this act, whether inside the country or abroad.
- Reconsidering and reviewing laws, policies and programs in order to eliminate the commercial sexual exploitation of children.
- Strengthening political laws and programs to protect children from commercial sexual exploitation.
- Creating and activating comprehensive plans and programs that take into account the differences between the sexes in order to reduce the sexual exploitation of children for money, help child victims and facilitate their rehabilitation and integration into society.
- Strengthening the role of parents and legal guardians of children and defining their responsibilities in protecting children from profitable sexual exploitation.
- Encouraging the role of public participation in order to eliminate the commercial sexual exploitation of children.

¹ This conference brought together representatives of governments from 122 countries, representatives of 400 non-governmental organizations, in addition to a large number of intergovernmental organizations, see: Muhammad Nour El-Din Sayed Abdel-Majid, *The Crime of Selling and Trafficking in Children, A Comparative Study*, Dar Al-Nahda Al-Arabiya, Cairo, 2012, p. 163.

2. The Yokohama Conference against Commercial Sexual Exploitation of Children.

This conference was held from December 17-20, 2001 in Japan. Its objectives were to review developments since the Stockholm Conference, identify the main problems and gaps in the fight against commercial sexual exploitation of children, and to enhance follow-up to the First World Conference about commercial sexual exploitation of children.¹

The countries and organizations participating in this conference have unanimously committed themselves to combat sexual exploitation of children, known as the "Yokohama Global Commitment", which was adopted as one of the important documents of the twenty-seventh special session of the United Nations General Assembly².

From what was stated in this commitment, the participating countries and organizations affirm their commitment to the Declaration and Program of Action of the First World Conference held in Stockholm, affirming their commitment to strengthening efforts to combat sexual exploitation of children, and to harnessing, in order to achieve this goal. These countries guaranteed the provision of sufficient financial resources to combat this phenomenon, and raising awareness in the community for more protection of children from sexual exploitation. They also affirmed the commitment to strengthening cooperation at the international level to eliminate all forms of sexual exploitation of children in all parts of the world.

3. The Rio de Janeiro conference for the prevention and cessation of sexual exploitation of adolescent children.

This conference was held in 2008, and was attended by representatives of various segments concerned with the issue of protecting children from sexual exploitation, including representatives of governments, international organizations, and human rights institutions, in addition to legal men, parliamentarians, religious leaders, and representatives of adolescent children and civil society.

This conference culminated in the approval of the attendees of the Declaration of Rio de Janeiro to prevent and stop the sexual exploitation of adolescent children, which included for the first time an explicit treatment of the issue of the use of communication technology, especially the Internet. This declaration called for the need to criminalize the production of pornography for children, and criminalizing their intentional distribution and possession, emphasizing the need to extend responsibility for these acts to legal persons due to the important role they have played in the spread of child pornography³.

¹ Fatima Shehata Ahmed Zaidan, previous reference, p. 429.

² This document has already been referred to in connection with our discussion of Protecting Children from Sexual Exploitation in the Children's Declaration 2002.

³ For more details about the Rio and de Janeiro Conference to Prevent and Stop the Sexual Exploitation of Adolescent Children, please visit the website: www.atfalouna.govlb/Files/Wo2.doc

Conclusion.

After we examined the issue of sexual exploitation of children, by reviewing the most important manifestations of this phenomenon, and the legal mechanisms created by the Algerian legislator, as well as the international efforts made to protect children from this criminal phenomenon, we have evaluated these efforts made to eliminate it.

Through this research, we have reached some results, the most important of which are:

1. It is difficult to determine the number of child victims of sexual exploitation due to the scarcity of data and statistics on crimes related to sexual exploitation of children, as these crimes are covered up and silenced because of the pressures that children victims are exposed to from intimidation and threats. Even families prefer not to report these heinous acts to the relevant authorities to avoid scandal; the majority take place within the family domain and are kept under wraps.
2. The failure of the provisions of the Algerian Penal Code to protect children from being sexually exploited in pornography on the Internet.
3. It is not enough to address the crime of sexual exploitation of children by applying injunctive penalties. Rather, it should be prevented by adopting a comprehensive and preventive approach to confront it, especially by improving the economic and social situation of poor children by combating poverty, illiteracy and ignorance.

In order to promote the protection provided by the Algerian legislature to children from sexual exploitation, we recommend the following:

1. Reviewing the laws relating to the protection of children from the phenomenon of sexual exploitation in all its forms, in line with developments in this regard, and in order to ensure effective protection for the protection of children from all forms of sexual exploitation, especially with regard to protecting them from pornography on the Internet, in sex tourism, and commercial sex
2. The necessity of enacting special legal texts that criminalize and punish, independently of the penal code, the sexual exploitation of children.
3. The obligation to extend criminal protection for children from all forms of sexual exploitation to every individual who has not reached the legal age of majority, be they able to discriminate these acts or not.
4. Severe penalties for the crime of sexual exploitation of children.
5. Increasing the penalty for anyone who uses modern means of communication, including the Internet, to commit such crim

6. Providing material and moral support to child victims of sexual exploitation in order to eliminate the negative effects of sexual exploitation and ensure their therapy and reinsertion into society.

7. Finding legal mechanisms that would secure the right of children affected by various forms of sexual abuse and exploitation to obtain appropriate financial compensation.

8. Activating the role of the family and civil society, as well as the media, to contribute to confronting and combating

the phenomenon of sexual exploitation of children, through raising awareness and sensitizing the dangers of sexual abuse and exploitation of children taking advantage of their immature minds and weak bodies.

9. Strengthening international cooperation in combating cross-border crimes related to sexual abuse of children, in all its forms.

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